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Global Privacy Protection
& Global Business Fluidity

Is it Impossible Mission Force?

Daniel Pradelles
Director, Global Strategic Engagements
Privacy Office

Privacy& Access 20/20 Conference – Vancouver BC
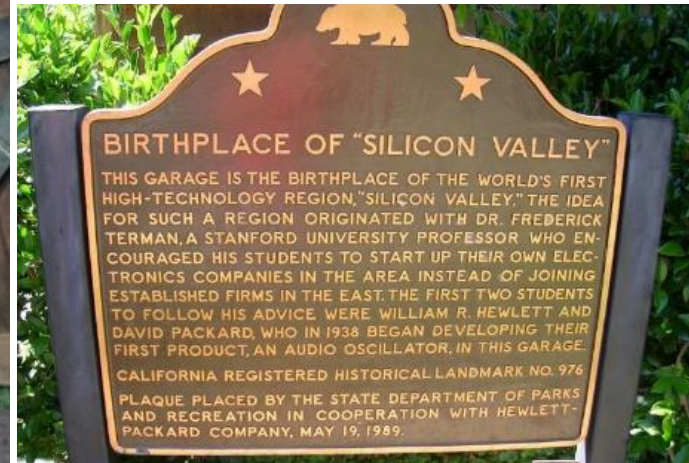**November 13, 2015**

V2.0

Agenda

- ❖ **Preamble**

- ❖ **Global Context Dynamics**

- ❖ **The Vision for Accountability**

- ❖ **Accountability Benefits**

- ❖ **Global Regulatory Environment**
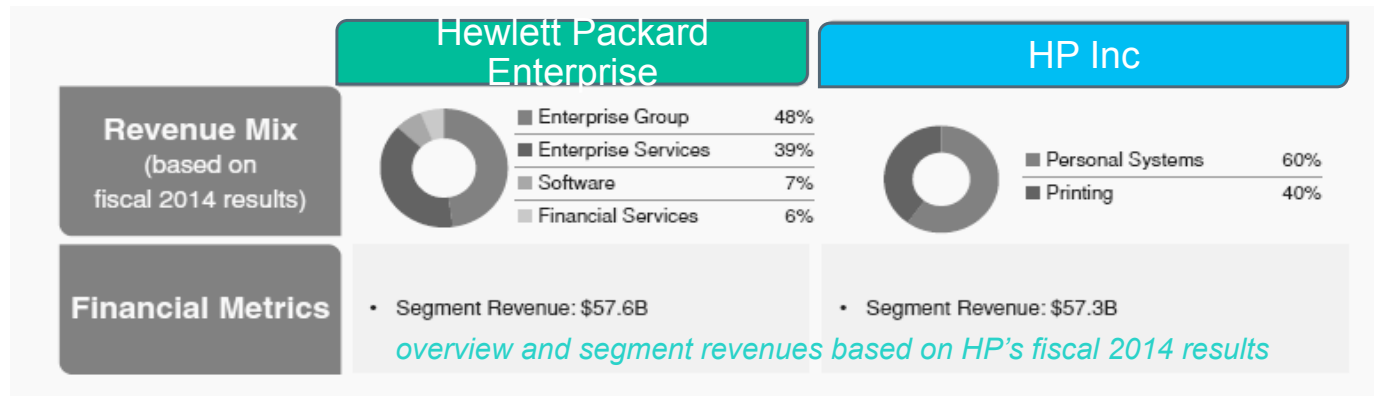
- ❖ **The Path Forward**

Making History - Again

Hewlett-Packard Company Split

Hewlett Packard Enterprise	HP Inc
Revenue Mix (based on fiscal 2014 results)	Enterprise Group 48% Enterprise Services 39% Software 7% Financial Services 6%	Personal Systems 60% Printing 40%
Financial Metrics	• Segment Revenue: $57.6B *overview and segment revenues based on HP's fiscal 2014 results*	• Segment Revenue: $57.3B

On October 6, 2014, HP Company announced it will separate in two **independent publicly-traded** companies:

Hewlett Packard Enterprise:
- Enterprise technology infrastructure, Software, Services and Financing businesses,

HP Inc:
- Printing and Personal systems businesses,

Separation finalized November 1, 2015

The New Style of Business for HPE

- The New Style of Business promises **agility**, **flexibility**, remarkable **customer experiences**, and employee **productivity**; with reduced costs.

