

*Centre for Law, Information &  
Converging Technologies*



*Privacy is dead - get over it!  
Article 8 and the dream of a risk-free  
society*

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# The Risk Discourse



*"Risk is the chance, in quantitative terms, of a defined hazard occurring"*

(Royal Society Report on "Risk, Analysis, Perception and Management" (1992))

# Risk perception



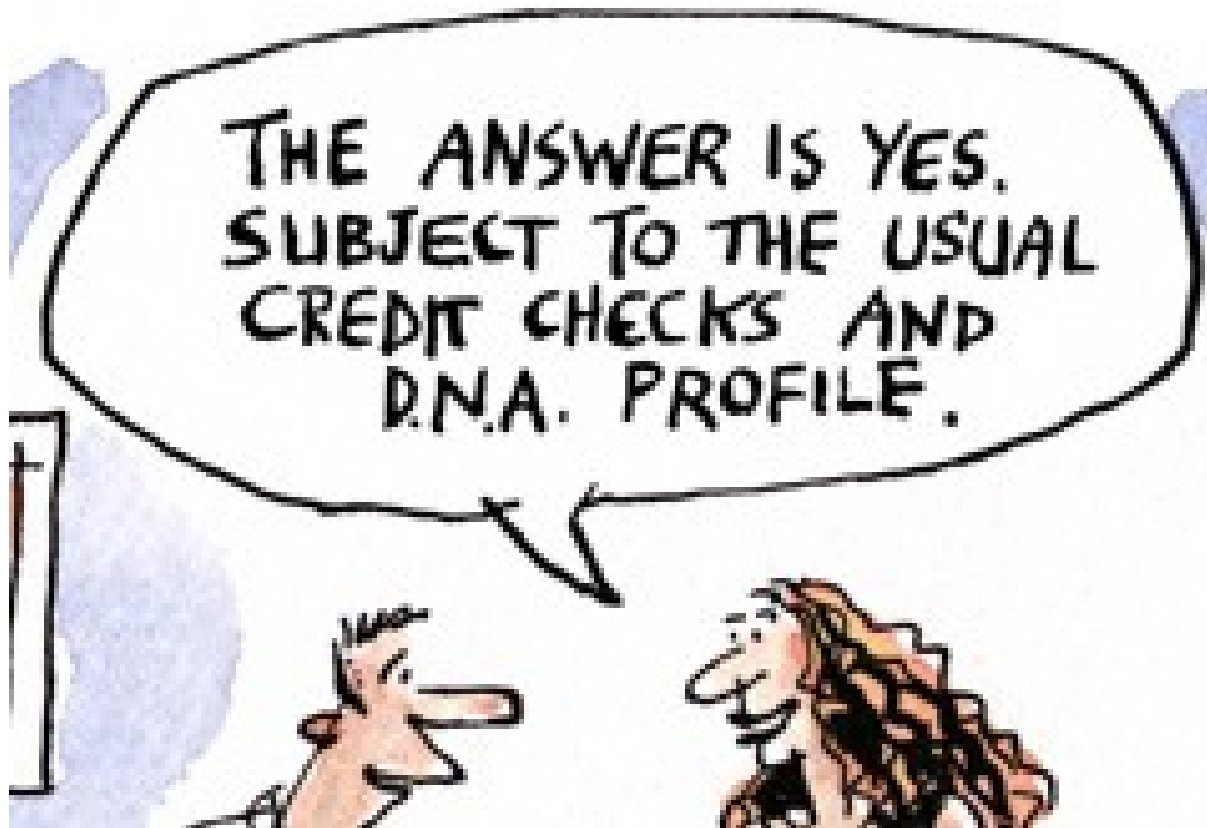
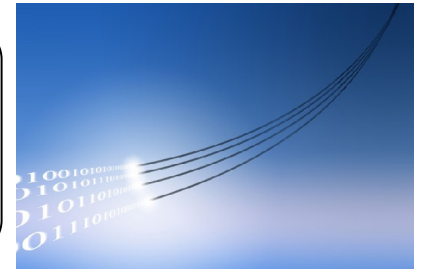
- Public perception of risk has increased
- Possible reasons:
  - Threat has increased
  - Reporting of threat has increased both quantitatively and qualitatively
  - Lack of control over certain threats (often technology related)

