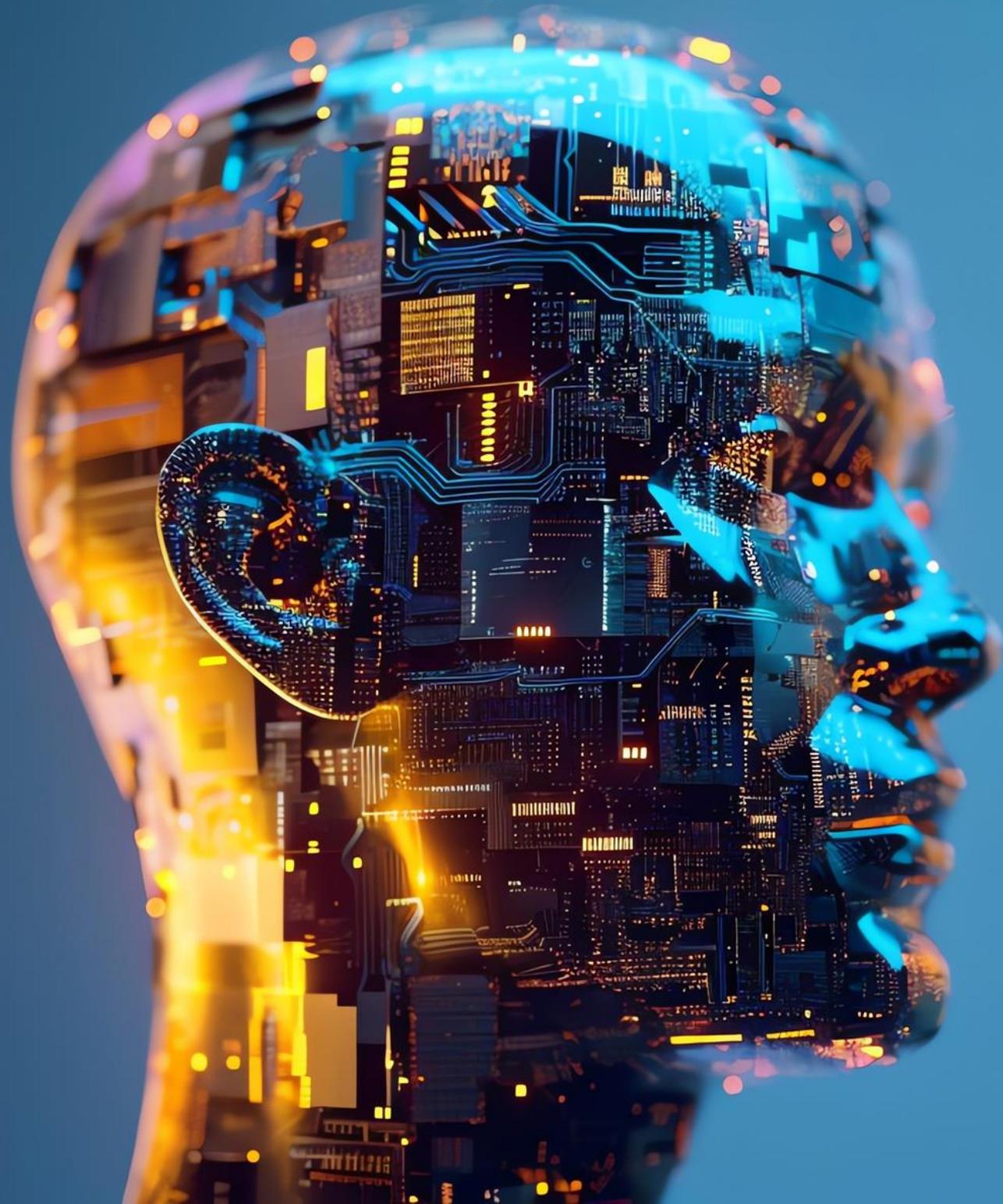


# ARTIFICIAL INTELLIGENCE AND PRIVACY

Daniel J. Solove



# THE RISE OF AI

# AI OLD AND NEW

The technologies branded as "AI" today are actually **old technologies** that are working more effectively given vast increases in data and computing power.

Vol. VI, No. 2, Summer 1958

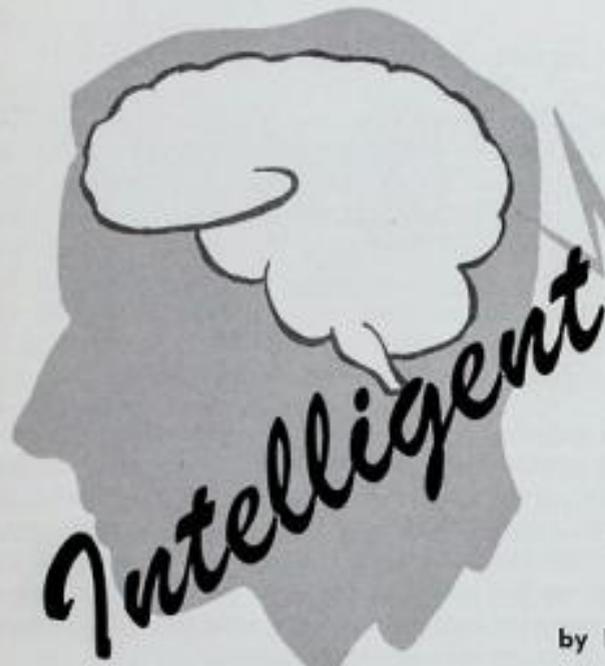


## research trends

CORNELL AERONAUTICAL LABORATORY, INC., BUFFALO 21, NEW YORK

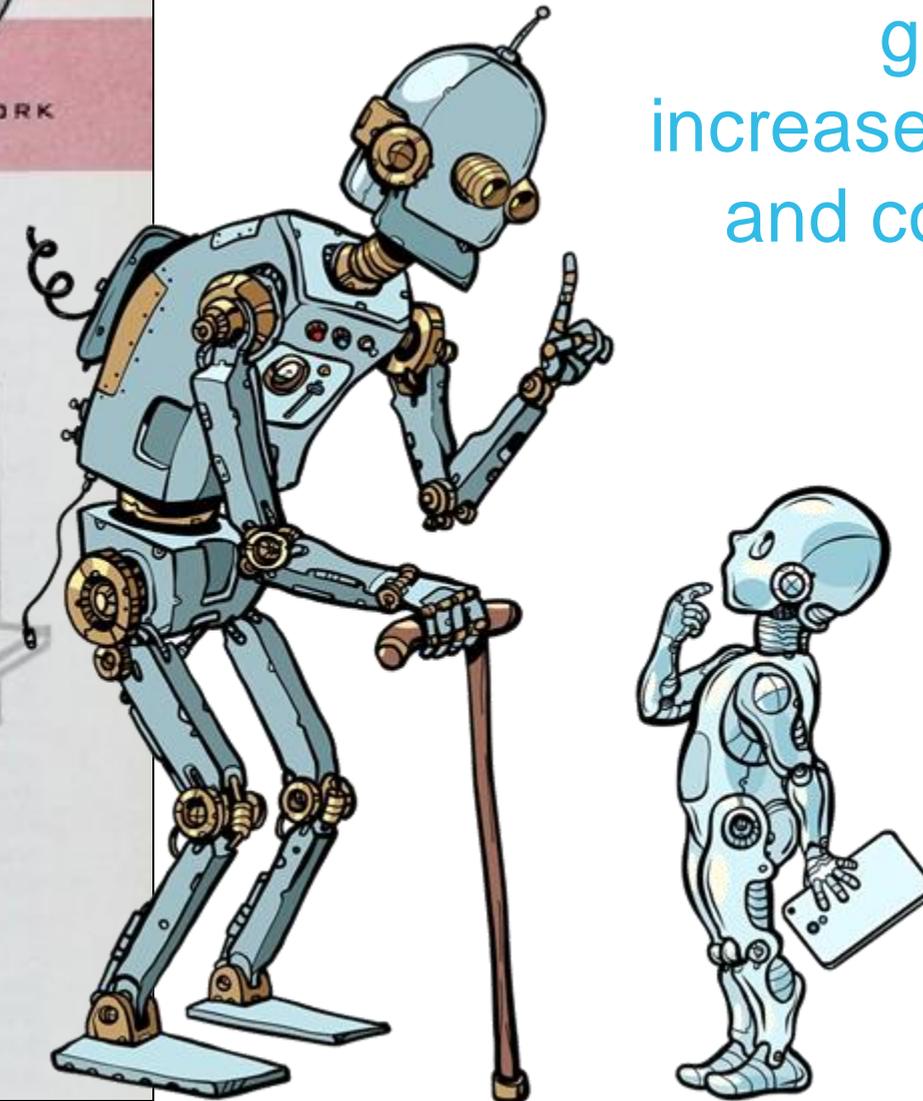
The Design of an

# AUTOMATON



by FRANK ROSENBLATT

Introducing the perceptron — A machine which senses, recognizes, remembers, and responds like the human mind.



None of what is called AI today is actually  
intelligent – or even artificial.  
AI is essentially math plus data.

