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Responsible AI Governance:

Accelerated Technological Transformation,
“Bet-the-Company” Litigation and Crystallized
AI Legislation Combine to Raise the Stakes

Charles S. Morgan

World Summit AI Americas

April 25, 2024

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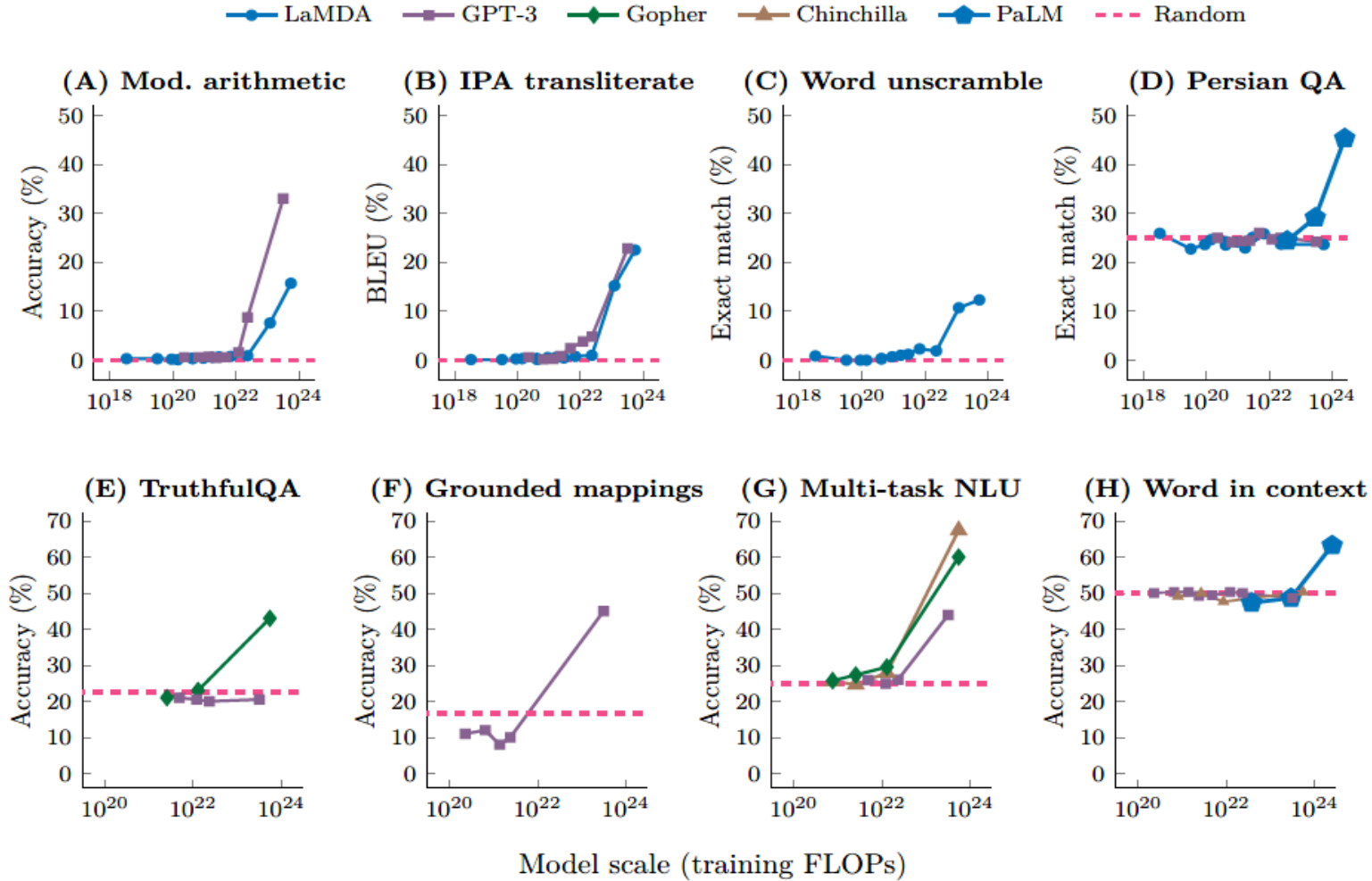