# Whatever happened to "shit happens?"



- **TAOISM:** Shit happens
- **ISLAM:** Shit happens if it is the will of Allah
- **COMMUNISM:** Equal shit happens to all people
- **CATHOLICISM:** Shit happens because you are bad
- **EXISTENTIALISM:** Shit doesn't happen, shit is
- **JUDAISM:** Why does shit always happen to us?

# Risk management as the new religion



# The Legalisation of risk



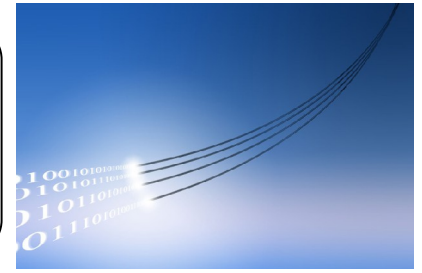
Failure to accept that decisions on the basis of professional judgement may be wrong but not necessarily blameworthy leads to...

## The Blame Game



Do you have an "I'm Sorry" card that stops short of admitting liability?

# Responsibility Aversity



*"I don't mind taking the risk as long as I am not blamed if it goes wrong"*



"Honey, our lawyer wishes us,  
but in no way guarantees,  
a Merry Christmas."

# Defensive proceduralism



## *The risk assessment tail wagging the dog*



Here's a dilemma. Should the disclaimer for our client's new sleeping pill read, "May cause drowsiness" or "May not cause drowsiness?"

# The imperialism of internal controls

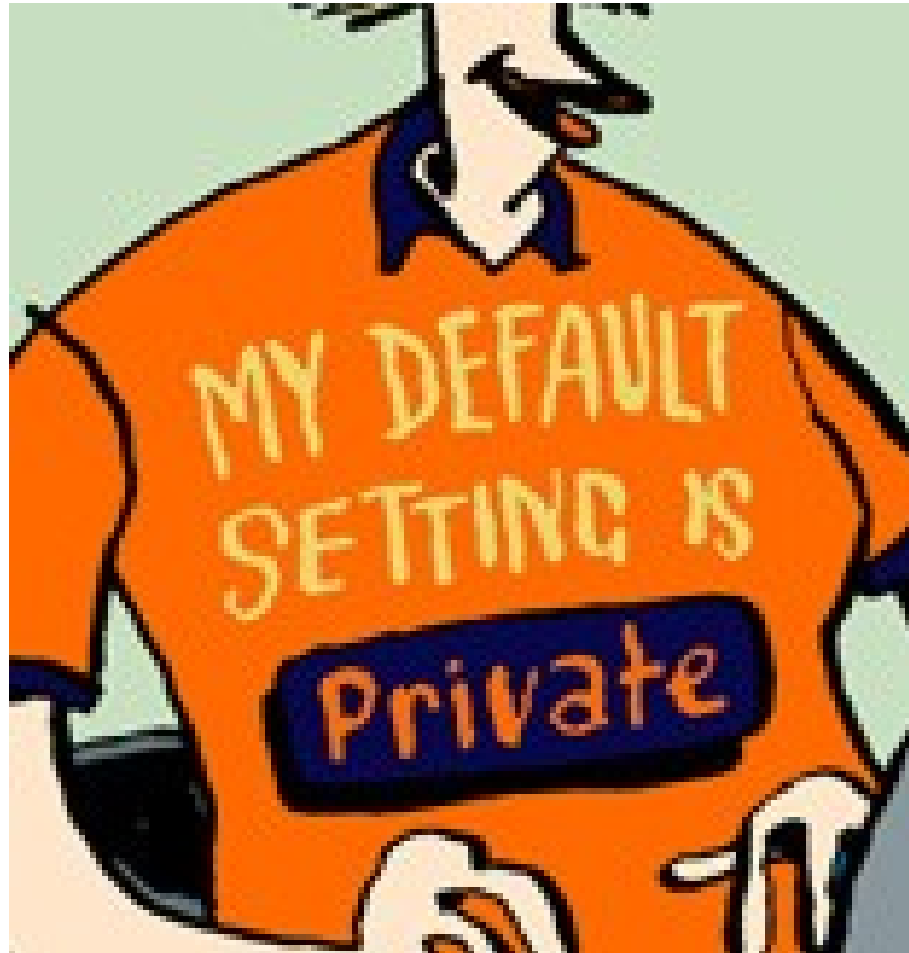
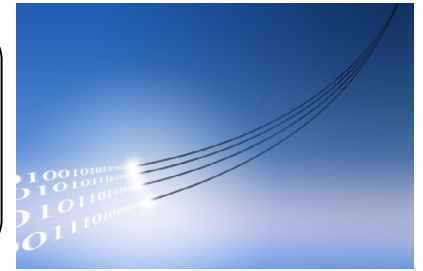


