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TRANSFORM

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A Data Faustian Bargain?: An Analysis of Government-Mandated Data Access

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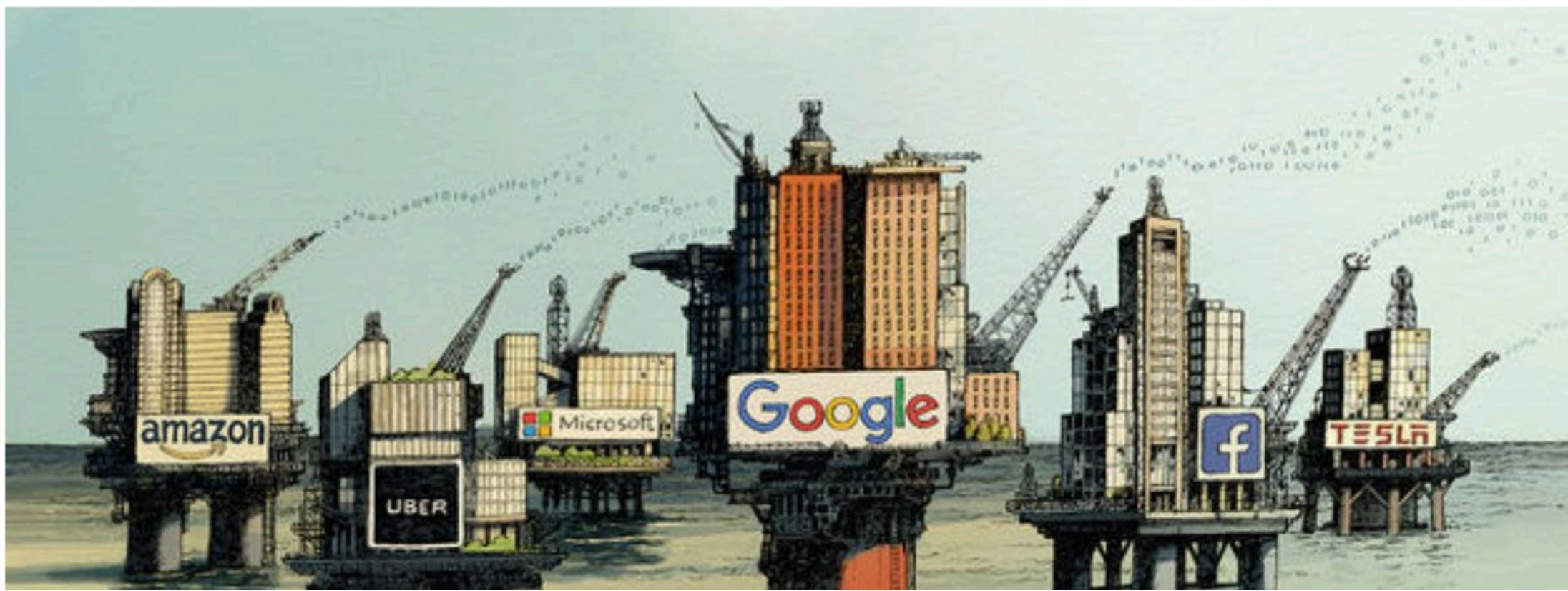
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More than half the world's population live under governments who have, or are considering mandating, government access to data

The world's most valuable resource is no longer oil, but data



Data as a Source of Power

Shifting notions of power due to confluence of cyber & emerging tech

In the past: power measured by military personnel, spending, iron and steel production, etc.

Mastering the 4 Vs of data (velocity, volume, variety, and veracity)

Power diffusion: thanks to the rapid pace of technological change and diminished price (or even open source) of digital capabilities, small countries or groups can have over-sized global impact