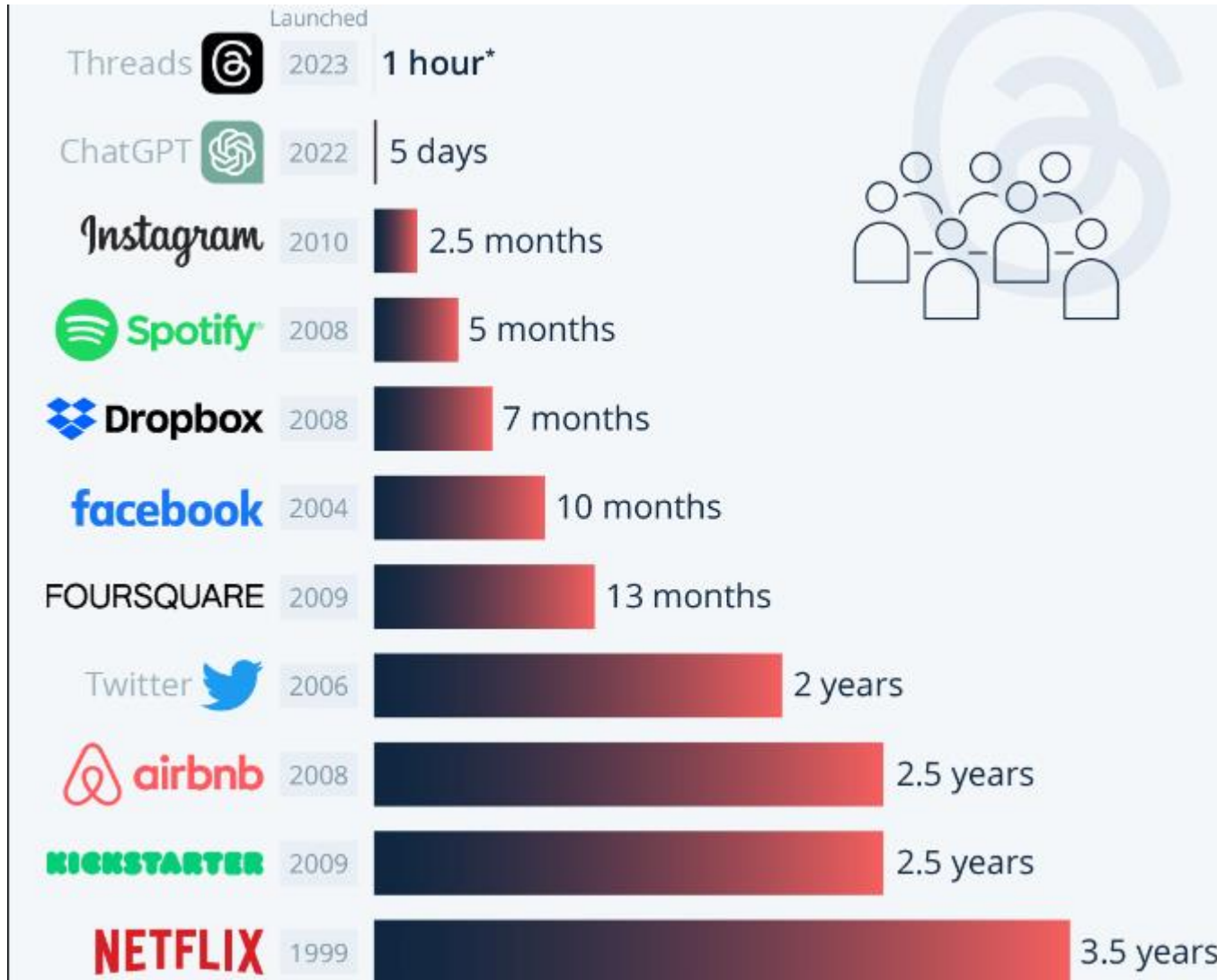
Agenda

1. Exponential Rate of Change
2. Two Stories of Technology Regulation
3. Multimodal Risks
4. From Principles to Laws
5. Responsible AI Governance

