



# International Seminar on Personal Data Protection and Privacy Câmara Dos Deputados-BRAZIL

Panel: Data protection in Finance, Health Services and Telecommunications



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Telefónica S.A.  
10.05.2017

**WE CHOOSE IT ALL**

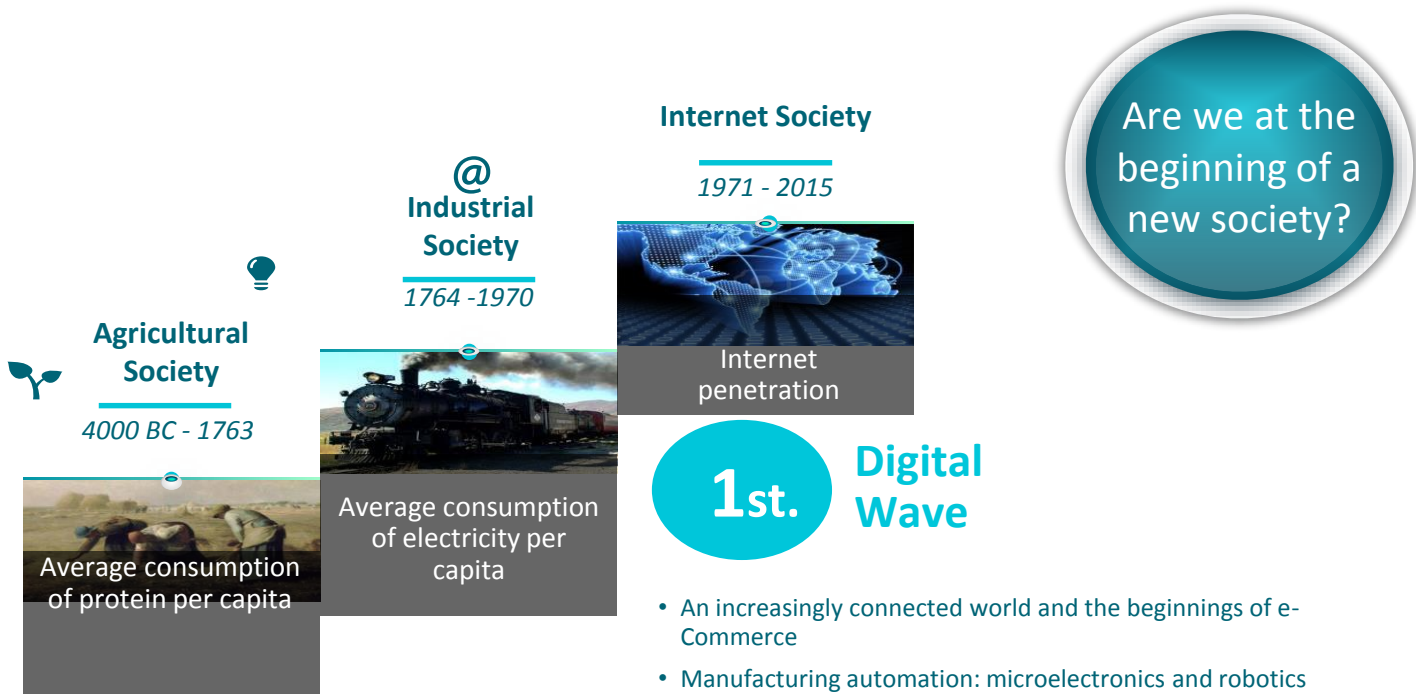


01

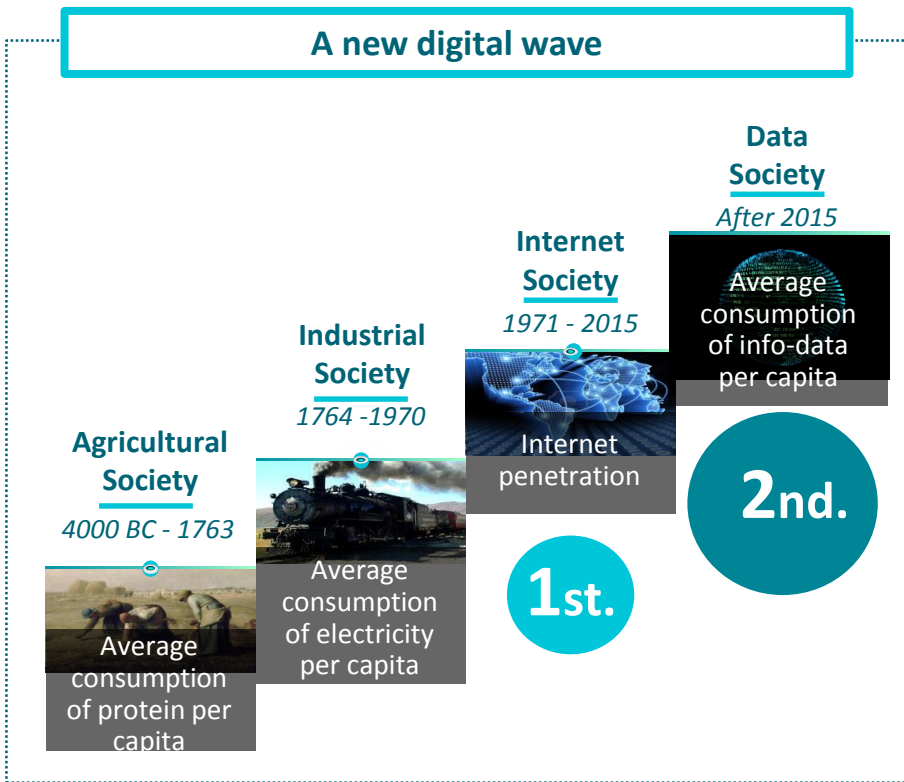


The beginning of a new  
Digital World  
A transformed environment

# A first wave of digital transformation has been led by connectivity



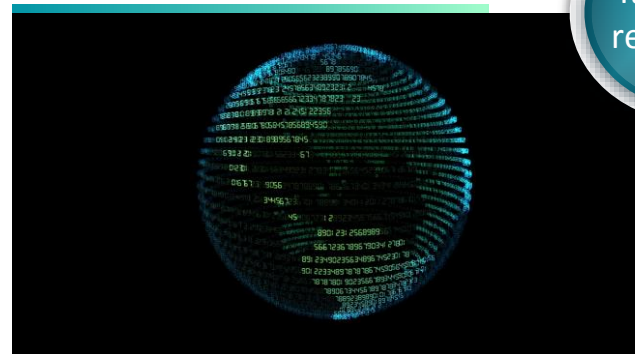
# The second wave of the Digital Revolution: The Data Economy



 **Data Society**

> 2015

It is a true revolution!



