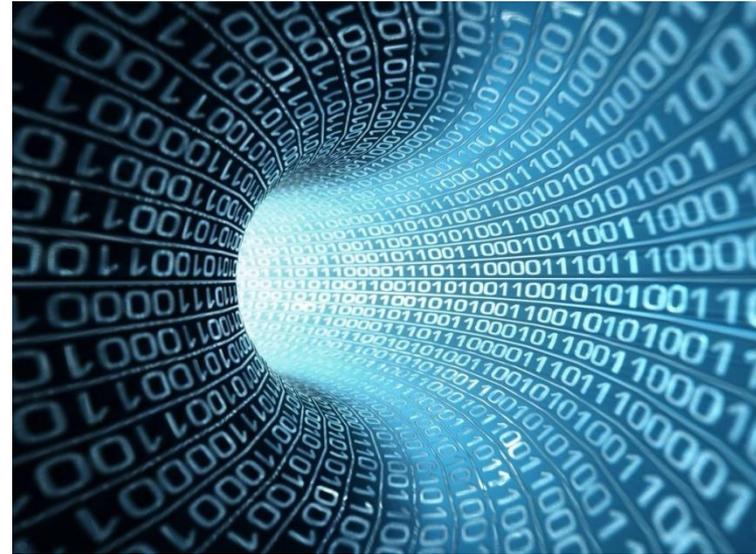


Bryant  
Miller  
Olive



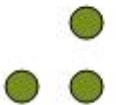
**FDOT Data Symposium  
Big Data – Legal Issues  
October 24, 2014**

[www.bmolaw.com](http://www.bmolaw.com)

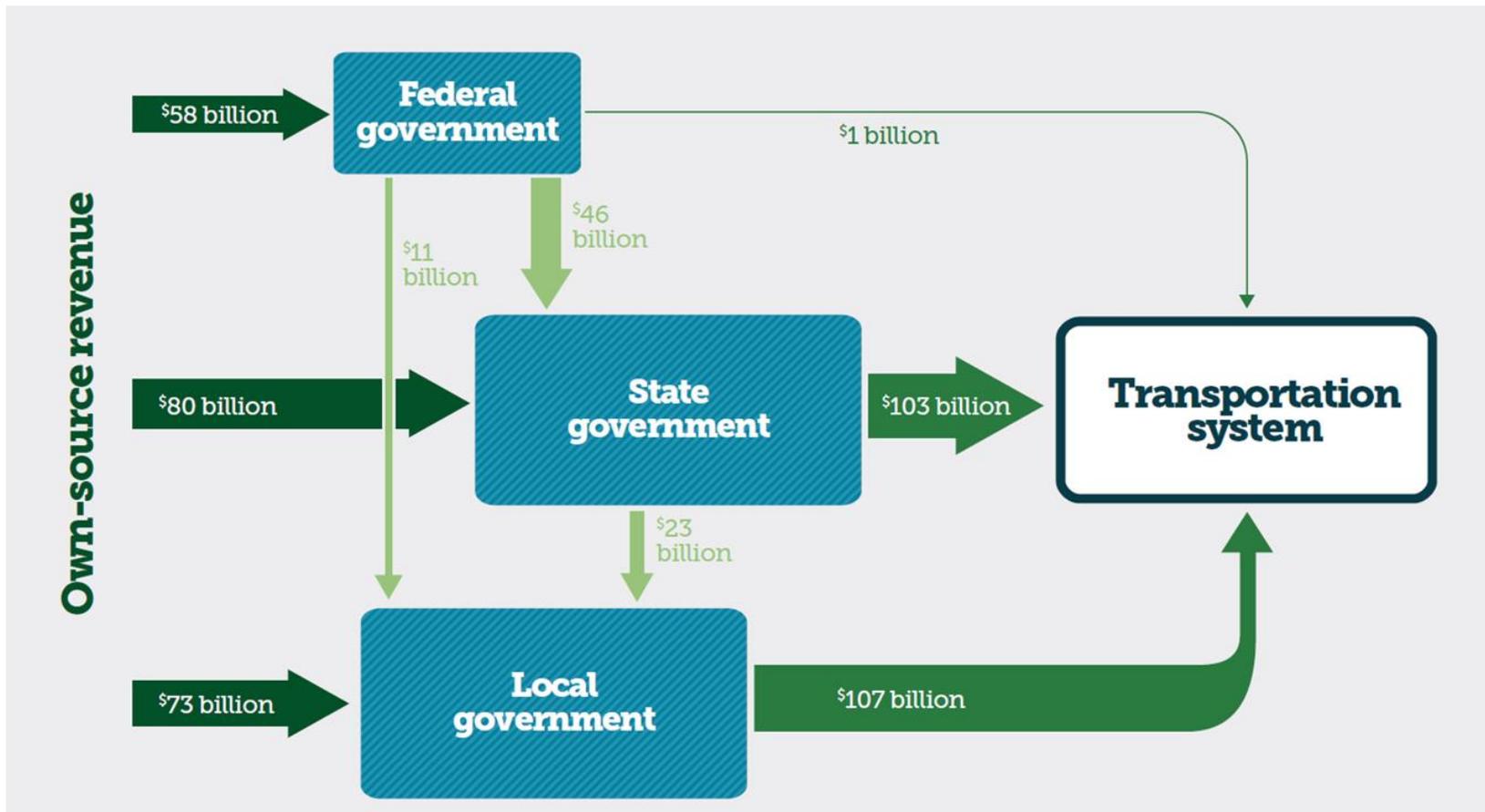
# Big Data – Legal Issues

## October 24, 2014

- Programmatic Law
- Cultural Interlude
- What Laws Matter?
- The Future



# Spending on Highways and Transit, 2011



# “Organic” Statutes

## Federal Statutes

- Title 23, U.S. Code (Highways)
- Title 49, U.S. Code (US DOT)