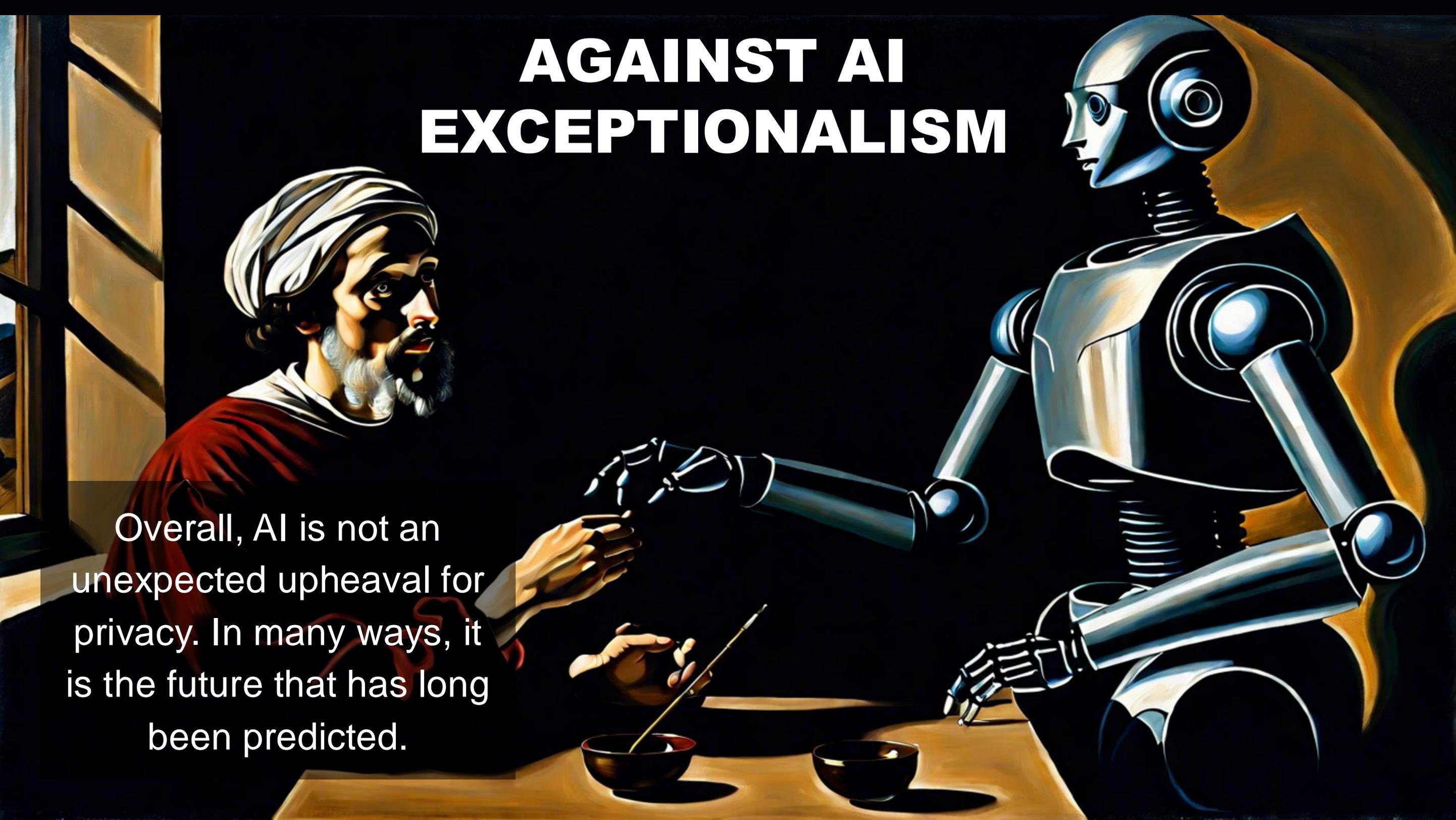
# METAPHORS FOR AI

Ironically, the way AI is understood **distorts** in ways that both anthropomorphize it by attributing it with human-like qualities as well as conceal its human dimensions.



# AGAINST AI EXCEPTIONALISM

Overall, AI is not an unexpected upheaval for privacy. In many ways, it is the future that has long been predicted.



# AI AND PRIVACY

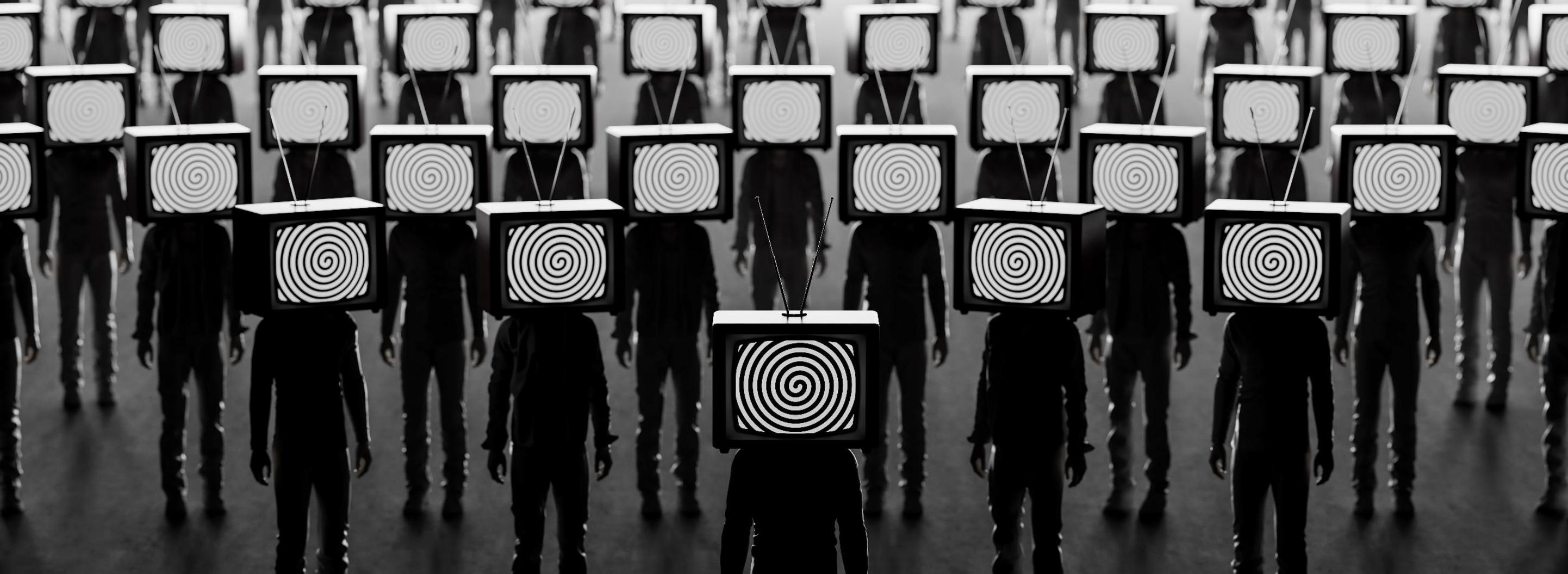
AI's privacy problems involve practices long addressed by privacy law – the gathering and processing of personal data.



# AI AND PRIVACY

Rarely is there a magic line separating privacy issues in AI from those in the digital age generally.





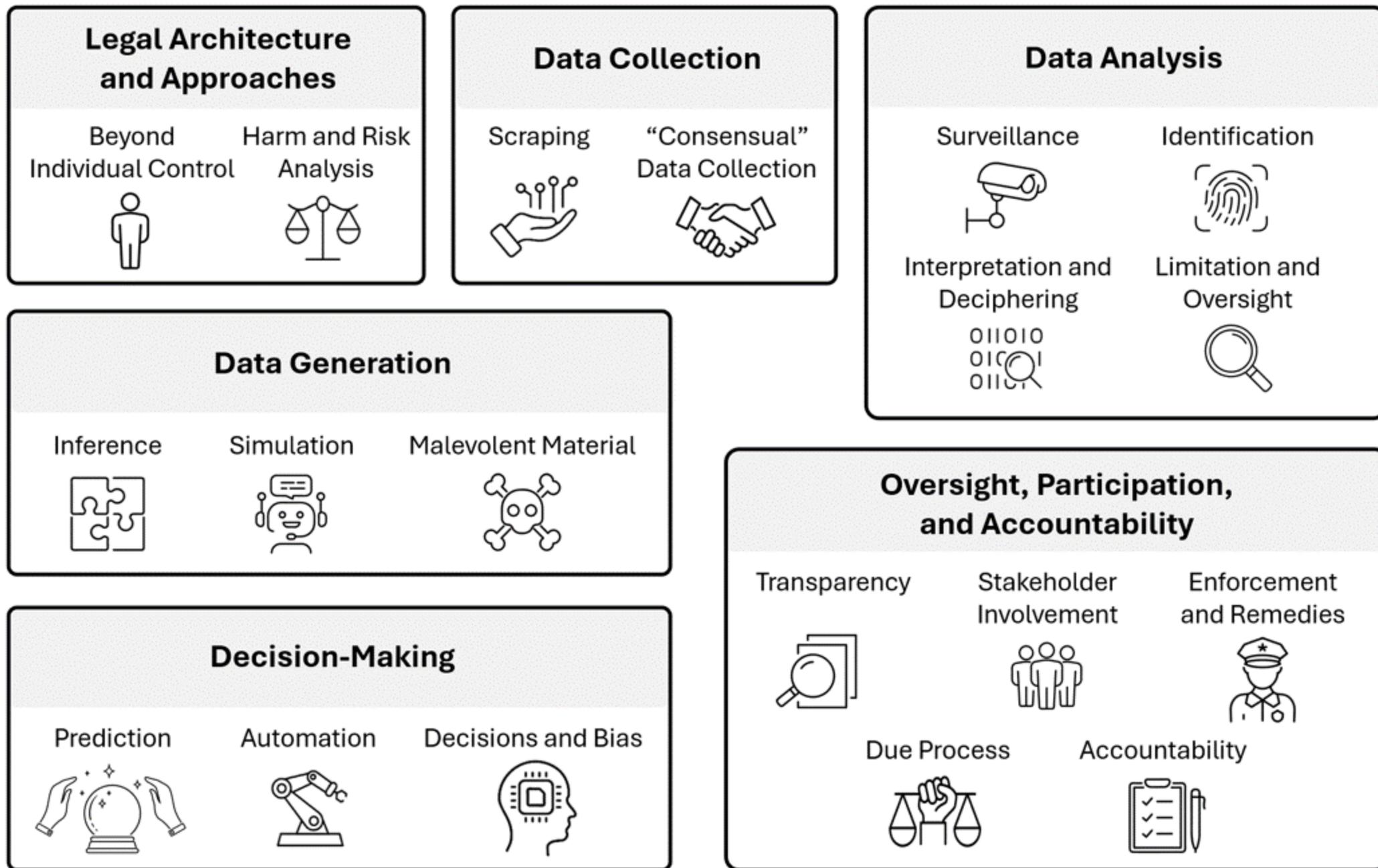
# AI AND PRIVACY LAWS

AI starkly exposes the longstanding shortcomings, infirmities, and wrong approaches of existing privacy laws.