1. Exponential Rate of Change

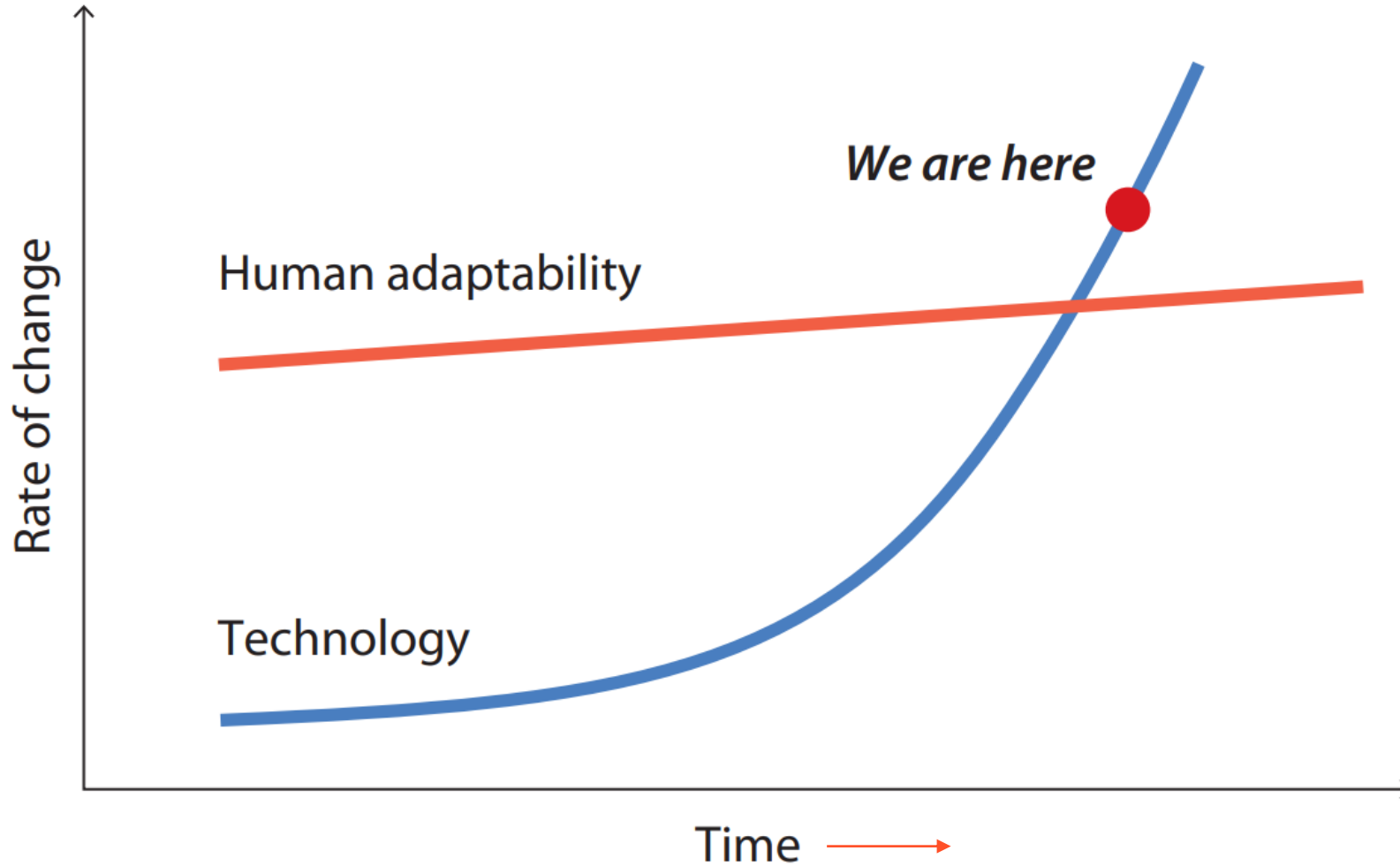
Even the Experts Were Surprised





How long to one million users?

Adapting to Change



2. Two Stories of Technology Governance

From Idealism...

« Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. »

- John Perry Barlow, *A Declaration of the Independence of Cyberspace* (1996)

...and Laissez-Faire...



“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

- **Section 230**, *Communications Decency Act*

- Technological neutrality and functional equivalency
- Limited privacy enforcement (name & shame)
- Copyleft movement

Technology | CYBERTIMES

The New York Times
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July 2, 1997

Clinton Issues 'Hands Off' Policy on Internet Commerce

By SANDRA SOBIERAJ

...to Caution...

'The Godfather of A.I.' Leaves Google and Warns of Danger Ahead

For half a century, Geoffrey Hinton nurtured the technology at the heart of chatbots like ChatGPT. Now he worries it will cause serious harm.

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By **Cade Metz**

Cade Metz reported this story in Toronto.

Published May 1, 2023 Updated May 4, 2023



Cade Metz reported this story in Toronto.