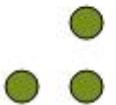
## State Statutes

- Section 20.23, Fla. Stat. (FDOT)
- Title XXVI, Fla. Stat. (Public Transportation)



# MAP-21 National Goals

- Safety
- Infrastructure Condition
- Congestion Reduction
- System Reliability
- Freight Movement & Economic Vitality
- Environmental Sustainability
- Reduced Project Delivery Delays



# MAP-21 Funding (\$M)

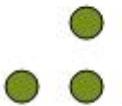
## FHWA RT&E Programs

<b>Highway Research and Development</b>	<b>115.0</b>
<b>Technology and Innovation Deployment Program</b>	<b>62.5</b>
<b>Training and Education</b>	<b>24.0</b>
<b>State Planning and Research (state administered funds)</b>	<b>184.0</b>
<b>TOTAL:</b>	<b>385.5</b>

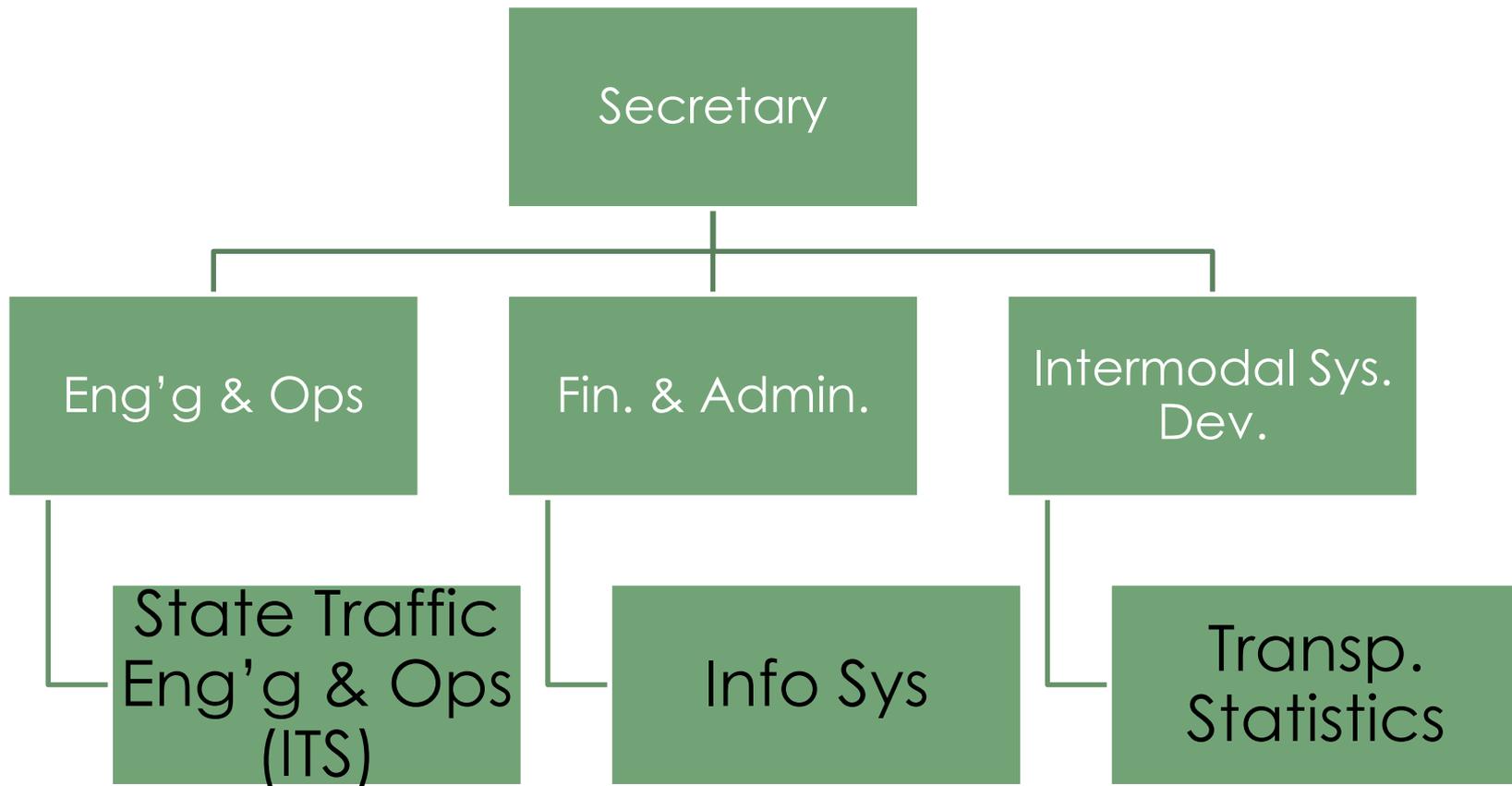
# MAP-21 Funding (\$M)

## RITA Programs

<b>University Transportation Centers</b>	<b>72.5</b>
<b>Intelligent Transportation Systems Research</b>	<b>100.0</b>
<b>Bureau of Transportation Statistics</b>	<b>26.0</b>
<b>TOTAL:</b>	<b>198.5</b>



# FDOT Organization



# FDOT ITS Program



Connected Vehicle



Management/Deployments



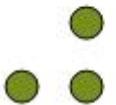
Telecommunications Management



ITS Software and Architecture

# FDOT Office of Information Systems

- Manages an automated information-processing environment that must be reliable, secure, cost effective and responsive.
- Educates personnel in the use and application of information technology to accomplish FDOT objectives and operations. Provides for the processing, storing and retrieval of data; system development and maintenance; statewide computer network management; information security administration; and general information consulting services supporting FDOT.