# AI AND PRIVACY LAWS

To confront the privacy problems with AI, these practices must be addressed holistically and together.

# A REGULATORY ROADMAP TO AI AND PRIVACY

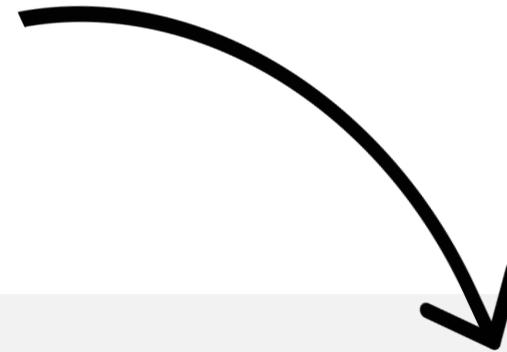
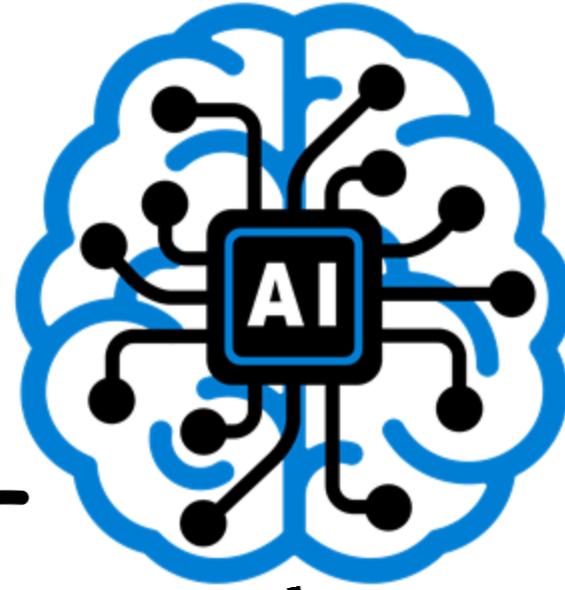


# INPUTS

**Data Collection**

Scraping  


“Consensual”  
Data Collection  

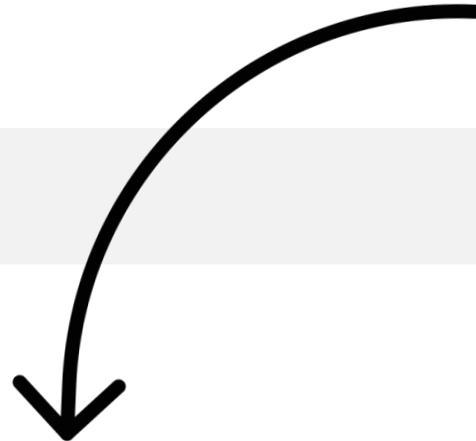
# OUTPUTS

**Data Generation**

Inference  


Simulation  


Malevolent Material  

**Decision-Making**

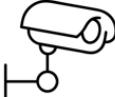
Prediction  


Automation  


Decisions and Bias  




**Data Analysis**

Surveillance  


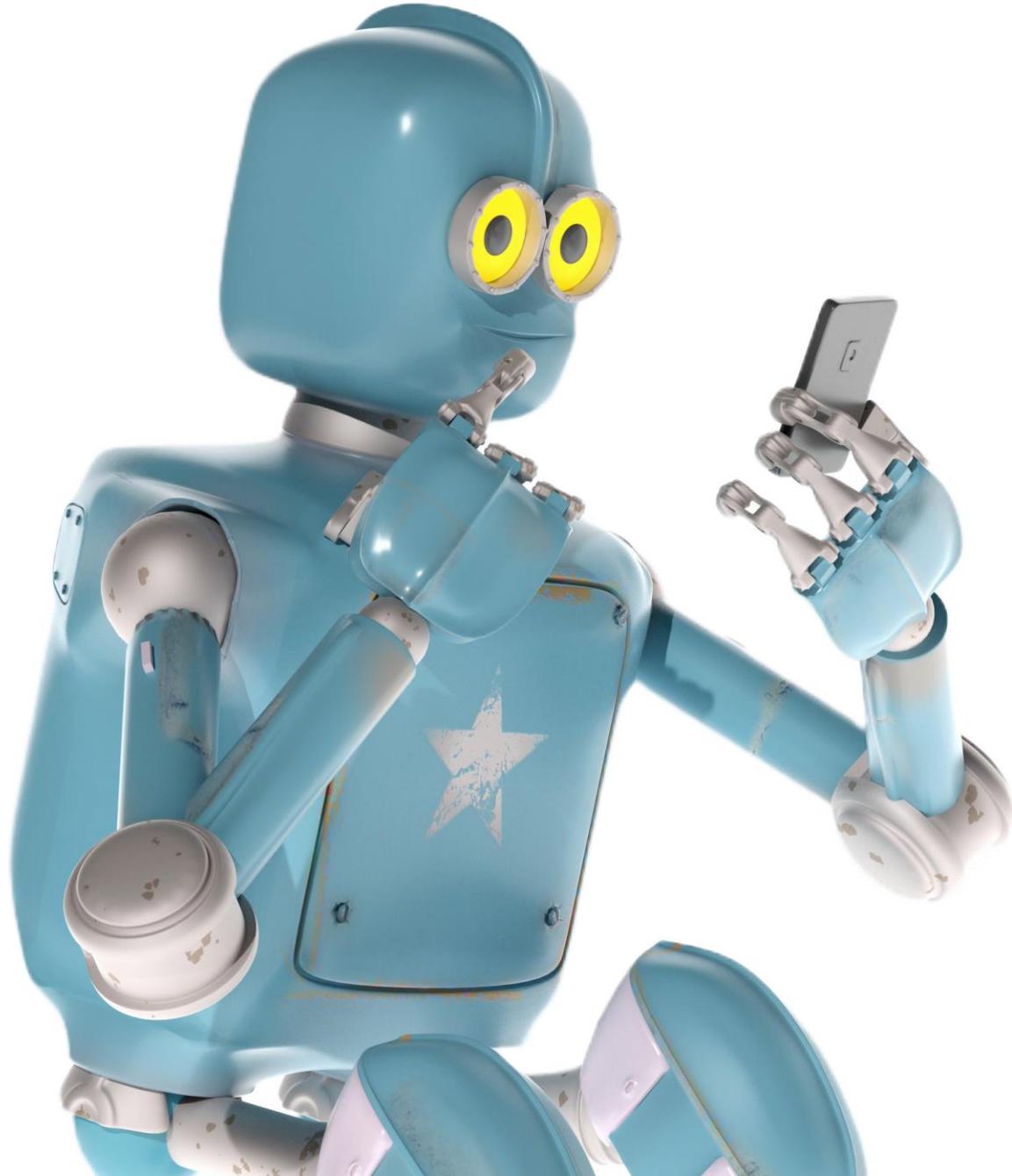
Identification  


Interpretation and  
Deciphering  


Limitation and  
Oversight  




# **LEGAL ARCHITECTURE AND APPROACHES**



## Legal Architecture and Approaches

Beyond  
Individual Control

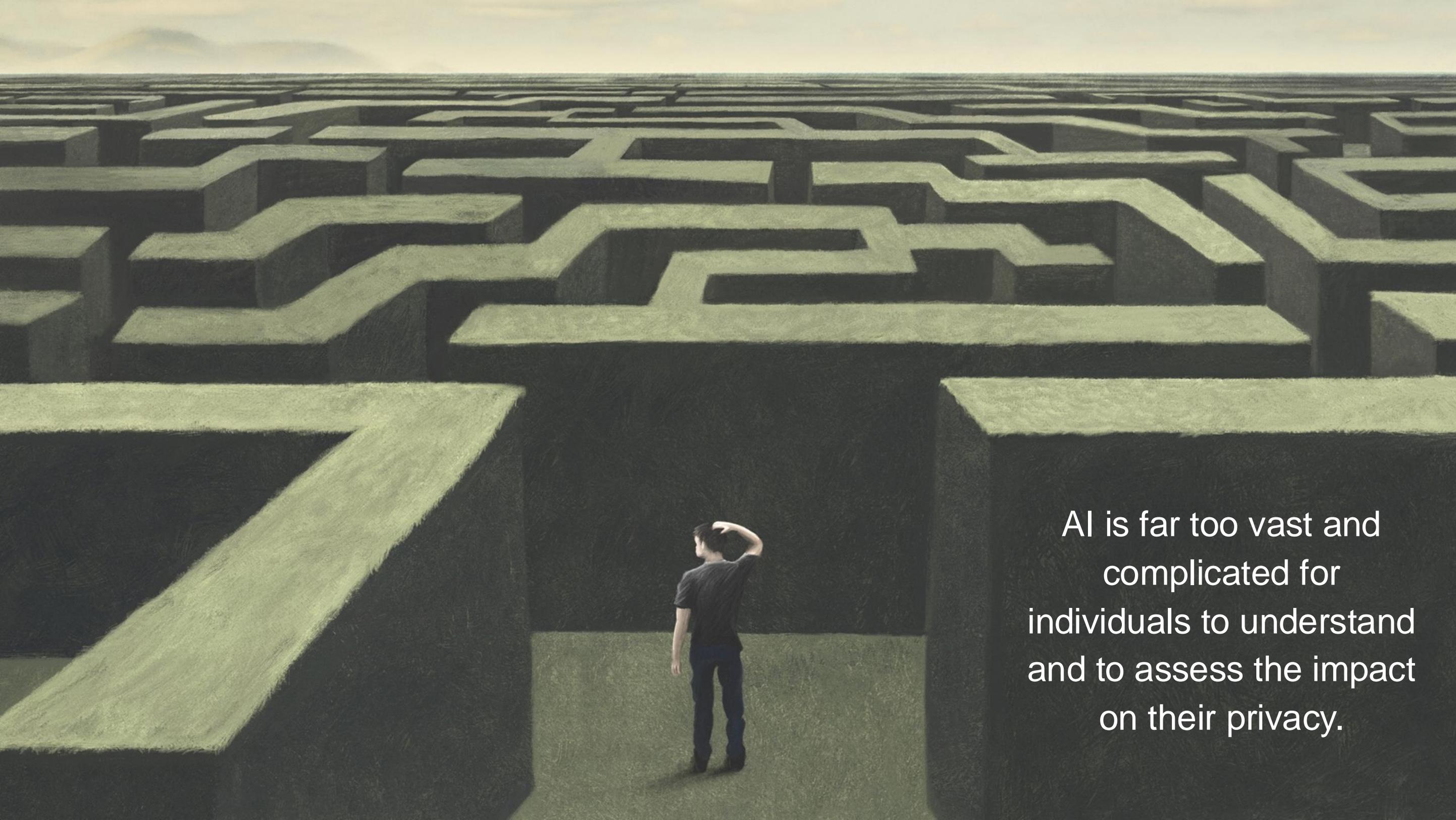


Harm and Risk  
Analysis





**BEYOND  
INDIVIDUAL  
CONTROL**



AI is far too vast and complicated for individuals to understand and to assess the impact on their privacy.