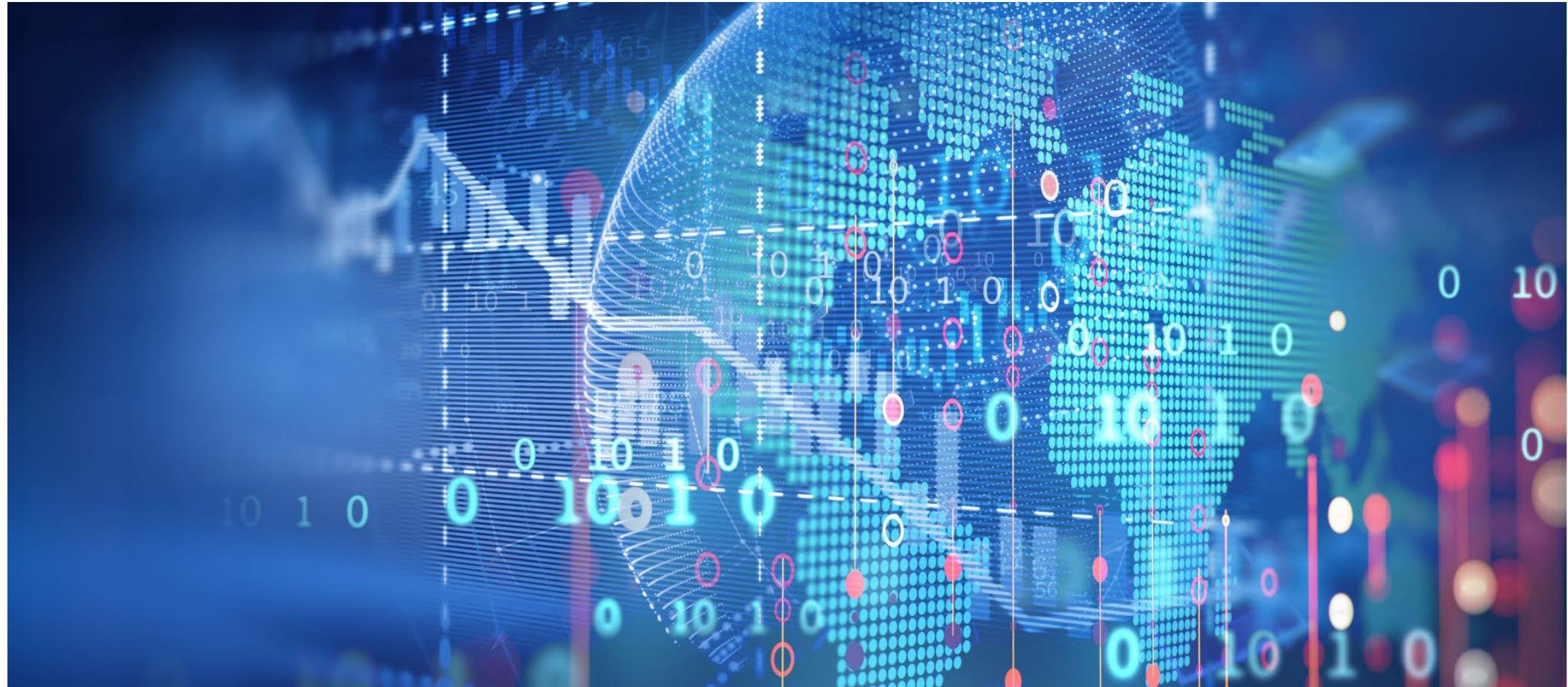
Data as an asset: Protection, loss, or manipulation of data can have financial, reputational, or existential implications for organizations

