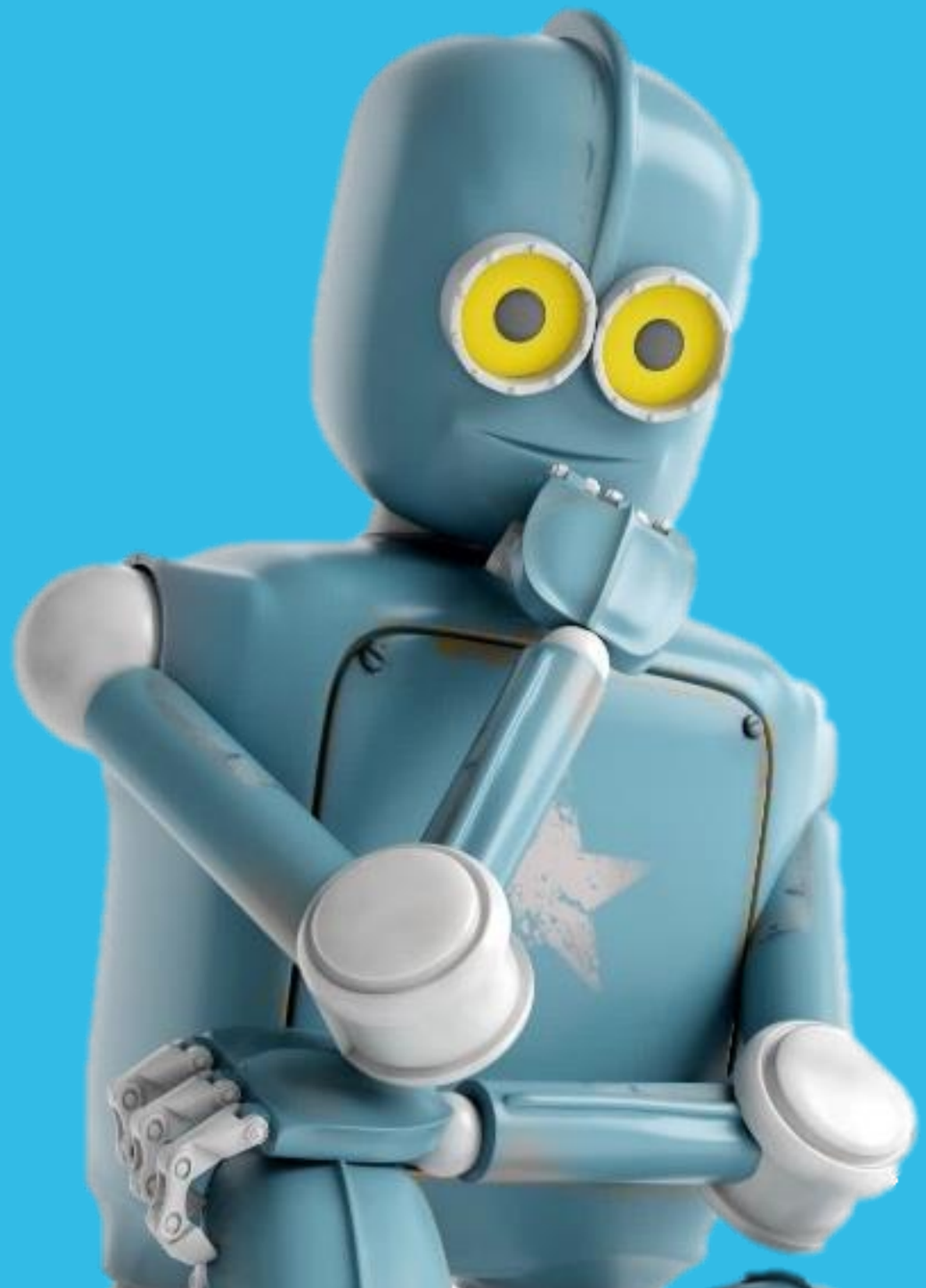
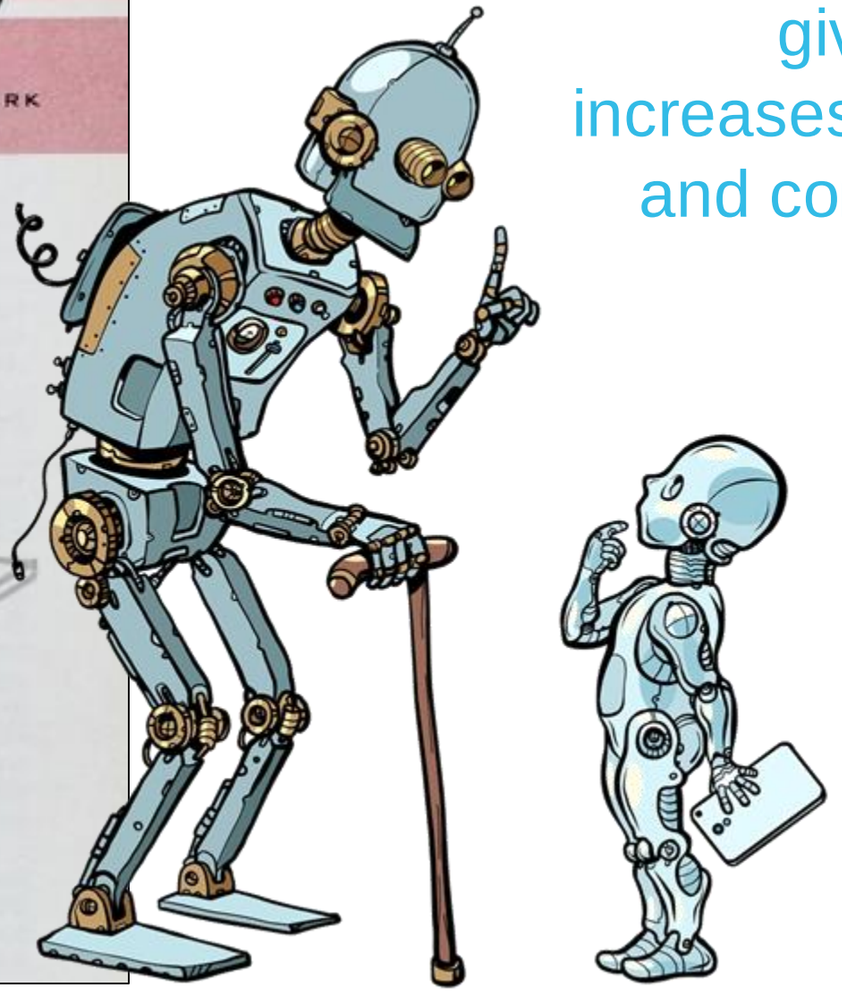