A person is walking a tightrope stretched between two rocky outcrops. The background features a vast mountain range with a prominent, snow-capped peak under a clear blue sky. The scene is bathed in the warm light of a low sun, creating long shadows and a golden glow on the mountains.

# **HARM AND RISK ANALYSIS**

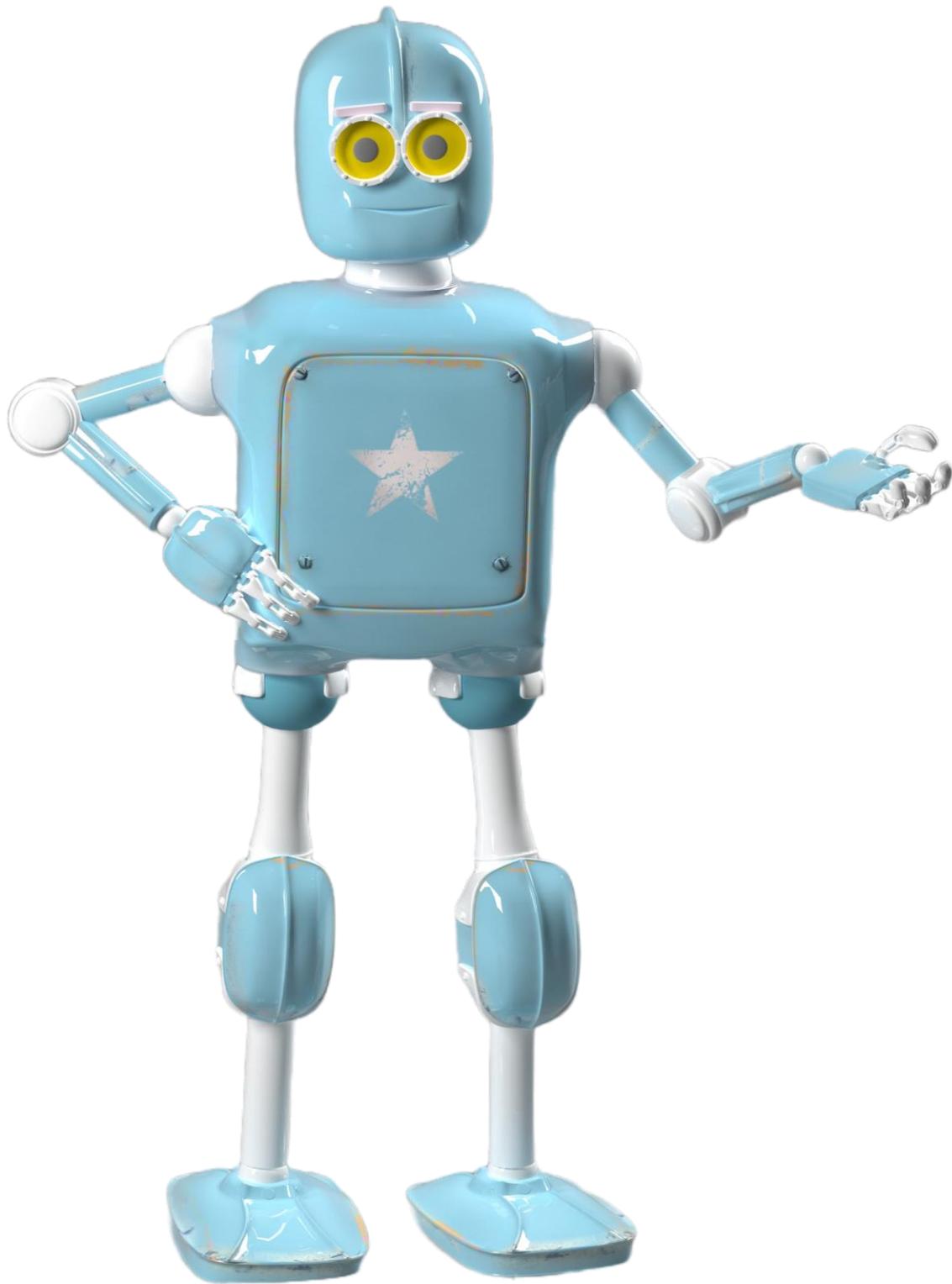
**EX  
ANTE**



**EX  
POST**



# **DATA COLLECTION**



## Data Collection

Scraping



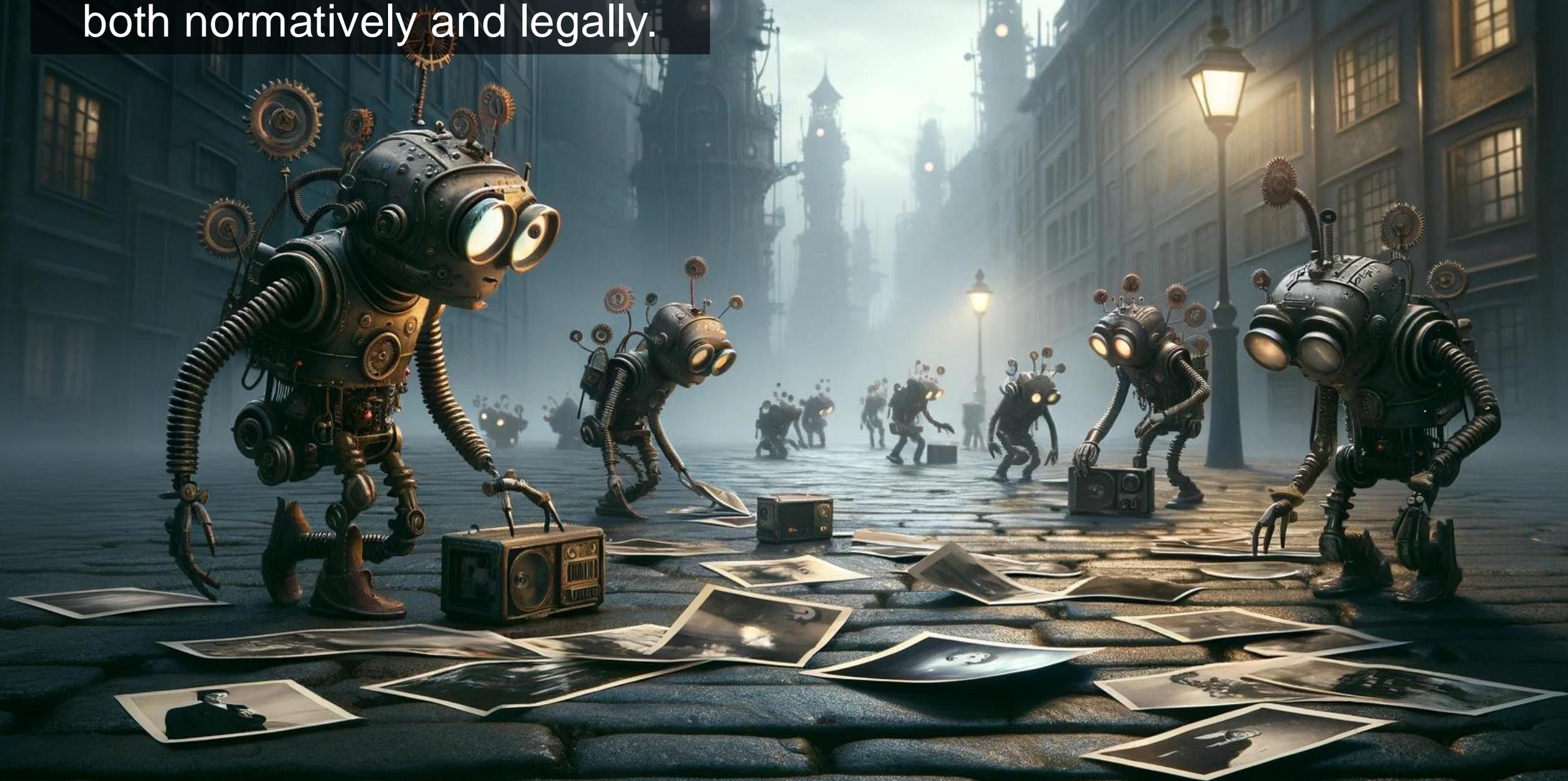
“Consensual”  
Data Collection



# SCRAPING



The defense of “publicly available information” is wrong both normatively and legally.