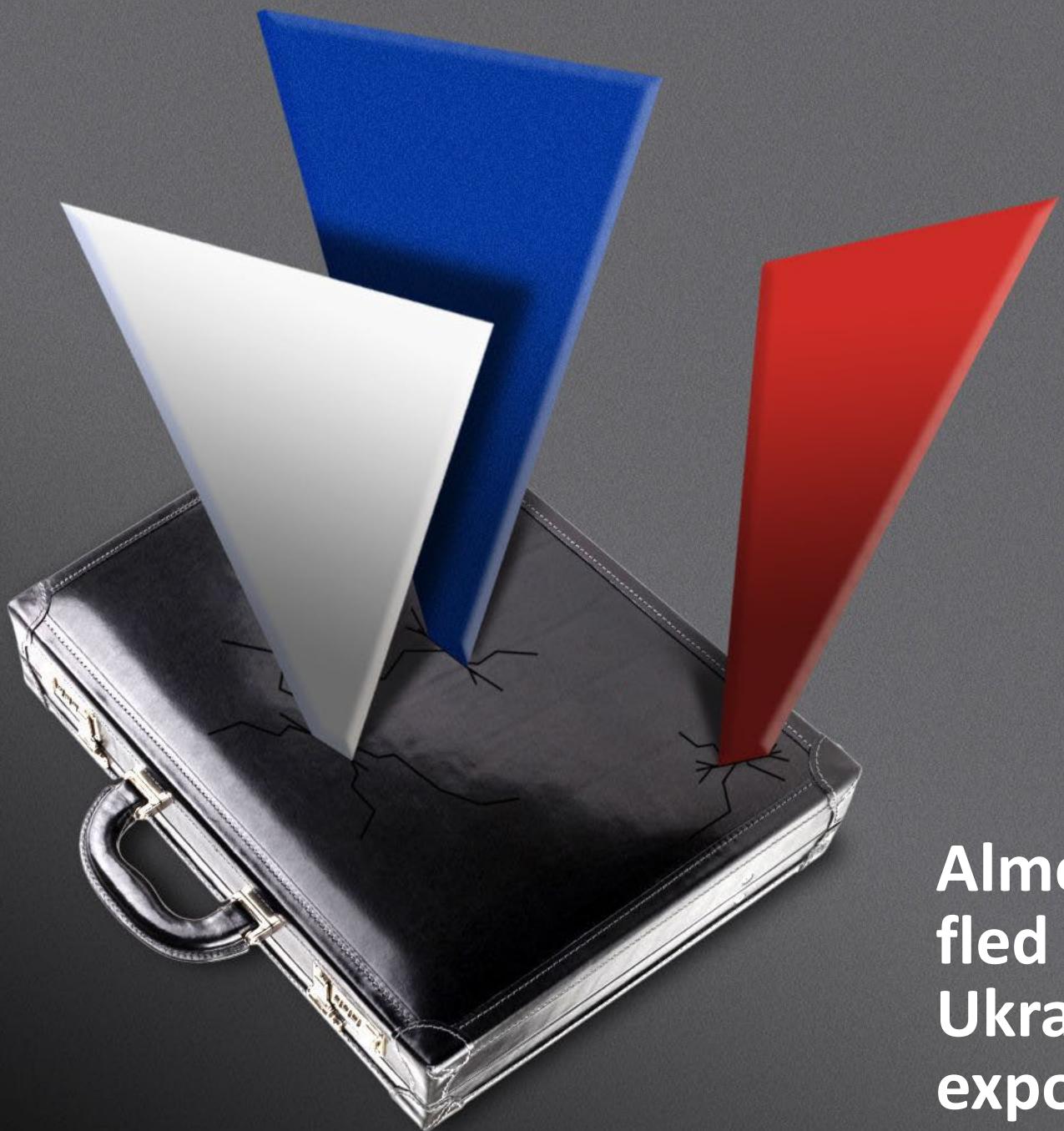


A Brief Story of the Data Faustian Bargain:

For 50 years, supply chains were designed to be cost-effective, but not resilient or secure. Organizations deprioritized security and resilience for market access. Global trade increasingly became digitized, leaving data at risk across the globe as governments increasingly demand data sovereignty within their borders.

The Average Global Brand Has Tens (if not Hundred) of Thousands of Suppliers in Hundreds (if not Thousands) of Global Locations





Almost 1000 companies have fled Russia since the invasion of Ukraine, leaving assets and data exposed

The Geography of Data Protection and Data at Risk

- Borders do exist on the internet
- Global businesses and their supply chains face very different data risks due to government access to data
- Where is data better protected and where is it most at risk?

➤ Let's Quantify It!



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Informing the Research Design