- It is driven by transformation in:

  - Protection of digital assets
  - The data-driven organization
  - Enabling the most productive workplace
  - Moving to a hybrid infrastructure

- Yet it **creates new risks** and changes how we must **think about protecting** the fundamental right to **Privacy**
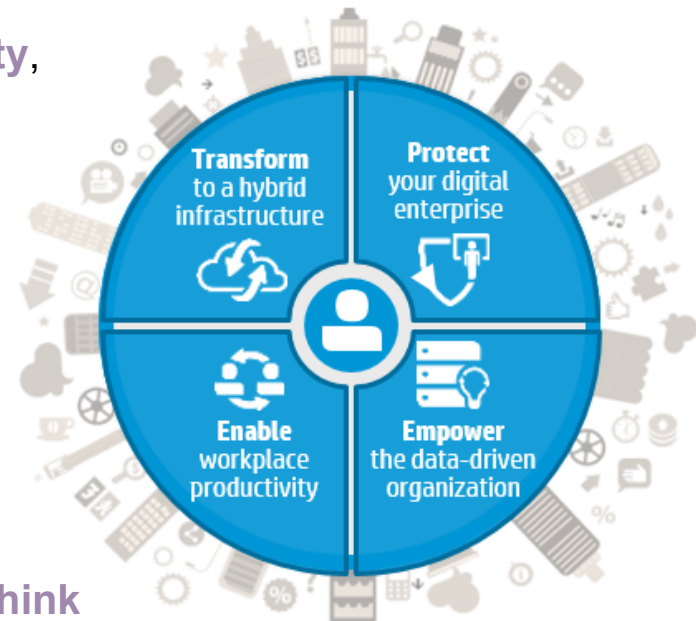
Global Context Dynamics

Trends & Challenges

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Trends & Challenges (Business)

Technical & Business Context

- Complex, Global & **Multi Dimensional** Context
- Data flows more **WW, Dynamic & Fragmented**
- **Exponential** increase of data creation / collection

- Highly dynamic **Multi Stakeholder** game
- Highly **rewarding** and potentially **privacy risky** trends
- Data Processing drives **Innovation**, Business Intelligence & Economic Growth
- Some Business models **NOT "Privacy" tested**

We are at a break point… …And this change will speed up…

Trends & Challenges (Legal)

Regulatory Context

– Globalization and technologies **straining the traditional frameworks**

– Laws are critical but often **lagging behind** new technologies and business models

– Limitation of approach based only on **legal compliance tool**

– **Uncertainty** in all regions and in all business sectors

– **Agreement** on fundamental principles but **different implementations**

– Too much **emphasis on geography** specific criteria

– Tension exacerbated by **highly publicized** cases *(Snowden, Schrempf, MS,…)*

…Lack of interoperability between regional legal approaches…

Trends & Challenges (Societal)

– Social norms may be changing but **protection has to stay**

– New Innovative Business models **not obvious or understandable** by Data Subjects

– Cloud, Big data, IoT and more will make it **even more "foggy"**

– Traditional "**Consent & Control**" approach may be **not sufficient**

– Fear & Doubts are shaping **perception**, **Trust** becomes a key requirement

– Data Subjects & Politics concerns drive **increased protections**

– Excessive Reactivity under scandals pressure drives "**impulsive**" laws

– Awkward user experience and potential **decreased benefits**

– Risk of **slowing down acceptance** or **killing** new technologies & practice

… Information Society as a whole pushing for "A" paradigm change

The vision
for the "A" ….