ARTIFICIAL INTELLIGENCE AND PRIVACY

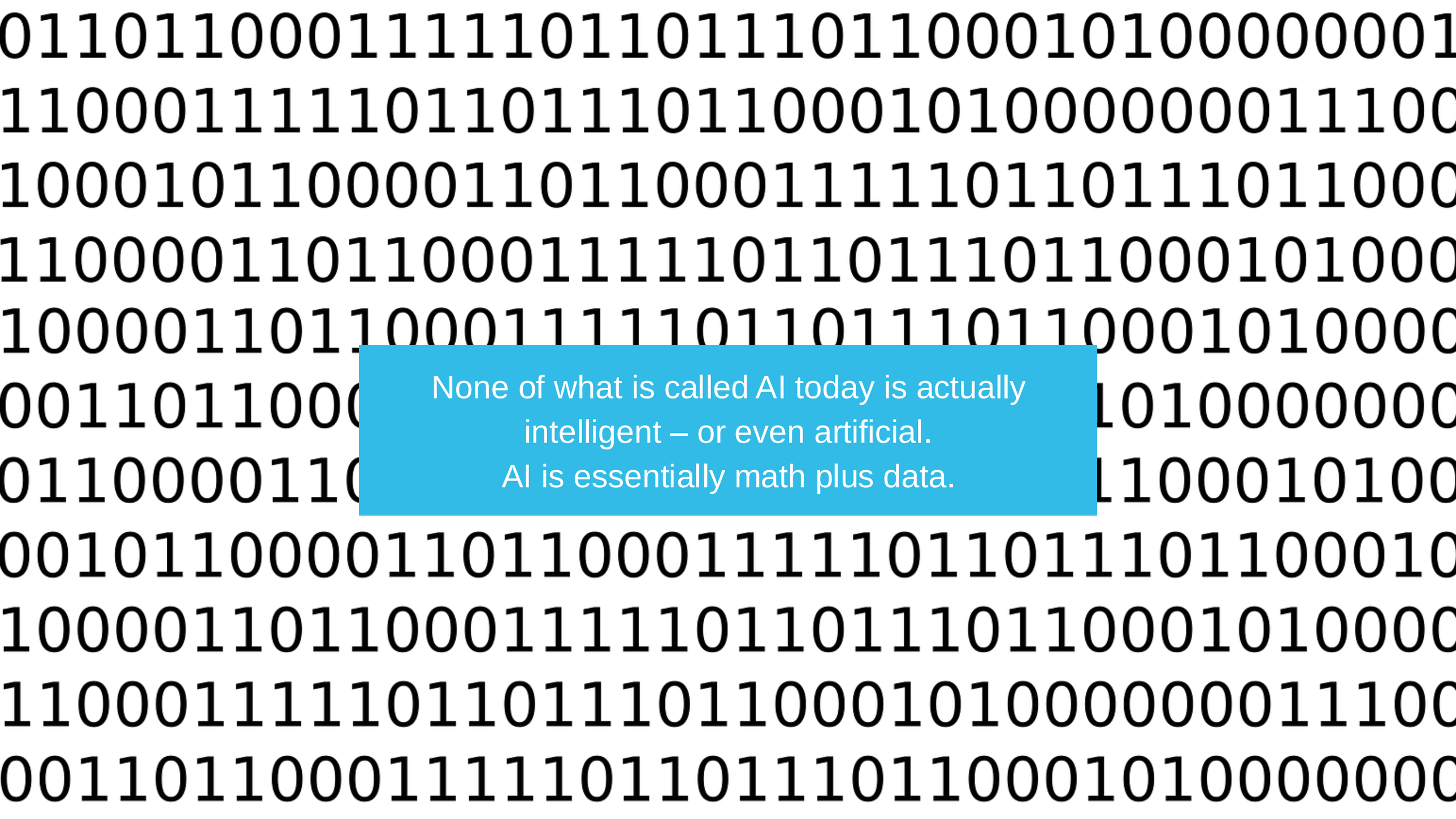
Daniel J. Solove

THE RISE OF AI

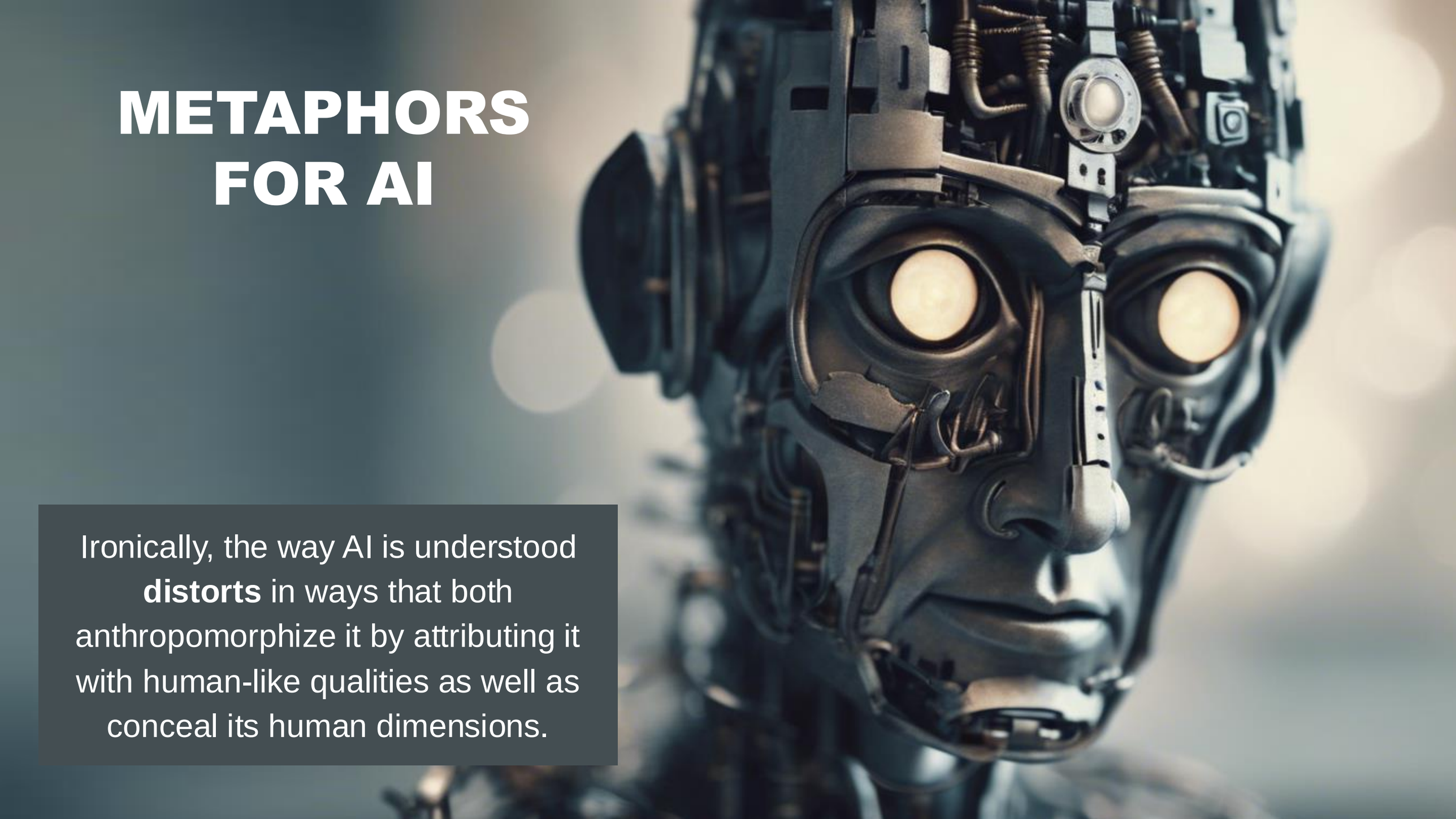
AI OLD AND NEW



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

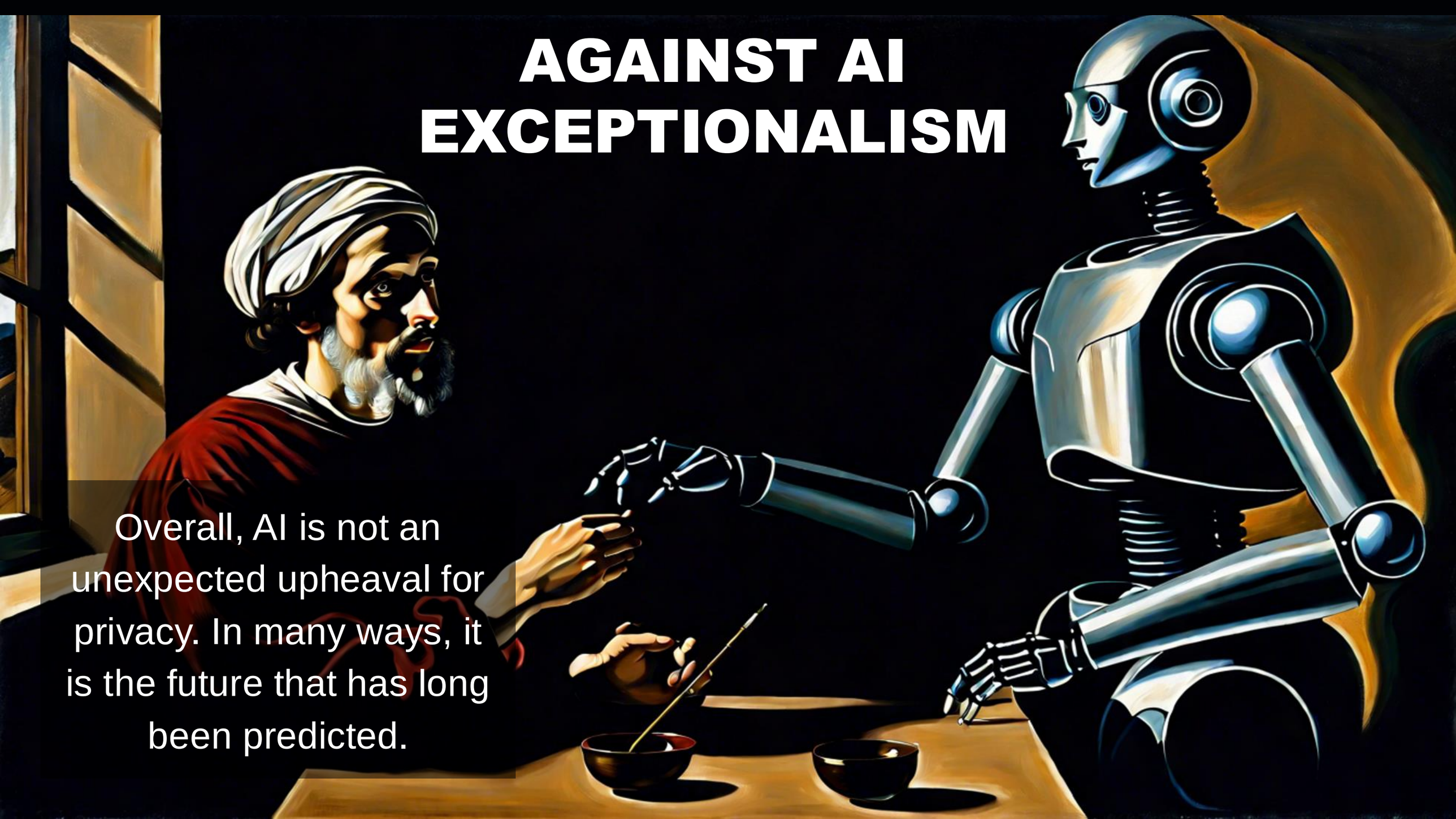

None of what is called AI today is actually intelligent – or even artificial.
AI is essentially math plus data.

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



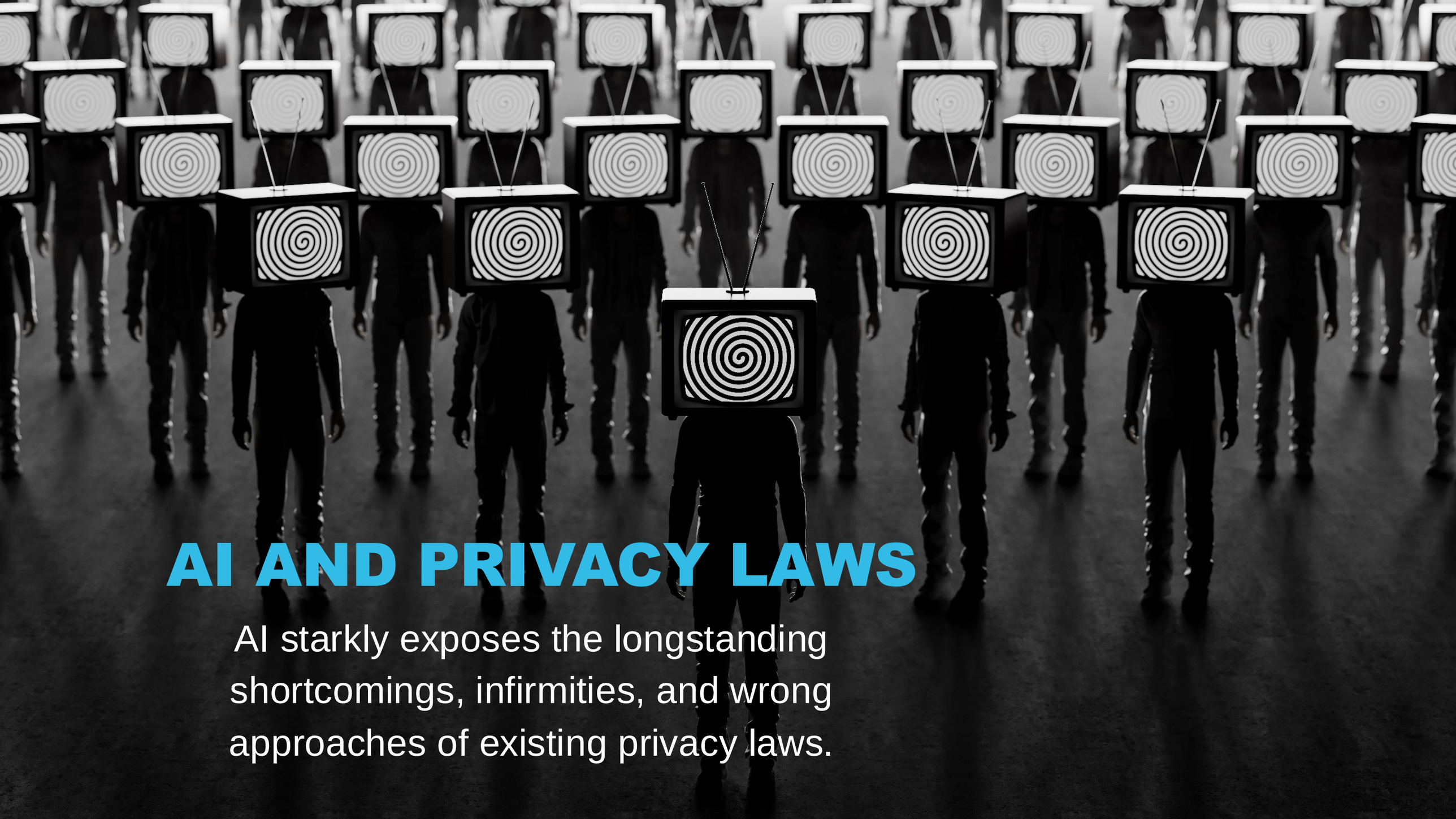
Overall, AI is not an unexpected upheaval for privacy. In many ways, it is the future that has long been predicted.