# FDOT Transportation Statistics

TranStat / Source Book

## Florida Transportation Data Source Book

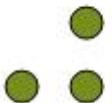


### About

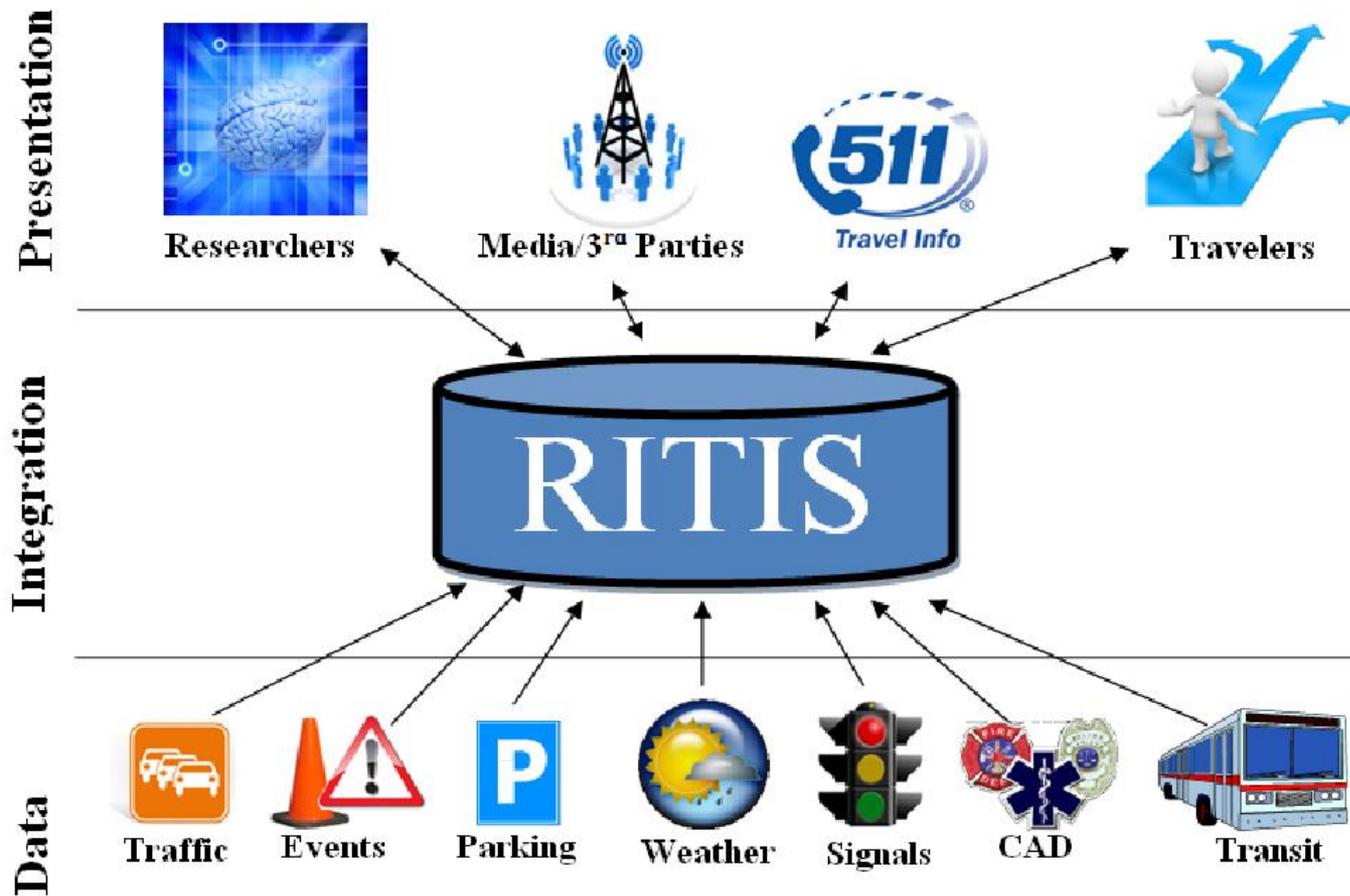
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The Source Book is a compendium of current and historical data and analysis describing the performance of Florida's transportation system. It is intended to be the primary source of mobility performance measure results for the State of Florida.

The Transportation Statistics Office produces two Source Books: the Multimodal Mobility Performance (MPM) Measures Source Book and a companion General Interest Highway Statistics Source Book which includes data on public roads.



# What to Do with the Data?



# “Hackathon” Possibilities

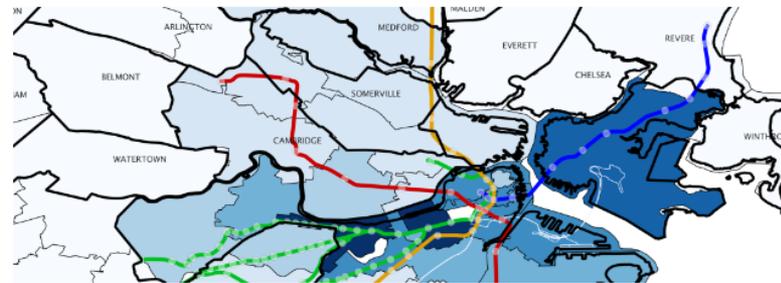
- What experiment could I construct to test this hypothesis?
- What correlations can I glean from the data?
- What insights could I glean if I could fuse data from multiple disciplines and domains?

## HAVE TAXI USE PATTERNS CHANGED SINCE LATE NIGHT MBTA SERVICE WAS INTRODUCED?

🕒 JULY 24, 2014   👤 ARI   💬 LEAVE A COMMENT

NEW: [Interactively explore these data](#) (but still read the conclusions below).