**4<sup>th</sup> Industrial Revolution**

*Trends*


1. Hyper-Connectivity
2. The world is more internationally connected
3. Barriers are blurring and physical and digital world merging
4. A new data society

# We are living a new revolution: the way of doing things is changing and technology is an only an enabler

A challenge for all

## New ways to meet demands of consumers in the digital economy

Transport



Uber and Taxi logos side-by-side.

Hospitality




Hotels VS AIRBNB WHICH IS BETTER? Image showing two hotel beds.

Telcos



WhatsApp and Tencent logos.

Entertainment



Spotify logo.

Media



NETFLIX logo.

Finance

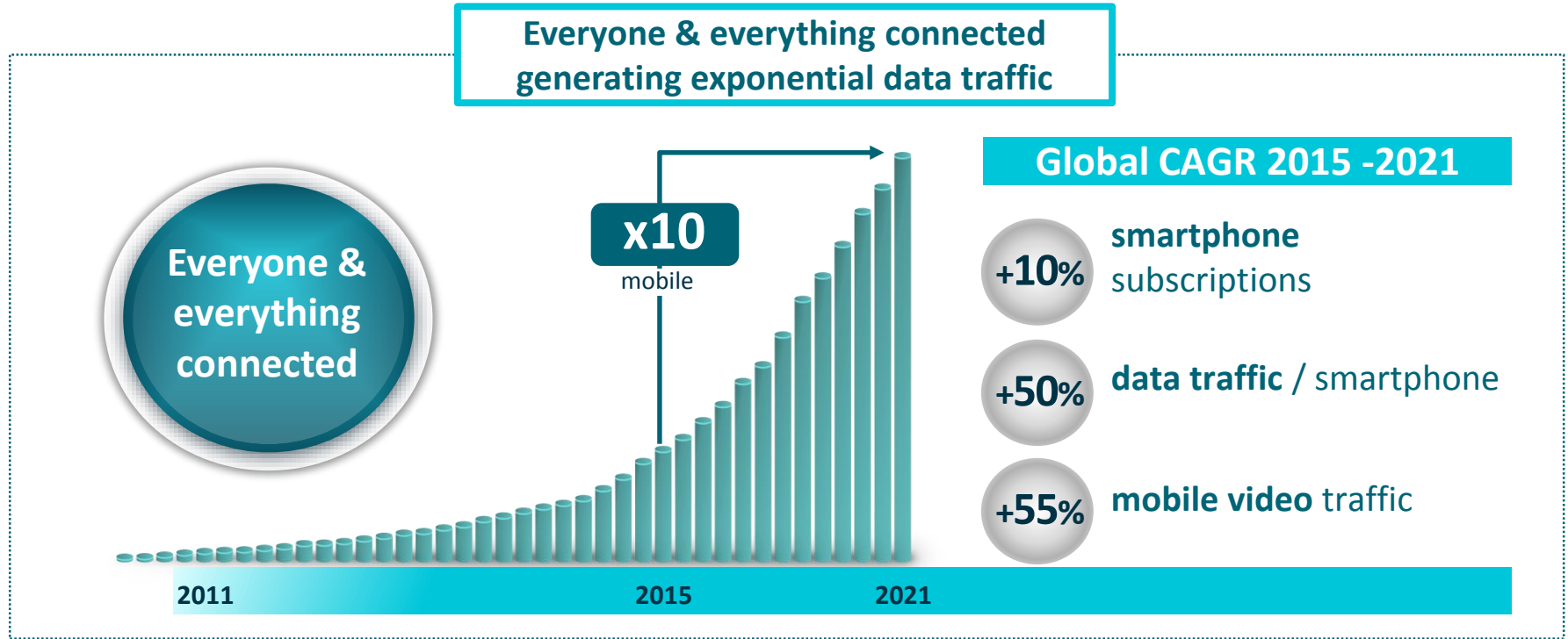


Alipay.com and PayPal logos.