Accountability:

Moving to an Accountability Culture

Liability	Accountability
Decisions are made based on local laws and regulations ➢ Based on theoretical compliance ➢ Focuses on the minimum standard ➢ Target on known technologies & practices	**Decisions are made based on a set of ethics- and value-based criteria in addition to liability** ➢ All employees accountable for stewardship of data under their charge ➢ Effective privacy handling ➢ Based on expectations and risks

+

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Risk based approach for an Accountable company?

Which ones and for **whom** … and **where**???

1. Compliance Risk
2. Reputation Risk
3. Investment Risk
4. Reticence Risk
5. Business Continuity Risk
6. Compounding Risk

+ Data Subject
                  Risks & Expectations
+ Public Sector
                  Political & Macro economical
Risks
+ Ethical Risks

+Cyber security Risks

Analyzing the Risk, Managing the Risk, Addressing the risk, NOT TAKING the risk

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Privacy Accountability Framework
Processes **AND** Demonstration of Capacity

Oversight

Identify Risks and Opportunities ➡ Integrated Governance

Contextual Approach

Commitment	Implementation	Validation
• Solid policies aligned to external criteria • Management commitment • Full transparency	• Mechanisms to ensure policies and commitments are put into effect with employees	• Monitoring and assurance programs that validate both coverage and effectiveness of implementation

Demonstration

Demonstrate capacity to internal stakeholders (Management, Internal Audit, Board)

Demonstrate capacity to external stakeholders (Trust Agents, Regulators)

Demonstrate capacity to individual data subjects

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Accountability benefits
Far beyond traditional compliance deliverables

The Principle of Accountability

Accountability consists of:

- **Defining and accepting responsibility**

- **Ensuring implementation of appropriate actions**

- **Explaining and justifying actions**

- **Remediating failure**

Article 29 WP 173, Opinion 3/2010
on the principle of Accountability:

➢ **Data protection must move from 'theory to practice'.**

(i) **need for a controller to take appropriate and effective measures to implement data protection principles;**

(ii) **need to demonstrate upon request that appropriate and effective measures have been taken. Thus, the controller shall provide evidence of (i) above.**

Concept universally recognized ..
already implemented in some jurisdictions,
acknowledged or under inclusion in others….

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Privacy Transformation in an Information Age

Traditional Approach

New Style of Business

New Alternatives

Ethics & Social Responsibility

Co-regulatory Frameworks

Organizational Accountability

Respect for the Law

Individual Autonomy; notice and consent

Point-to-point transfers requiring approval

Purpose specification with use limitation (static)

Single Data controllers and Data processors

Accountability & Transparency; Balancing Benefits & Risks

Ubiquitous collection/ free movement of data

Legitimate Interests; Use vs. Collection (dynamic)

Distributed Controllers; Data Supply Chain Responsibility

Privacy Solutions in an Information Society

Many challenges can be solved by responsible, enforceable practices

New Alternatives

Ethics & Social Responsibility

Co-regulatory Frameworks

Organizational Accountability

Respect for the Law

In specific cases, provides enforceable alternatives that augment traditional options

Liability   Accountability   Ethics

(BCR/CBPR) → BCR-P, CBPR-P → Big Data Code of Ethics → Distributed Controllers

Motivations for an Accountability Approach

INCREASE TRUST

(FOR CONSUMERS, CLIENTS & REGULATORS AND THEREFORE FOSTER BUSINESS)

SUPPORT GLOBAL INTEROPERABILITY

(THEN DECREASES REGULATORY COMPLEXITY BY CREATING BRIDGES)

ADDRESS NEW CHALLENGES

(UPFRONT RISKS AND HARMS CONSIDERATION FOR NEW TECHS & NEW BUSINESS MODELS)

ENSURE EFFECTIVE DATA PROTECTION

(FROM THEORETICAL TO PRACTICALLY DEMONSTRATED COMPLIANCE)

Company Governance and Accountability Culture from "C suite" to Field level

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Global regulatory environment
Challenging but moving forward…

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Complex Global Environment

BCR (from EU only)

CBPR (APEC only)

CBPR (APEC only)