BUSINESS • TECHNOLOGY

DeepMind's CEO Helped Take AI Mainstream. Now He's Urging Caution

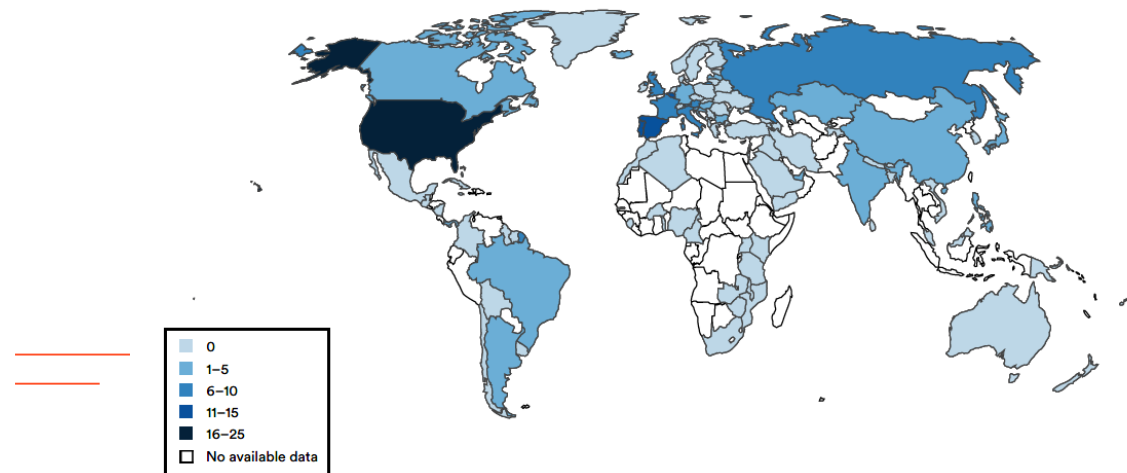
Now He's Urging Caution

Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach

...and Heavy Regulation

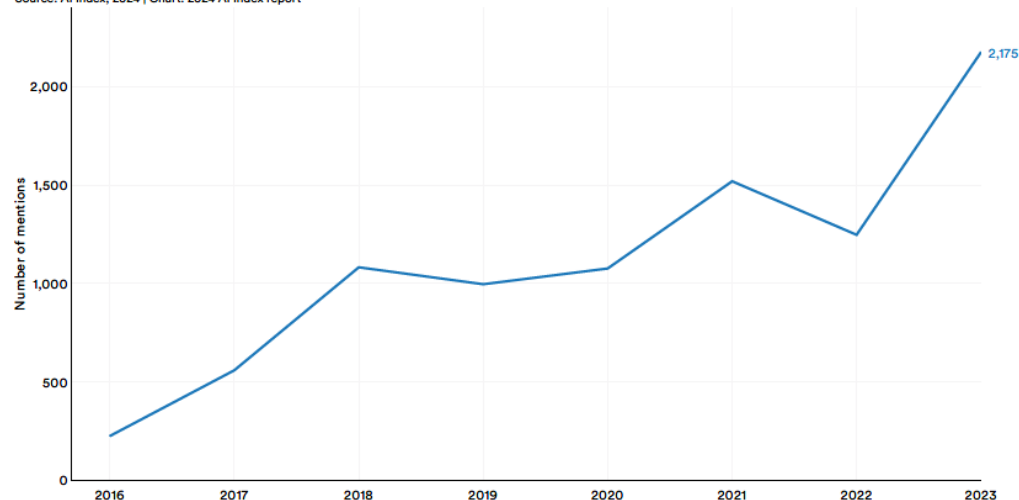
Number of AI-related bills passed into law by country, 2016–23

Source: AI Index, 2024 | Chart: 2024 AI Index report



Number of mentions of AI in legislative proceedings in 80 select countries, 2016–23

Source: AI Index, 2024 | Chart: 2024 AI Index report



E.U. Agrees on Landmark Artificial Intelligence Rules

The agreement over the A.I. Act solidifies one of the world's first comprehensive attempts to limit the use of artificial intelligence.

RISK & COMPLIANCE JOURNAL

SEC Settles With Two Investment Advisers Over Alleged 'AI Washing'

The regulator said Delphia and Global Predictions made 'false and misleading claims' about the use of AI in their investment platforms

By [David Smagalla](#) [Follow](#)

March 18, 2024 4:31 pm ET

Source: Stanford University Human Centered Artificial Intelligence, « Artificial Intelligence Index Report 2024 ».

New York Times, (<https://www.nytimes.com/2023/12/08/technology/eu-ai-act-regulation.html>)

Wall Street Journal, (<https://www.wsj.com/articles/sec-settles-with-two-investment-advisers-over-alleged-ai-washing-cd067049>)

3. Multimodal Risks

Risk of Biased Output and Discriminatory Outcomes

What Researchers Discovered When They Sent 80,000 Fake Résumés to U.S. Jobs

Some companies discriminated against Black applicants much more than others, and H.R. practices made a big difference.

Amazon ditched AI recruiting tool that favored men for technical jobs

Specialists had been building computer programs since 2014 to review résumés in an effort to automate the search process

Informational Asymmetry and the Expert Fallacy

- Transparency
- Explainability
- Hallucinations

New York lawyers sanctioned for using fake ChatGPT cases in legal brief - Reuters

[Source: New York lawyers sanctioned for using fake ChatGPT cases in legal brief | Reuters](#)

