

# Locking in the status quo for business, recent changes to U.S. data privacy law and long-term impacts on data collection

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# Introduction

- Emerging social issues from technology
  - Libraries value privacy but because library technology is vendor hosted, privacy isn't controlled by libraries or implemented.
  - Surveillance technology is in conflict with most people's desires. Large technology companies make money in ways that are invasive to individual people's privacy.
- There's a lot of tension over privacy
- The US doesn't have a comprehensive privacy law
  - Little pieces are regulated - student records, medical records, financial records, but not privacy in general.
- Pressure for a general right to privacy
  - Two paths are state law and federal law.
  - This presentation is about how the state law side of that is playing out.

# Current social problems: surveillance technology

- Big tech companies make money through targeted advertising (based on tracking).
  - In 2019, 83% of Google's revenue came from advertising.
  - In 2019, 98% of Facebook's revenue came from advertising.
  - And in 2019, 70% of websites had a Google tracker, and more than 20% of websites had a Facebook tracker.
  - Targeted advertising pays a lot more. Trackers and targeted advertising is the business model for at least some big tech companies.

Source = Australian Competition and Consumer Commission, Digital platforms inquiry - final report (2019), available at <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.



# Current social problems: surveillance technology

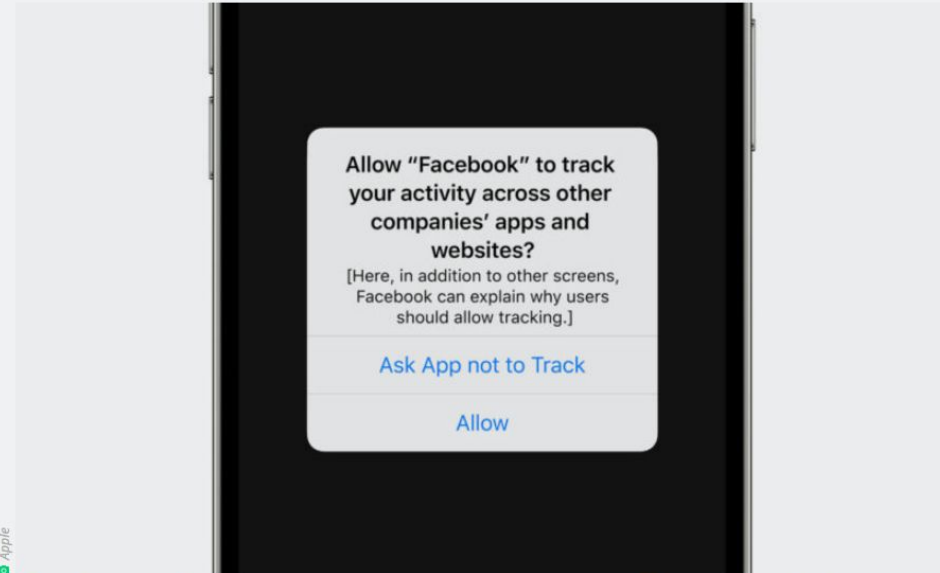
- Regular people don't want to be tracked.

APP TRACKING TRANSPARENCY —

## 96% of US users opt out of app tracking in iOS 14.5, analytics find

Some of the first data on user behavior exceeds advertisers' worst fears.

SAMUEL AXON - 5/7/2021, 2:59 PM



Enlarge / The Facebook iPhone app asks for permission to track the user in this early mock-up of the prompt made by Apple.