- Killer events and sources of fear become translated into routines, regulations and data collection processes
- On the basis of data collected for modelling and predictive purposes Acts of God become possibilities for normative decisions making
- Incalculable uncertainties can be "tamed" as calculable risk by a kind of "naming"
- **But:** How much data is collected because it is collectable rather than because it is relevant?



**Data is imperative!**

So what's this to do  
with Privacy?

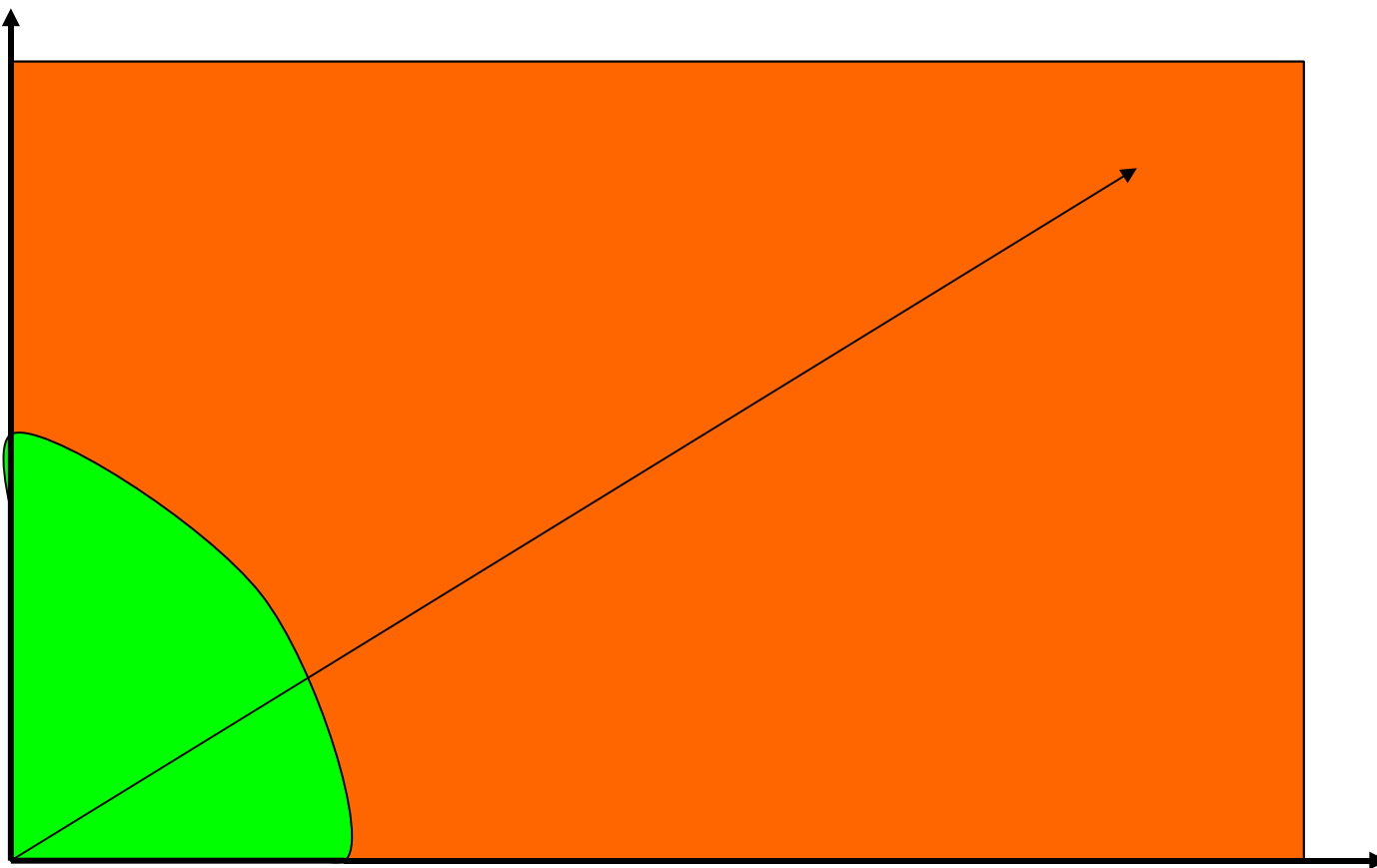


# Why do we disclose personal information?



- Because we want to
  - Security (ID cards)
  - Convenience (Oyster card)
  - Monetary benefits (Loyalty cards)
  - Other benefits (Social networking sites)
- Because we have to
  - Legal requirements (Passport, PNR data, ...)
  - Commercial requirements (insurance, financial assistance)
- Because we don't care!

Number of purposes  
for which data is  
processed



Number of people to whom data is disclosed

Comfort Zone

Zone of Discomfort

# How is our personal data used?



- To gain commercial advantage
  - Data mining
  - Identity theft
  - Capacity planning
- To evaluate and minimise risk
  - Security risk
  - Commercial/financial risk