In a word: yes. By looking at the spatial variation of taxi rides in 2014 vs 2013, we can see how these patterns have changed before and after MBTA service was introduced. Let's go straight to maps:



# Tesla's "Autopilot"

Model S will be able to steer to stay within a lane, change lanes with the simple tap of a turn signal, and manage speed by reading road signs and using active, traffic aware cruise control. It will take several months for all Autopilot features to be completed and uploaded to the cars.

Our goal with the introduction of this new hardware and software is not to enable driverless cars, which are still years away from becoming a reality. Our system is called Autopilot because it's similar to systems that pilots use to increase comfort and safety when conditions are clear. Tesla's Autopilot is a way to relieve drivers of the most boring and potentially dangerous aspects of road travel – but the driver is still responsible for, and ultimately in control of, the car.

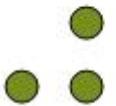
The Autopilot hardware opens up some exciting long term possibilities. Imagine having your car check your calendar in the morning (a feature introduced in **Software v6.0**), calculate travel time to your first appointment based on real time traffic data, automatically open the garage door with Homelink, carefully back out of a tight garage, and pull up to your door ready for your commute. Of course, it could also warm or cool your car to your preferences and select your favorite morning news stream.

The introduction of this hardware is just the first step for Autopilot in Model S. We will continue to develop new capabilities and deliver them through over-the-air software updates, keeping our customers at the forefront of driving technology.



## A Priceless Opportunity?

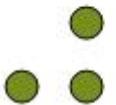
Websites are amassing information that holds enormous social potential. The data our users generate helps companies improve their sites and make money; that's a story that most people know. But that same data could also unlock new ways of understanding society and new kinds of science. (Christian Rudder)



# At What Cost?

The possibilities of this research are as varied as the human condition, and it is uniquely able to uncover hidden narratives because the data reveal what we're doing, not merely what we're saying or hoping we do.

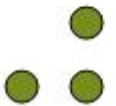
- How do we continue to wring meaningful findings out of intensely personal data while protecting the privacy of the individual?
- How do we ensure that users are never at risk?
- What is permissible, and what should always be off limits?



# Big Data – Legal Issues

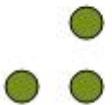
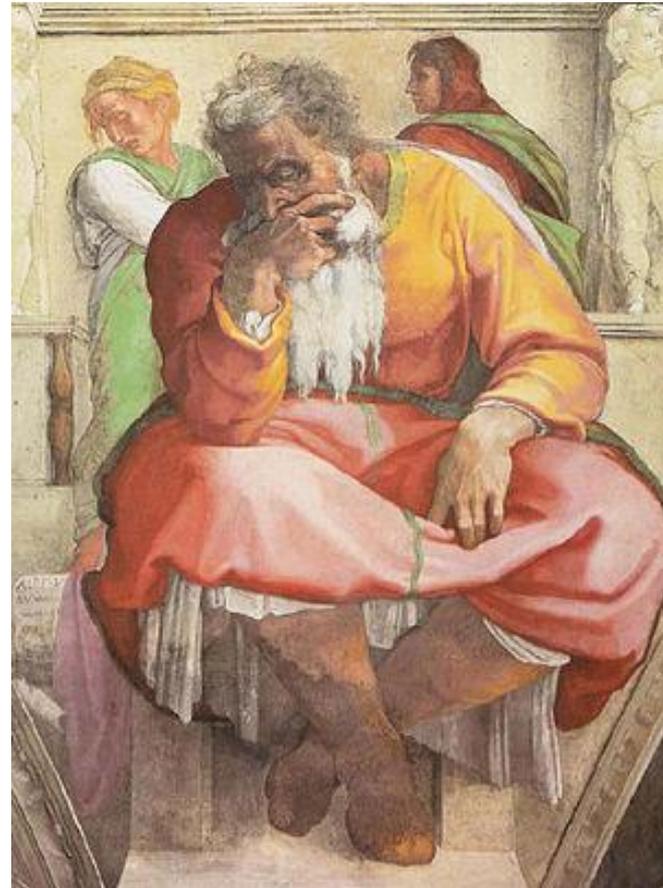
## October 24, 2014

- Programmatic Law
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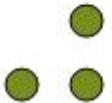
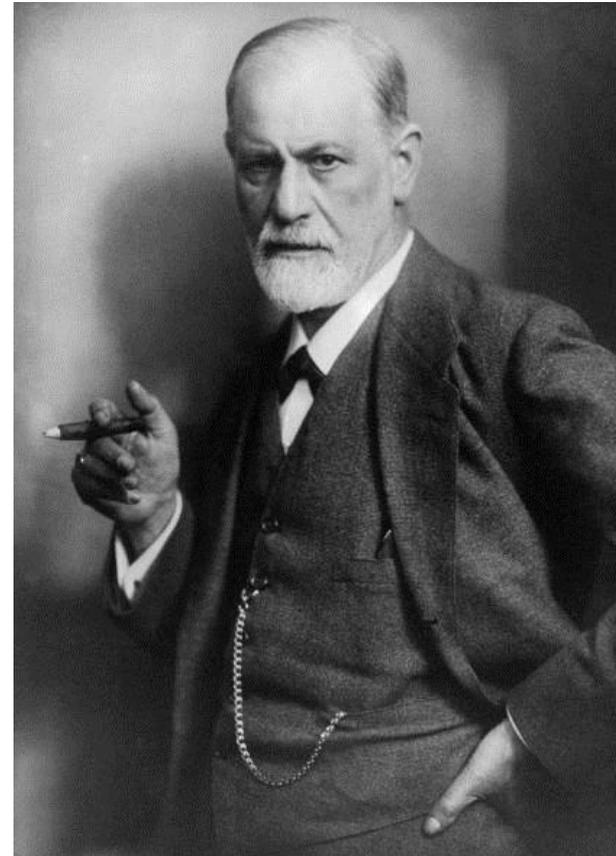
# 2600 Years Ago

The heart is deceitful  
above all things  
and beyond cure.  
Who can understand it?  
I the Lord search the heart  
and examine the mind,  
to reward each person  
according to their  
conduct,  
according to what their  
deeds deserve.