360

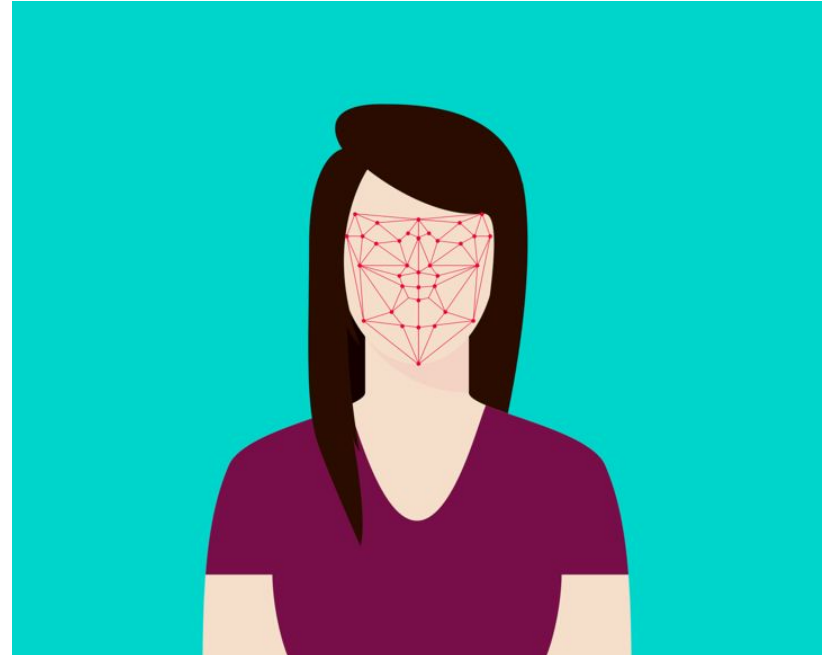
It seems that in the United States, at least, app developers and advertisers who rely on targeted mobile advertising for revenue are seeing their worst fears realized: [Analytics data published this week](#) suggests that US users choose to opt out of tracking 96 percent of the time in the wake of iOS 14.5.

When Apple [released iOS 14.5](#) late last month, it began

[FURTHER READING](#)

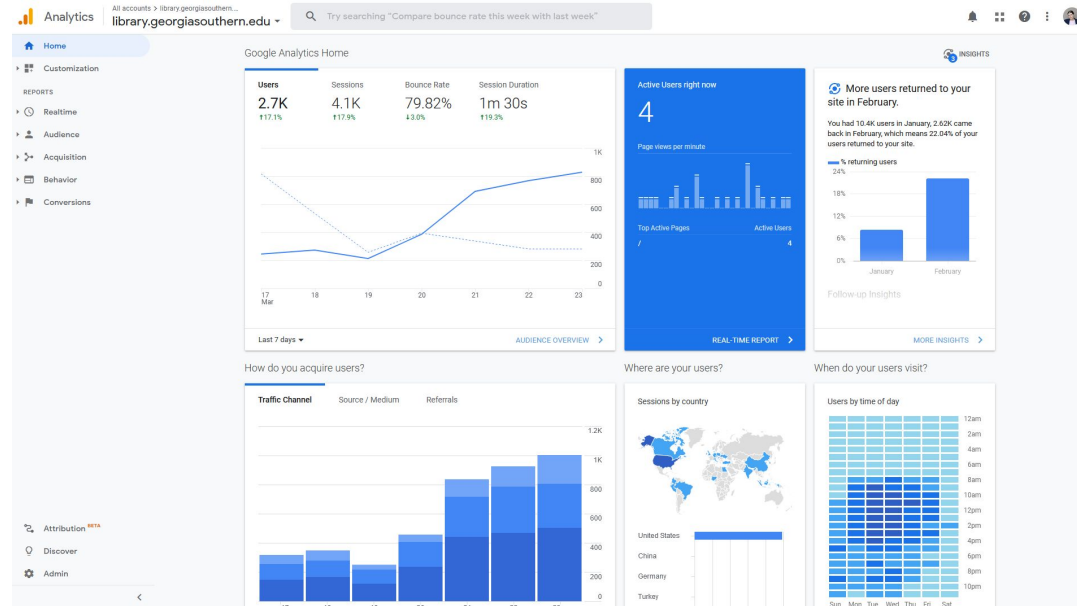
# Current social problems: surveillance technology

- Widespread use of cameras in public places and of facial recognition has led to backlash from the public.