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

Legal Architecture and Approaches

Beyond Individual Control

Harm and Risk Analysis

Data Collection

Scraping

"Consensual" Data Collection

Data Analysis

Surveillance

Identification

Interpretation and Deciphering

Limitation and Oversight

Data Generation

Inference

Simulation

Malevolent Material

Oversight, Participation, and Accountability

Transparency

Stakeholder Involvement

Enforcement and Remedies

Due Process

Accountability

Decision-Making

Prediction

Automation

Decisions and Bias

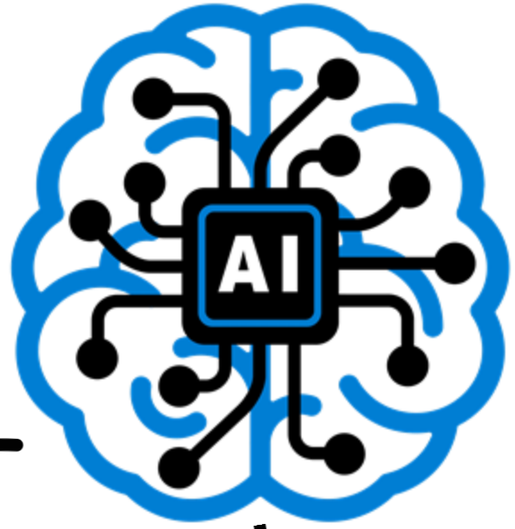
from Daniel J. Solove, *Artificial Intelligence and Privacy*, forthcoming 77 Florida L. Rev. __ (2025), https://ssrn.com/abstract=4713111