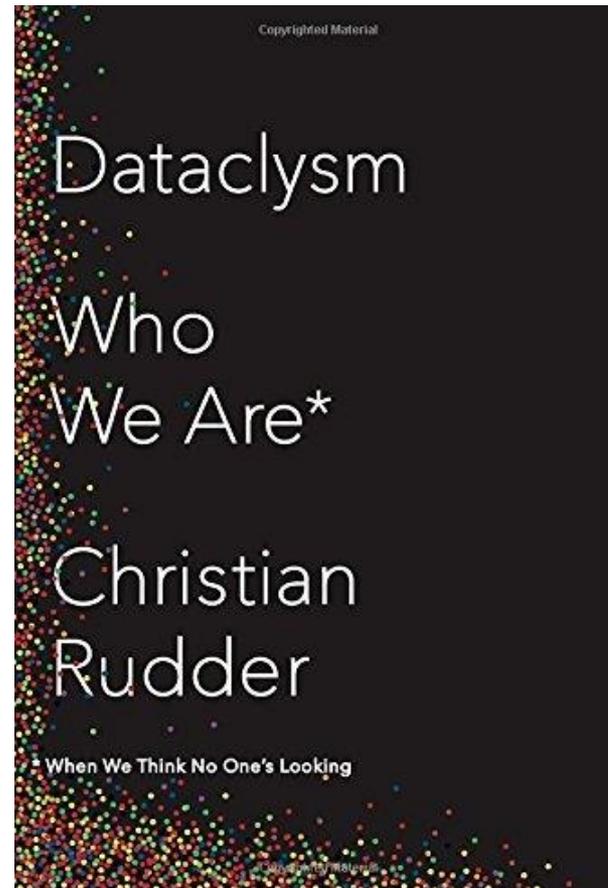
# 100 Years Ago

We may define the unconscious, the deepest level of consciousness, as a pool of unwanted or unacceptable ideas, wishes or desires, memories, and emotions. These unwanted things are pushed down into the unconscious so that we do not have to deal with them and so they do not interfere or cause problems in our daily lives.



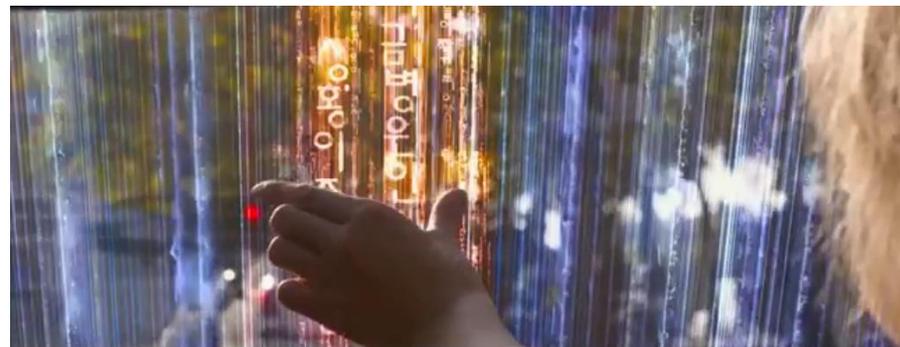
# This Month

We're gaining a growing understanding of humanity. Social websites are remaking sociology – taking it out of the old world of surveys, questionnaires and contrived laboratory setups and into real life.



# Today's Popular Image

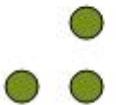
from Lucy - © 2014 Universal Pictures, a Division of NBC Universal



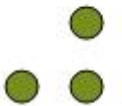
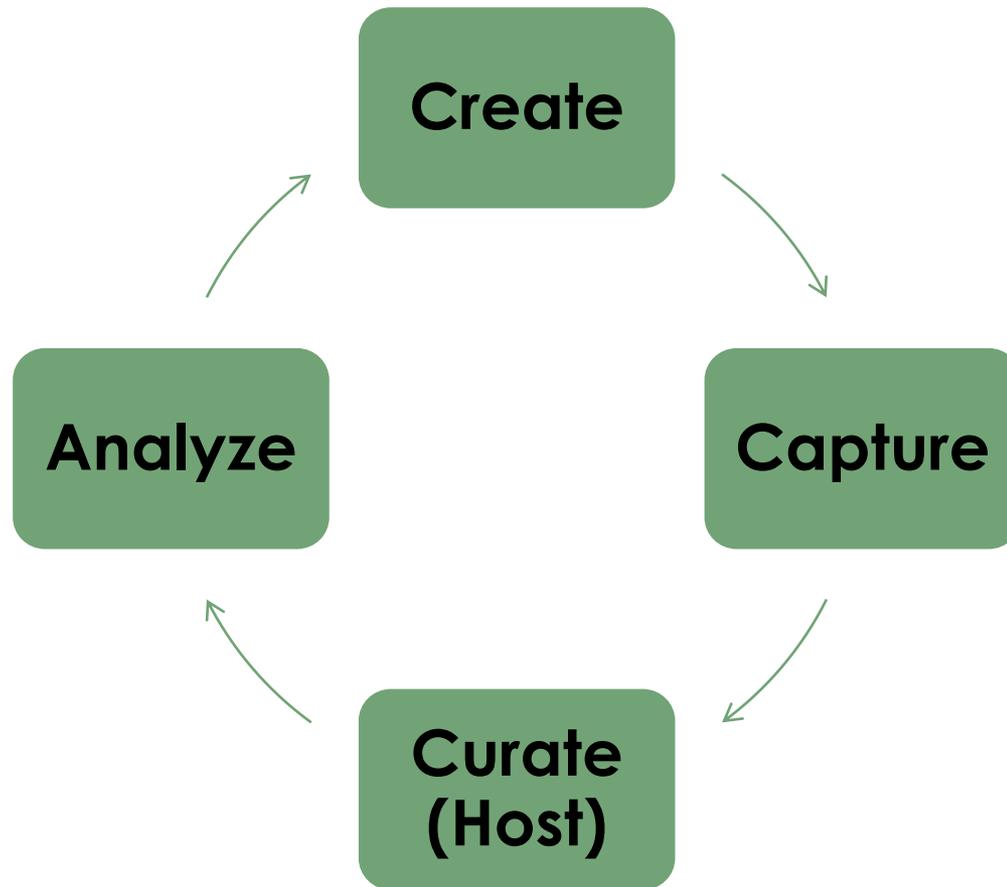
# Big Data – Legal Issues