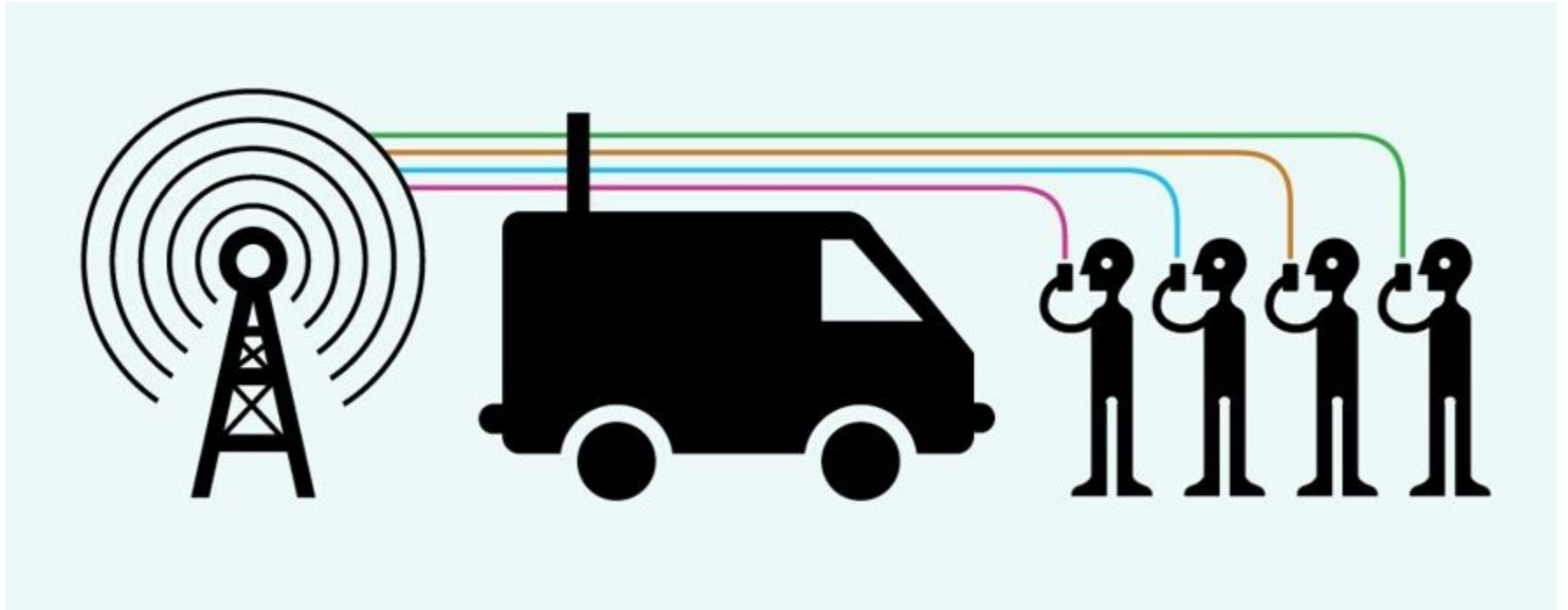


# Current library problems: tension between principles and reality

- Libraries value privacy vs
- The vast majority of library technology is vendor hosted
- Libraries want statistics and often pressure vendors against privacy



# The current state of privacy law



# The current state of privacy law

- The U.S. doesn't recognize a general right to privacy.
- Specific laws cover specific kinds of information
  - FERPA - educational records
  - HIPAA - health records
  - financial records
- As of 2021, three states passed a general privacy / personal data law:
  - California in 2018; Colorado in 2021; Virginia in 2021
- Possible ways to have a U.S. privacy law:
  - Federal law is one path
  - Many states adopting a similar law is one path



# Uniform Law Commission (ULC)

- Nonprofit formed by state governments
- States appoint people to it, and the process is usually written into state law
- ULC drafts and publishes model laws
  - Don't apply to anyone.
  - Tend to get adopted by states and written into state law.
- ULC is highly influential and represents the consensus of what state law will be.

