

THE ETHICS OF BIG DATA

May 2016



THE ISSUE

- Predicting future outcomes – no matter the endeavor – is compelling
 - Big data isolates correlations humans cannot see
 - This leads to predictions based on non-intuitive data relationships
- There is exponentially more data in an observational world to drive insights – most beyond the individual's knowledge and control
- Assessment is no longer based on whether an activity was covered by a notice, but whether an application is a legal, fair, and just application
- This requires understanding the broad range of risks to individuals and whether risk mitigation is effective

IF ISSUE IS NOT RESOLVED

- A vacuum leads first and foremost to reticence risk
 - Your organization doesn't use data aggressively enough to drive innovation
 - Behavior at other companies will drive norms impacting whole industries
- Legal and regulatory bright lines that prohibit data creation and use
 - It can happen here
- Lost trust – a killer to brands

BIG DATA HAS TWO PHASES

- Discovery – where one “thinks with data” to discover insights that are not visible without heavy processing
 - One explores many data sets on many people to discover the real predictors of heart incidences
- Application – where one “acts with data” to improve business, social, or societal processes
 - A heart attack risk score is assigned to an individual that determines the level of intervention, the cost effectiveness of treatment, where one sits in the triage process

WHEN IS BIG DATA ALLOWABLE?

- United States – “Thinking with data” is a form of expression, always allowable except where prohibited. “Acting with data” is prohibited where it is (a) in violation of an explicit protection, (b) deceptive, or (c) unfair
- Everywhere else with a privacy or data protection law – “Thinking with data” is a processing that needs to be permitted in some fashion. “Acting with data” requires a permitting that may be very different from the permitting for “thinking with data.”

PRIVACY AND DATA PROTECTION AREN'T NECESSARILY THE SAME

- European law differentiates privacy and data protection
 - Privacy protects individual autonomy and family life
 - Data protection assures fair processing even if individual control is not fully effective
- Many legal systems integrate the two into information privacy
- Using the term privacy without explanation triggers different understanding in different people
- Purely for functional reasons I use the European definitions

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: The Ethics of Big Data

Also available as part of the eCourse

[2016 Technology Law eConference](#)

First appeared as part of the conference materials for the
29th Annual Technology Law Conference session

"The Ethics of Using Big Data"