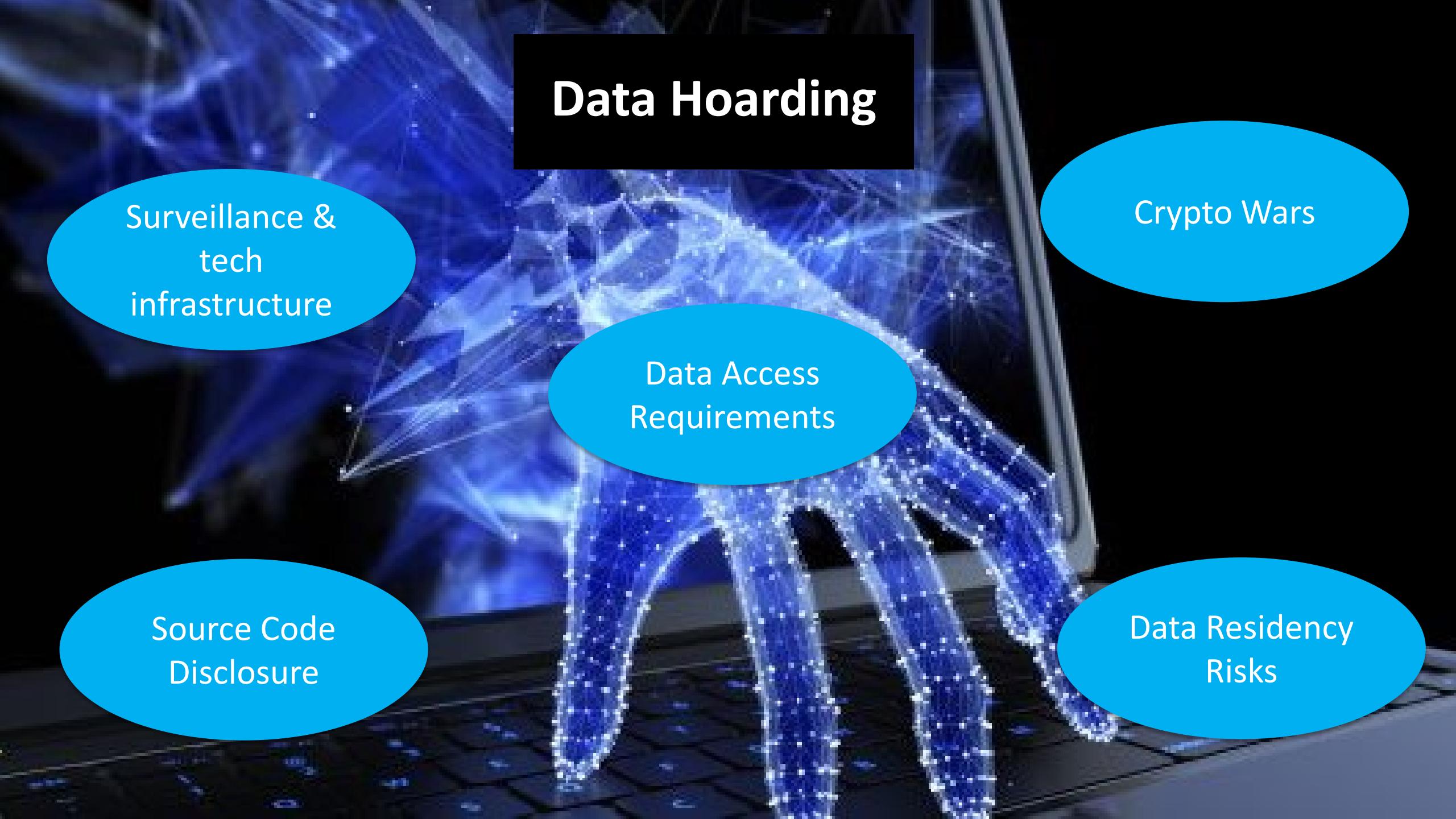
**Competing Techno-Ideologies and a Shifting
Regulatory Landscape**





Increasingly a Spectrum of Policies, Tactics, & Norms





Data Hoarding

Surveillance &
tech
infrastructure

Crypto Wars

Data Access
Requirements

Source Code
Disclosure

Data Residency
Risks

Data Protection

Lei Geral de
Proteção
(LGDP)

General Data
Protection
Regulation
(GDPR)

California
Consumer
Privacy Act
(CCPA)

Almost half of
Africa's 54
countries have
adopted some
form of federal
data protection

Data Residency
Risks

The current global leaders in diffusing digital and information strategies



The Rule Setters

China

- Cybersecurity Law
 - Since 2015, series of laws focused on cyber sovereignty, internet controls, state access to data or technical support to authorities, security standards
- Latest Five-Year Plan emphasizes tech self-reliance, data localization and government influence over data
- Personal Information Protection Law:
 - Came into effect November 1, mirrors GDPR but does not stop government access to data

European Union

- General Data Protection Regulation
 - Focused on transparency, security, minimization, purpose limitation, accountability, strict standards for data transfer outside of EU
- Recent discussions of banning facial recognition in public spaces