It is a true revolution

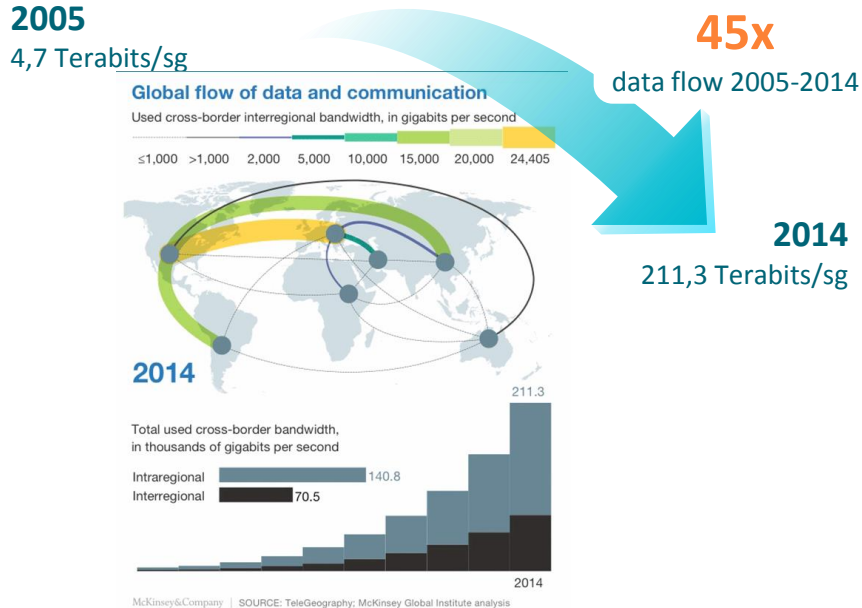
# 1. A digital revolution fostered by an ubiquitous and mobile internet...



...driving an hyper connected society, always on, in real time

## 2. The world is more internationally connected than ever.....

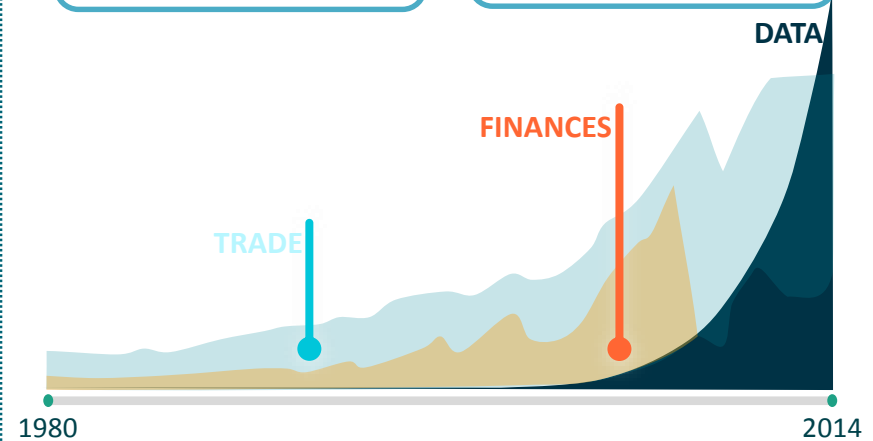
Increasing global flow of data ....



... generating more value than the global goods trade

**10%**  
increase in global GDP due to  
Global Trade (7,8 trillion USD)

**2,8 Trillion USD**  
Increase in GDP due to  
international Data Flows



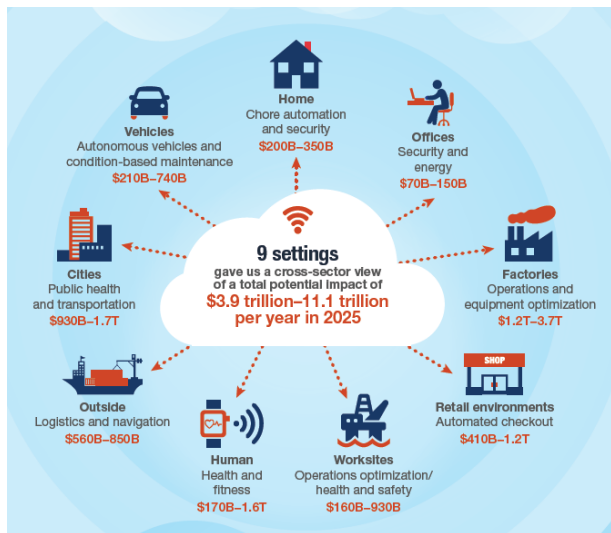
... leading to a hyper globalized era



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# 3. Barriers are blurring: physical and digital world are merging

Technologies enable merging of digital & physical world ...



+ 3D printing  
+ Machine Learning & AI

... markets have converged and competition has increased....

