

# — 2023 Annual Colorado Privacy Summit

September 28, 2023



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Colorado Privacy Summit  
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# — A General Counsel's Guide to Privacy and Data Security

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## A General Counsel's Guide to Privacy and Data Security



**Kelsey Fayer**

Associate  
Ballard Spahr LLP



**Sakal Heng**

General Counsel  
GOLFTEC



**Peter Sauer**

Head of Legal (US)  
Flexicare



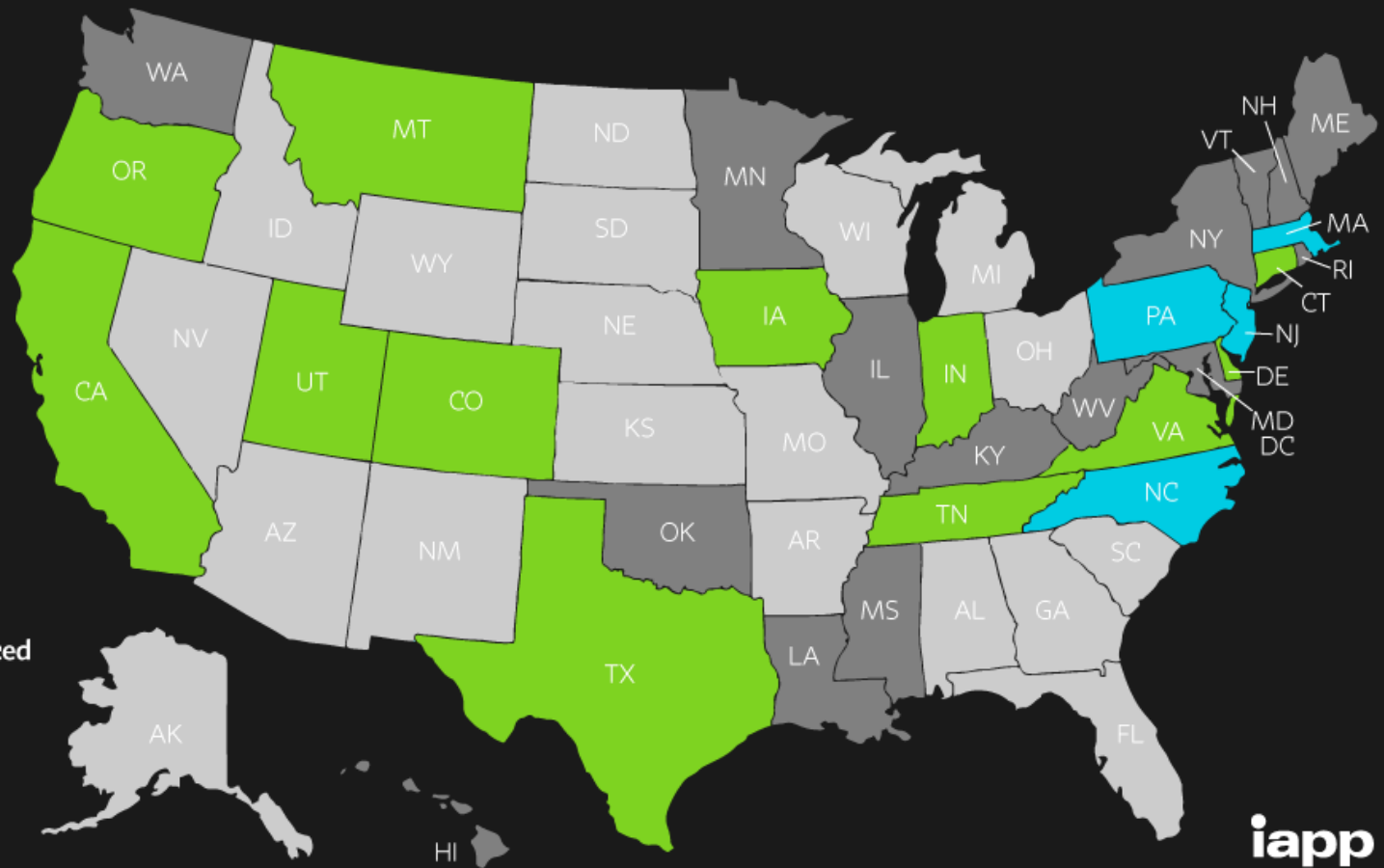
**Adriana Sosa**

General Counsel  
and Board Secretary  
FullStack Labs

# US State Privacy Legislation Tracker 2023

## STATUTE/BILL IN LEGISLATIVE PROCESS

- Introduced
- In committee
- In cross chamber
- In cross committee
- Passed
- Signed
- Inactive bills
- No comprehensive bills introduced