Model Contracts

Model Contracts

Model Contracts

Model Contracts

Model Contracts

No specific Contracts

Safe Harbor

Contract

Data Flows

National privacy or data protection law in place

Other significant privacy laws in place

Emerging privacy or data protection laws
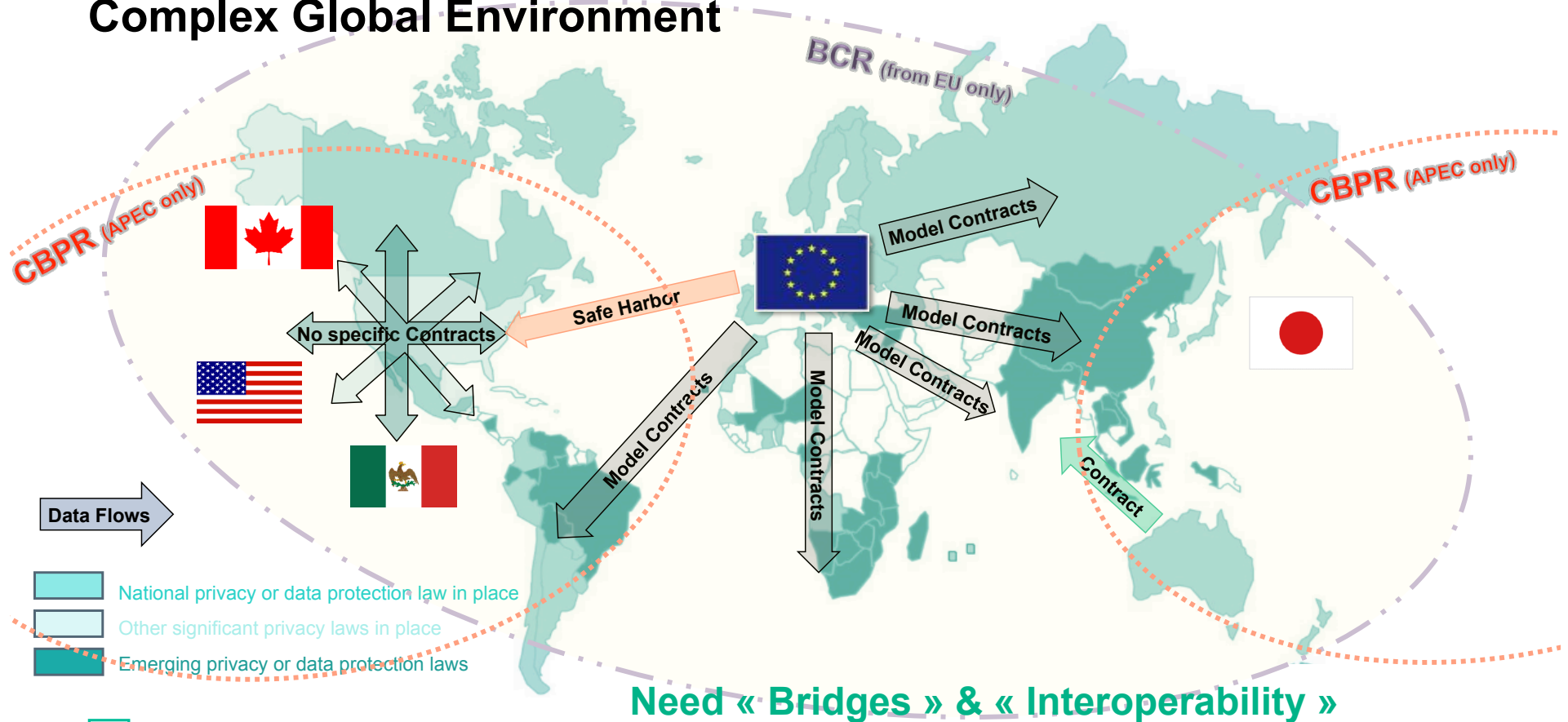
Need « Bridges » & « Interoperability »

Complex but rapidly evolving…

– **GDPR** (*General DP regulation*) approaching its final phase

 – Commission – Parliament – Council Trialogue started - **Expected Q4/2015-Q1/2016**