M&A online companies



M&A Offline-Online companies



Online firms going offline



Offline firms going online

**INDITEX** 5,5%

Online Revenue/Total % (2015)

New competitors, new competition models: from price-based competition ... to innovation based competition...

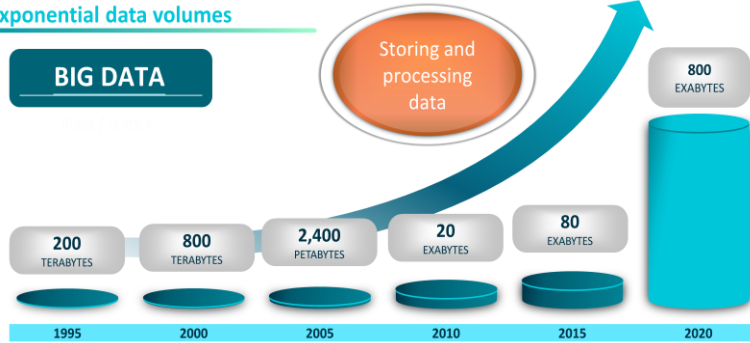




# 4. Data will not only be stored, it will be processed to generate insights..

Exponential data volumes: we are living in an era defined and shaped by data

## Exponential data volumes



90%  
of the data in the world today has been created in the last 2 years



Source IBM

Marc Andreessen

*“Six decades into the computer revolution, four decades since the invention of the microprocessor, and two decades into the rise of the modern Internet, all of the technology required to transform industries through **software** finally works and can be widely delivered at global scale.”*

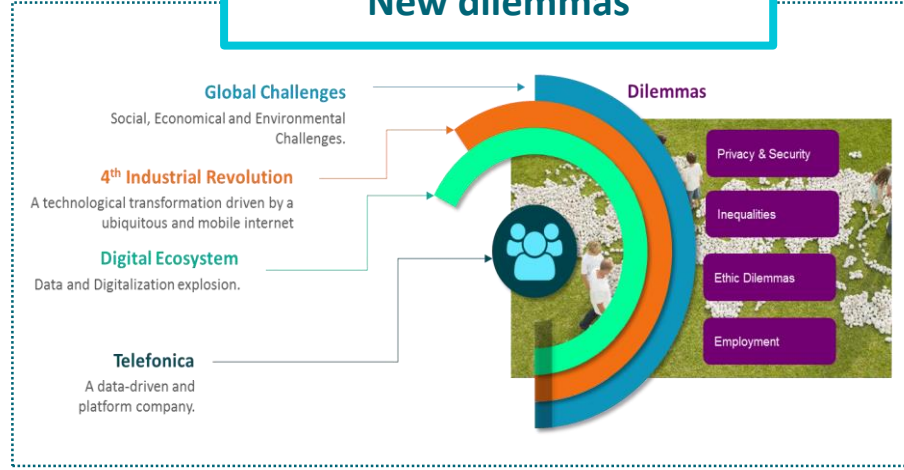
... in a world where “software is eating the world”

# Data economy grows in the context of the Digital Challenge

## New opportunities & threats



## New dilemmas



The Political Challenge



Digital Economy is Economy itself

Digital Life is Life itself

The rules of the game

02



A new data society

Data can **enrich** people's lives,  
enhance **decision making**  
and **benefit** society

# Is Data the new Oil?



Tech  
4/02/2012 @ 11:09AM  
26,339 Views

## Is Data The New Oil?



Perry Rotella, CONTRIBUTOR

Recently, on a CNBC Squawk Box Pulse of Silicon Valley," host Joe K the question, "What is the next rea to Ann Winblad, the legendary inv senior partner at Hummer-Winblad "Data is the new oil."



Marketing commentator [Michael Palmer](#) blogged back in 2006:

*"Data is just like crude. It's valuable, but if unrefined it cannot really be used. It has to be changed into gas, plastic, chemicals, etc., to create a valuable entity that drives profitable activity; so must data be broken down, analyzed for it to have value."*

Not just the new oil...  
But much more



Data has many implications

Fundamental rights  
Digital Confidence  
Competition  
Ethical issues...

# Trust is the foundation: Data Ethics

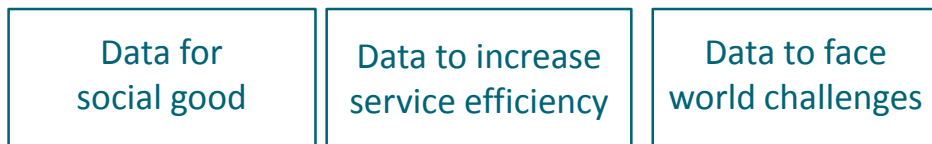


To ensure that the second wave of digitalization enables better digital lives both **Public** and **Private** Sector must engage to built a new

Data Ethics



# Data is a huge resource that can be used for good and benefit society



## Data for Social Good



Pandemic disease information

To prevent crime



Intelligent Transport Systems



Pre-positioning Emergency Services



Smartcities



Primer desafío de IoT para el Agro  
Conteo remoto de polillas Lobestia Botrana  
Inscripciones hasta el 13 de Noviembre