INPUTS

Data Collection

Scraping

"Consensual" Data Collection



OUTPUTS

Data Generation

Inference

Simulation

Malevolent Material

Decision-Making

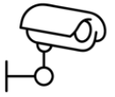
Prediction

Automation

Decisions and Bias

Data Analysis

Surveillance

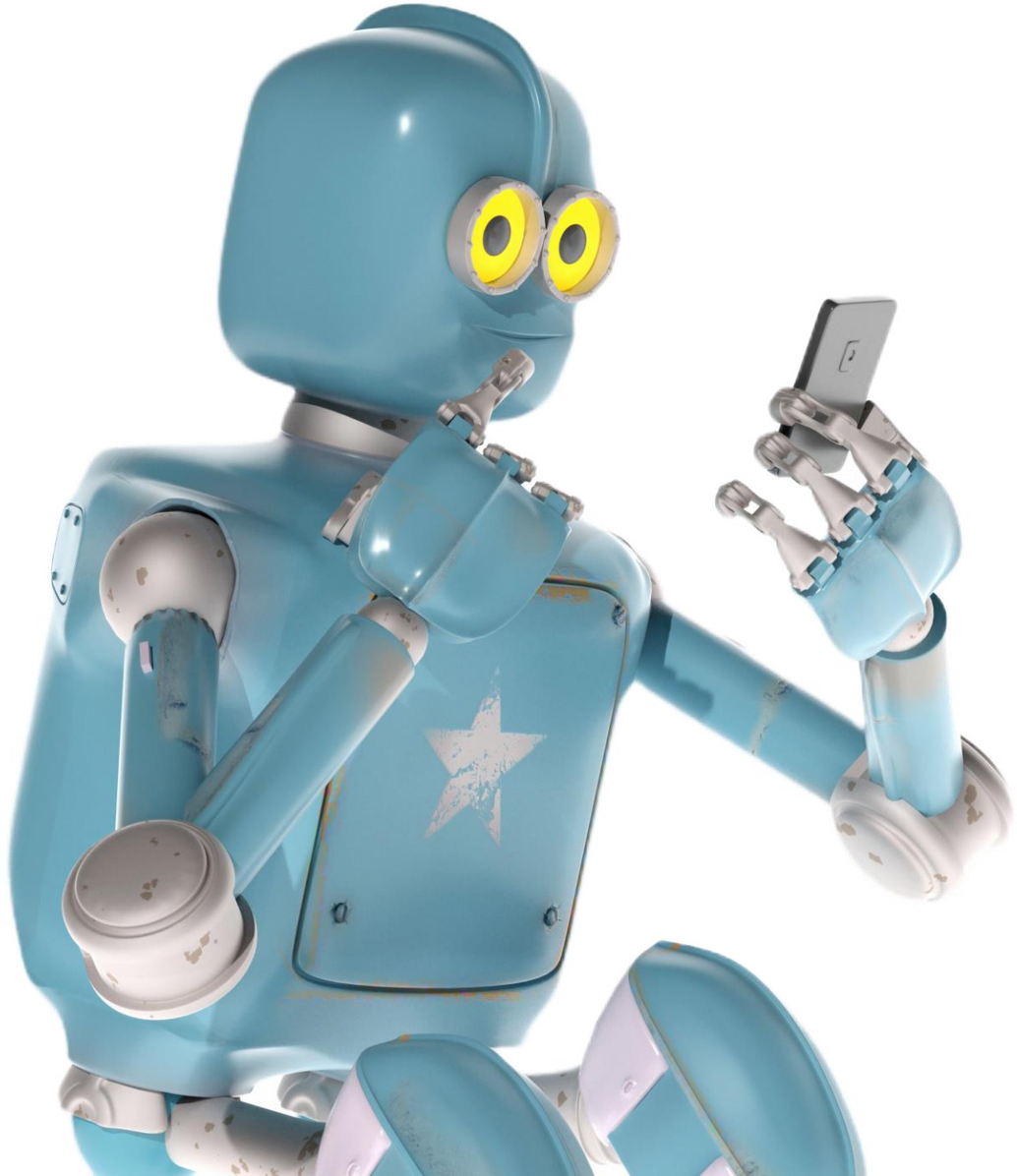


Identification

Interpretation and Deciphering

Limitation and Oversight

LEGAL ARCHITECTURE AND APPROACHES

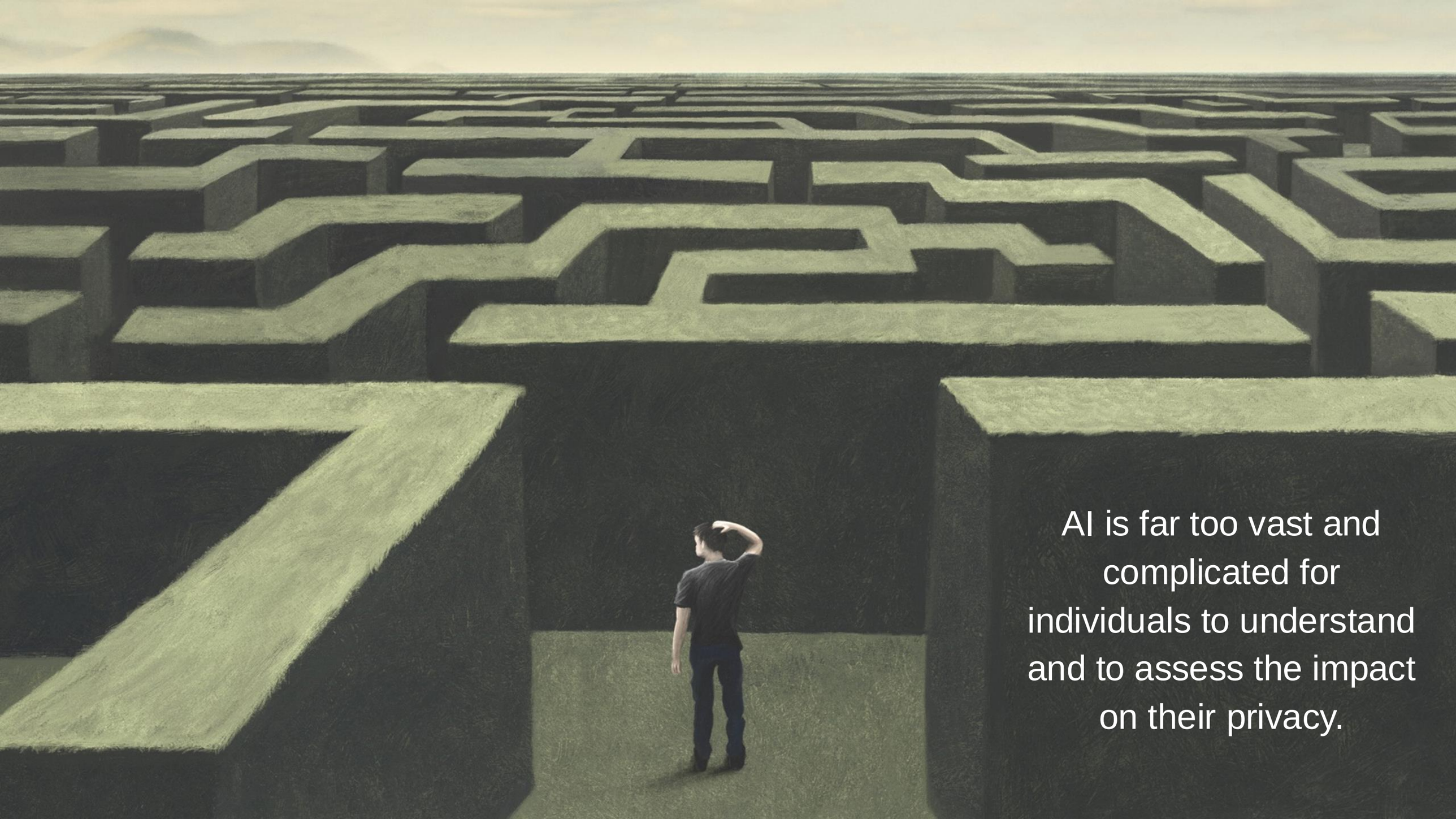


Legal Architecture and Approaches

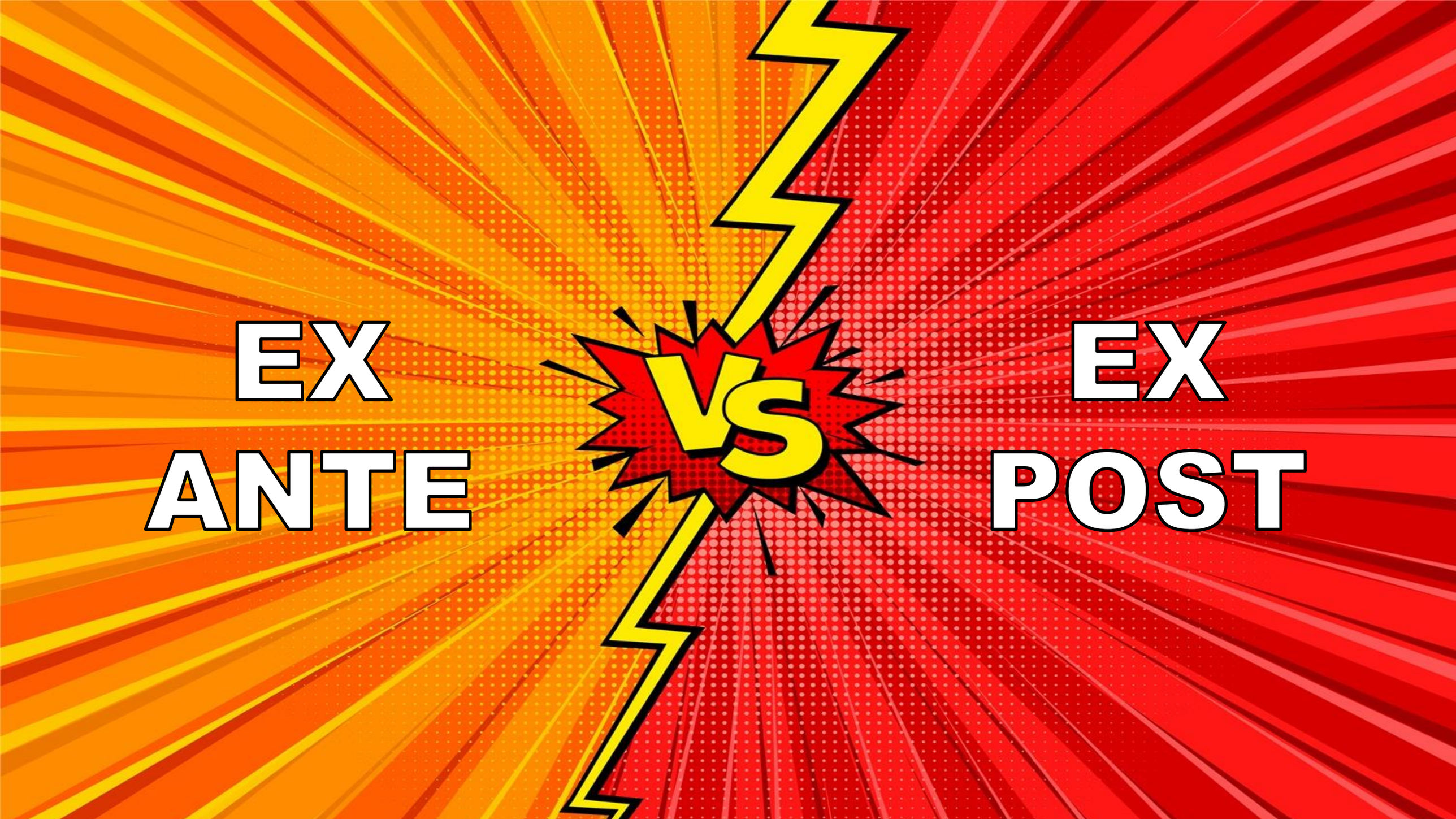
Beyond Individual Control

Harm and Risk Analysis

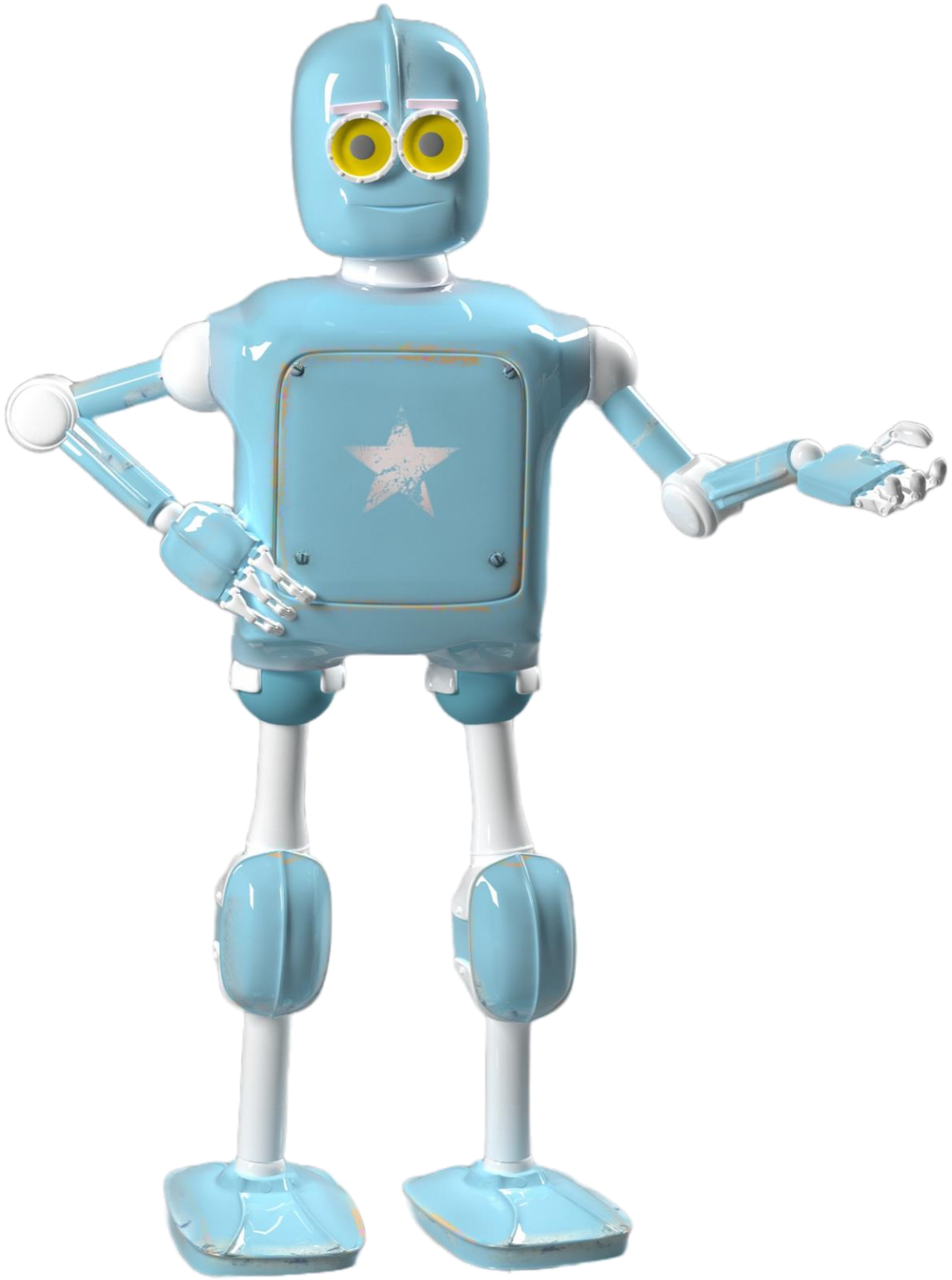

BEYOND
INDIVIDUAL
CONTROL


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


HARM AND
RISK
ANALYSIS


EX
ANTE
VS
EX
POST