**“CONSENSUAL”  
DATA COLLECTION**

*Accept*

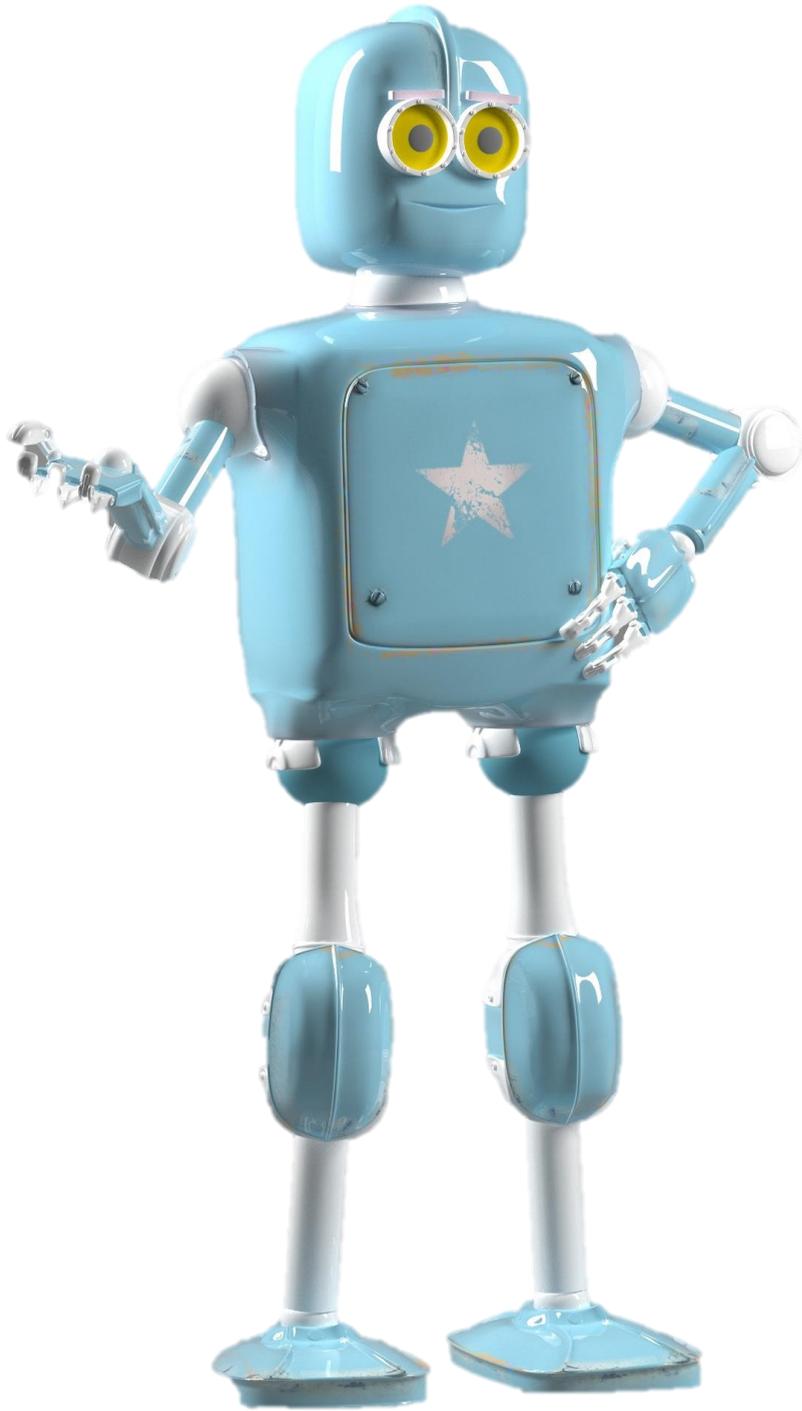
*Decline*

Privacy consent is a fiction.  
AI demonstrates how just  
how farcical the fiction is.





# DATA GENERATION



## Data Generation

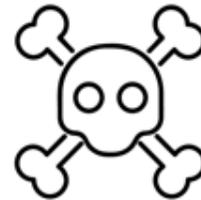
Inference



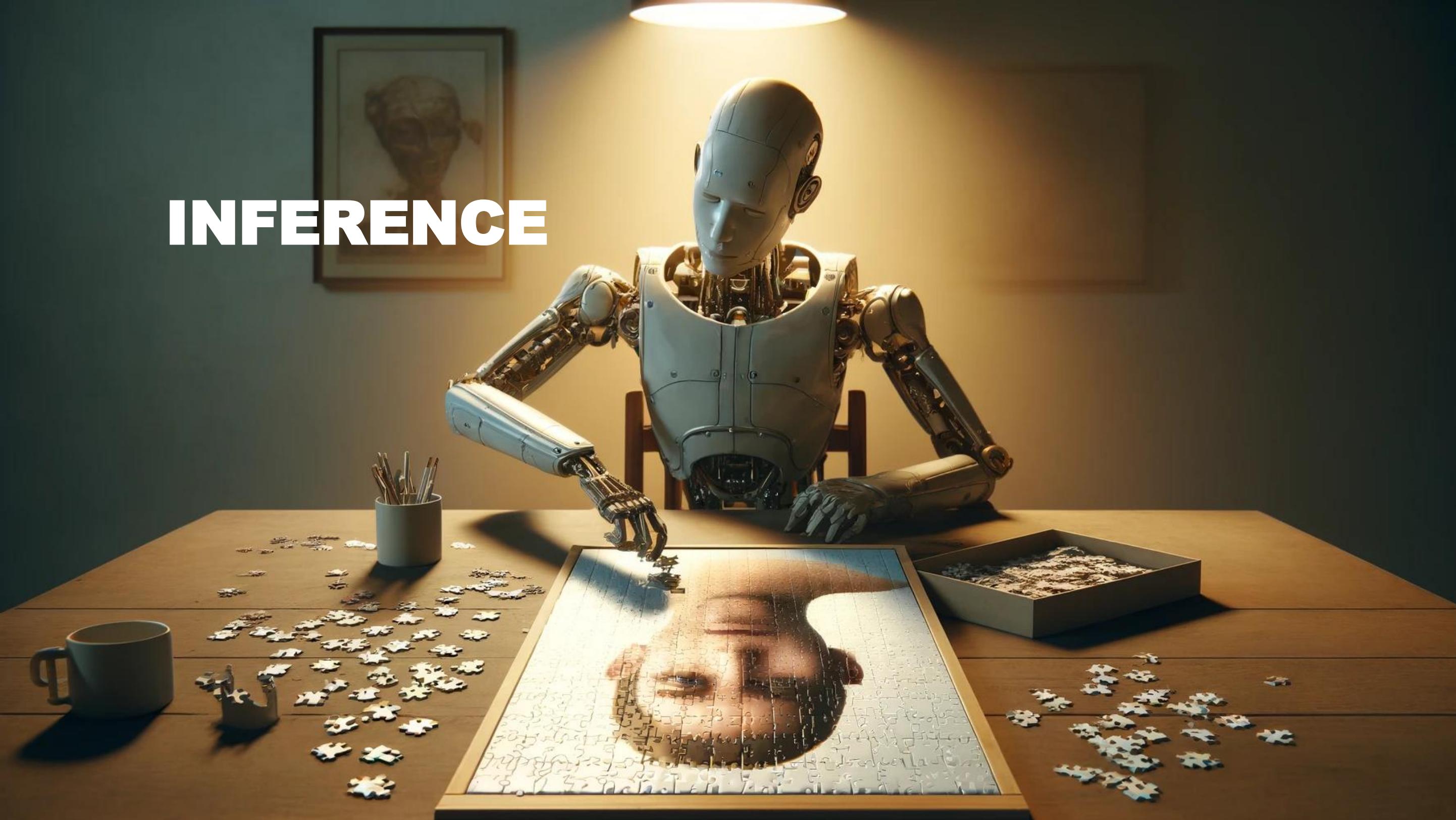
Simulation



Malevolent Material



# INFERENCE



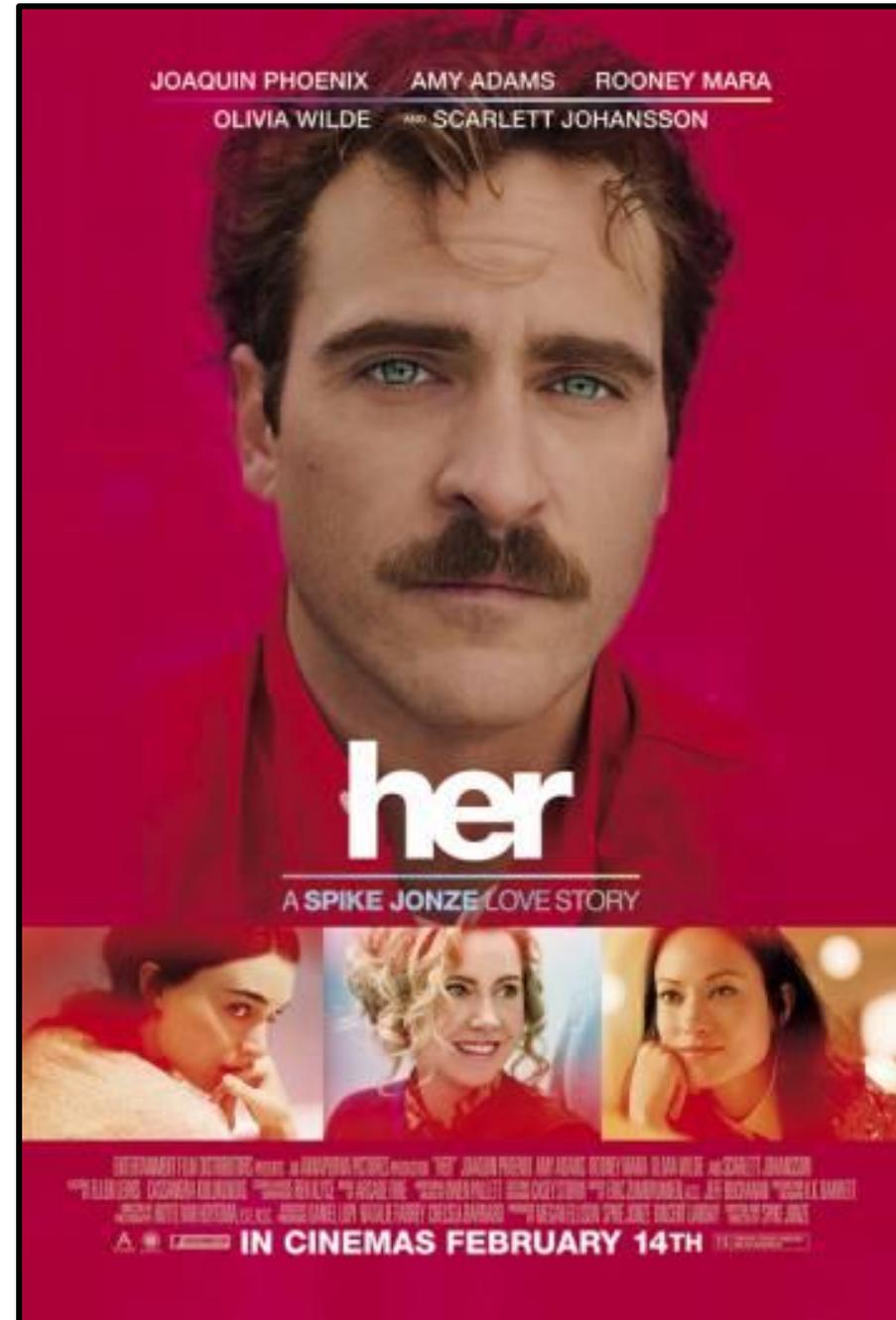
Machine learning algorithms are able to make so many surprising inferences that people have no control over what data organizations know.