DeepFakes: From Playful to Deeply Troubling



Taylor Swift deepfakes taken offline. It's not so easy for regular people



'A global problem': US teen fights deepfake porn targeting schoolgirls

Issued on: 18/04/2024 - 13:31

Accountability for Intended and Unintended Uses

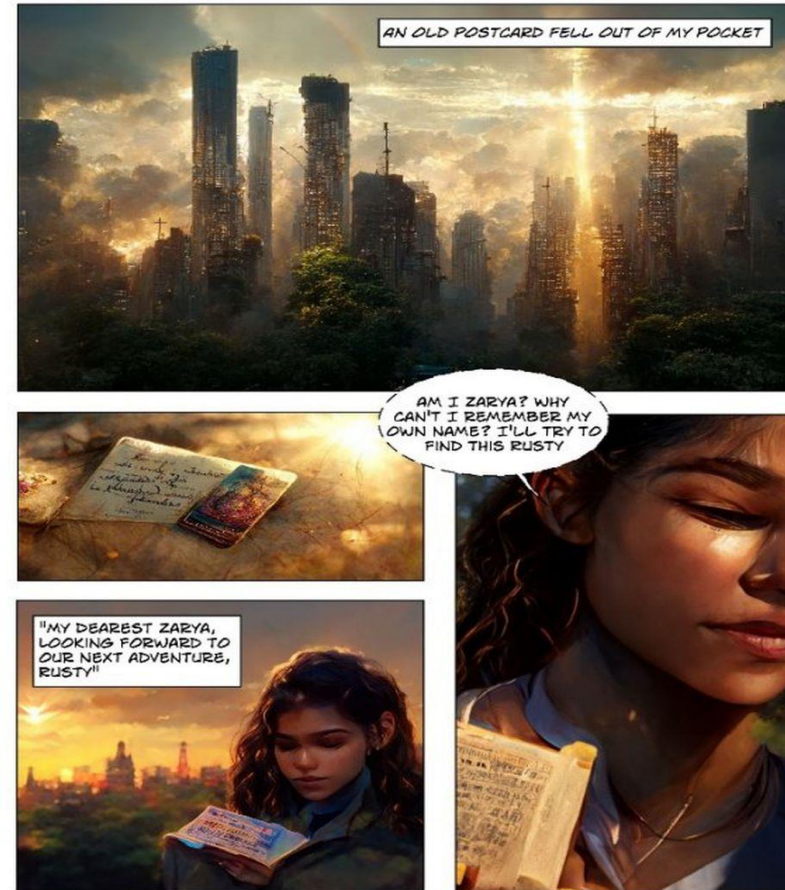
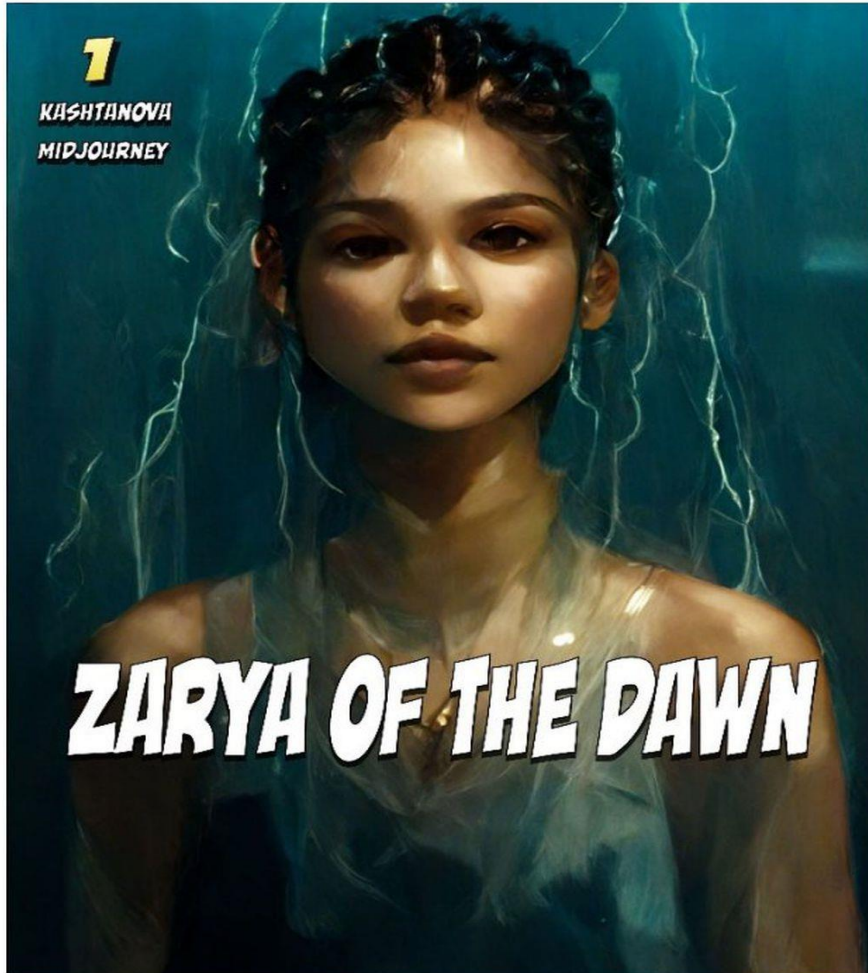
A Wellness Chatbot Is Offline After Its 'Harmful' Focus on Weight Loss

The artificial intelligence tool, named Tessa, was presented by the National Eating Disorders Association as a way to discover coping skills. But activists say it instead veered into problematic weight-loss advice.

Your Car Is Tracking You. Abusive Partners May Be, Too.

Apps that remotely track and control cars are being weaponized by abusive partners. Car manufacturers have been slow to respond, according to victims and experts.