DATA COLLECTION



Data Collection

Scraping

“Consensual” Data Collection

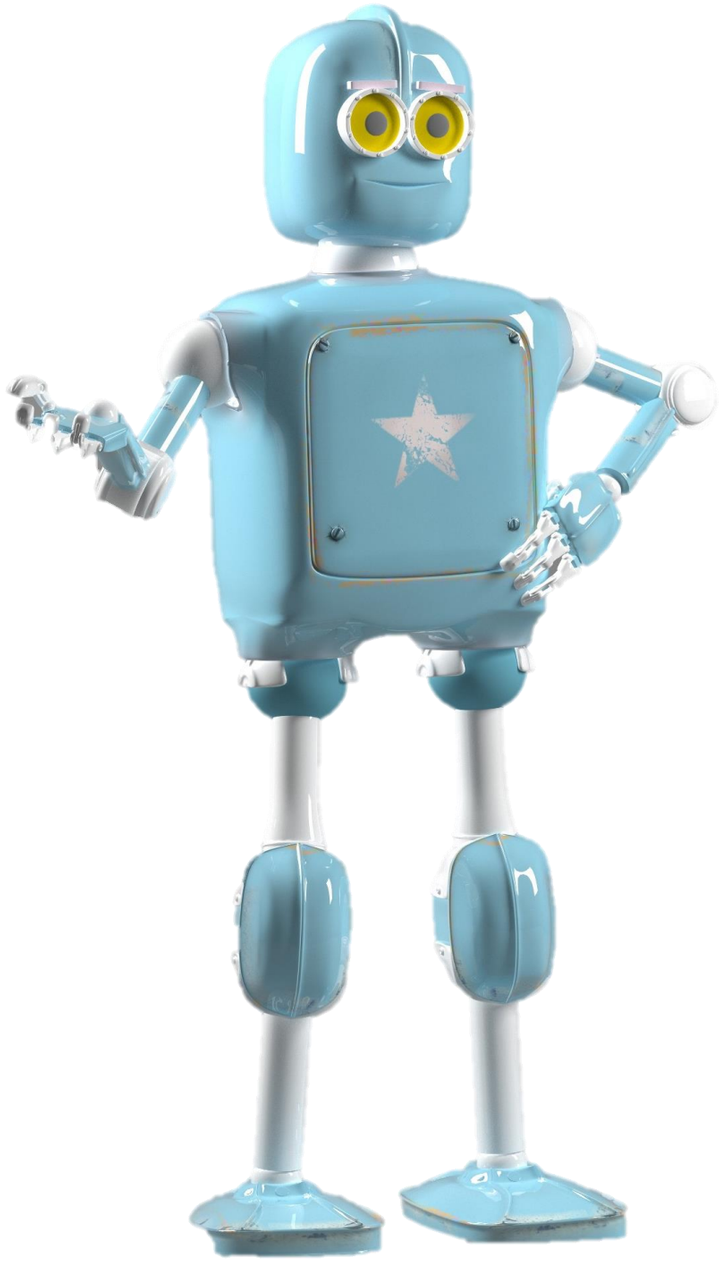

SCRAPING


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


“CONSENSUAL”
DATA COLLECTION
Accept


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

DATA GENERATION

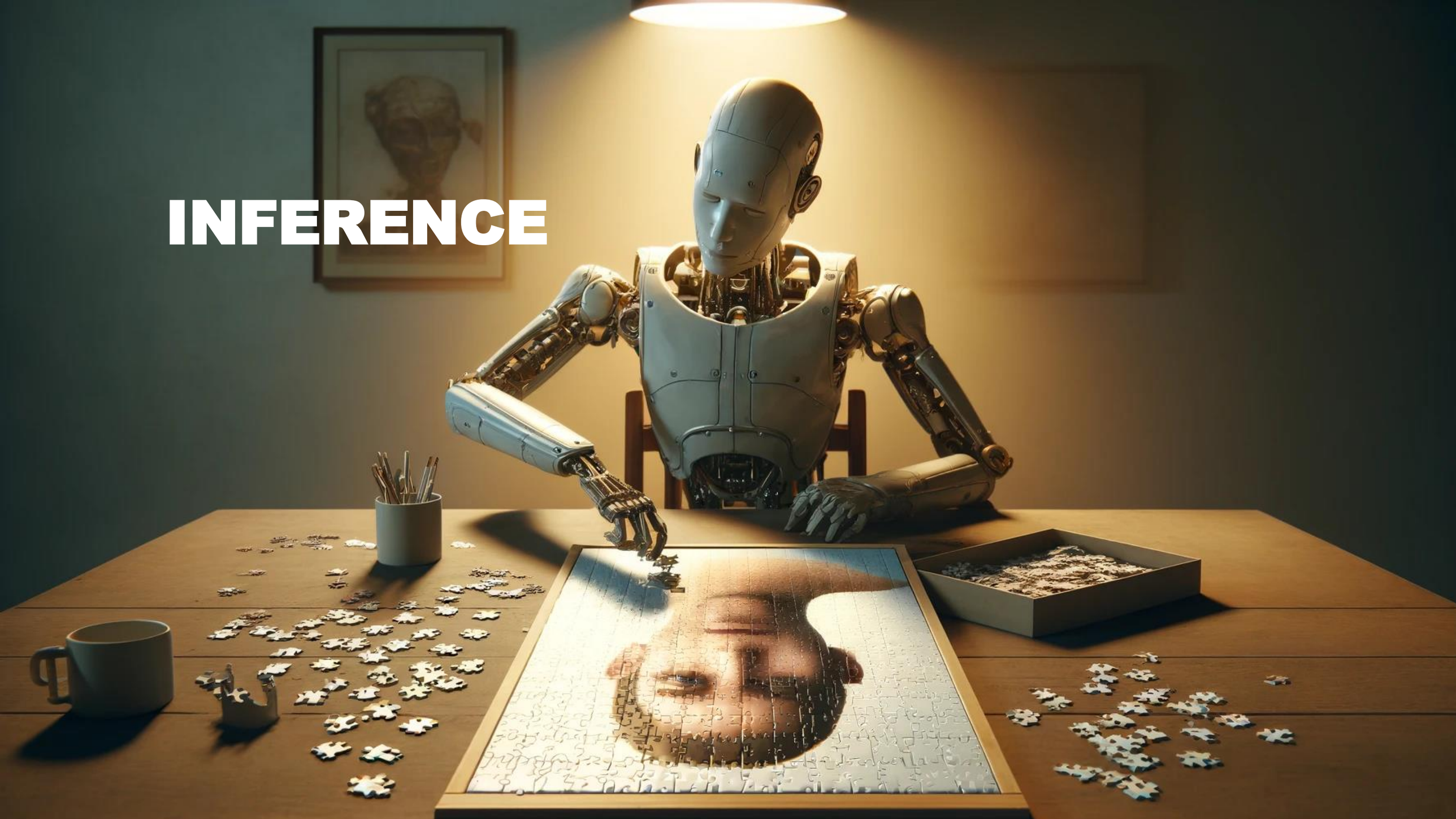


Data Generation

Inference

Simulation

Malevolent Material


INFERENCE

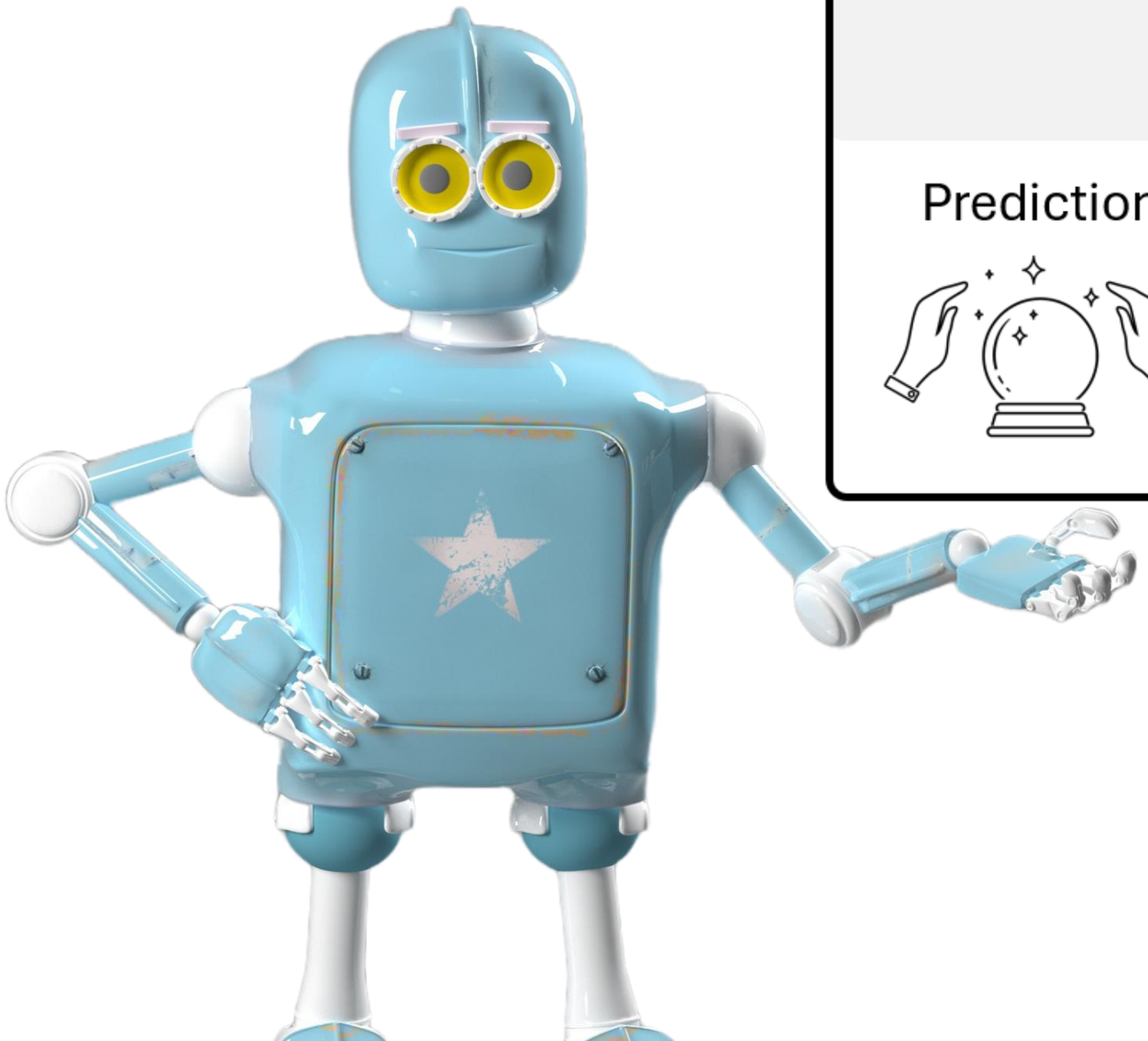
Machine learning algorithms are able to make so many surprising inferences that people have no control over what data organizations know.


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

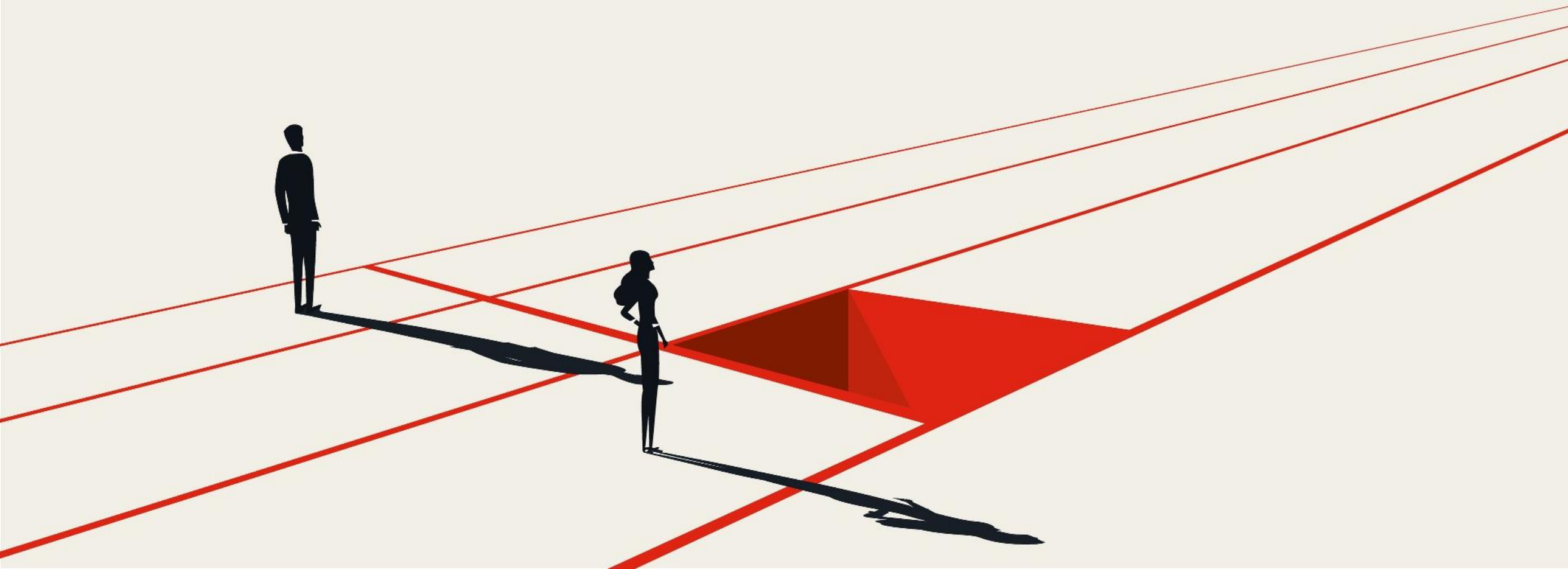

Algorithmic predictions do more than just forecast the future; they also shape it.


