

# AI Regulation in the US & EU: A Comparative Discussion

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# Agenda

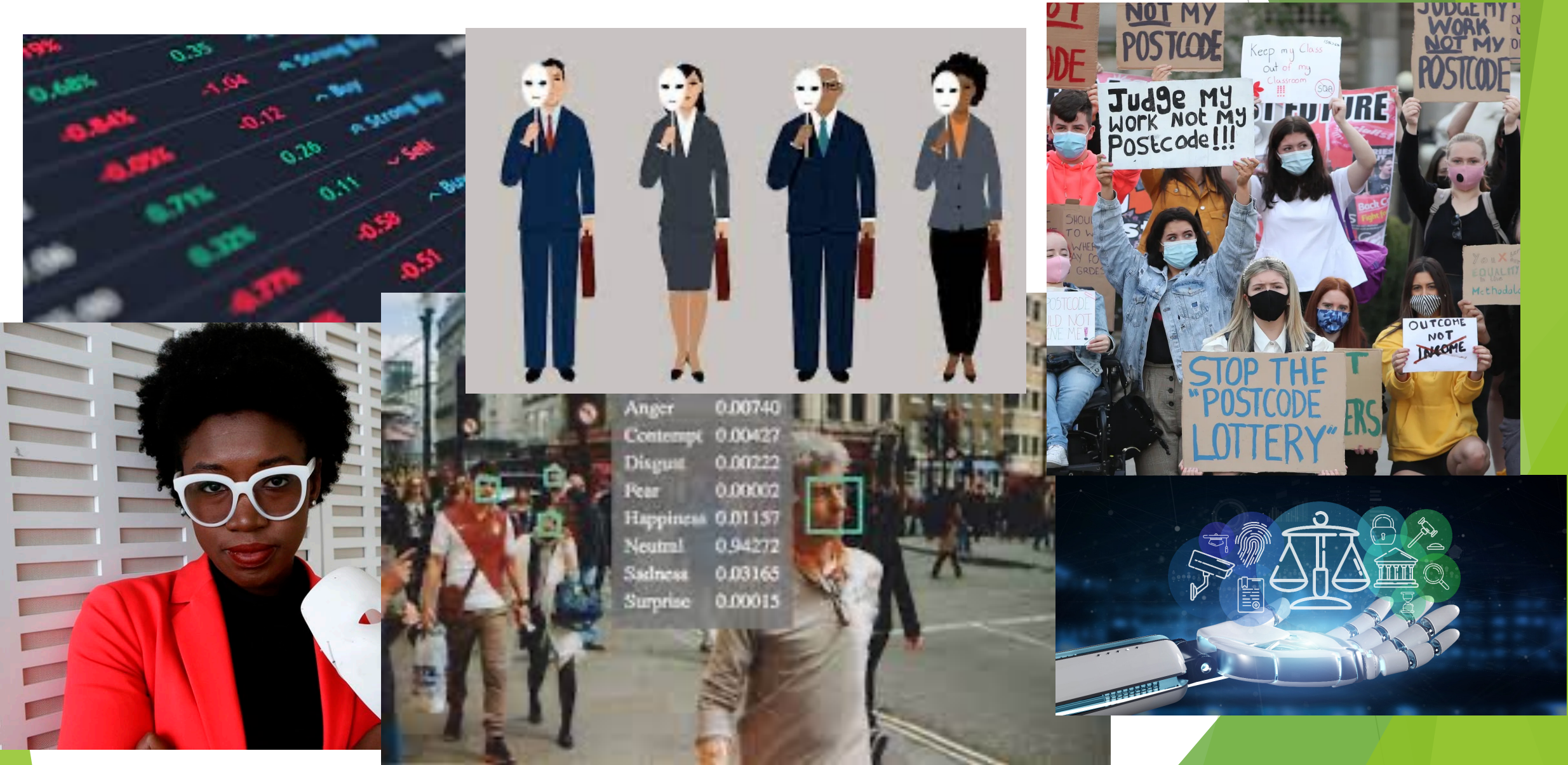
- ▶ What is driving regulatory appetite? 5 mins
- ▶ Existing laws
  - ▶ EU existing law 5 mins
  - ▶ EU proposed law 5 mins
  - ▶ US existing law + possible FTC reforms 5 mins
  - ▶ US proposed legislation - federal and state 5 mins
  - ▶ Cross border: Us v EU 5 mins

## *AI perspectives*

- ▶ Expert discussion - Q&A 15 mins
- ▶ Q&A audience 10 mins
- ▶ Closing remarks 3 mins



# What is driving regulatory appetite?



# Existing Law: European Union

## GDPR - Art 22

- ▶ **Right not to be subject to a decision based solely on automated processing, including profiling, which produces legal (or similarly significant) effects concerning an individual.** Suitable safeguards include the rights to:
  - ▶ Obtain human intervention
  - ▶ Express his/her point of view
  - ▶ Contest the decision
- ▶ **DPIA's** for most cases involving profiling on which decisions are based that produce legal or similarly significant effects (Article 35(3)(a))
- ▶ **Purpose limitation, data minimization, and accuracy** (Art.5)
- ▶ **Right to Object** (Art 21)
- ▶ All automated processing to incorporate **data protection by design** principles (Art 25)
- ▶ **Notice** to data subject with respect to automated decision-making (Art 13 & 14)