🔄 Last updated: 9/15/2023

iapp

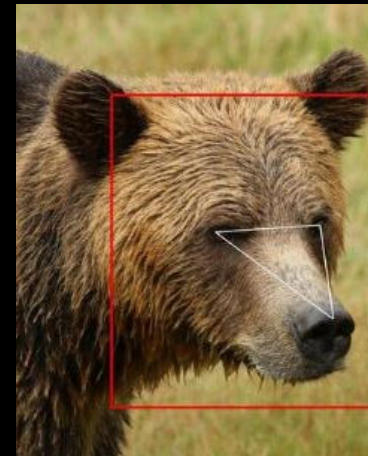
## Regulation of Employee Data

- Biometrics laws
  - Illinois, Texas, Washington
- Data security requirements
- Employee monitoring laws
  - New York, Delaware, Connecticut
- CCPA / CPRA
  - End of employee exemption
- Use of AI in employment decisions



## 2023 Litigation Risk Trends

- Wiretap and Video Privacy Protection Act (VPPA) lawsuits based on common online analytics tools
  - Meta Pixel, Session Replay, Chatbots.
  - Per Violation Statutory Damages
- Biometric Identifier lawsuits in Illinois
  - Employee timekeeping, facial and voice recognition.
  - Statutory Damages of \$1,000- \$5,000 per violation.
    - *Each collection is a separate violation.*







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# The Biggest Data Privacy Challenges Businesses Face When Building a Rock-Solid Third-Party Risk Management Program

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## The Biggest Data Privacy Challenges Businesses Face When Building a Rock-Solid Third-Party Risk Management Program



**Damian Apone**

GRC Director  
Genuine Parts Company



**Tate Crumbley**

Staff Tech Lead Manager  
Quip



**Micheal Reski**

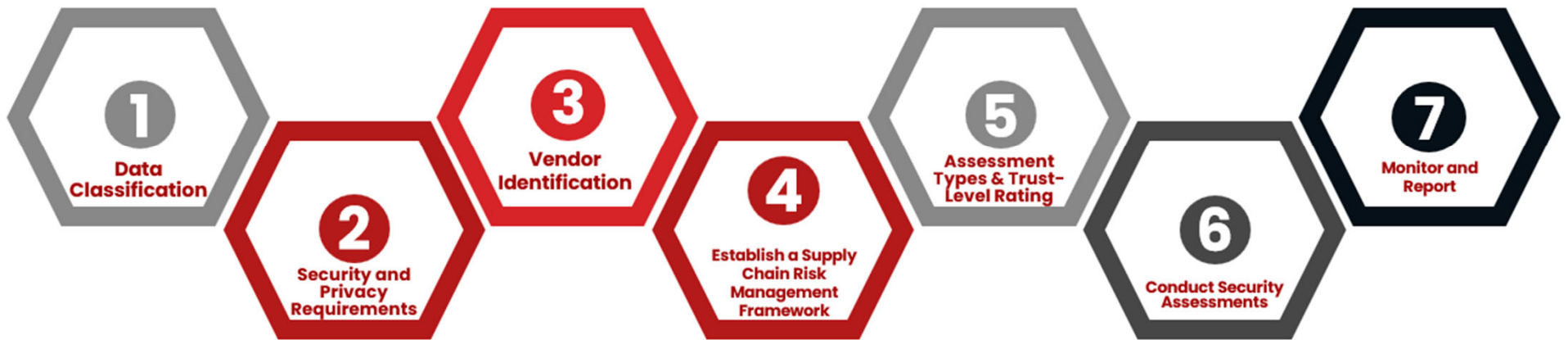
Founder and Principal  
Security Consultant  
Black Lantern Security