 – Elements of **Accountability** & Major concepts (One Stop Shop, Privacy by design, EDPB,…)

– **EU – USA dialog** badly impacted by « *Snowden – Schrems* » syndrome

 – Safe harbor invalidation by EUCJ but **SH 2.0** in progress and intense work going on

 – Bill of rights / Non US citizens rights, Assistance mechanisms improvements

– **Forward path** with improved transparency, on going collaboration

 – Renewed **dialog** between all parties at Global level

 – Global **interoperability** and bridges in construction (BCR-CBPR, SH 2.0,…)

 – Think **beyond mere compliance** and acknowledge the place of **ethics**

 – **Paradigm change** needed **everywhere** and for everybody (Private & Public)

How to achieve effective Accountability in Global context?

A Vision of Demonstration & Governance Continuity
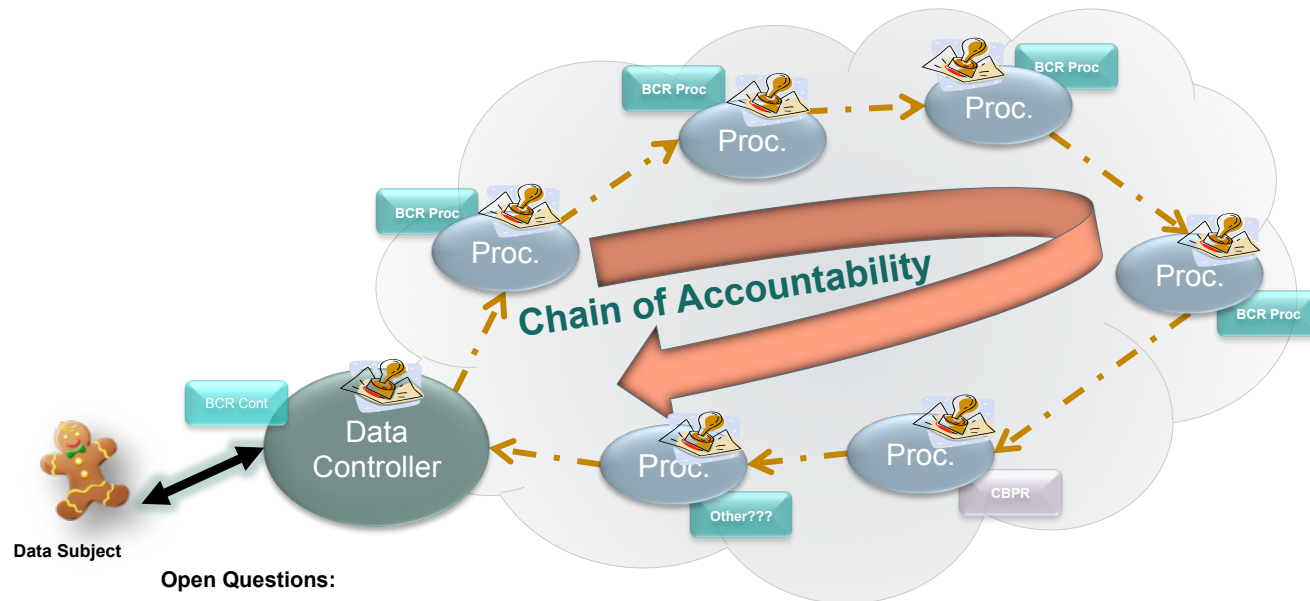
Open Questions:

- Controller Vs BCR Processor liability linkage?

- Intra Corp. BCR Controller Vs BCR Processor linkage?

- Inter Corp. BCR Controller Vs BCR Processor linkage?

- Inter Corp. BCR Controller Vs BCR Controller linkage?

-BCR – CBPR linkage

-Others???

Accountability Demonstration / Validation ?