AUTOMATION

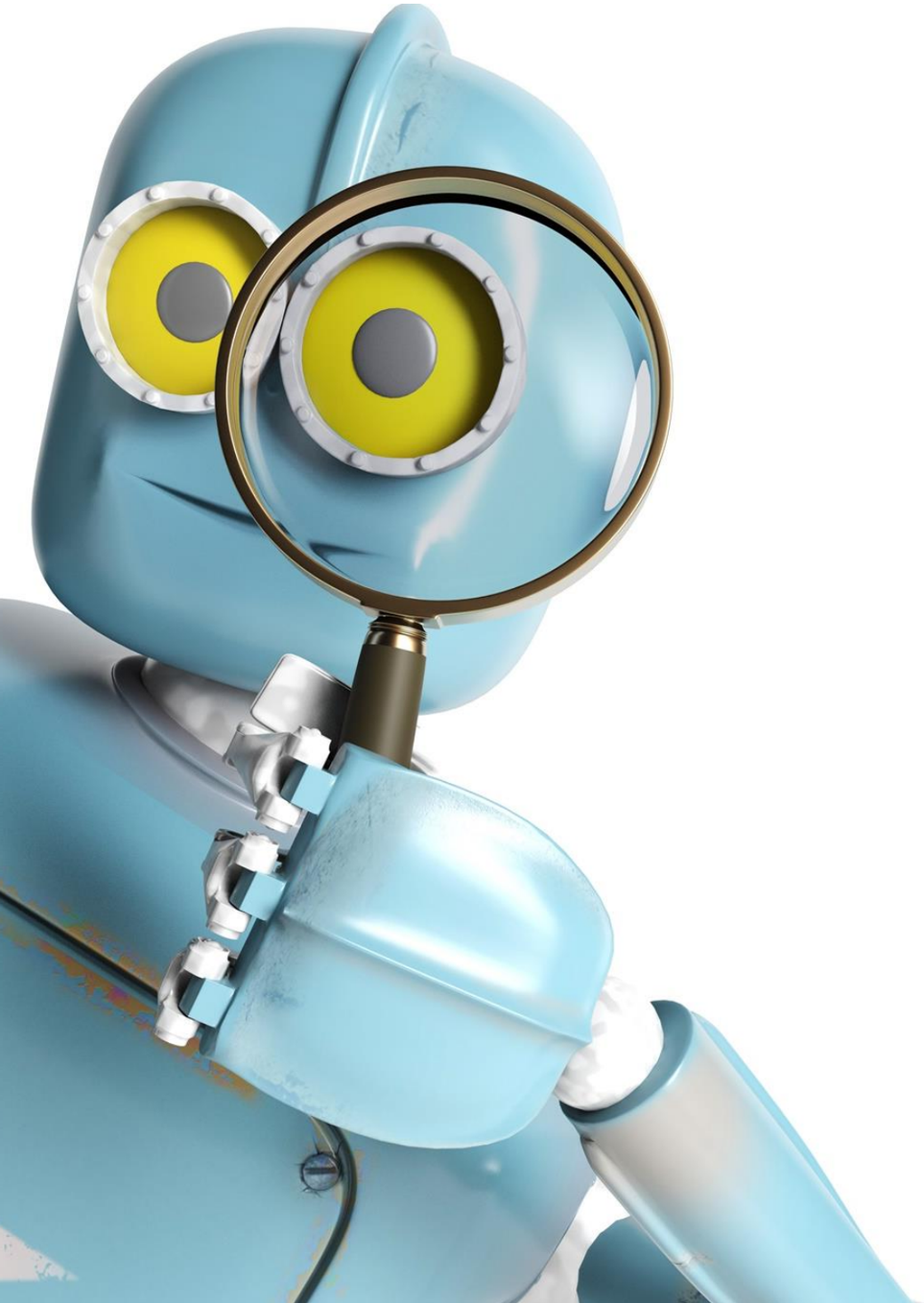

Focusing on quantifiable data can
skew decisions and impoverish them.

DECISIONS AND BIAS

AI may give rise to
new forms of
discrimination.