**Will Sweeney**

Managing Partner  
Zaviant

## Third Party Risk Management Process







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# Break

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# — The Future of AI Litigation

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— The Future of AI Legislation



**Senator James Coleman**

Colorado Senate  
District 33

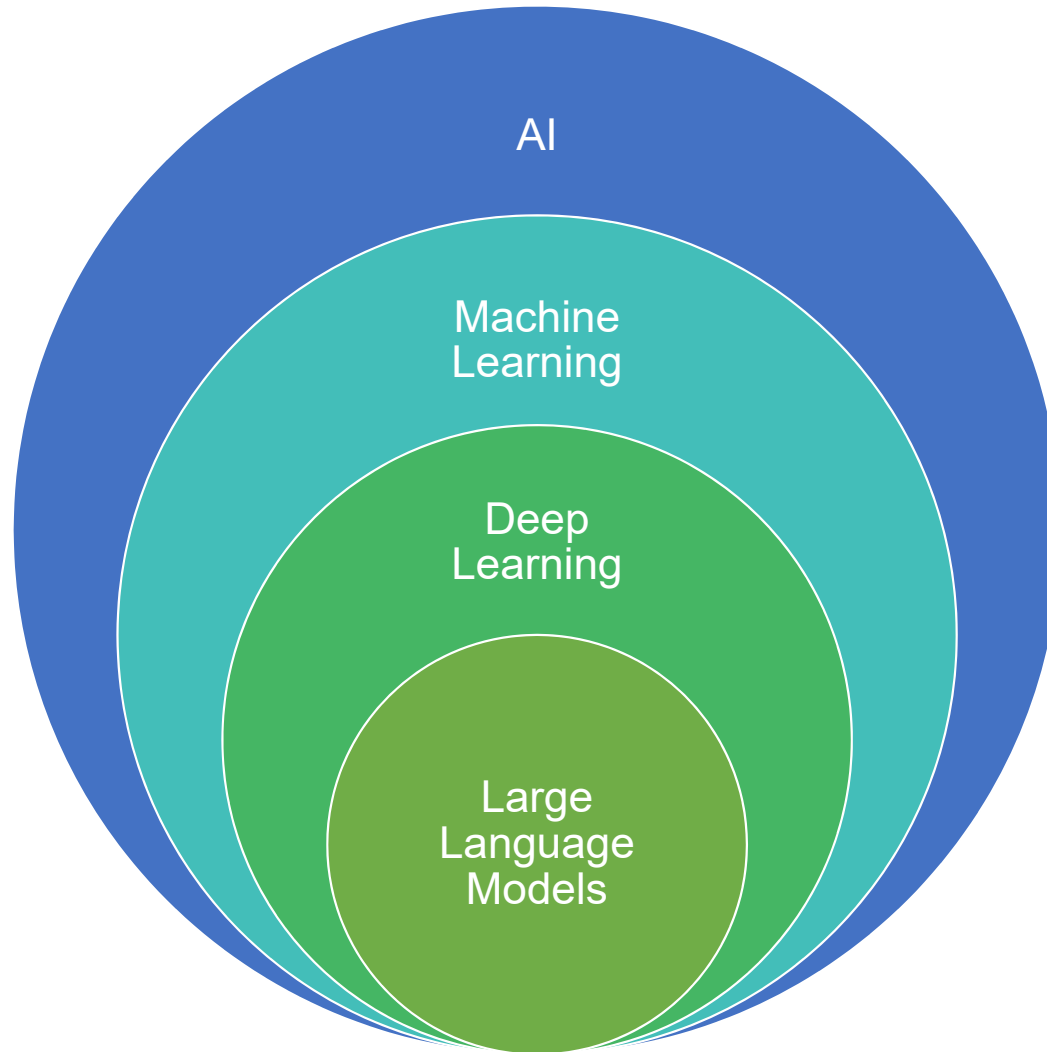