Smart Agriculture

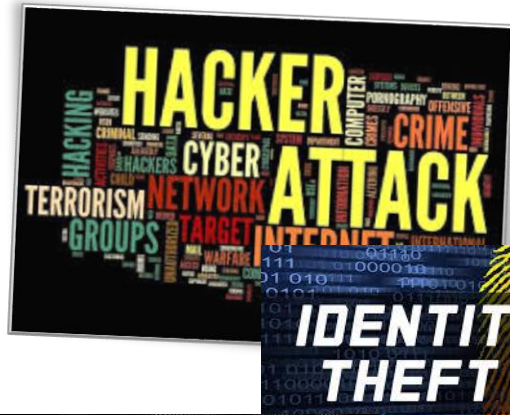


The Billion Prices Project @ MIT

Eurostat is exploring ways to exploit Big Data for statistics

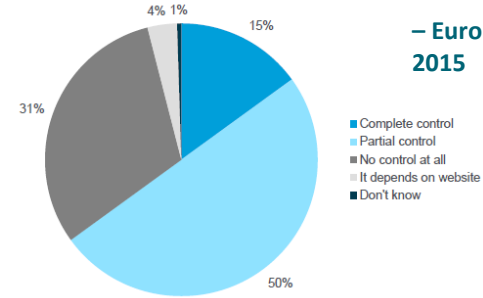
(\* ) Some benefits derived from the use of data (anonymized or pseudo-anonymized)

# But also data generates fears ... Sometimes for good reasons



warden data

## How Much Control Do You Feel You Have Over the Information you Provide Online?

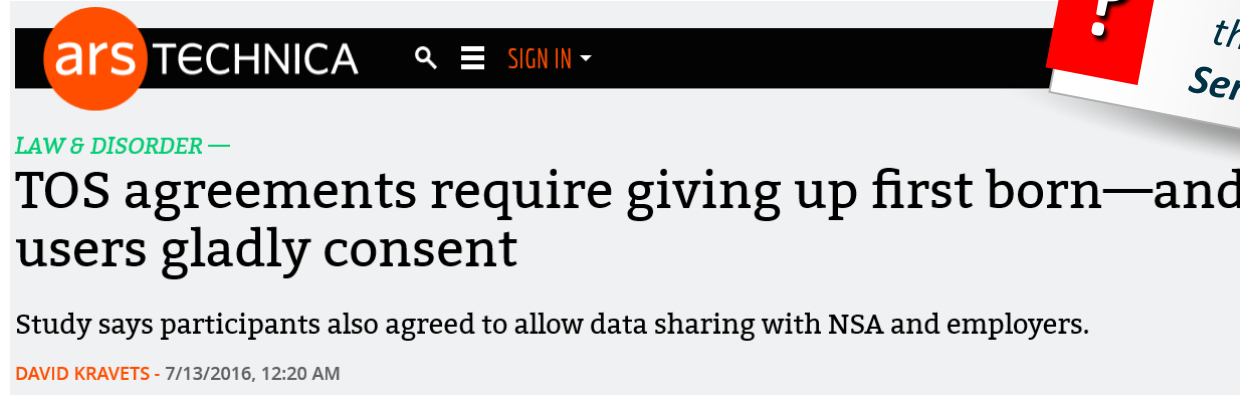


– Eurobarometer 2015

- Complete control
- Partial control
- No control at all
- It depends on website
- Don't know

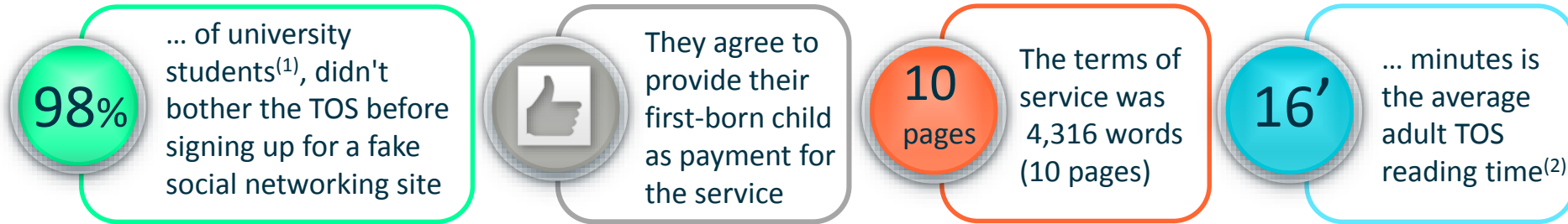


... and meaningful data transparency is challenging, in order to achieve a sustainable data ecosystem



The screenshot shows the Ars Technica website header with the logo and navigation links. Below the header is a category tag 'LAW & DISORDER' and the article title 'TOS agreements require giving up first born—and users gladly consent'. A sub-headline reads 'Study says participants also agreed to allow data sharing with NSA and employers.' The author is listed as 'DAVID KRAVETS - 7/13/2016, 12:20 AM'.

 Does anybody read the Terms Of Service (TOS)?



(1) 543 University students involved in the study.

(2) For readers, average TOS reading time was 51 seconds. The average adult reading speed is 250-280 words per minute (TOS should have taken 16 minutes).