# The EU Proposed Regulation on AI: 4 levels of risks





# Existing Law: U.S. Federal Rules

- ▶ Existing tools
  - ▶ FTC Section 5 FTC Act
    - ▶ Truth, fairness, equity
    - ▶ Recent enforcement actions / remedies
  - ▶ Market studies under Section 6(b) FTC Act
  - ▶ Equal Credit Opportunities Act (ECOA)
  - ▶ Fair Credit Reporting Act (FCRA)
  - ▶ Children's Online Privacy Protection Act (COPPA)
- ▶ Limits of existing regulation & proposals for reform
  - ▶ Hard to apply current rules (black-box opacity, explainability, algorithmic models trade secrets)
  - ▶ Mag-Moss Rulemaking (Commissioner Slaughter)
  - ▶ Emerging U.S.-state laws

# Existing Law: U.S. state rules

- ▶ CPRA rulemaking on automated decision-making expected to govern:
  - ▶ access rights; and
  - ▶ opt-out rights.
- ▶ Should specifically require that responses include:
  - ▶ “meaningful information about the logic involved in” automated decisionmaking process
  - ▶ Description of the likely outcome of the automated automated decisionmaking process
- ▶ Virginia CDPA and Colorado Privacy Act:
  - ▶ Opt-out for profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.
  - ▶ Data Protection Assessments for certain high risk profiling activities.



# Proposed Regulation: US

## State

- ▶ **Unfair discrimination in insurance practices** (CO SB21-169)
- ▶ **Video interviews** (IL HB 53)
- ▶ Prohibits certain discrimination by ADS (NJ S1943)
- ▶ Algorithmic accountability and bias prevention in the protection of consumers (MA H4029)
- ▶ Task forces (VT, AL, NV, MA, PA and elsewhere)

## Legislative sessions ended:

- ▶ CA AB-13 (*Automated Decision Systems Accountability Act*)
- ▶ WA S-SB 5116 (*ADS*)
- ▶ MD HB 1323 (*ADS - Procurement and Discriminatory Acts*)
- ▶ VT H.263 (*State development, use, and procurement of ADS*)

## Federal

- ▶ **Endless Frontier Act / US Innovation and Competition Act of 2021** (S.1260)
- ▶ Algorithmic Justice and Online Platform Transparency Act of 2021 (S.1896 / H.R.3611)
- ▶ Protecting Americans from Dangerous Algorithms Act (H.R.2154) - (S.230 amendment)
- ▶ Mind Your Own Business Act of 2021 (S.1444)
- ▶ Filter Bubble Transparency Act (S.2024)

# Proposed Regulation: US

- ▶ **New Jersey (A. 3283)**
  - ▶ GDPR-like framework
  - ▶ **right not to be subject to a decision based on solely automated decision making**, including profiling, which **produces legal effects** concerning the consumer.
  - ▶ **Notice** to consumers when collecting personal data regarding the existence of automated decision-making, including profiling, meaningful information concerning the logic involved, and significance and potential consequences for the consumer.
- ▶ **New York Digital Fairness Act (A.6024)**
- ▶ **New York Privacy Act (S.6701)**
- ▶ **Massachusetts Information Privacy Act (MIPA - MA 46)**
  - ▶ Prohibit a covered entity from engaging in acts or practices that directly result in discrimination against or otherwise make an opportunity, or public accommodation, unavailable based on an individual's or group's actual or perceived belonging to a protected class.
  - ▶ This includes a prohibition on targeting advertisements on the basis of actual or perceived belonging to a protected class



# Cross-border issues - US vs EU

Interoperability / fragmentation

Definitional issues

- ▶ What is AI / automated decision systems

Beyond the US & EU:

- ▶ China
- ▶ UK

# Moderated discussion

- ▶ Q&A with panelists (15 mins)
- ▶ Q&A with audience (10 mins)

# Recommended Reading

- ▶ Rebecca Kelly Slaughter, [Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission](#) (Yale Journal of Law & Technology - Aug, 2021)
- ▶ European Commission, [Proposal for Regulation on Artificial Intelligence](#) (COM/2021/206 final)
- ▶ IBM [Feedback on EU Proposal for AI Regulation](#) (August, 2021)
- ▶ EDPB EDPS [Response to EU Proposal for AI Regulation](#) (June, 2021)
- ▶ Gianclaudio Malgieri & Frank Pasquale, [If You Don't Trust AI Yet, You're Wrong](#) (New York Times - July 2021)
- ▶ Pollyanna Sanderson, Stacey Gray & Sara Jordan, [Automated Decision-Making Systems: Considerations for Policymakers](#) (FPF - May, 2021)
- ▶ Future of Privacy Forum, [The Spectrum of Artificial Intelligence - An Infographic Tool](#) (Dec, 2020)



# Thank you!