**Professor Zahra Takhshid**

University of Denver  
Sturm College of Law



Defining AI



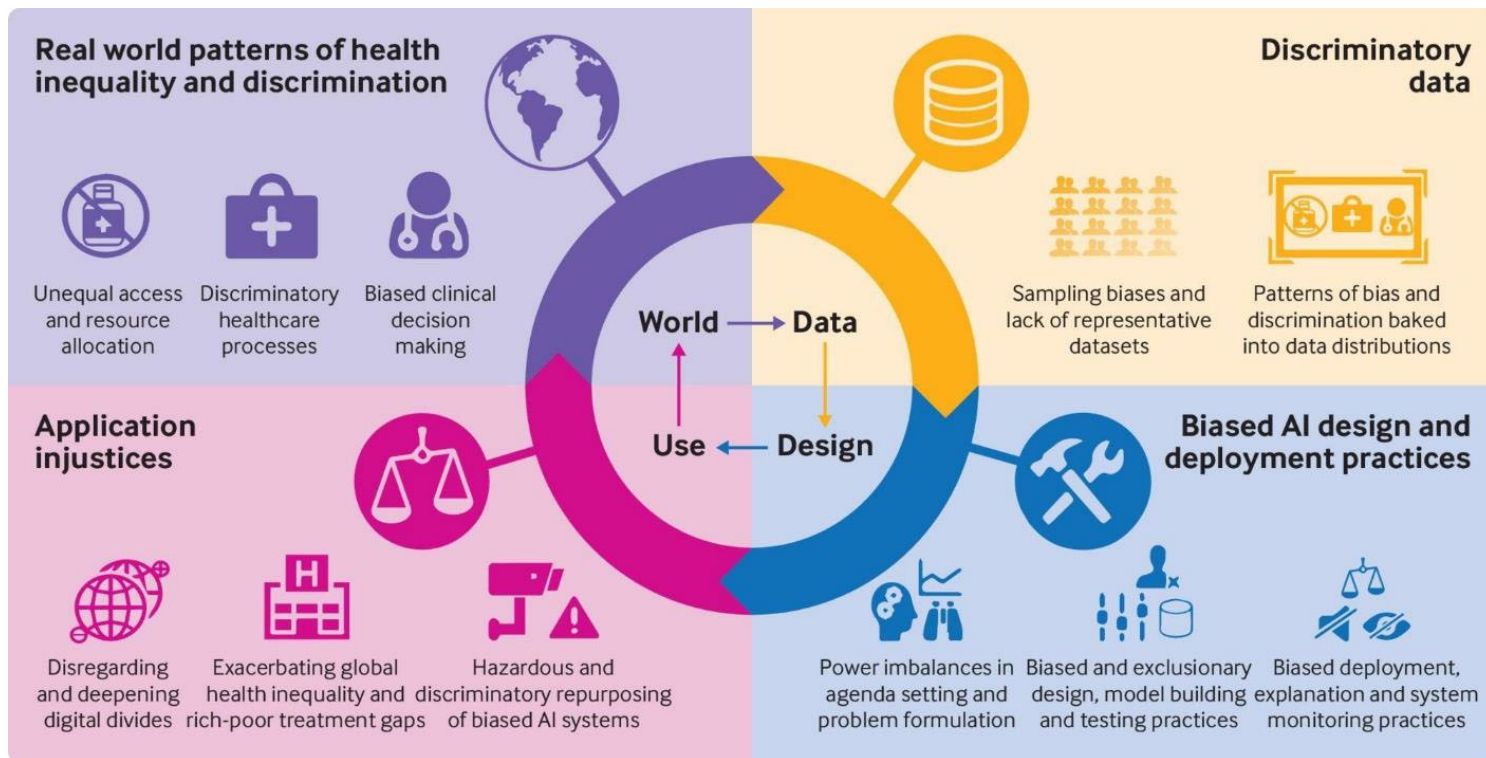
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## Common Concerns and Risks

- Lack of transparency
  - Dependency and misinformation
- Discrimination and bias
- Privacy
- Concentration of power / monopolization
- Job displacement
- Existential threat