# As a result, the management of data is now in the public agenda, and confidence is becoming a business challenge

**>100**  
countries enacting  
data protection  
regulation since  
1972



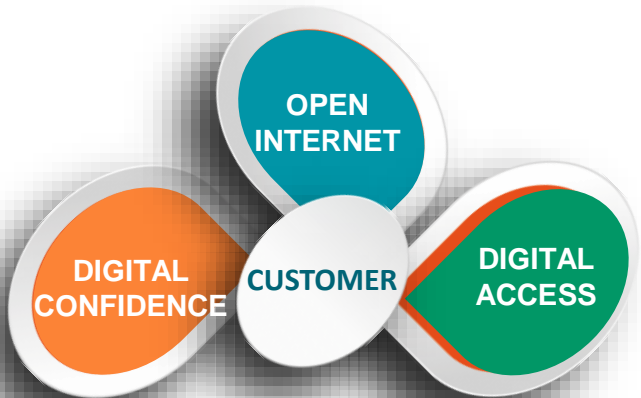
New regulation replacing  
1995 Privacy Directive

**05/2018**

EU's General  
Data Protection  
Regulation (GDPR)  
implementation date



## Telefonica's public agenda



Level Playing Field



Legislators, regulators and companies we share a role fostering digital confidence to build the new values based data-enriched society

03



Data Privacy  
The European experience

# A long journey building trust and a privacy culture

- Only for **Telecom** operators services
- **Security** of telecom services/data breaches
- **Confidentiality** of the communications
- **Traffic and billing data** protections
- **Specific services:** Itemized billing, presentation and restriction of calling line, Unsolicited calls...

First ePrivacy (Directive 97/66 for Telcos)

1995

1997

- Only for **Telecom** operators & service providers
- **Similar topics** to first ePrivacy
- Introducing **“cookies”** consent (amendment in 2009)

ePrivacy (Directive 2002/58)

2002



Privacy perceptions differ worldwide  
USA vs Europe

A new ePrivacy?

2016

The first EU Directive on Personal Data

- **Horizontal**, for all sectors (incl. public)
- **Key legal principles on Personal Data**
- Up to **3 years to be transposed + 3 years to be applied** (and up to 12 years for some files)
- **Independent Data Privacy Agencies created**

EU Regulation on Personal Data: after 20 years of privacy culture & experience

**05/2018**  
EU's General Data Protection Regulation (GDPR)  
implementation date



- **Horizontal**, for all sectors (incl. public)
- Same **key legal principles + accountability & pseudonymized data**
- Wider territorial scope & to more agents, more data, more rights & processes, tougher sanctions, data breach notifications, DPO.
- Directly applicable to all EU countries **in 2 years: harmonising implementation in the EU**

# The European General Data Protection Regulation (GDPR) scope

## Goals

- Enhance **data protection rights**
- Improve business opportunities by facilitating **free flow of personal Data** in the **Digital Single Market** with a consistent legal framework

HORIZONTAL  
REGULATION OF  
PERSONAL DATA

TERRITORIAL  
HARMONIZATION FOR  
EUROPEAN CONSUMERS

WIDER SCOPE:  
FOR EU CONSUMERS,  
NEW RIGHTS AND  
OBLIGATIONS,  
AND ALSO APPLIED TO  
NEW AGENTS

- A **horizontal** privacy regulation of **Personal Data** (not anonymized data) and for all sectors including public sectors.
- Key initiative of **Digital Single Market strategy**
- GDPR into force on 25 May 2016 (applying from **25 May 2018**)
- Regulation to get over 28 country data regimes (previous Directive)
- Applied also to **companies not established in the EU** providing goods or services to EU citizens, for a level playing field
- It includes also joint **liability for data controllers and processors**
- **New obligations & rights**, increased sanctions and prescriptive processes
- Conditions to be met for **Free flow of data with Third countries**

Is GDPR the new global standard?

# Overarching principles: Transparency, Consent & Legitimate interest

## TRANSPARENCY

1

- **Transparency as explicit requirement**
- **Privacy Notice & formal requirements**
- **New rights**

GDPR builds on the rights under the current Directive and adds Right to erasure ('right to be forgotten') and right to data portability

### Open debates in the EU:

- Right balance on transparency (eg. Cookies)
- Tools
- Limitations to transparency: public interest, business secrets, algorithms...
- Impact of consumers' education

## CONSENT

2

- One **legal ground** for processing
  - the key for **sensitive data & profiling**
  - One of the basis for **data transfer** outside the EU
- Principle needed for **personal data consent** must be:
  - **Freely given** (written or oral, including by electronic means)
  - **Specific, informed** and **unambiguous**
  - Much more **detailed formulation**
  - **Individuals can withdraw** it any time
  - **Children's consent** (parents if below 16)

21

## LEGITIMATE INTEREST

3

- One of the **grounds for lawful processing of personal data, to allow innovation** (exceptional basis for data transfers outside the EU)
- GDPR recognizes specific examples of legitimate interest:
  - Fraud Prevention
  - Information and network security
  - Direct Marketing
  - Processing by a group of undertakings
- Broad right for individuals to object

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# GDPR: Pseudonymisation to allow data based innovation