**SIMULATION**

AI human simulation can beguile  
and manipulate people even  
when they know it is not real.

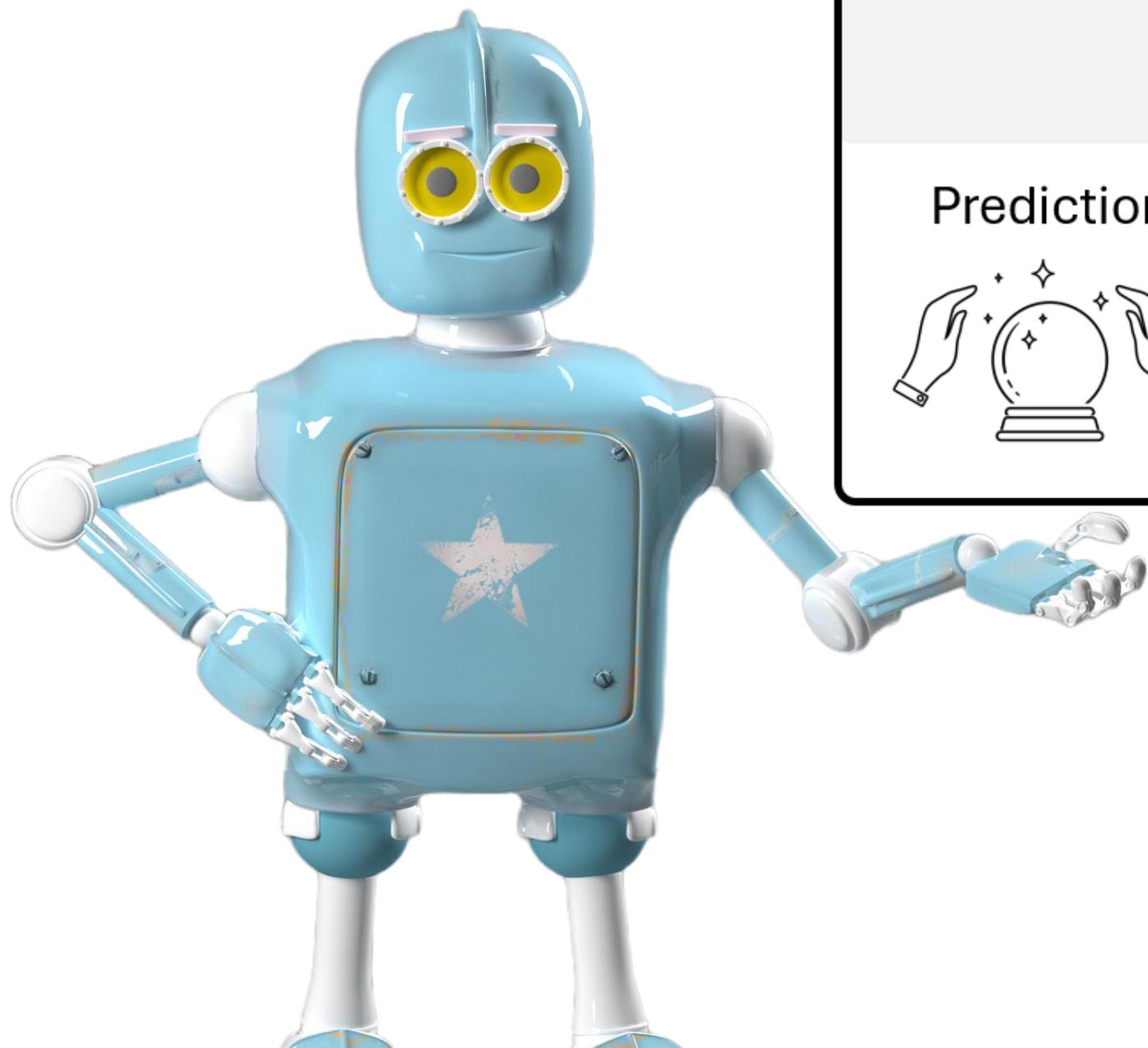




**MALEVOLENT  
MATERIAL**



# DECISION-MAKING



## Decision-Making

Prediction



Automation



Decisions and Bias



# PREDICTION



Algorithmic predictions  
do more than just  
forecast the future;  
they also shape it.





**AUTOMATION**

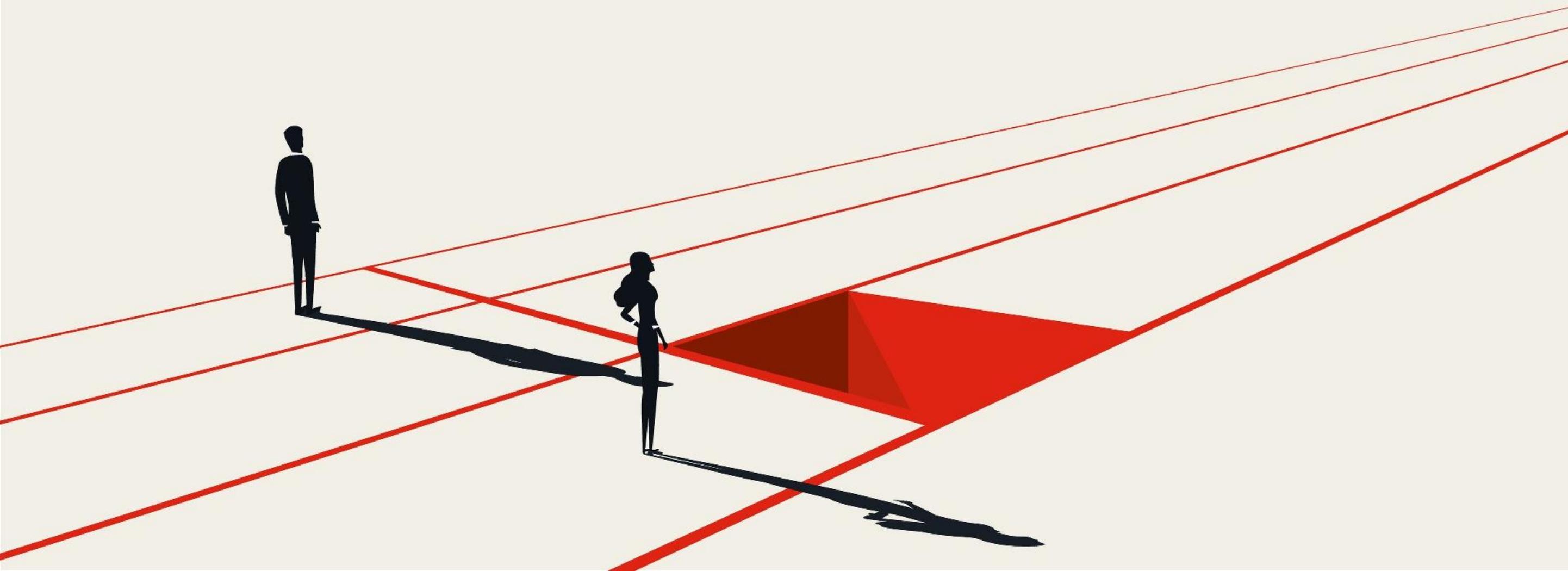


Focusing on quantifiable data can skew decisions and impoverish them.