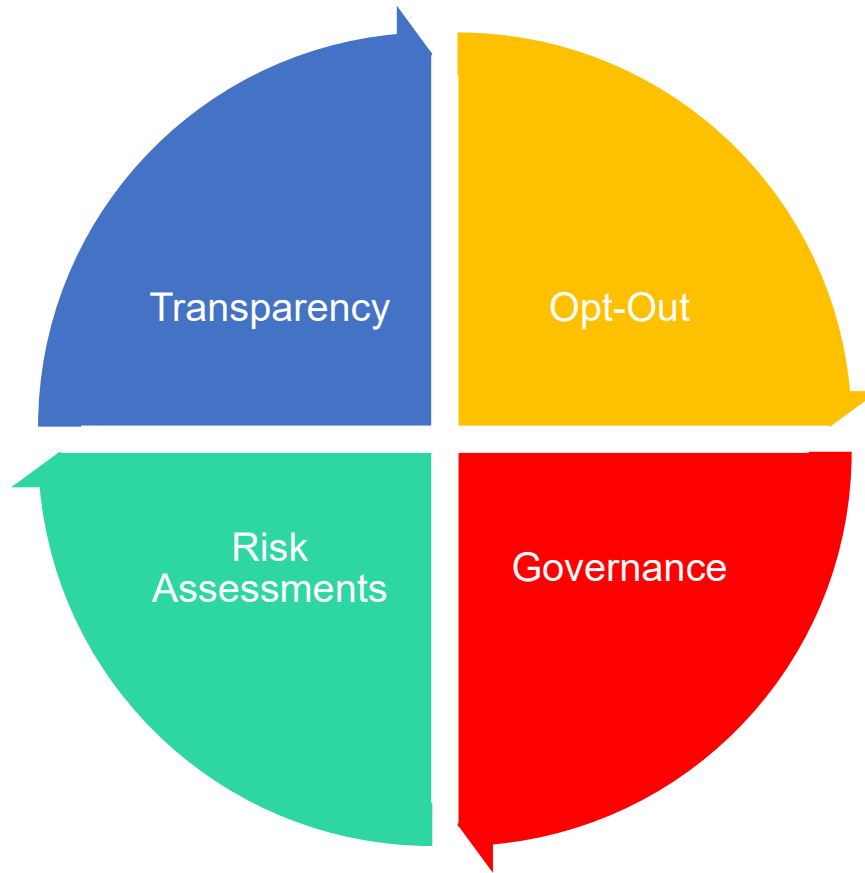


# Bias and Discrimination in AI



Source: World Economic Forum

Mitigating Efforts



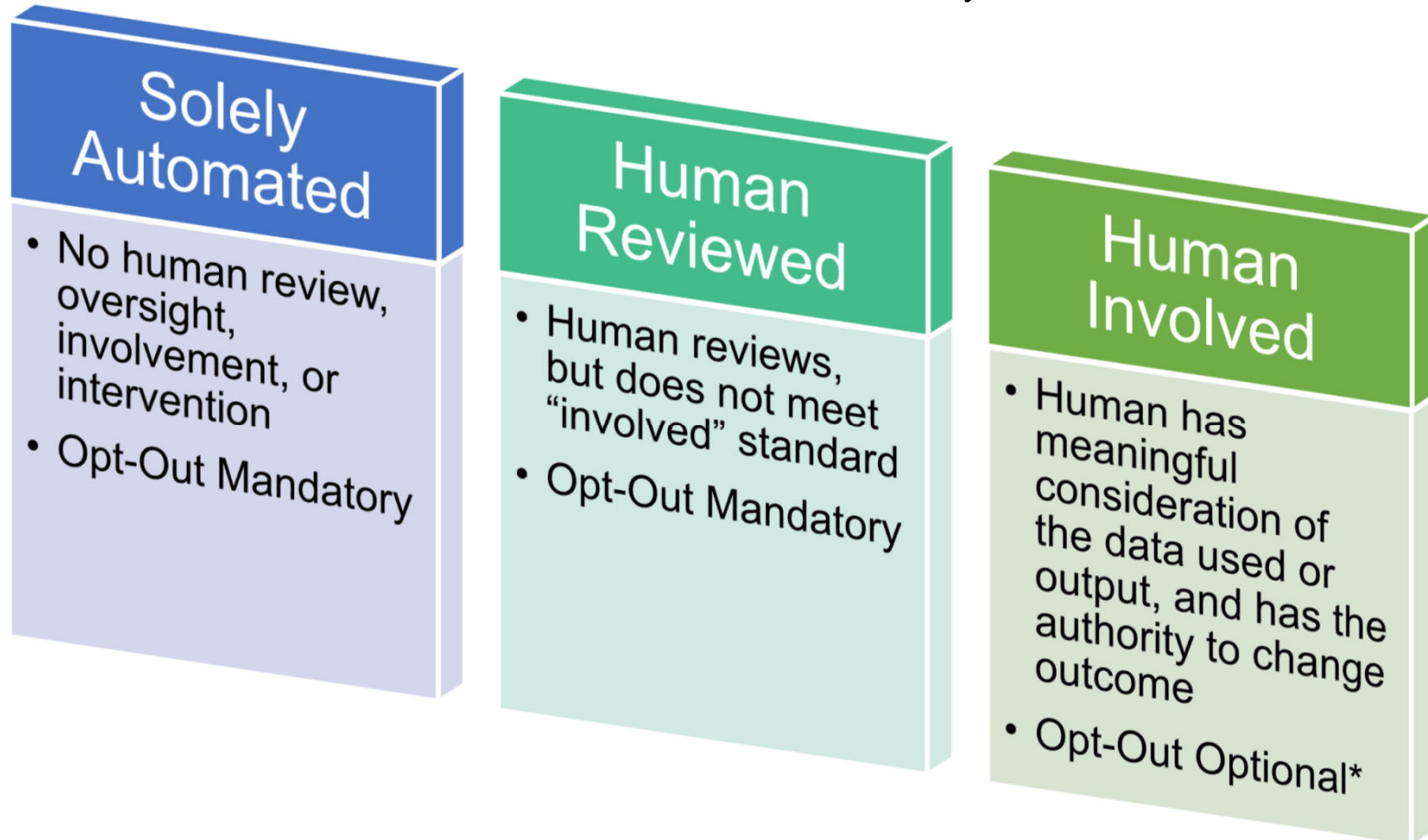


## State Privacy Laws and “Profiling”

Profiling: any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable individual’s economic situation, health, personal preferences, interests, reliability, behavior, location, or movements

Decisions Producing Legal or Similarly Significant Effects: decisions that result in the provision or denial of financial or lending services, housing, insurance, education enrollment or opportunities, health-care services, or access to essential goods or services

## Human Involvement Under the Colorado Privacy Act



## Tort Law and AI Regulation



- Tort Law to Address the Threat of Deepfakes
  - Privacy risks
  - Impact on NIL
- Rethinking Traditional Concepts More Broadly
  - Personal Data as Digital Persona and Likeness



## The EU AI Act

### ➤ AI Systems:

- System designed to operate with a certain level of autonomy;
  - Infers how to achieve a given set of objectives using machine learning and/or logic approaches; and
  - Produces system-generated outputs
- Non-compliance fines the higher of €40 million or 7% of global annual revenue
- Likely going into effect 2025



## EU AI Act's Risk-Based Approach

### Minimal Risk

- No restrictions on use
- Includes vast majority of current AI systems, including video games or spam filters

### Limited Risk

- Permitted with transparency obligations
- Systems that directly interact with humans (e.g., chatbots)

### High Risk

- Permitted with strict conformity, documentation, data governance, design, and incident reporting obligations
- Applies to providers and deployers
- Systems used in civil aviation, security, medical devices, or management or operation of critical infrastructure

### Unacceptable Risk

- Prohibited
- Threats to safety, livelihood, and rights of people
- Includes social scoring by governments, real time biometric identification systems used by law enforcement, exploitative systems

## Voluntary Frameworks

### NIST AI Risk Management Framework



### White House Voluntary Commitments

- Red-teaming by independent experts
- Sharing trust and safety information with government and other companies
- Watermarking on audio and visual content
- Investing in cybersecurity measures
- Encouraging third parties to uncover vulnerabilities
- Reporting societal risks



— Can laws really address all of the big concerns?

- Lack of transparency
  - Dependency and misinformation
- Discrimination and bias
- Privacy
- **Concentration of power / monopolization\***
- **Job displacement\***
- **Existential threat\***

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