## OTHER GROUNDS FOR PROCESSING

4

- Further processing allowed without consents with appropriate safeguards like **pseudonymisation**
- **Performance of a contract**
- **Legal obligation for the controller**
- Protection of the **vital interests** of the data subject or of another natural person
- Performance of a **task carried out in the public interest or in the exercise of official authority** vested in the controller

Other grounds for processing additionally to Consent & Legitimate interest allow flexibility

Concept of 'pseudonymisation' defined for a more flexible regulation

*'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;*

Anonymous data are not subject to any data regulation

**Consent, Legitimate Interest and Further Processing are specially relevant under companies perspective**  
They provide for the necessary flexibility to foster innovation

# And what about sectorial data regulation? New ePrivacy proposal



Proposal for a **NEW** ePrivacy Regulation (ePR) -replacing current Directive- with specific protection of traffic and location data applicable to:

- e-communications data (“content” and “metadata”) processed in the provision and use of Electronic Communication Services (ECS)
- information related to the terminal equipment of end-users

Processing continues to be subject to **user consent** (except for few exceptions)

+

Extension to OTT’s services (Skype, WhatsApp...) provides for **certain level-playing-field**, but not fully achieved (e.g. location data consent only when coming from ECS services, not from device GPS)

but

-

Draft misses the opportunity to align sector-specific data protection with general GDPR, which can cause:

- **confusion for consumers**, with this unlevelled protection
- an **artificial complexity** for data-driven ecosystem, leading to harm to innovation
- a disadvantaged position for telcos in **data-driven** businesses

# In the digital age, the role of legislators is essential

1

Settling the principles,  
allowing flexibility &  
innovation

Settling the **principles** that will strengthen **citizens' fundamental rights and confidence** in the digital age, while facilitating business, by **simplifying rules** and allowing the necessary **flexibility for innovation**

2

Raising awareness  
& privacy culture

Raising awareness about **benefits of personal data and risks**, putting customers in control and empowering them to make their own choices in the digital world, **fostering a privacy culture**

3

Bringing legal &  
practical certainty

Bringing the **required legal and practical certainty** and a **uniform and level playing field** data protection allowing neutral and **cost-effective implementation**



# Focus on the principles to allow flexibility and innovation

1

Settling the principles,  
allowing flexibility &  
innovation

- **Horizontal regulation for all sectors** (including public sector)
- **Principle-based approach allowing flexible implementation** (e.g. pseudonymized data, avoid ex-ante listings & burdensome processes for consents)
- **Legitimate interest to allow innovation**
- **International level playing field: applying also to companies not established in the country** but providing goods or services to its citizens (in EU, with GDPR, companies will need a representative within EU for data)
- **Free Flow of data** when customer rights are guaranteed, avoiding burdensome processes (e.g. intragroup...)



Post Implementation Review of the E  
Electronic Communications Regulator  
Framework 2009

Presented to Parliament  
by the Secretary of State for Culture, Media and Sport  
by Command of Her Majesty

April 2017

There was also a general consensus that the cookies provision (introduced under Art 5.3 of the ePrivacy directive, 2002/58/EC), which was intended to secure prior, informed consent to the storing and removing of data from a user's terminal, has proved disproportionate, ineffective, spoiled the user's experience of navigating the internet and not succeeded in delivering against its objective.

TOO MUCH  
REGULATION?

Do we need a sectorial privacy regulation? Is it even consistent?

Why not repealing it?

# The role of the data privacy agency: building data privacy culture, empowering users and helping firms develop data privacy

2

## Raising awareness & privacy culture



Revista de Prensa ▶ Notas de Prensa ▶ 2016 ▶ 11 de enero ▼

### La AEPD informa al Grupo de Autoridades europeas de protección de datos de los avances en relación a la política de privacidad de Google

La Agencia ha constatado que Google ha introducido modificaciones significativas en materia de información, consentimiento y ejercicio de derechos, áreas sobre las que la AEPD le requirió que hiciese cambios. La compañía se ha comprometido a adoptar medidas adicionales específicamente solicitadas por la Agencia y a mantener un diálogo constante.

- La Agencia ha examinado la evolución en el último año de la política de privacidad de Google, en el marco del seguimiento de la resolución sancionadora hecha pública hace dos años
- La AEPD ha constatado que la compañía ha introducido modificaciones significativas en materia de información, consentimiento y ejercicio de derechos, áreas sobre las que la AEPD le requirió que hiciese cambios
- Google también se ha comprometido a adoptar medidas adicionales específicamente solicitadas por la Agencia y a mantener un diálogo constante tanto sobre la aplicación de nuevas medidas como a informar de futuros cambios que puedan afectar a la privacidad de los ciudadanos



La AEPD publica la guía 'Protección de datos y administración de fincas' para ayudar a cumplir con la normativa

El tratamiento de datos personales en el ámbito de las comunidades de vecinos constituye uno de los motivos de consulta más frecuentes ante la Agencia.

[Guía 'Protección de datos y administración de fincas'](#)



La AEPD recibe el Premio Zapping a la 'Mejor iniciativa en internet' por su web Tudadeseninternet.es

La Asociación de Consumidores de Medios Audiovisuales de Cataluña reconoce el trabajo realizado por la Agencia con su web orientada a jóvenes, padres y profesores.