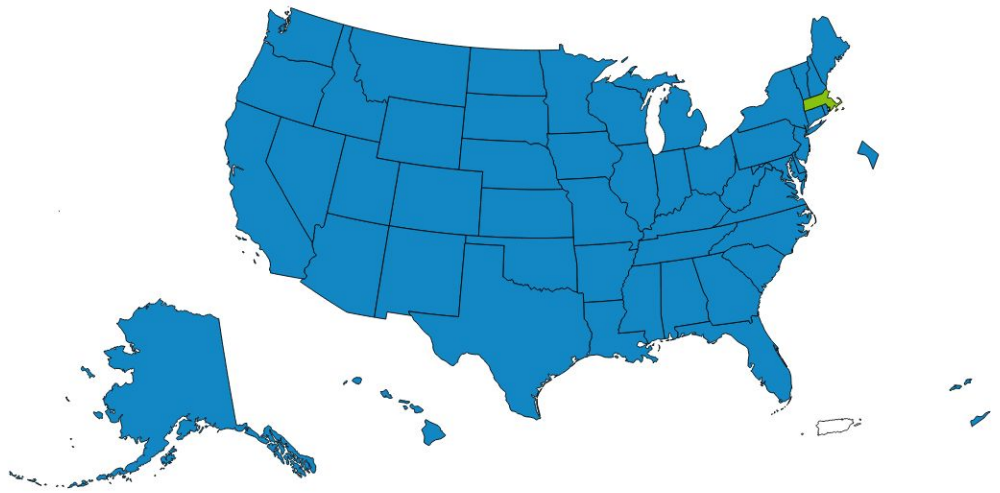


# Uniform Law Commission (ULC) is highly influential

## 1997 | Child Custody Jurisdiction and Enforcement Act

Family Law | Civil Procedure & Courts | International Law

- Map
- Bill List
- Summary
- Enactment History



Enactment Map ● Introduced ● Enacted ● Prior Version Enacted

### Description

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) limits the state with jurisdiction over child custody to one, avoiding competing orders. The act also provides enforcement provisions for child custody orders. For more information about the UCCJEA, please contact ULC Legislative Counsel Lindsay Beaver at 312-450-6618 or [lbeaver@uniformlaws.org](mailto:lbeaver@uniformlaws.org).

# Uniform Law Commission (ULC) is highly influential

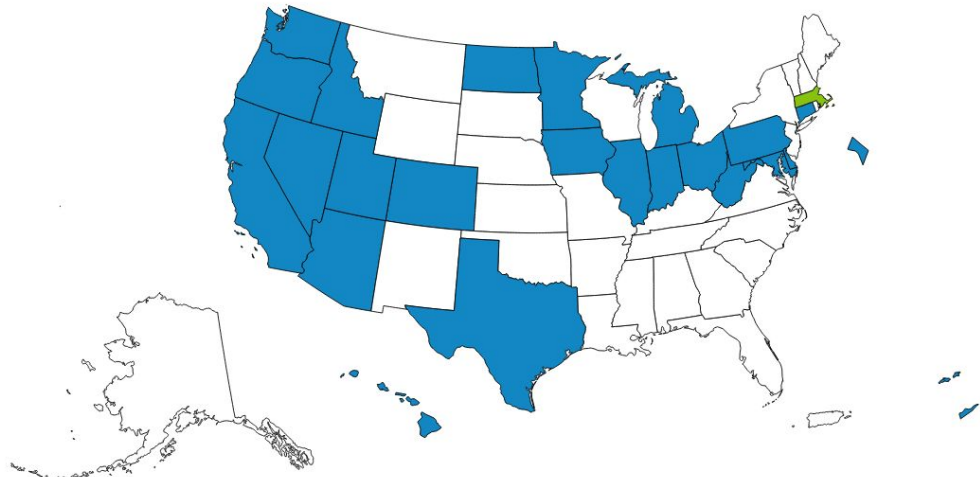


Acts ▾ Projects ▾ Meetings and Events ▾ News and Publications ▾ Legislation ▾ About ULC ▾

## 2011 | Electronic Legal Material Act

Administrative Law

- Map
- Bill List
- Summary
- Enactment History



Enactment Map ● Introduced ● Enacted

### Description

The Uniform Electronic Legal Material Act (UELMA) establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book. UELMA requires that official electronic legal material be: (1) authenticated, by providing a method to determine that it is unaltered; (2) preserved, either in electronic or print form; and (3) accessible, for use by the public on a permanent basis. For more information about enacting UELMA please contact ULC Legislative Counsel Libby Snyder at 312-450-6619 or lsnyder@uniformlaws.org.