## October 24, 2014

- Programmatic Law
- Cultural Interlude
- What Laws Matter?
- The Future

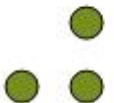


# Data Life Cycle



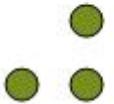
# Constitutional Protections

- Right to acquire, possess and protect property (Art. I, § 2, Fla. Const.)
- Freedom of speech and press (Art. I, § 4, Fla. Const.; U.S. Const. amend. I)
- Right to due process (Art. I, § 9, Fla. Const.; U.S. Const. amend. V)
- Protection from unreasonable searches and seizures (Art. I, § 12, Fla. Const.; U.S. Const. amend. IV)
- Right of privacy (Art. I, § 23, Fla. Const.)
- Access to public records (Art. I, § 2, Fla. Const.)



## Recent 4<sup>th</sup> Amend. Cases

- ***Tracey v. Florida*** (Fla. 10/16/14) - use of cell site location information to track person is a “search”, for which probable cause is required
- ***Riley v. California*** (U.S. 6/25/14) – police generally may not, without a warrant, search digital information on cell phone seized from arrested individual
- ***U.S. v. Jones*** (U.S. 1/23/12) – attaching GPS device to vehicle, and using device to monitor movement, is a “search”

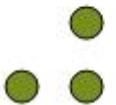


# Federal Laws on Access to Data

- USA PATRIOT Act (2001)
- Children's Online Privacy Protection Act (1998)
- Economic Espionage Act (1996)
- Health Insurance Portability and Accountability Act (1996)
- Communications Assistance to Law Enforcement Act (1994)
- Electronic Communications Privacy Act (1986)
- Computer Fraud and Abuse Act (1986)
- Foreign Intelligence Surveillance Act (1978)
- Family Educational Rights and Privacy Act (1974)

# Copyright Protection

- “The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const., art. I, § 8
- Copyright Protection Act of 1976
- Digital Millennium Copyright Act of 1998

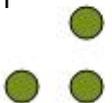


# Subject Matter of Copyright

Copyright protection subsists ... in **original works of authorship** fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

Note: A "**compilation**" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that **the resulting work as a whole constitutes an original work of authorship**.



# Copyright Current Events

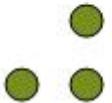
1600 Amphitheatre Parkway  
Mountain View, CA 94043

**Re: Google's Repeat Copyright & Privacy Violations in Connection  
with Hacked Photo Scandal**  
Our File No.: 5608-2

Dear Messrs. Page, Schmidt, Brin, Drummond, Walker and Cohen:

We are litigation counsel for over a dozen female celebrities, actresses, models and athletes whose confidential, personal, private photos and videos (the "Images") were recently hacked from their respective iCloud accounts and illegally posted on various websites and blogs, including YouTube, Blogspot and other Google based sites, servers and systems. We are writing concerning Google's despicable, reprehensible conduct in not only failing to act expeditiously and responsibly to remove the Images, but in knowingly accommodating, facilitating and perpetuating the unlawful conduct. Google is making millions and profiting from the victimization of women. As a result of your blatantly unethical behavior, Google is exposed to significant liability and both compensatory and punitive damages that could well exceed One Hundred Million Dollars (\$100,000,000).

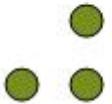
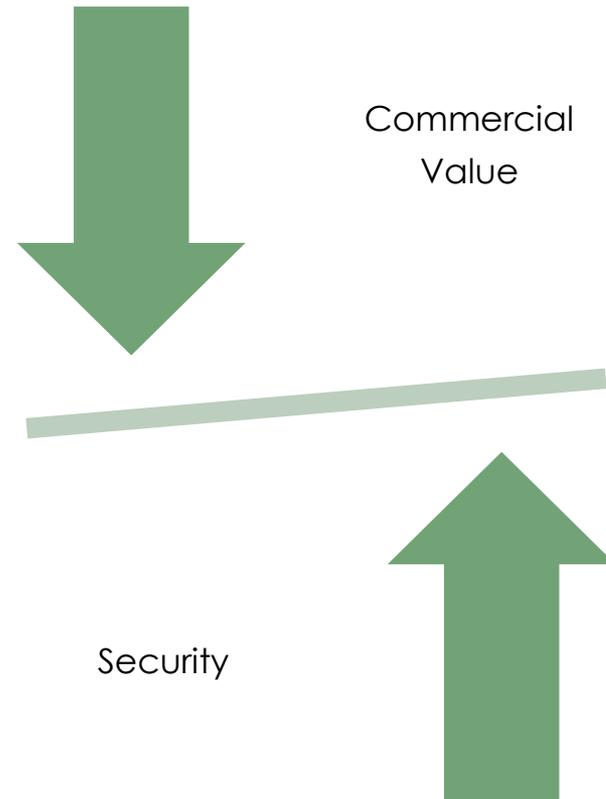
Ever since the hacked Images first began to be posted on websites and blogs during Labor Day Weekend, we have been sending notices to various website operators and host providers, including Google, demanding that the Images be removed in accordance with the requirements of the Digital Millennium Copyright Act ("DMCA"), which mandate that the Internet service provider ("ISP") and/or host act "expeditiously" to remove the unlawful Images. The vast majority of those sites and ISPs/hosts, all of which are much smaller than Google, with far fewer staff and resources, complied with their obligations under the DMCA and removed the Images within an hour or two of receiving our DMCA notice. Yet Google, one of the largest ISPs in the world, with vast resources