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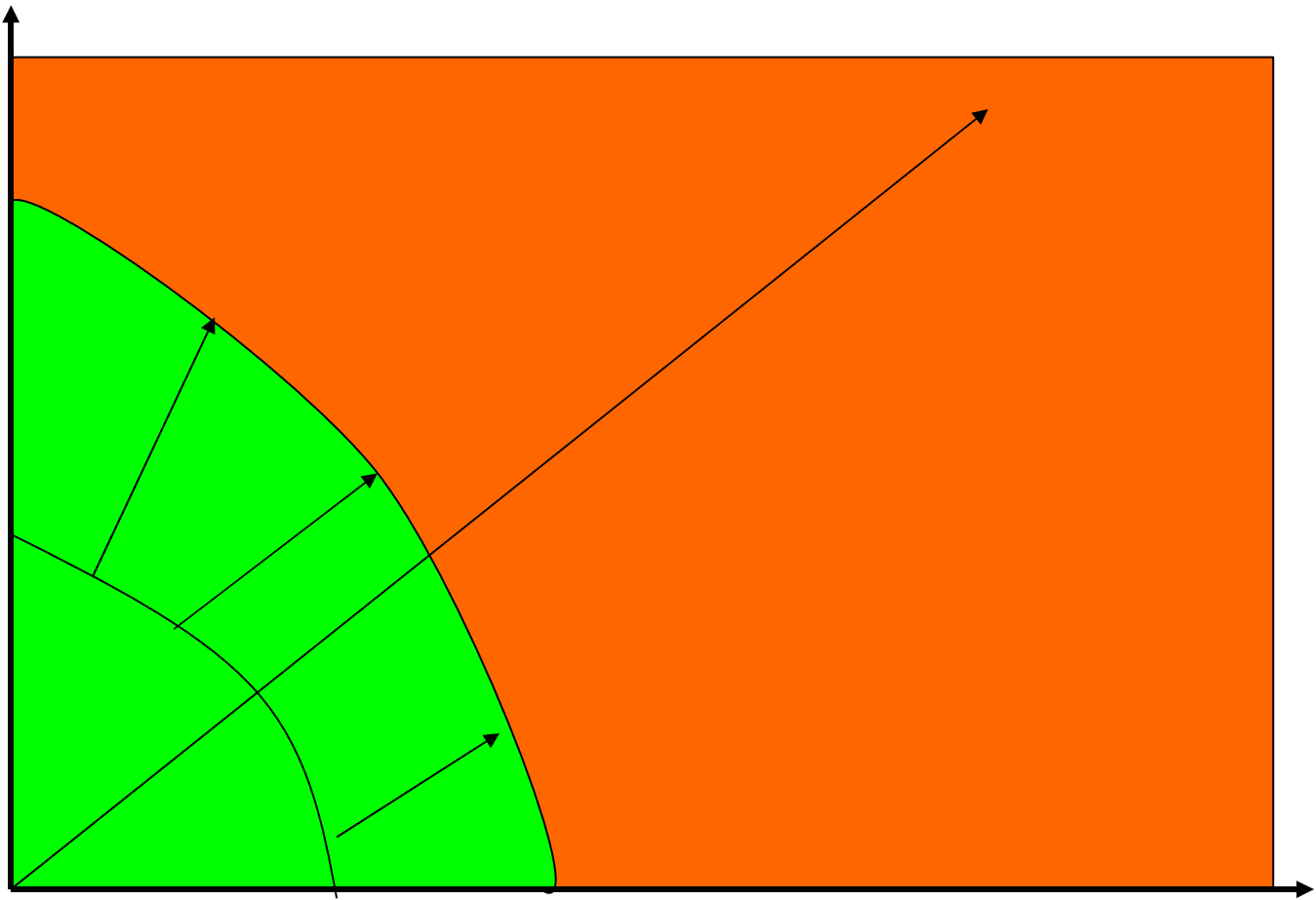
# Changing the default



To enable risk management we need to be conditioned in a way which ensures that privacy is no longer our default



Number of purposes for which data is processed

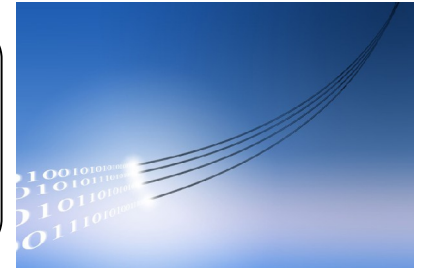


Number of people to whom data is disclosed

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# The Security/Risk Formula



$$\text{Risk} = \frac{\text{Security}}{\text{Need}} \times \text{Threat}$$

# The Security/Risk Formula



- The more (visible) security exists, the lower is my perception of risk.
  - Police presence at airport
  - Paid off mortgage, savings
- The bigger the threat, the higher is my perception of risk
  - Great likelihood of an event happening (e.g. house in a flood zone)
  - Severe consequences of an event happening (terror attack)
- The greater my need, the bigger is my willingness to take a risk
  - Need of a loan during unemployment
  - Need of benefits if incapacitated

# Conclusion



- **Privacy** played off against **security**: get people to accept increased disclosure of personal data by increasing the perception of risk/threat
- Salami tactics
- Potential conflict between (responsibility averse) data collectors and data subjects
- Data not always collected in our best interest
  - Individual risk assessment can work against us
  - Data may be used for other purposes
- More individual caution and public research into risk/privacy relationship required