Revisiting Core Assumptions About Intellectual Property

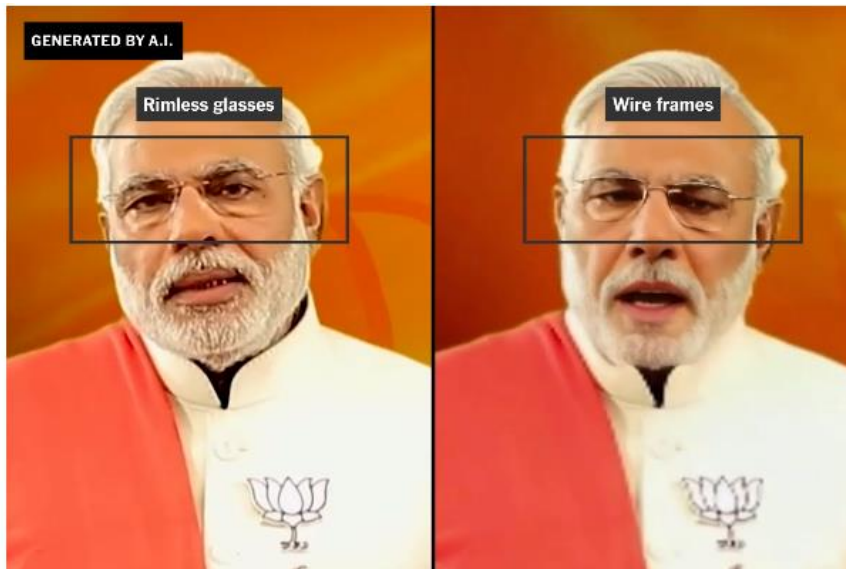


Zarya of the Dawn (Registration # VAu001480196), graphics by Midjourney

Where Next?

Your Brain Waves Are Up for Sale. A New Law Wants to Change That.

In a first, a Colorado law extends privacy rights to the neural data increasingly coveted by technology companies.

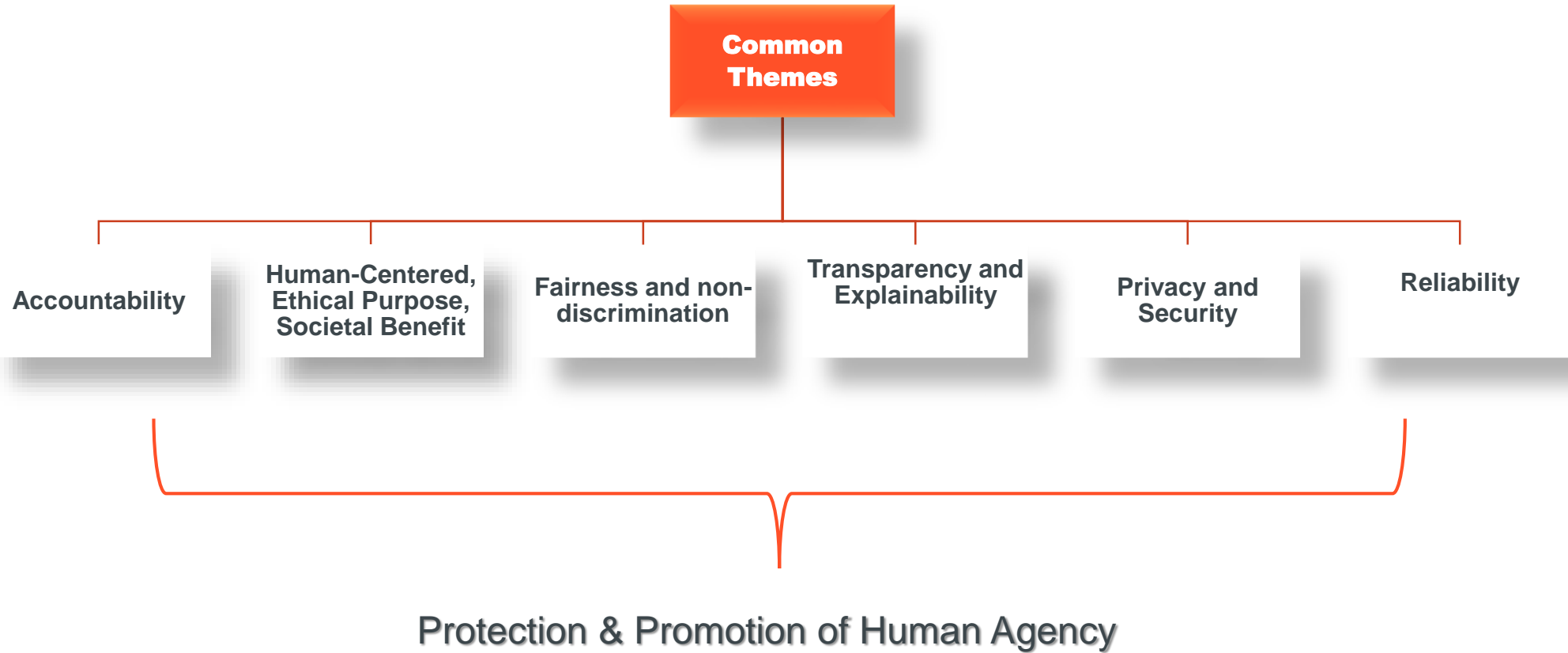


How A.I. Tools Could Change India's Elections

Avatars are addressing voters by name, in whichever of India's many languages they speak. Experts see potential for misuse in a country already rife with disinformation.