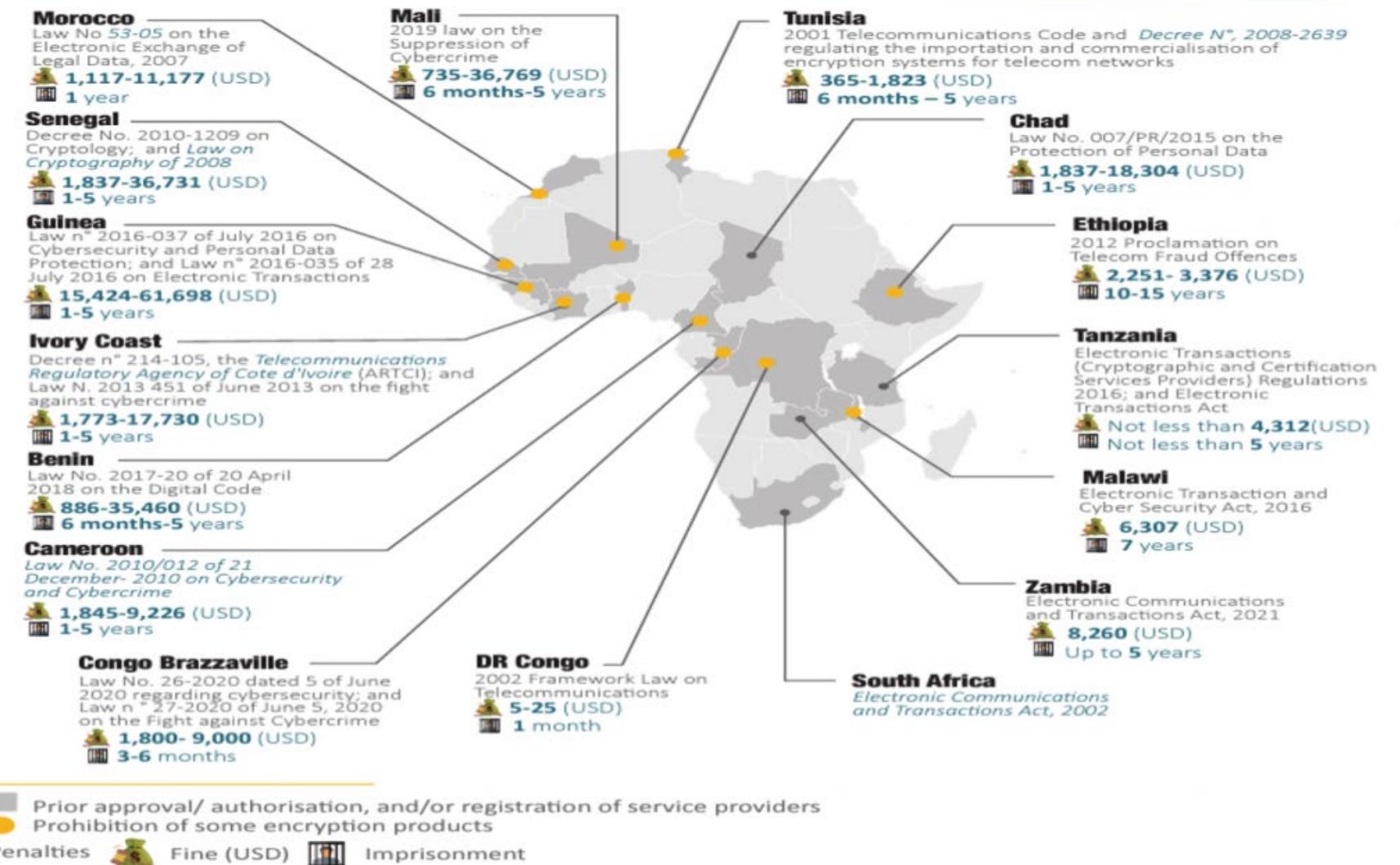
Just a Few of the Regulatory Shifts in 2021

- Botswana
 - The 2018 data privacy law was put into effect in October 2021
- Ecuador
 - A draft approved by the national assembly on May 10, 2021 and enacted on May 26, 2021
- United Arab Emirates
 - The UAE Cabinet enacted a new personal data protection law on 28 November 2021
- Brazil
 - Personal data protection to become fundamental right
- Belarus
 - A new data privacy law was signed on May 2021 and enacted November 2021
 - Includes definition of personal data, consent to process and collect data, process for cross-border transfers, liability for breaches, and creation of oversight body
 - Dramatic reduction over the past year in restricted Internet access, social media surveillance, and deadly force against online activists

And a Few More.....