# Uniform Personal Data Protection Act

## 2021 | Personal Data Protection Act

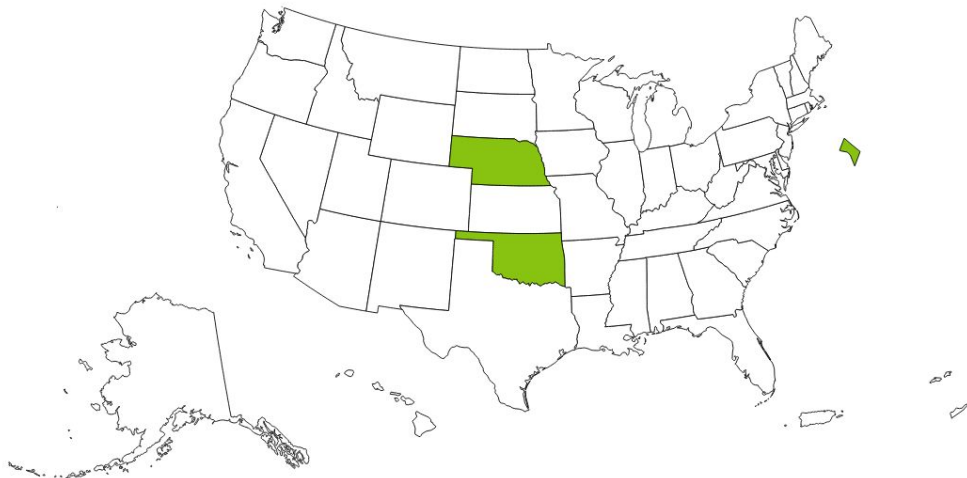
Consumer Protection & Labor | Technology

Map

Bill List

Summary

Enactment History



Enactment Map • Introduced

### Description

The Uniform Personal Data Protection Act applies fair information practices to the collection and use of personal data from consumers by business enterprises. The Act provides a reasonable level of consumer protection without incurring the compliance and regulatory costs associated with some existing state regimes. The Act recognizes that the collection and use of personal data are important features of our modern economy but raise significant issues of privacy and control. The Act outlines compatible, incompatible, and prohibited data practices and provides an enforcement mechanism to ensure compliance with the Act. For information about enacting this uniform act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or [lsnyder@uniformlaws.org](mailto:lsnyder@uniformlaws.org).

# The current state of privacy law

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# What the Uniform Personal Data Protection Act is and does

Data access - people can request to see and correct data with the company that collected it directly from the person (people can't request this from companies that bought it or got it downstream from the collecting entity; can't request to delete the data)

3 classes of personal data:

- **compatible data practice**
  - compatible with consumer expectations and best interests
  - (long list of these)
  - No consent needed
- **incompatible data practice**
  - incompatible with expectations and direct interests of consumers
  - (anything else not in a list)
  - Must get consent; can have a fee scale to opt out
- **prohibited data practice**
  - prohibited by this act (ie. harmful)
  - (list of these)
  - Can't do these, even with consent.

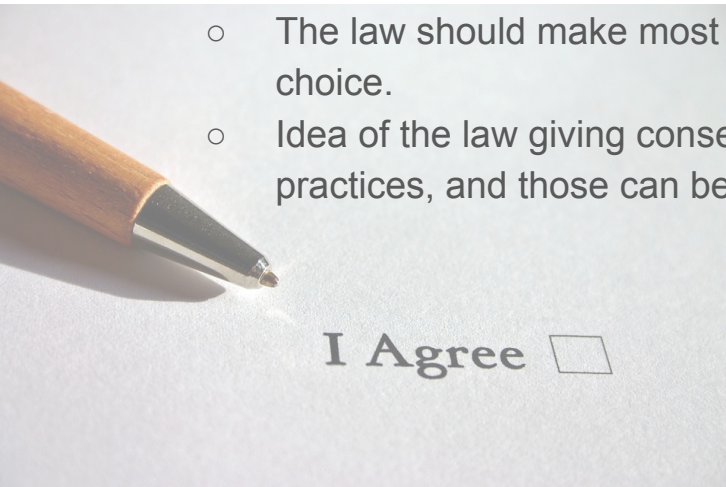
All these have to be in the privacy policy - company has to say what it's collecting.