La AEPD presenta nuevos materiales para ayudar a las pymes a cumplir con el Reglamento europeo

La Agencia quiere facilitar que, en este periodo transitorio, las pymes conozcan el impacto que va a tener el Reglamento en la forma en la que tratan datos y las medidas a adoptar.

[Guía del Reglamento para responsables](#)  
[Directrices para contratos responsable - encargado](#)  
[Guía del deber de informar](#)



Guía sobre privacidad y seguridad en internet

La AEPD e INCIBE publican 18 fichas prácticas para concienciar a los usuarios de la importancia de proteger su información personal, ofreciendo consejos y recomendaciones prácticas.

[Videos de configuración de privacidad](#)  
[Nota de prensa](#)

Independence & technical role,  
further than enforcement

Telefonica

# Bringing legal and practical certainty

3

Bringing legal & practical certainty



- **Flexibility & cost-benefit analysis: Pace the journey & obligations to build a data privacy culture** (> 20 years privacy regulation in Europe)
- **Allow time for proper implementation** (> 6 years for the first, >2 years for the revised version in Europe). Give time to all enterprises and particularly to SME and public sector to adapt files and processes
- **Set a technical independent Data Privacy Agency (DPA)**. It should be a win-win relationship for DPAs, users and companies.
- Regulatory **enforcement** should set appropriate and proportionate measures, without putting at risk whole firms or operations (e.g. disproportionate sanctions)

# Final words for the Brazilian discussion

- 1** General Law...  
The data protection law should be applicable to all responsible for data processing, whether they are online or off-line and regardless the economic sector or geographic localization of the data.
- 2** Consent...  
The consent must be free and informed – but at the same time adequate and feasible for all kind of connected devices (IoT).
- 3** Legitimate Interest...  
The legitimate interest as one of the hypothesis that allows the processing of personal data shall be kept.
- 4** International transfer of data...  
The law should allow free flow of data. The fact that the law applies to data located in other countries ensures enough protection.
- 5** Competent body and sanctions...  
Necessity to create an independent and technical authority that will monitor compliance of the law. In addition, penalties shall be proportional.

04



Telefónica's vision

Firms empowering customers

# A responsible and values oriented Telco operator

## Our own data space

- Managing **our own data**
- Different business, **different approach** than OTTs
- **Different position** on consumers data: we do not need to sell customers data
- **Respect & Trust** on customers data



Based on  
Telco  
Strengths

## Value and Trust

- Our customers want **value** for their personal data. They want confidence
- We believe we are in the **best position** to provide **digital confidence**
- We can **provide value** to our customers for all the data that we hold

Trusted  
3<sup>rd</sup> Party

# Working on digital confidence with 3 principles...



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## ... to benefit customers

- 1 Security...**  
the **foundation of our data business** and a primary consideration when designing our services and **collaborating with partners**
- 2 Transparency...**  
enhancing their services while protecting them and **respecting their individual wishes** for varying levels of privacy
- 3 Empowerment...**  
to **put customers in control of their data**, rewards for themselves, their communities or wider society



We want our customers to have a choice: we want to give back the control to the customer



## Digital Introvert

- **Protect** their privacy
- **Stop being tracked**

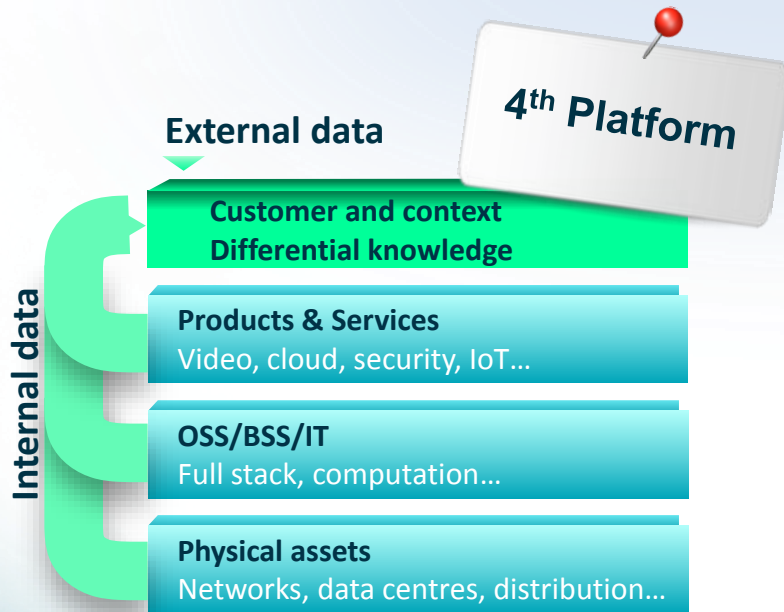
It's  
your  
choice

## Digital Extrovert



- **Engage** with brands they are in love with
- Receive **rewards** and **incentives** on return

# We have “encapsulated” these principles in AURA, our 4th platform



...designed to secure with transparency and empowering users in an easy way

...to bring together internal & external data

...to enable secure connections between Telefónica and trusted third party services

...to give customers control to interact with our full range of products and services

A new approach to solve the traditional challenge of Telco operators: **The relationships with their customers**

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