- Indonesia
 - Court rules that the government can block internet data during unrest, and tightens MR5 Regulation requiring compliance to government requests for data
- OECD
 - Members split on government access to personal data (Australia, Canada, Japan, the U.K., and U.S. support “obliged access”)
- Government Use of Spyware
 - India: Top court investigates illegal surveillance, including government use of spyware against citizens
 - France: Final stages of contract negotiations to purchase spyware until officials learned it had been used to target French politicians
 - At least 18 governments have been linked to Pegasus spyware

Undermining Encryption for Data Access



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Building a Model

Constructing the Index



Assessing Data Access Risk

Data residency
requirements

Joint ventures

Federal data
privacy
protections

Encryption &
surveillance
policies

Source code
requirements

Transparency &
judicial oversight



Data Triangulation

The screenshot shows the official seal of the U.S. Department of State at the top left. Below it, the text "U.S. DEPARTMENT of STATE" is displayed. At the top right, there are links for "Press", "Business", "Employees", "Job Seekers", and "Students". In the center, there are two dropdown menus: "POLICY ISSUES" and "COUNTRIES & AREAS". Below these menus, the URL "Home > Reports > Bureau of Economic and Business Affairs > 2020 Investment Climate Statements > Mauritius" is visible. The main content area features a title "2020 Investment Cl" followed by "Mauritius" and a star rating icon.



Proposed New Internet Law in Mauritius Raises Serious Human Rights Concerns

BY JILLIAN C. YORK AND DAVID GREENE | APRIL 30, 2021



Personal expression and private discussion are generally unrestricted. However, critics of the 2018 ICT Act amendments have argued they could serve as a deterrent to unfettered online speech by ordinary users.

The screenshot shows the EFF's page for Mauritius. At the top, there is a green button labeled "Download the Factsheet". Below it, there are sections for "Fast Facts" and "Law". The "Law" section contains text about Mauritius' data protection laws, mentioning the Data Protection Act 2004 (DPA) and the Office of the Data Protection under the Data Protection Regulation. There are also sections for "Personal Data", "Collection and Processing", "Registration and Enforcement", "Cross-border Transfer", "Security and Breach Protocol", and "Complaint Portal". A green checkmark indicates that "Data protection law enforced". At the bottom, there is a note that the information was last updated on March 31, 2020.

Data in a Haystack Problem:

While some information is available from security and privacy sources, more expansive sourcing is necessary, including human rights and ‘ease of doing business’ research



Unstructured to Structured Text

- Each question aligned and coded such that low scores reflected less data protection/more invasive government intervention while higher scores reflected more data protection/less invasive government intervention
- Core areas:
 - Data storage
 - Restrictions on government access to data
 - Data protection law and independent oversight
 - Source code disclosure requirements
 - Joint venture requirements
- Global Coverage: 189 countries or territories

What the data look like

Coded Variables

- Data storage requirements
- Government surveillance and data access
 - Transparency over access to data
- Joint venture requirements
- Source code disclosure
- Federal data protection act
 - Independent data protection authority

Scale 0-16:

Higher Scores=Greater Data Protection

Country	WB/ISO3/UN Identifier	0=Local data storage required, or significant	0=Government open access over to data and	0=no transparency	Is there a joint venture licensing model:0=	0=Source code disclosure required if	0=No independent federal data protection	Federal data protection law does not exist = 0,	Total	Notes	Sources	
Afghanistan	AFG	2	4	1	2	2	0	0	11		https://www.dataguidance.com	
Albania	ALB	1	4	2	2	1	1	1	2	13	Information	https://www.state.gov/
Algeria	DZA	1	2	1	1	1	1	1	1	8	The Law provides	https://www.state.gov/
Angola	AGO	2	3	1	1	2	2	2	2	13	The Ministry	https://freedomhouse.org
Antigua and Barbuda	ATG	2	4	2	2	2	2	2	2	16		https://www.state.gov/
Argentina	ARG	0	3	1	2	2	2	2	2	12	Most of the bills	https://docs.microsoft.com
Armenia	ARM	1	3	2	2	2	2	2	2	14		https://www.state.gov/
Australia	AUS	1	3	1	2	2	2	2	2	13	health data	https://www.state.gov/
Austria	AUT	1	4	2	2	2	2	2	2	15		https://www.state.gov/
Azerbaijan	AZE	1	1	0	1	0	1	2	2	6		https://www.state.gov/
Bahamas	BHS	2	4	2	2	2	2	2	2	16		https://www.state.gov/