# Current social problems:

- **Lack of consent:** Click through ads don't allow real consent or choice. There isn't even time to read all of them, so there's definitely no choice.
- Surveillance technology: **Targeted advertising:** This depends on tracking, this how tech companies make money, but people don't want to be tracked.
- Surveillance technology: Widespread use of **cameras in public places** and of **facial recognition** has led to backlash from the public.

# Current social problems:

- **Lack of consent:** Click through ads don't allow real consent or choice. There isn't even time to read all of them, so there's definitely no choice.
- **Uniform Personal Data Protection Act:**
  - The law should make most choices for people, and then only give people the most important choice.
  - Idea of the law giving consent on each person's behalf. There's a long list of compatible data practices, and those can be done without consent.





## Current social problems:

- Surveillance technology: **Targeted advertising:** This depends on tracking, this how tech companies make money, but people don't want to be tracked.
- Uniform Personal Data Protection Act:
  - Targeted advertising is a compatible data practice. No consent is needed to share and use personal data for targeted advertising.



# Current social problems:

- Surveillance technology: Widespread use of **cameras in public places** and of **facial recognition** has led to backlash from the public.
- Uniform Personal Data Protection Act:
  - Section (3)(c)(1): "This [act] does not apply to personal data that is: (1) publicly available information;"
  - Section (2)(15):
    - “Publicly available information” means information:
      - (A) lawfully made available from a federal, state, or local government record;
      - (B) available to the general public in widely distributed media, including:
        - (i) a publicly accessible website;
        - (ii) a website or other forum with restricted access if the information is available to a broad audience;
        - (iii) a telephone book or online directory;
        - (iv) a television, Internet, or radio program; and
        - (v) news media;
      - (C) observable from a publicly accessible location; or
      - (D) that a person reasonably believes is made available lawfully to the general public if:
        - (i) the information is of a type generally available to the public;
    - and
      - (ii) the person has no reason to believe that a data subject with authority to remove the information from public availability has directed the information to be removed

# Consumer Reports: The Uniform Law Commission privacy model bill is a disaster

August 13, 2021



CR Comments on ULC CUPIDA Oct. 12

74.6 KB

The Uniform Law Commission (ULC), an organization that seeks to develop model legislation to help bring consistency and uniformity to state laws, has been working on a model privacy law for several years — and had the opportunity to introduce a meaningful consensus document that raises the bar for consumer data privacy. But the ULC's finalized Uniform Personal Data Protection Act (UPDPA), approved last month, misses the mark.

The model law would do little to reform companies' inappropriate data collection and sharing behaviors — including by explicitly exempting behavioral advertising from the protections in the bill. If such a bill were to be implemented, it could be worse than doing nothing at all, as it could forestall future privacy legislation that is more beneficial to consumers and holds companies accountable.

Please click [here](#) for a full analysis of the bill. For CR's comments on an earlier draft of the bill, please see the attached PDF.

# Impact

State law is likely to lock in the status quo

- No right to view downstream personal data bought from the original company that collected it.
- No privacy in info collected from public places
  - Cameras in public - not restricted
  - Downloading and reselling web content (jail records, social media posts, etc.) - not restricted
- Current industry norms are protected
  - Targeted advertising
  - Data that permits analysis for research or development of a product or service

# Implications for Libraries

- Any change will be labor intensive and take tremendous coordinated effort
  - NISO Privacy Principles haven't been picked up by vendor terms of service.
- Libraries should reckon with pressure for usage statistics being in conflict with the long term library value for privacy.
- Ethics is written out of reality, and anyone studying data privacy should be aware of this idea of law giving consent on behalf of people.

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