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# What's Old Is New Again: How Past Debates Can Ground Current Challenges

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# Speakers



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# AI + “Public Data”

## Then

- Publicly available data is traditionally subject to fewer requirements on its use in the United States than non-publicly available data.
- Wiretap and video recording laws distinguish between “private” spaces and “public” spaces.
- 4th Amendment protections distinguish between areas with a “reasonable expectation of privacy” and areas of public access and view.
- Web scraping cases continue to set the boundaries of data collection on the open web.

## Now

- New AI systems are [trained on a huge corpus](#) drawn from the open web.
- Beyond [IP related issues](#), questions remain about whether AI models should use text and other digital interactions and ephemera for their commercial use.
- How can companies building and using AI think about how “public data” fits in their models?
- What lessons can be applied from similar debates in the past?

# Data + Discrimination

## Then

- Congress passed a series of laws aimed at combating discrimination in key parts of the economy, including the Civil Rights Act, ECOA, and FHA.
- Courts enforced these laws not only to the decisions about credit or housing, [but also to advertising in those markets](#).
- As new services entered regulated markets, the laws continued to apply.

## Now

- New data practices and systems are being used to engage in regulated activity.
- Enforcement [agencies continue to police](#) alleged discrimination practices in new arenas.
- [Lawmakers](#) and [regulators](#) continue to focus on potential discriminatory uses of data, including in last years ADPPA.
- Are the uses of digital data today materially different in outcome from the past?

# “Data Brokers” + Third Party Data

# “Data Brokers” + Third Party Data

## Then

- Credit bureaus since the [mid-19th century](#), but modern “data brokers” take shape in the mid-20th century.
- In 1970 Congress passed the FCRA to regulate “consumer reports” when they are used for specific permitter purposes.
- [Congress](#), the [FTC](#), and [GAO](#) all studied “data brokers” a decade ago assessing potential gaps in regulation and possible harms to consumers.

## Now

- Congress [held a hearing](#) to discuss “data brokers” just the other week and the [CFPB has a current RFC](#) open regarding the industry.
- Several states have [data broker registries](#), aiming to bring transparency to the industry.
- [Studies show](#) that third party data, provided by “data brokers” continue to fuel efficient markets, increase competition, a lower prices for consumers.
- Given the consistent focus “data brokers” have received since the 1970s, how has the industry responded to continues change?



# Targeted Advertising

## Then

- [LL Bean pioneered](#) targeted advertising in 1911 by mailing flyers to out-of-state hunting license holders.
- In 2009 the [FTC issued a report](#) calling for self-regulation of data-driven online targeted advertising.
- The [Supreme Court](#) upheld the 1st Amendment speech rights of data-driven marketing.
- Industry groups have promulgated, enforced, and updated various [self-regulatory programs](#), including consumer opt-out tools.

## Now

- “Targeted advertising” is central to ongoing discussions regarding kids and teen online engagement, including at the [State of the Union](#).
- Every state privacy law has addressed targeted advertising, requiring opt-out rights for residents.
- [Studies show](#) that data-driven advertising deliver value to consumers and the marketplace.
- The types and amount of data used for modern advertising has changed, has the fundamental use of that data materially changed?

# Questions & Contacts



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