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Global Rankings

Results/Findings



Opposite Ends of the Spectrum

Government Intervention

- North Korea
- China
- Eritrea
- Iran
- Russia
- North Korea

And those in between:

- Pakistan 4 out of 16
- India 7 out of 15
- USA 11 out of 16
- Australia 13 out of 16
- Belgium 15 out of 16

Data Protection

- Antigua and Barbuda
- Bahamas
- Costa Rica
- Denmark
- Estonia
- Iceland
- Taiwan

Trends: The Good

- Over 100 countries with data protection laws
 - Many more have passed but are not yet enacted
- Accountability on the rise
 - Data protection laws in one country/region are changing behavior elsewhere
 - Fines and regulatory action may be at tipping point to prioritize data protection
- Growing global societal interest and movement for data protection

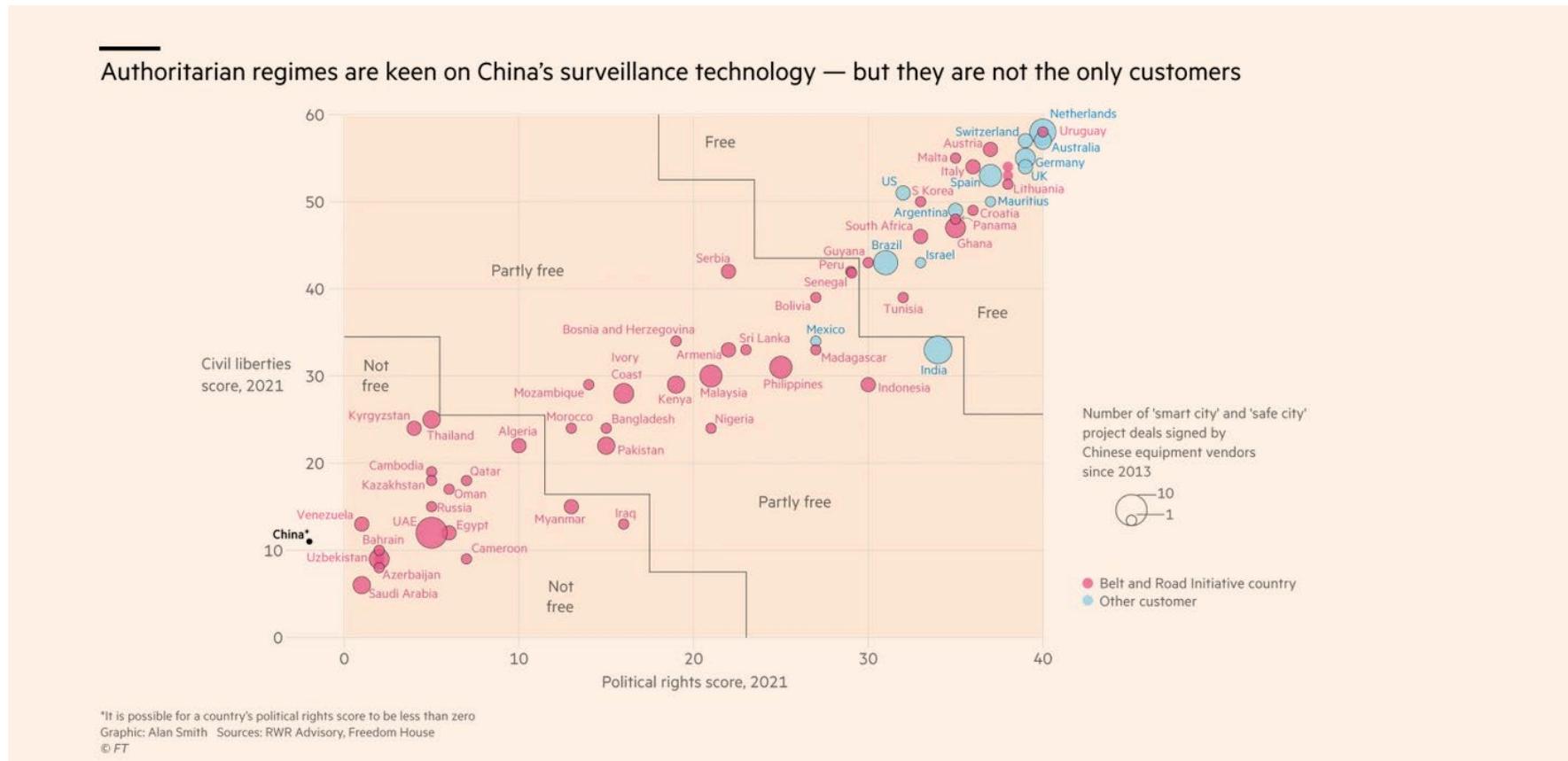
Trends: The Bad

- If you can't block them....
 - Censorship as a precursor to data access requirements
- Gaps between law and reality
 - Identifying scandals that demonstrate lack of adherence to data protection laws
- The rise of the rest
 - Copycat laws and policies across all regions
- Greater interference around elections
- Growing use of unchecked surveillance technologies

And the Data Traps

"If you allow another country to gain access to really critical data about your society, over time that will erode your sovereignty, you no longer have control over that data."

MI6 Chief Richard Moore



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Looking Ahead



Change is Coming Fast!

Zambian CSOs challenge constitutionality of newly passed cybercrime law

US government pushed tech firms to hand over source code

A turning point for privacy laws in Israel

Saudi Arabia Issues New Personal Data Protection Law

Oman approves data protection law

Ecuador Approves Data Protection Law

The UAE's new data protection law: key features and compliance tips

Expanding state surveillance: Organised crime and the PM's push for more police powers

Colorado Passes Data Privacy Law

Indian government launches trusted telecom portal

China makes genetic data a national resource

Russian lawmakers vote to force U.S. tech giants to open local offices

Lisbon gave protesters' data to foreign embassies

Russia draws up law to force taxi firms to share data with FSB -document

Hungarian government suspends some aspects of GDPR