# DECISIONS AND BIAS

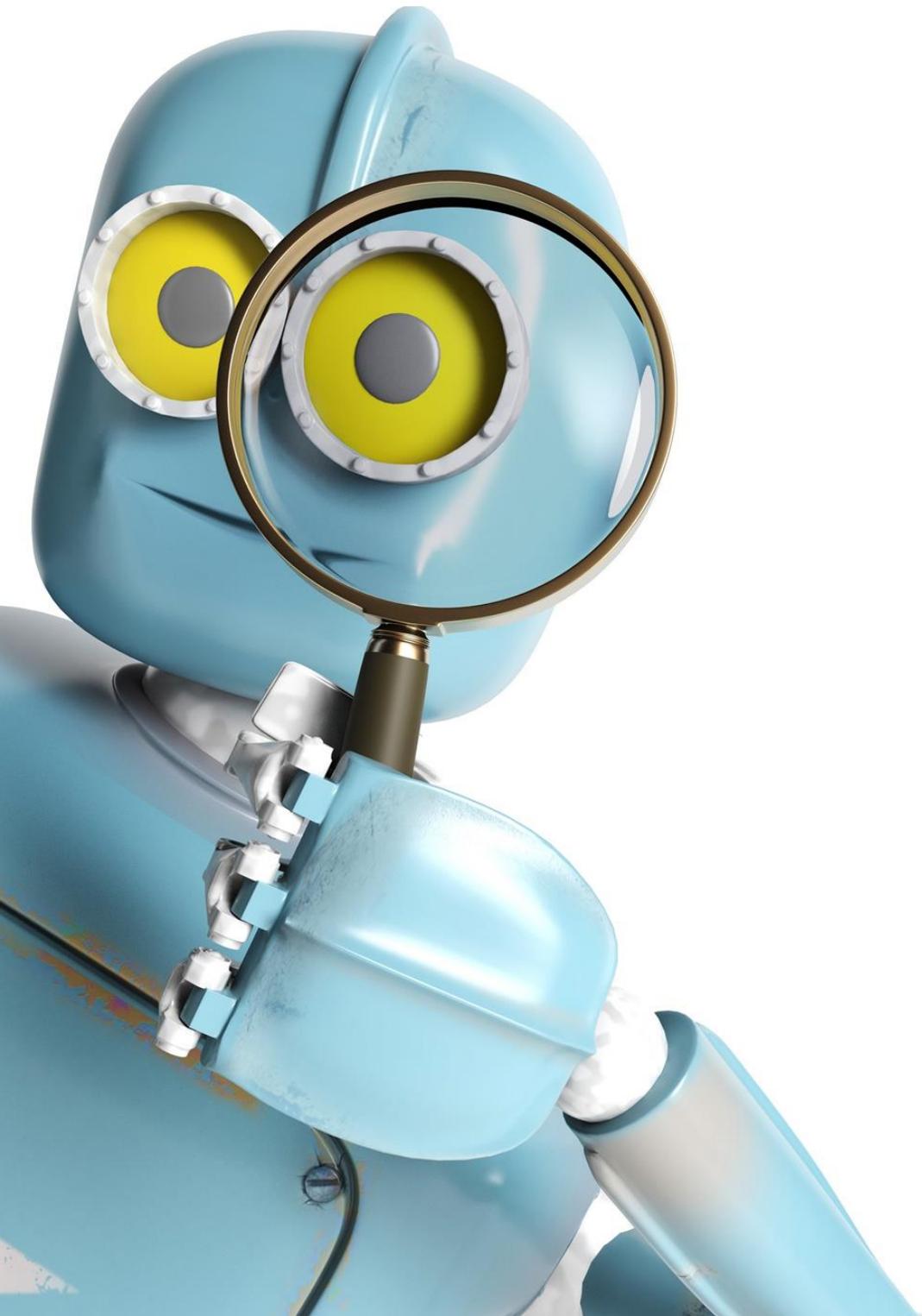


AI may give rise to  
new forms of  
discrimination.





# DATA ANALYSIS



## Data Analysis

Surveillance



Identification



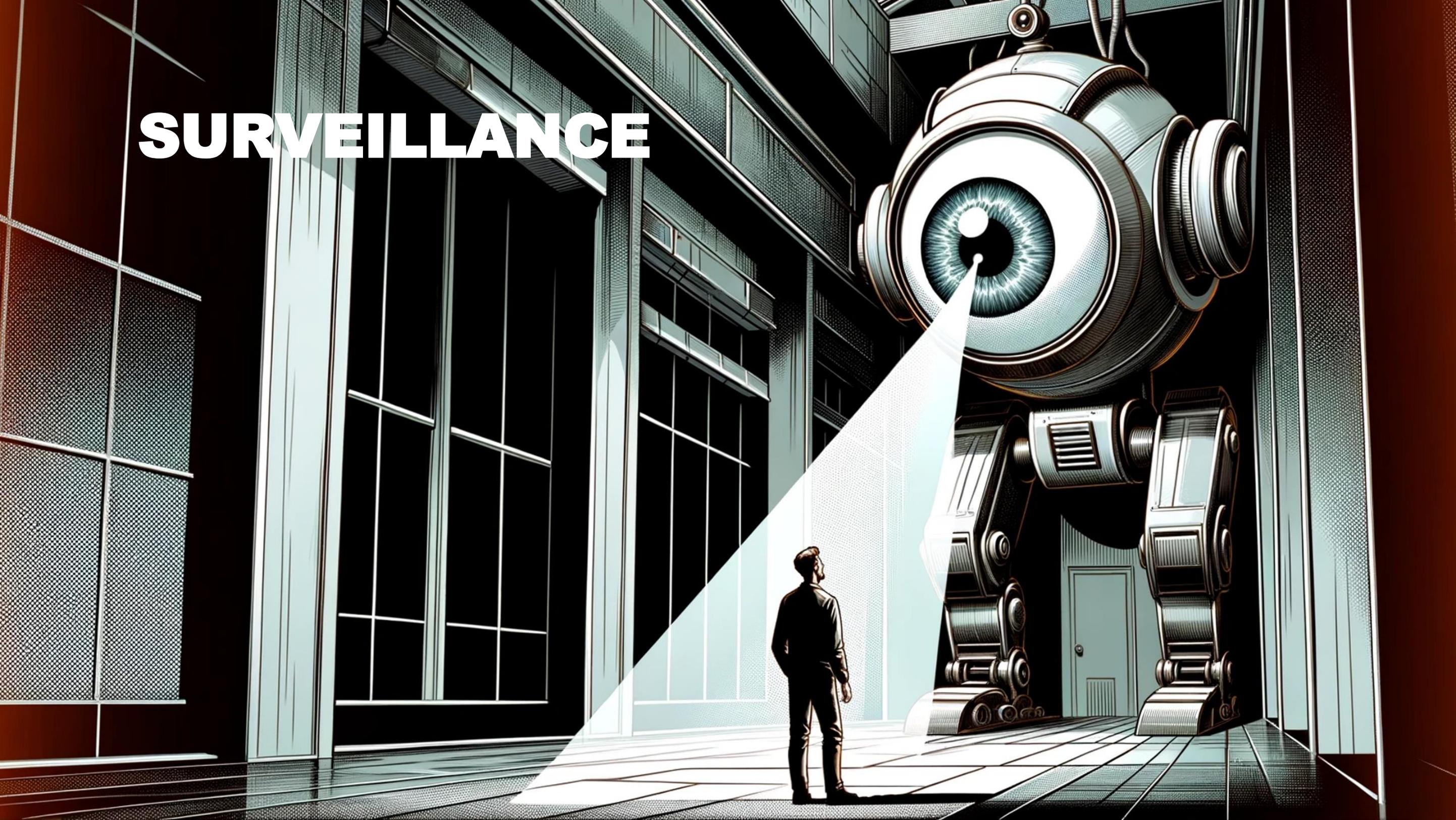
Interpretation and  
Deciphering



Limitation and  
Oversight



# SURVEILLANCE





AI is poised to significantly exacerbate the detrimental impacts of surveillance.

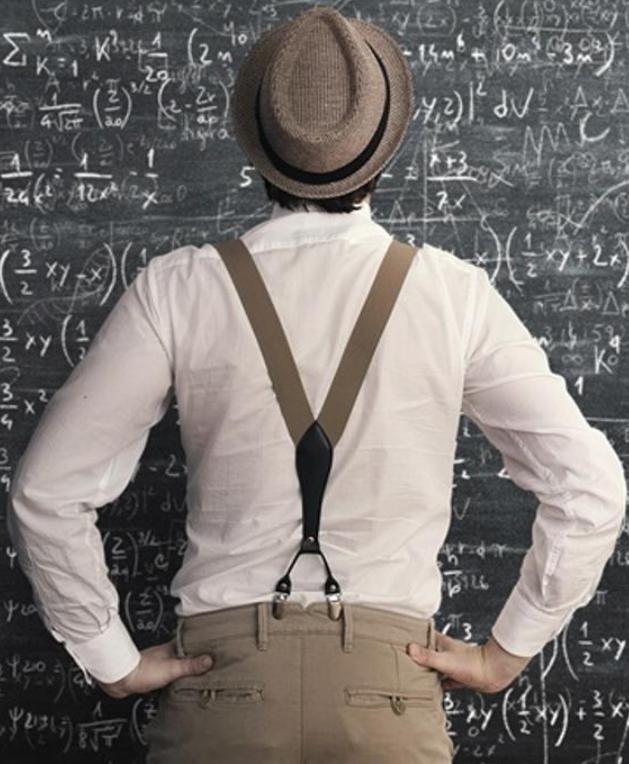
# IDENTIFICATION





# **INTERPRETATION AND DECIPHERING**

The government could use AI systems to infer extensive data about a person from data it possesses or finds online.