# Difficult Trade-Offs

“Online security is an absolutely crazy, busy, evolving, still-frontier-dangerous place.”

Prof. Steven  
Teppler, Ave Maria Law School



# Recent Examples



*Neiman Marcus*



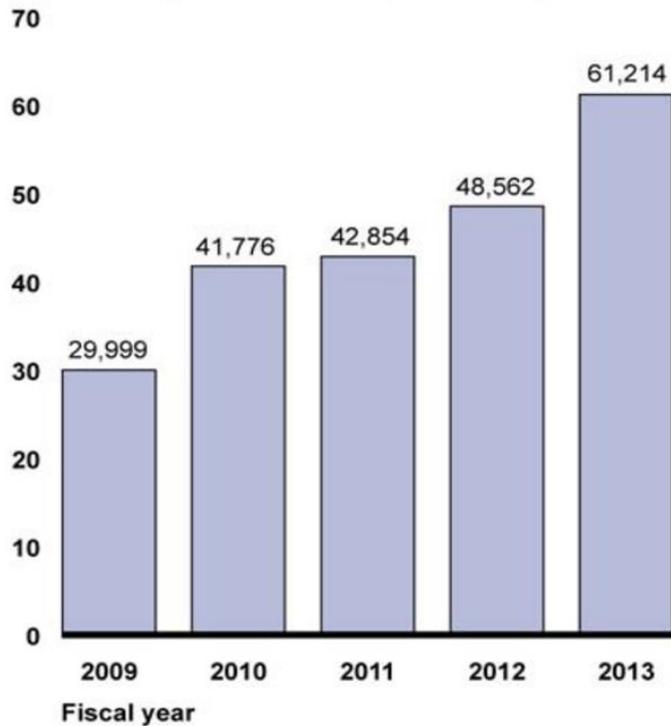
**SuperValu**  
Real Food, Real People



# Federal Agency Reported Information Security Incidents

## All Reported Incidents

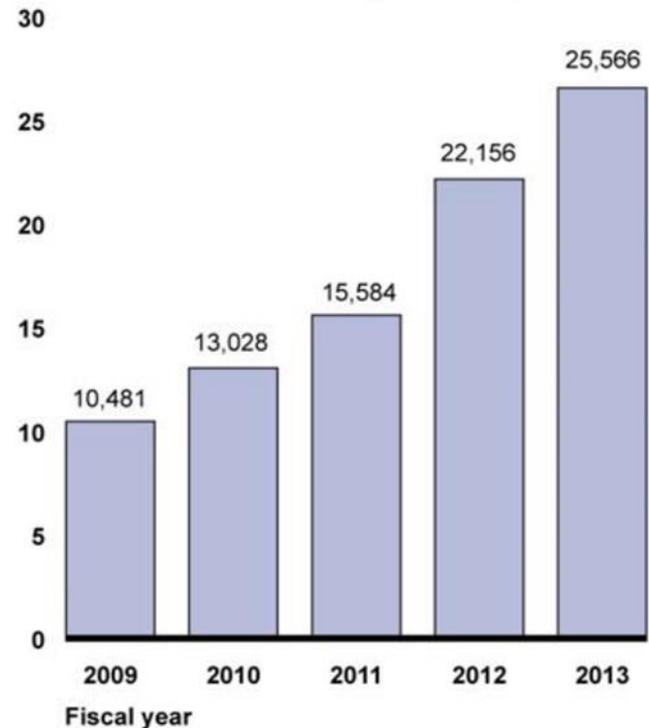
Number of reported incidents (in thousands)



Source: GAO analysis of US-CERT data for fiscal years 2009-2013.

## Incidents Involving PII

Number of reported incidents (in thousands)



Source: GAO analysis of US-CERT data for fiscal years 2009-2013.

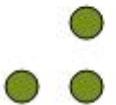
# State Law Consequences

- Florida Information Protection Act of 2014 (FIPA) (§ 501.171, Fla. Stat.)
- FIPA expands the obligations of businesses and government entities that maintain data containing personal information of individuals to safeguard and provide notice of breaches of such information
- “Perhaps the strictest breach notification statute in the country”



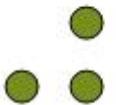
# “Privacy” Torts

- Unreasonable intrusion upon the seclusion of another
- Appropriation of the other's name or likeness
- Unreasonable publicity given to the other's private life
- Publicity that unreasonably places the other in a false light before the public



# Other Theories of Recovery

- Negligence
- Breach of contract
- Unjust enrichment and restitution
- Breach of fiduciary duty



# No Breach, Just Experimenting ...

## SUPREME COURT OF THE UNITED STATES

MEGAN MAREK *v.* SEAN LANE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13–136. Decided [November 4, 2013]

The petition for a writ of certiorari is denied.