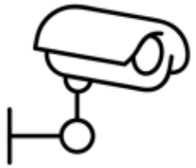


DATA ANALYSIS



Data Analysis

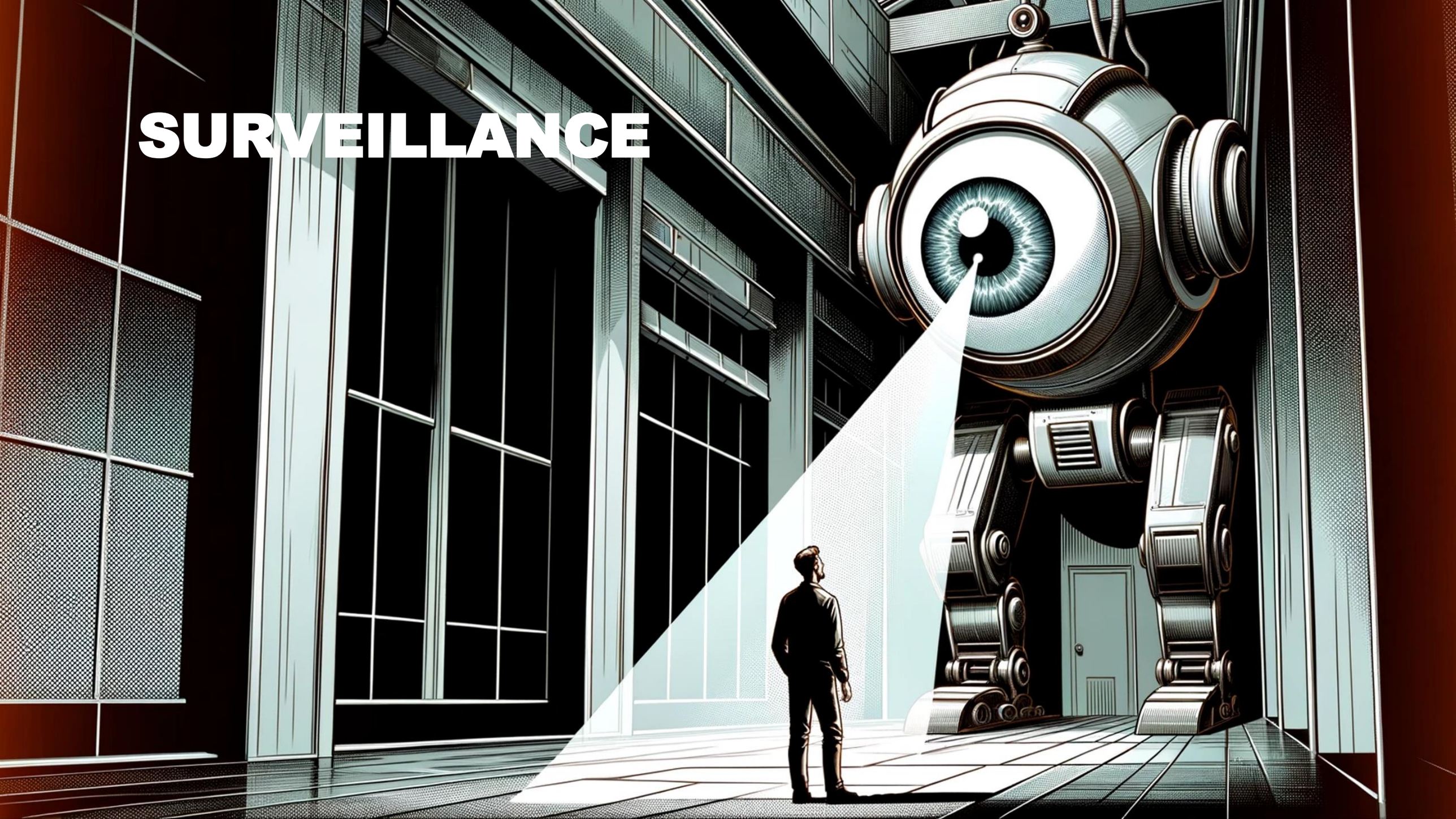
Surveillance



Identification

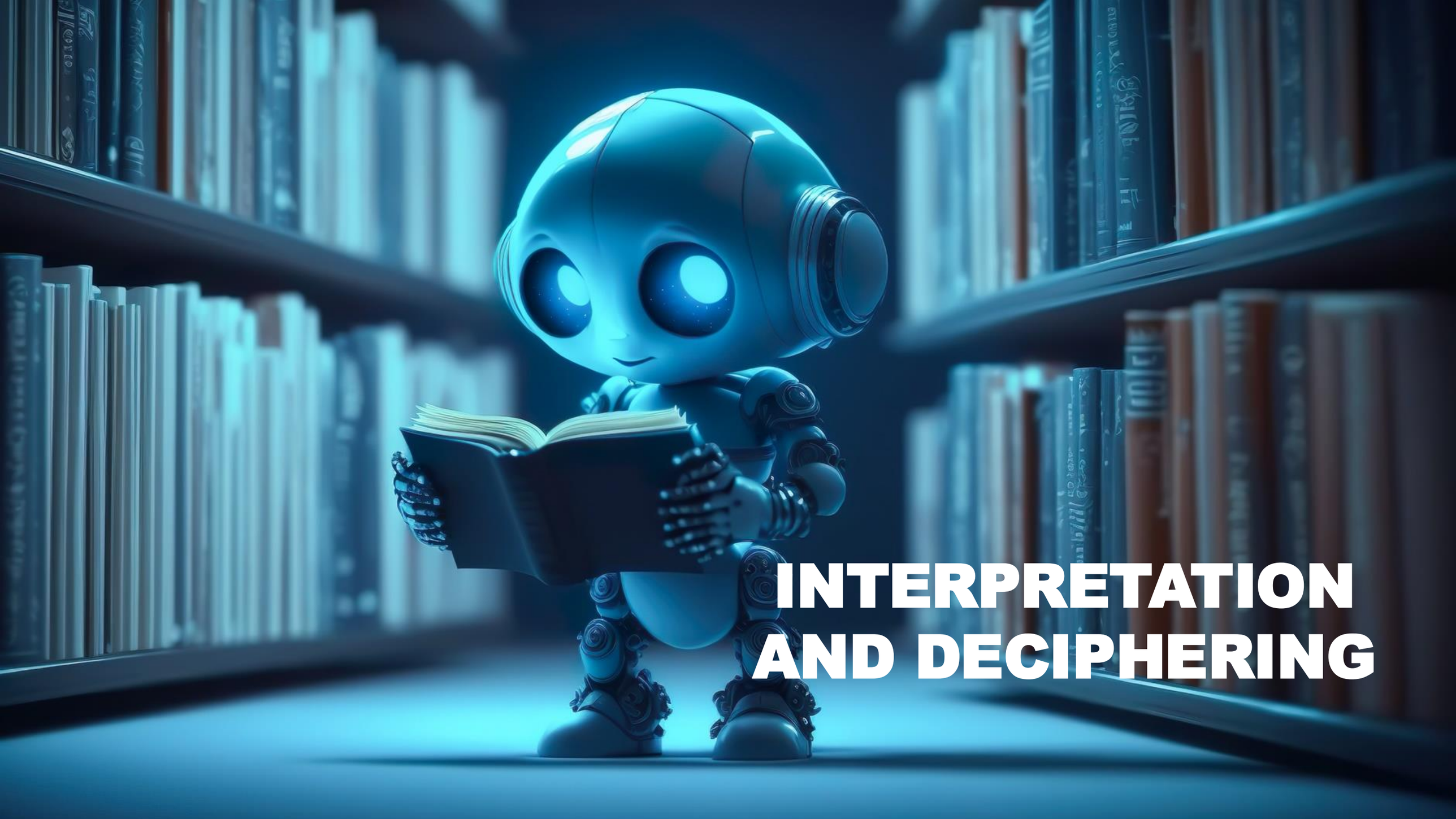
Interpretation and Deciphering

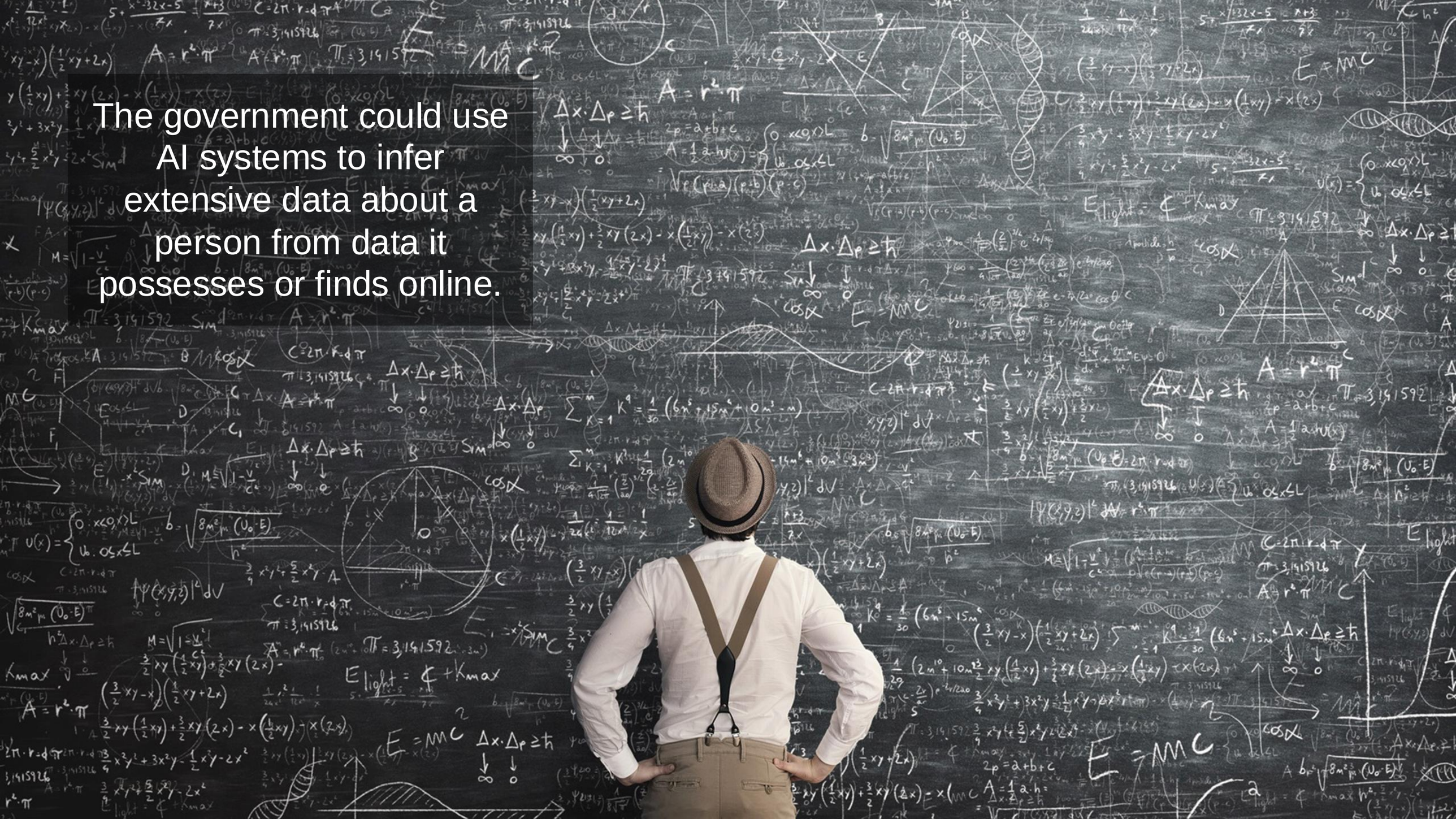
Limitation and Oversight


SURVEILLANCE

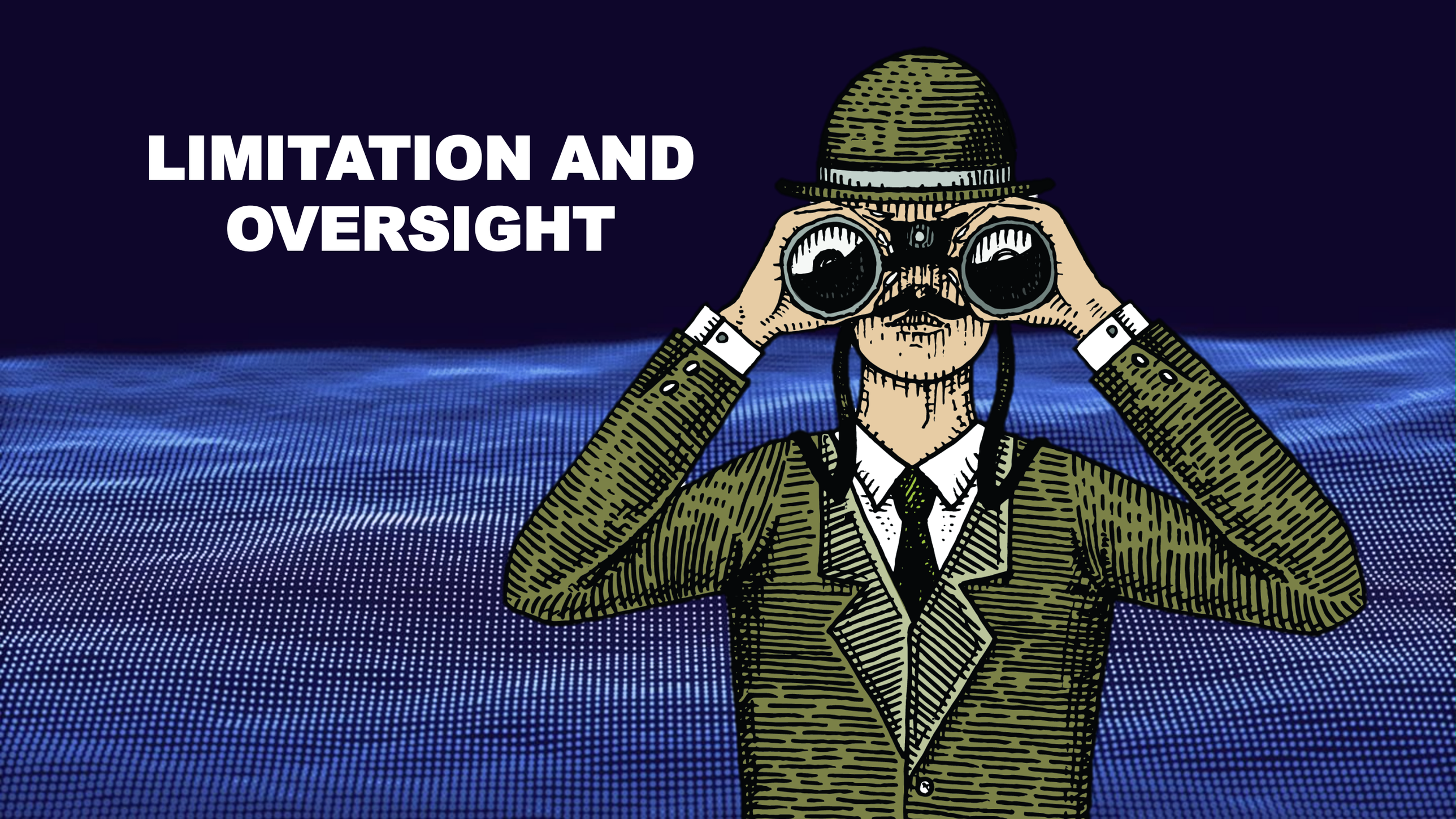

AI is poised to significantly exacerbate the detrimental impacts of surveillance.