# LIMITATION AND OVERSIGHT





# **OVERSIGHT, PARTICIPATION, AND ACCOUNTABILITY**

## Oversight, Participation, and Accountability

Transparency



Stakeholder  
Involvement



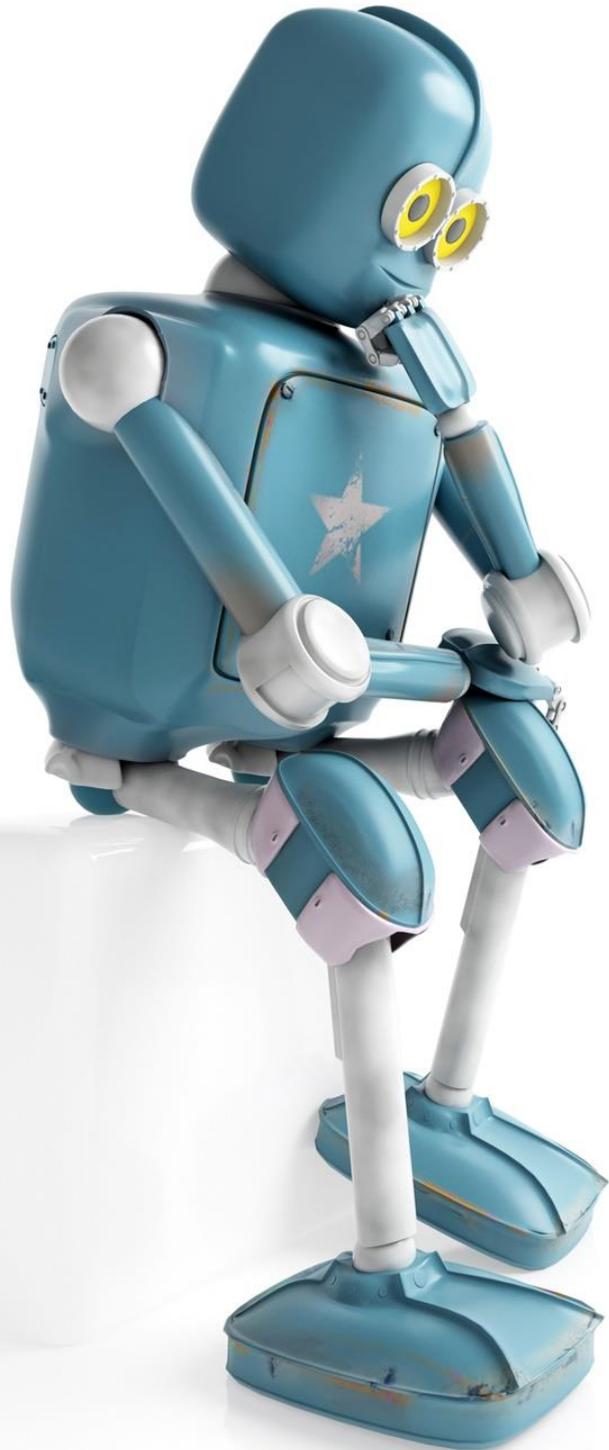
Enforcement  
and Remedies



Due Process



Accountability



# TRANSPARENCY

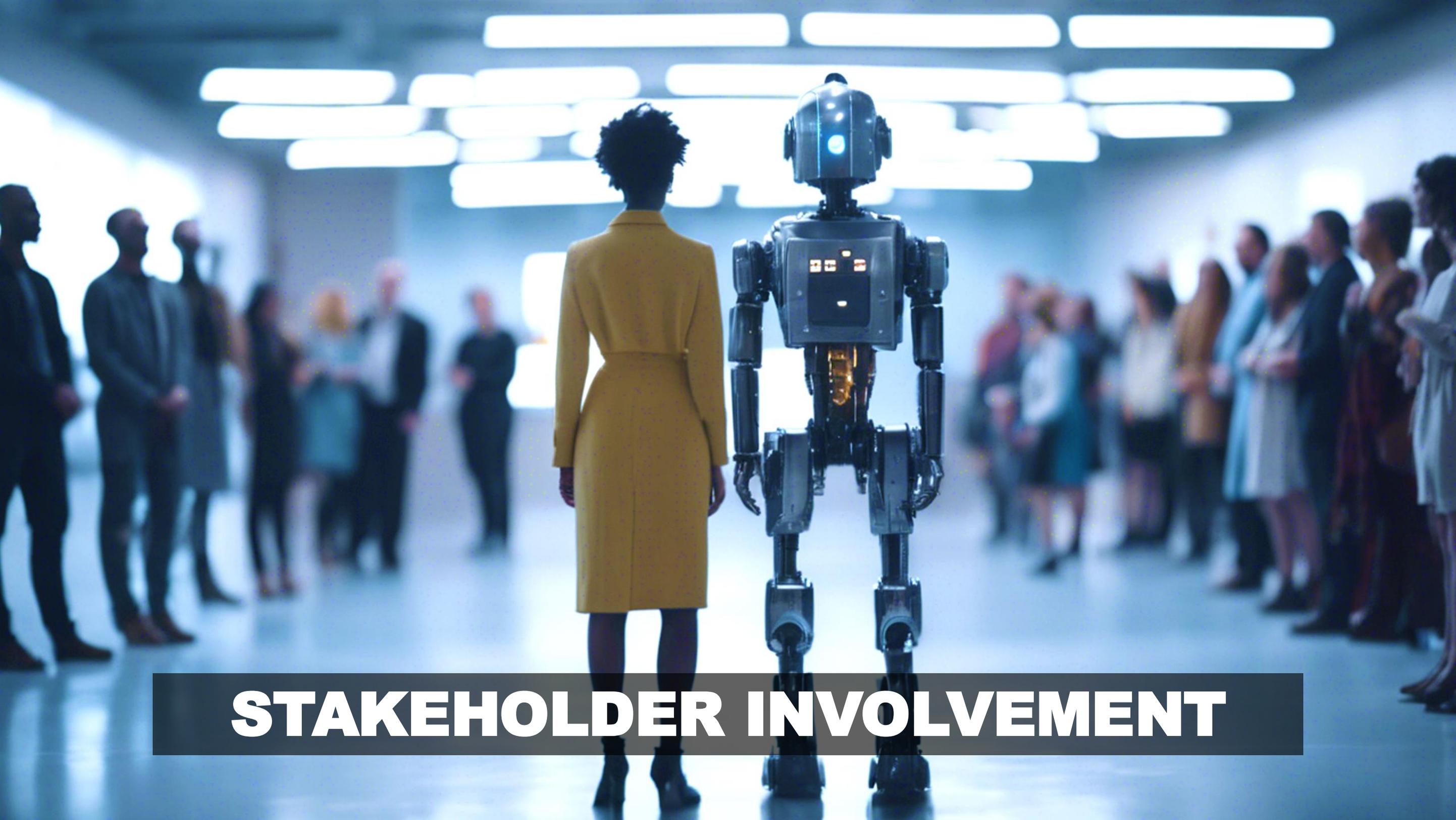


For transparency to be truly meaningful,  
automated decisions need to be  
comprehensible. Most individuals are not  
equipped to evaluate complex algorithms.



# DUE PROCESS





**STAKEHOLDER INVOLVEMENT**



**ACCOUNTABILITY**

# ENFORCEMENT AND REMEDIES

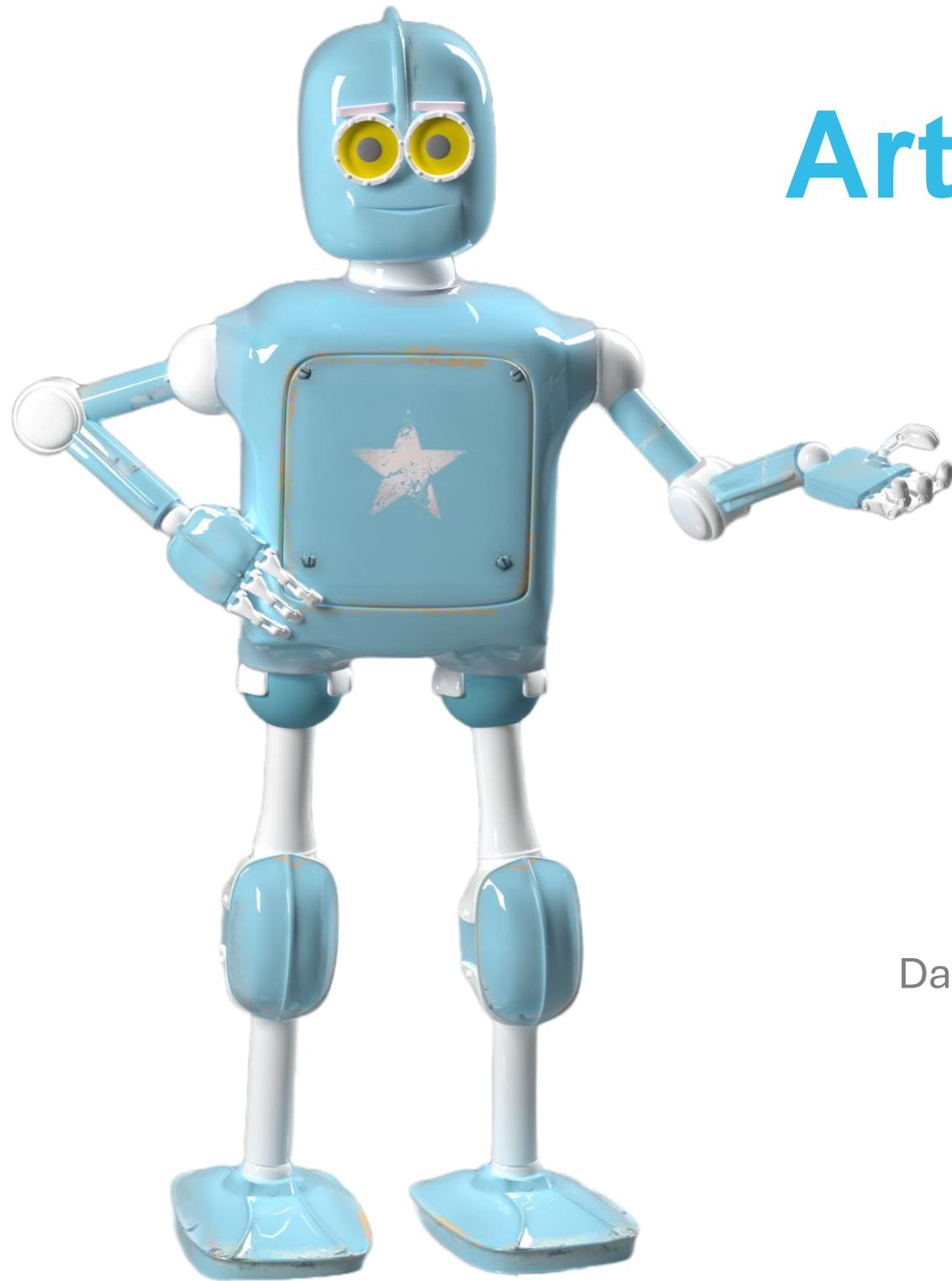


The outdated approaches that persist in most privacy laws are particularly unsuitable for managing AI's complexities.



A close-up, high-contrast image of a person's eye, likely a woman, looking directly at the camera. The eye is framed by a dark, metallic-looking border, suggesting it is being viewed through a computer monitor or a security camera. The eye itself is light-colored and has a small, white, rectangular data overlay on the iris, resembling a barcode or a digital signature. The background is dark and blurry, with some blue and white light sources, possibly from a server room or a control center. The overall mood is serious and technological.

This is time to start  
rethinking privacy law.



# Artificial Intelligence and Privacy

Daniel J. Solove, GW Law School

**Read the article:**

Daniel J. Solove, *Artificial Intelligence and Privacy*,  
forthcoming 77 Florida L. Rev. \_\_ (2025)

**Download (free) at:**

<https://ssrn.com/abstract=4713111>