Statement of CHIEF JUSTICE ROBERTS respecting the denial of certiorari.

In November 2007, respondent Facebook, Inc., released a program called “Beacon.” It worked like this: Whenever someone visited the Web site of a participating company and performed a “trigger” activity, such as posting a comment or buying a product, the program would automatically report the activity and the user’s personally identifiable information to Facebook—regardless of whether the user was a Facebook member. If the user was a Facebook member, Facebook would publish the activity on his member profile and broadcast it to everyone in his “friends” network. So rent a movie from Blockbuster.com, and all your friends would know the title. Or plan a vacation on Hotwire.com, and all your friends would know the destination. To prevent Facebook from posting a particu-

CURRENT ISSUE // ARCHIVE // NEWS & MULTIMEDIA // FOR AUTHORS // ABOUT PNAS // COLLECTED ARTICLES // BROWSE BY

Current Issue > vol. 111 no. 24 > Adam D. I. Kramer, 8788–8790

## Experimental evidence of massive-scale emotional contagion through social networks

Adam D. I. Kramer<sup>a,1</sup>, Jamie E. Guillory<sup>b,2</sup>, and Jeffrey T. Hancock<sup>b,c</sup>

<sup>a</sup>Core Data Science Team, Facebook, Inc., Menlo Park, CA 94025; and Departments of <sup>b</sup>Communication and

<sup>c</sup>Information Science, Cornell University, Ithaca, NY 14853

Edited by Susan T. Fiske, Princeton University, Princeton, NJ, and approved March 25, 2014 (received for review October 23, 2013)

### Significance

We show, via a massive ( $N = 689,003$ ) experiment on Facebook, that emotional states can be transferred to others via emotional contagion, leading people to experience the same emotions without their awareness. We provide experimental evidence that emotional contagion occurs without direct interaction between people (exposure to a friend expressing an emotion is sufficient), and in the complete absence of nonverbal cues.

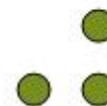
### Abstract

Emotional states can be transferred to others via emotional contagion, leading people to experience the same emotions without their awareness. Emotional contagion is well established in laboratory experiments, with

# Public Records Issues

“As private companies have discovered there’s profit to be made from some kinds of government records, public agencies increasingly are outsourcing parts of their recordkeeping. That’s led to disputes over whether private firms can receive exclusive or preferential access to public data, copyright it, or withhold it from business competitors and other parties who request it.” Adam Hochberg, *Poynter*, May 2013

“These are laws written in the age of manila envelopes and the typewriter. This is one of a dozen different issues where technology has raced in front of the law.” Prof. Charles Davis, Univ. of Missouri



# Florida's Response (2013)

In addition to other contract requirements provided by law, each public agency contract for services must include a provision that requires the contractor to comply with public records laws, specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

## Recent Case – Public Records

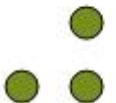
***Sierra Club v. Superior Court of Orange County*** (Ca. 7/8/13) – GIS formatted database of land parcel information was public record that must be produced at actual cost of duplication (statutory rate)



# Big Data – Legal Issues

## October 24, 2014

- Programmatic Law
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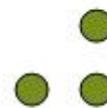


## “Right to be Forgotten”?

- In 1890, in their seminal Harvard Law Review article ‘The Right to Privacy’, Samuel D. Warren and Louis D. Brandeis lamented that ‘[r]ecent inventions and business methods’ such as ‘[i]nstantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life’. In the same article they referred ‘to the next step which must be taken for the protection of the person.’

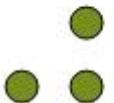
## EU Balancing (June 2013)

Nowadays, protecting personal data and privacy of individuals has become increasingly important. Any content including personal data, be it in the form of texts or audiovisual materials, can instantly and permanently be made accessible in digital format world wide. The internet has revolutionised our lives by removing technical and institutional barriers to dissemination and reception of information, and has created a platform for various information society services. These benefit consumers, undertakings and society at large. This has given rise to **unprecedented circumstances in which a balance has to be struck between various fundamental rights**, such as freedom of expression, freedom of information and freedom to conduct a business, on one hand, and protection of personal data and the privacy of individuals, on the other.



# Directive 95/46, Preamble Section (2)

“... data-processing systems are designed to serve man; ... they must, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably the right to privacy, and contribute to ... the well-being of individuals;”



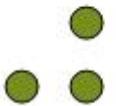
## Questions at Issue (May 2014)

- Is Google involved in “processing of ... data”?
- Is Google the “controller” of the personal data in the web pages it indexes?
- May a person require Google to withdraw from its indexes an item of information published on the web by third parties, without addressing the third-party owner of the web page?
- Does it matter when the personal data has been lawfully published by third parties and is kept on the web page from which it originates?



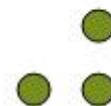
# The Reasoning

- “Even initially lawful processing of accurate data may, in the course of time, become incompatible with the directive where those data are no longer necessary in the light of the purposes for which they were collected or processed. That is so in particular where they appear to be **inadequate, irrelevant or no longer relevant, or excessive in relation to those purposes and in the light of the time that has elapsed.**”



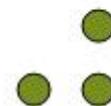
# The Answer

- Even if the personal information is true ...
- If , “at this point in time, that information appears, having regard to all the circumstances of the case, to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out by the operator of the search engine,” ...
- then “the information and links concerned in the list of results must be erased.”



# Looming Issues?

- Data Sovereignty vs. Borderless Internet
- Internet of Things
- Valuation of Data
- IP Law Reform
- Contract Law Reform



# Thank You!

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