4. From Principles to Laws

Responsible AI: Core Themes



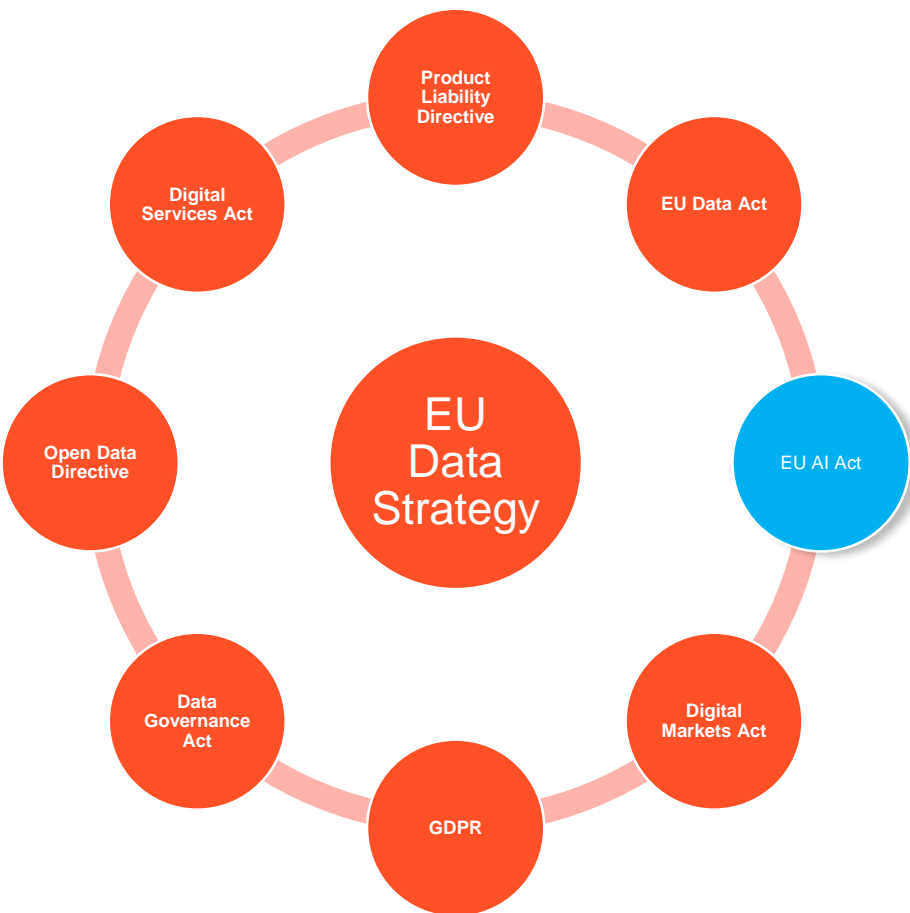
Emerging International Standards

- ISO/IEC 42001 - Artificial Intelligence Management System (AIMS)
- NIST AI Risk Management Framework
- IEEE