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The path forward

For achieving the Mission…
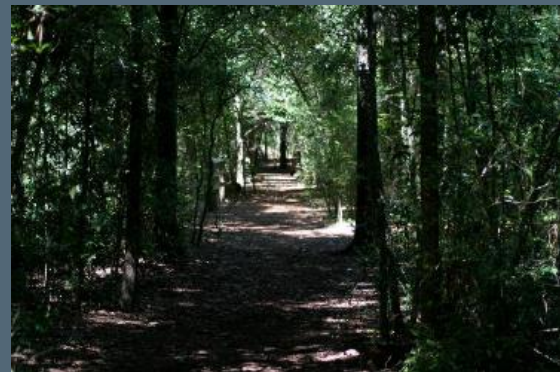
The place of Ethics in data Protection

Holistic Human based vision required

➢ **Responsible & Privacy Conscious Engineering**

  ▪ Technical experts with a « human » feeling

➢ **Accountable Controller and more….**

  ▪ All along the processing chain, at all level of organizations

➢ **Future oriented with Industry early involvement**

  ▪ Share expertise of all and maintain trusted partnership dialog

➢ **Empowered individual within human limitations**

  ▪ The limit of understanding and consent….

Going further than technology, business and laws..

The Context of Data Subject Privacy

Inspired from « *Towards a new Digital Ethics* »
Data, Dignity and Technology
EDPS - September 2015
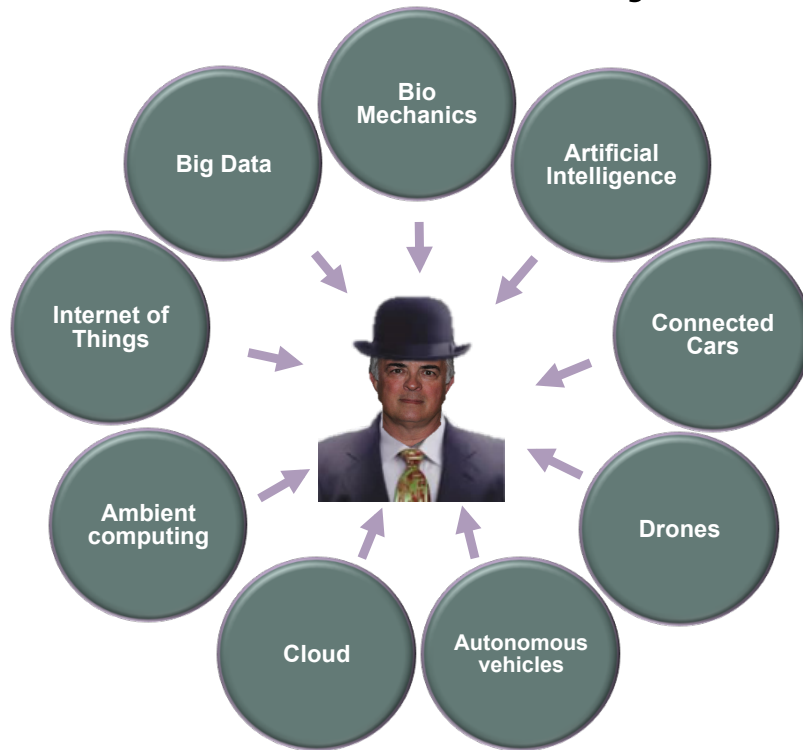
Mind-Boggling for 95% of users

➢ **Be Fair and Transparent with User**

▪ Forget the "everything is free for all"

➢ **Acknowledge the Anxiety of the unknown**

▪ Listen, explain and be trustworthy

➢ **Demonstrate Benefits of this "Brave New World"**

▪ And bravely address upfront its potential drawbacks

➢ **Adequate Privacy is the "key" to growth**

▪ As Enabler of Digital future and not as an Obstacle

Data Subject at the center → « Prosumer »

The Paradigm change in practice…
… a call for trustful forward looking collaboration

Challenges and issues should be addressed by:
Consistent and **Coordinated** development

      - in 3 main Dimensions

      - with an **active dialog** between **ALL stakeholders**:

- **Responsible Company Governance** (Accountability and more)

  Supporting Technologies (Access Governance, Obfuscation, Data Minimization….)

- **Innovative Regulatory Frameworks** (International Standards and Tools i.e. BCR, CBPR…)