IDENTIFICATION

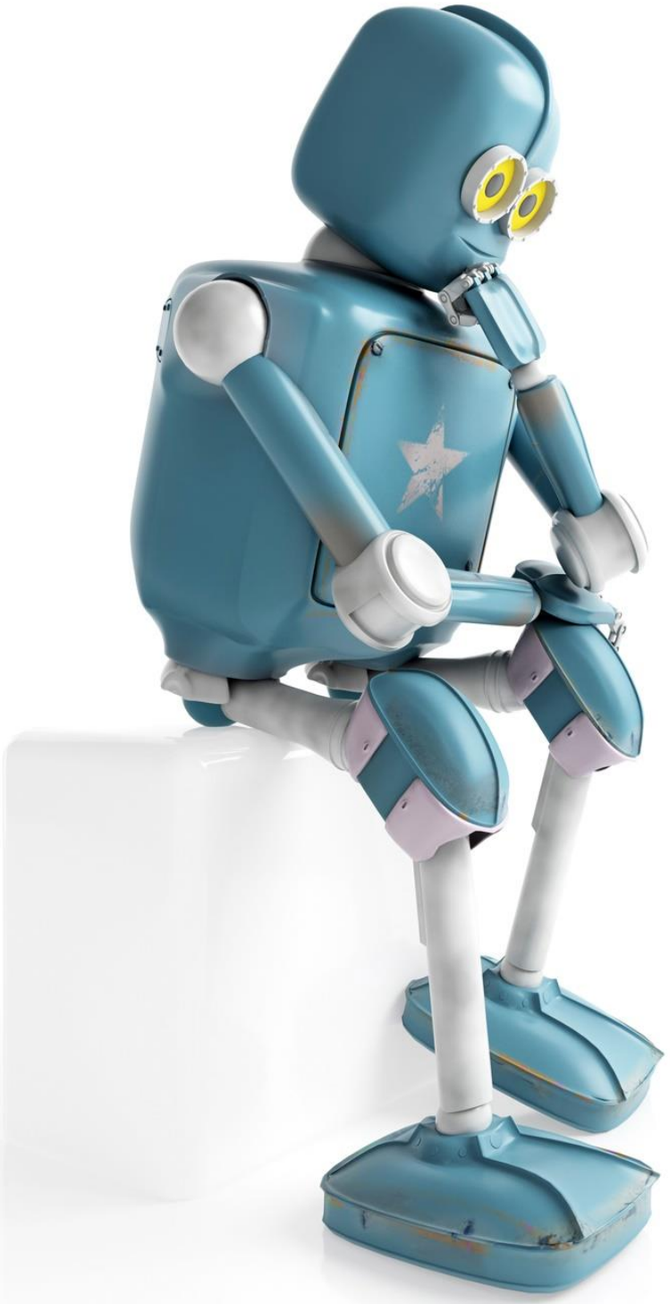

INTERPRETATION
AND DECIPHERING


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

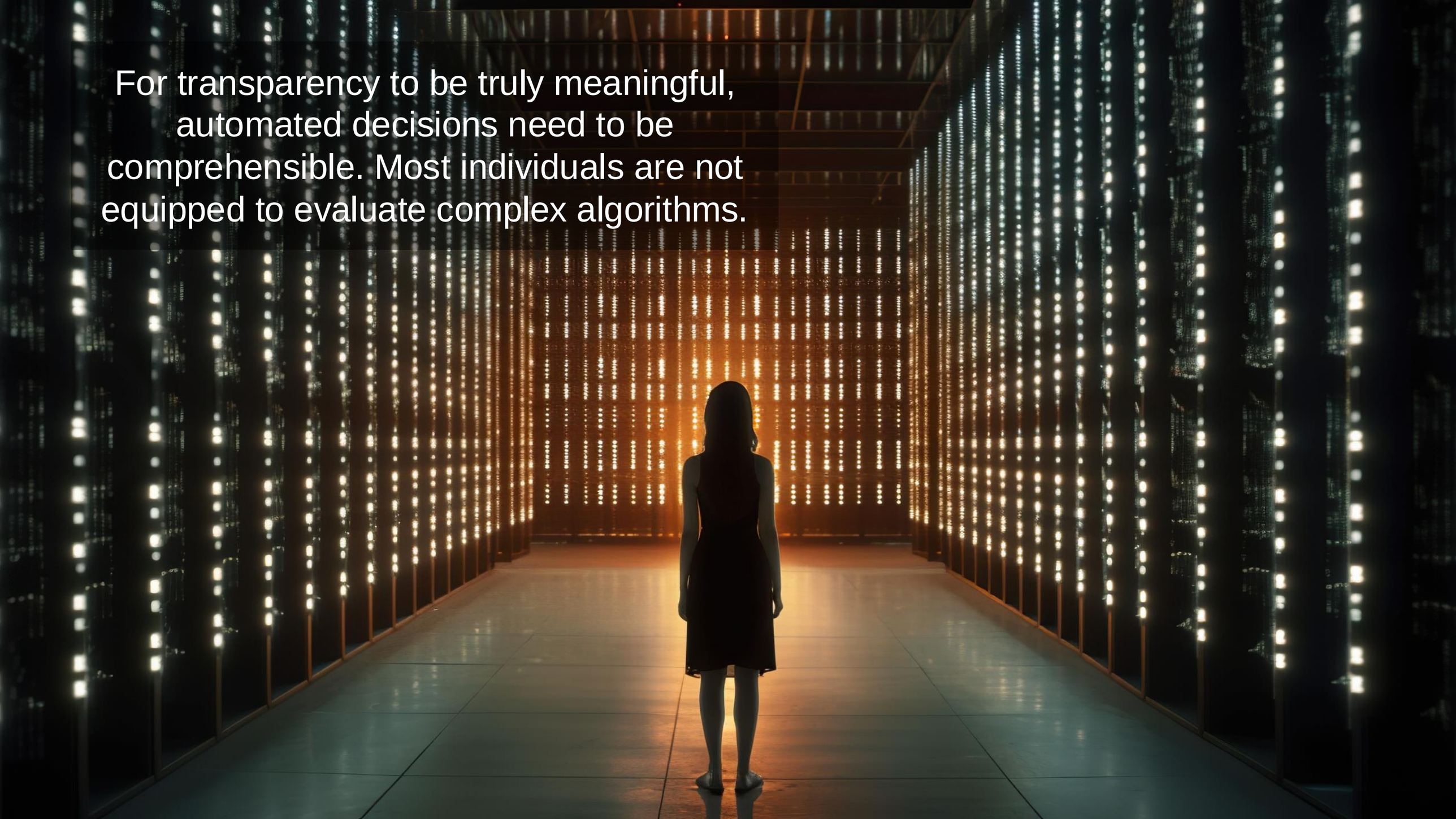
Stakeholder Involvement

Enforcement and Remedies

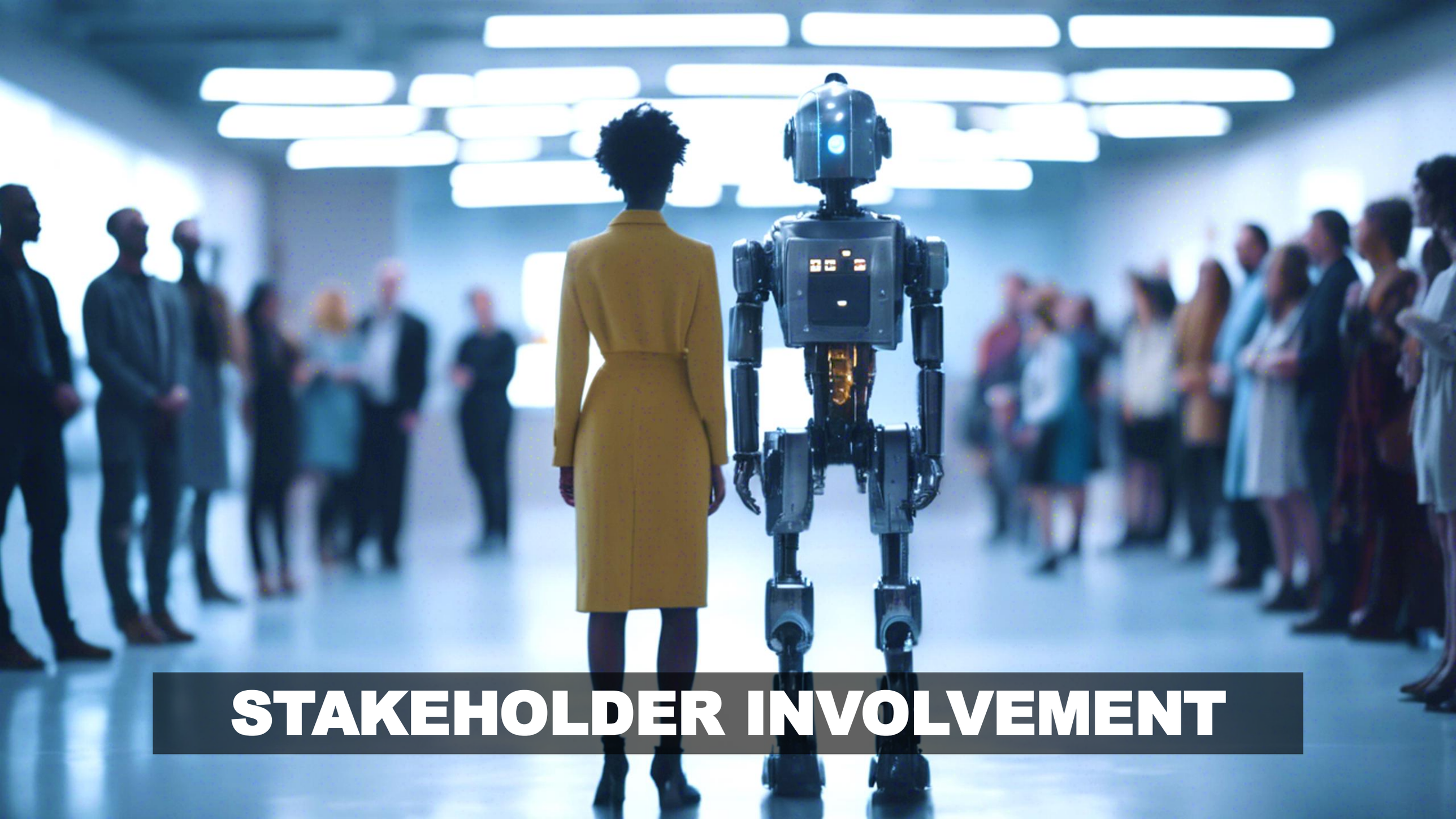
Due Process

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

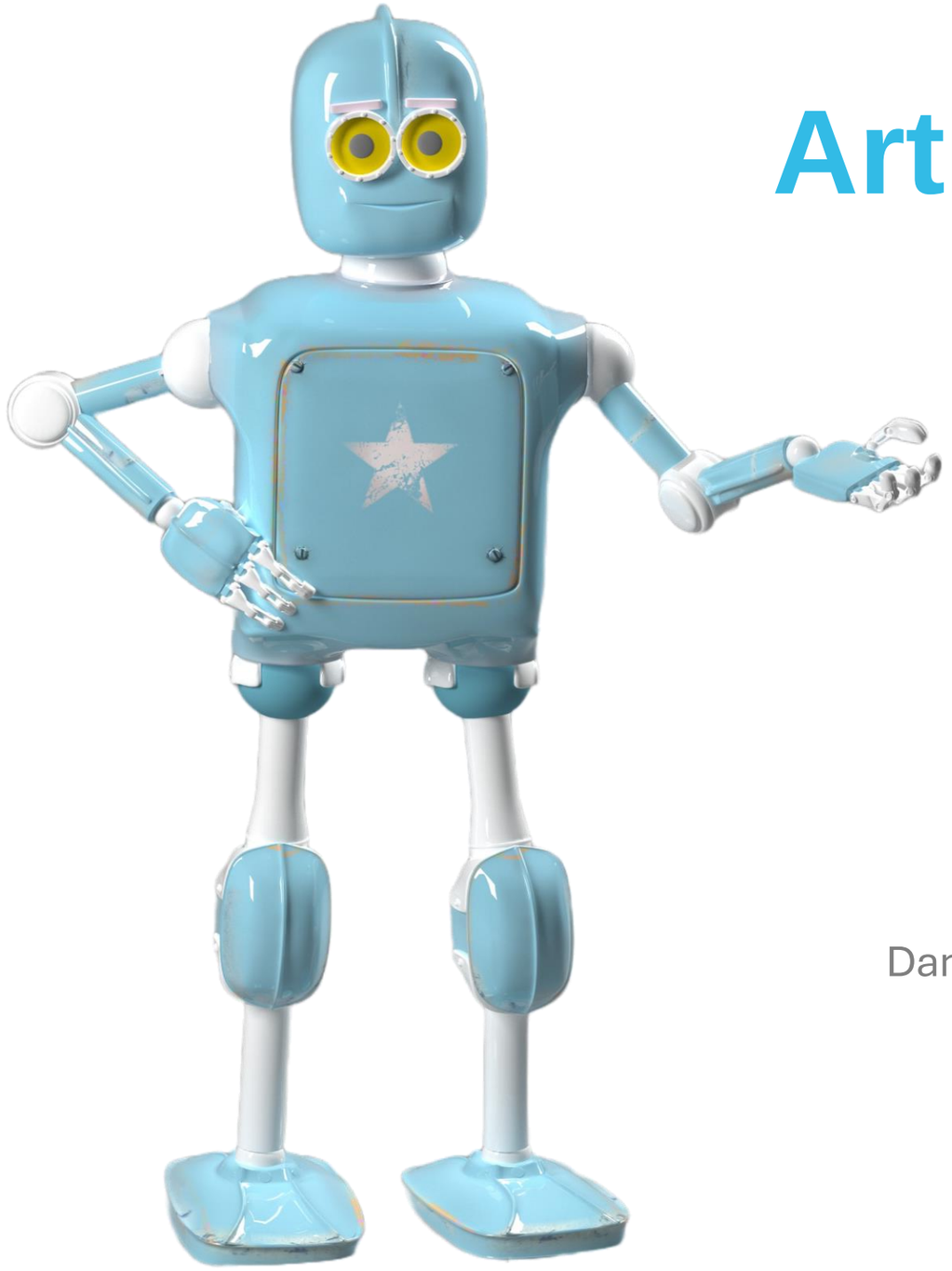

STAKEHOLDER INVOLVEMENT


ACCOUNTABILITY

ENFORCEMENT AND REMEDIES


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


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