New Data Security Law in China Makes Government Power Over Tech Giants Absolute

Facebook received 40,300 requests for user data from Indian government, restricted access to 878 items in India

Germany's New Surveillance Laws Raise Privacy Concerns

Geopolitical Shifts are Reshaping the Global Economy and Supply Chains (aka the new normal)



The Data Faustian Bargain is so Pre-Pandemic: The Movement toward Ally-shoring and Trusted Networks



Building Resilience Against Data Traps



Do Government Regulations Involve...

- Data protection and privacy?
 - Is there an independent data protection authority?
- National Security Exceptions?
 - Is there judicial review and guardrails?
 - Is the definition overly vague?
- Local data storage?
 - Are your products and services (or those across your partners and supply chains) impacted by localization?
 - Is your data subject to localization laws?
 - Is there rule of law and data protections?
- Joint ventures with local firms?
- Turning over source code?

What about your suppliers?



What to do Next: Minimizing the Data Faustian Bargain

- Next week
 - Integrate stakeholders from across the organization to assess what data may be at risk (including procurement, privacy, people operations, etc.)
 - This needs to be an iterative process that starts immediately but continues on a regular cadence
- First Six Months
 - Evaluate data access and protection policies when assessing corporate global footprint
 - Evaluate data access and protection policies when assessing supply chain partners
 - Explore the costs (e.g., potential data loss) and benefits (e.g., market access, labor, data protection) of each global location
- Within Six to Twelve Months
 - Ensure corporate data policies integrate the potential risks of a ‘data at risk’ regulatory environment, including data minimization, seizure, and data storage requirements
 - Maintain regular cross-departmental ‘data at risk’ reviews for all stakeholders to promote collaboration and permanently eliminate internal data silos
 - Include cost/benefit updates of geographic footprint
 - Integrate updated reviews on any shifts in the global data regulatory environment



**The Future is Now:
The Data Faustian Bargain and Geopolitical Shifts are Forcing
Companies to Reimagine their Global Footprint and Data Risks**

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Thanks!

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