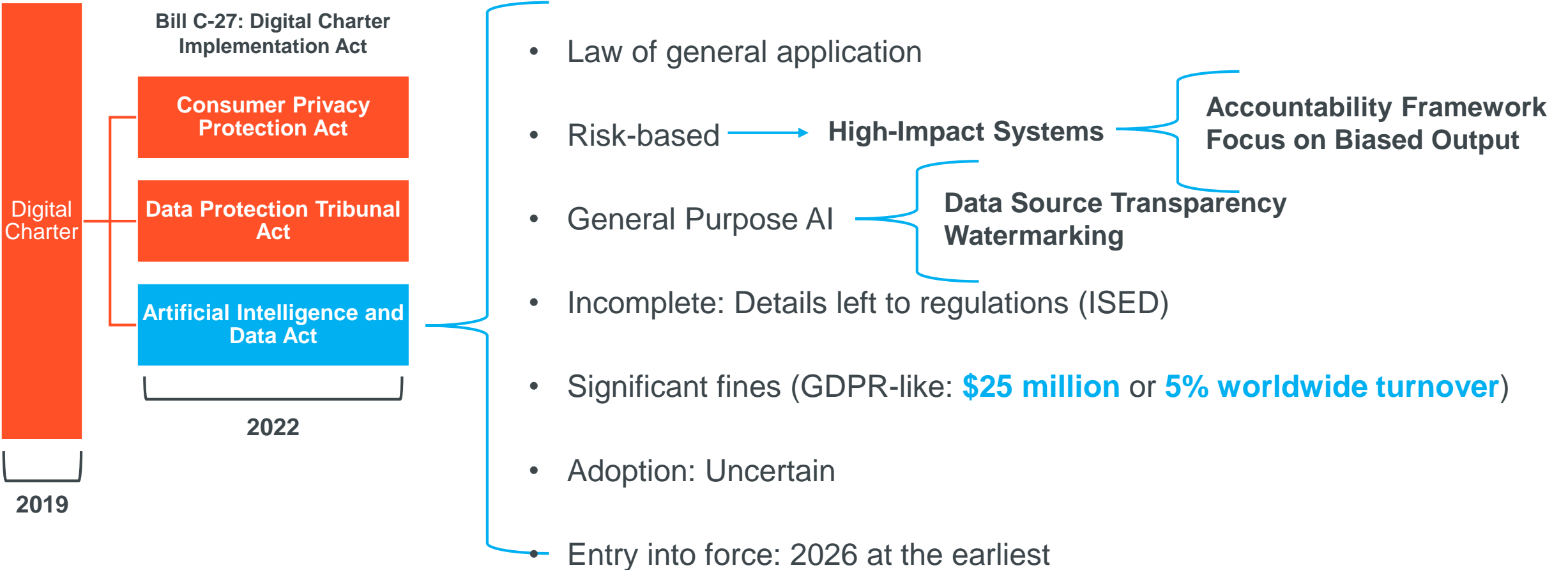


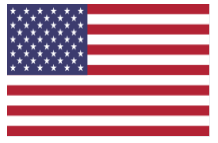
Regulatory Approaches - EU



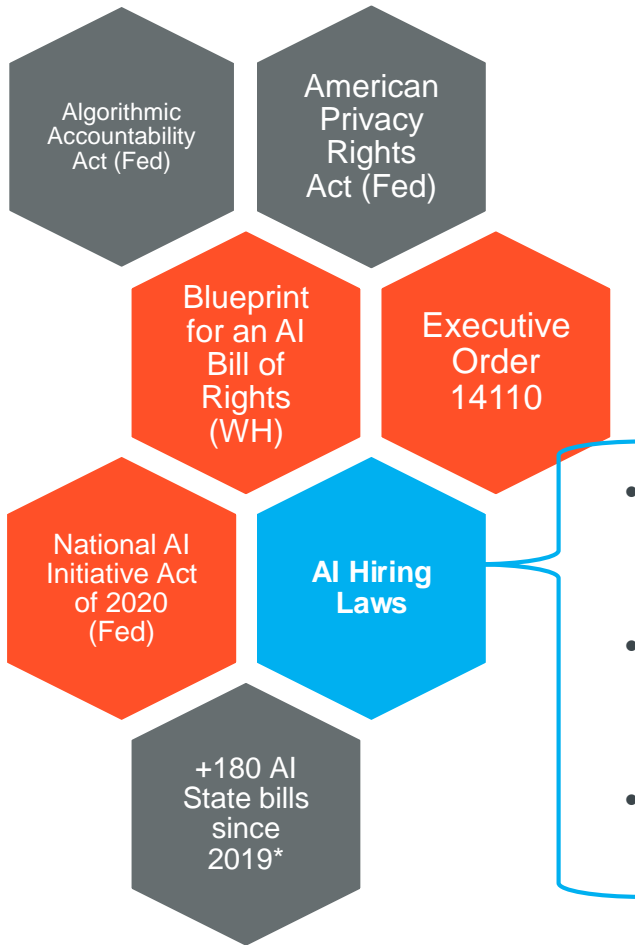
- Law of general application
- Risk-based
 - Unacceptable Risk: **Prohibited**
 - High Risk: **Conformity Assessment**
 - Limited Risk: **Transparency**
- Brussels effect?
- Significant fines (GDPR-like: **€35 million** or **7% worldwide turnover**)
- Adoption: 2024
- Entry into force: 2024-2026
- General Purpose AI as a *sui generis* category

Regulatory Approaches – Canada





Regulatory Approaches – USA



- A fragmented legislative landscape
- As there is no unified privacy protection regime at the Federal level, the same scenario is likely with AI
- A focus on bias mitigation and anti-discrimination

- Illinois' *Artificial Intelligence Video Interview Act* (2019)
 - Use of AI video/image analytics in job interview requires consent + information obligation
- Maryland's *H.B. 1202* (2020)
 - Use of facial recognition in job interview requires consent
- New York City's *Local Law 144* (July 2023)
 - Rules on automated employment decision tools
 - Requires annual bias audit

5. AI Governance

Responsible AI Governance

- AI Governance Committee
- AI Accountability and Risk Assessment Framework
- AI Policies
- AI Risk Impact Assessment Tools and Processes
- Vendor Management + Client management
- Revisiting IP strategy, IT Security, Data Protection
- Employee Training and Change Management
- Data Readiness and Testing
- Responsible AI by Design
- Incident Response

Take Aways

- AI-specific regulation is on its way in EU, Canada and US (moving beyond privacy and policy to new “AI law”)
- Fines for non-compliance are likely to be material
- AI litigation may start to shape AI risk analysis even before AI laws of general application take effect
- Digital trust has become an issue of central concern to both consumers and regulators
- Responsible AI must be built in by design

The Time for Responsible AI Governance is Now!

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Law School

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Québec, 1998

Practices

Procurement

Cyber/Data

Intellectual Property

Industries

Information Technology

Fintech

Strategic Issues

Cyber/Data

Artificial Intelligence



- Charles brings deep understanding of disruptive technologies, providing practical advice to help clients fully exploit the promise of innovative solutions while managing risk.
- Charles is the national co-leader of McCarthy Tétrault's Cyber/Data Group and former leader of our Technology Law group. He is the former President of the International Technology Lawyers Association (iTechLaw).
- Charles' practice takes a 360-degree approach to data, helping clients extract the tremendous value inherent in data, while at the same time managing the associated risks. He is a recognized thought-leader on the responsible deployment of artificial intelligence.
- In addition, Charles regularly serves as "breach coach" for our clients in matters of enterprise-wide risk, including on three of the largest cyber incidents in Canadian history.