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# AI Policy, Regulation and Law (module 9)

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# Outcomes

At the end of this module, you should be able to:

- Understand the role of policy, regulation and law in responding to social concerns about AI
- Reflect on the relationship between the ethical principles of AI and law
- Explore the legal responses to the use of AI for targeted advertising and in influencing consumers' decision-making



# Readings

1. Gilad Edelman, 'Why Don't We Just Ban Targeted Advertising?' *Wired* (24/04/2021): <https://www.wired.com/story/why-dont-we-just-ban-targeted-advertising/> (Links to an external site.) (Link to an external site)
2. Jeannie Marie Paterson and Elise Bant 'Privacy Erosion by Design: Why the Federal Court Should Throw the Book at Google Over Location Data Tracking' *The Conversation* (19/04/2021): <https://theconversation.com/privacy-erosion-by-design-why-the-federal-court-should-throw-the-book-at-google-over-location-data-tracking-159206> (Links to an external site.) (Link to external site)



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# Part A: Key concepts





## What we will cover in this lecture

Key concepts

The structure of  
law

The relationship  
between law  
and ethics



# Key concepts





# Policy

A **policy** is a deliberate system of principles to guide decisions and achieve rational outcomes. A policy is a statement of intent, and is implemented as a procedure or protocol.

<https://en.wikipedia.org/wiki/Policy>.



# Regulation

**Regulation** is the management of complex systems according to a set of rules and trends.

<https://en.wikipedia.org/wiki/Regulation>



# Law

**Law** is a system of rules created and enforced through social or governmental institutions to regulate behaviour,

<https://en.wikipedia.org/wiki/Law>

# The structure of law





# Public and private law

**Public law** concerns government and society, including constitutional law, administrative law, and criminal law.

**Private law** deals with legal disputes between individuals and/or organisations in areas such as contracts, property, torts/delicts and commercial law.

<https://en.wikipedia.org/wiki/Law>



# Judge made law and statute law

**Common law** (also known as judicial **precedent** or judge-made law, or case law) is the body of law created by judges and similar quasi-judicial tribunals by virtue of being stated in written opinions.

**Statutory law** or **statute law** is written law passed by a body of legislature.

<https://en.wikipedia.org/wiki/Law>



# The relationship between law and ethics

'At his best, man is the noblest of all animals; separated from law and justice, he is the worst.'

Aristotle





# Law and ethics

The two strongest influences on legal systems such as Australia or England that have a common law tradition are probably:

**Utilitarianism** is the view that laws should be crafted so as to produce the best consequences.

**Deontology** (Kant) is the view that laws should reflect our obligation to preserve the autonomy and rights of others.

[https://en.wikipedia.org/wiki/Philosophy\\_of\\_law](https://en.wikipedia.org/wiki/Philosophy_of_law)



# Law and the ethics of AI

Law and the principles of AI ethics do not cover precisely the same ground. However, they may be seen as:

- complementary, and
- mutually supportive.



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## Part B: Personalised advertising





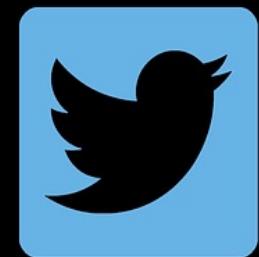
## What we will cover in this second part of the lecture





# Data collection, storage and use

follow us



# Data driven personalised advertising

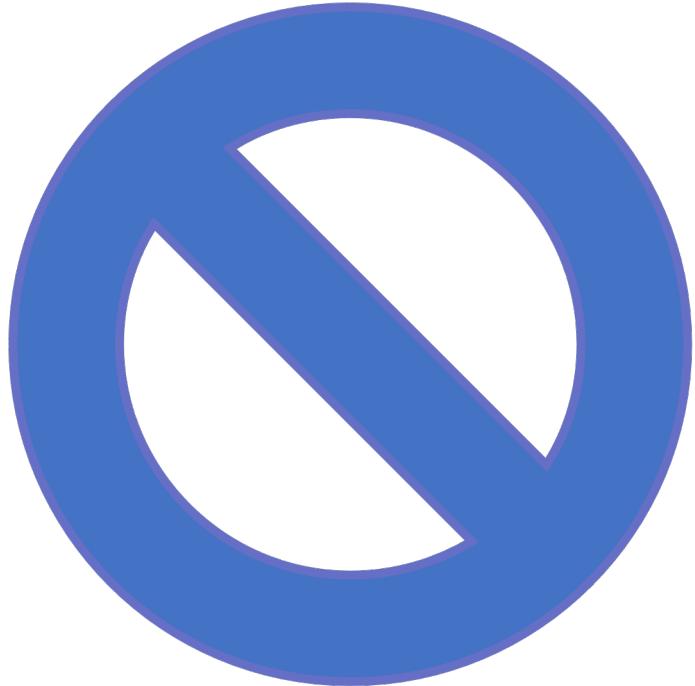
- *Contextual advertising*
- *Retargeting advertising*
- *Behavioural advertising*
- *Targeted advertising*
- *Differential pricing*





# Is there any harm in personalised advertising?

- *Lack of transparency*
- *Use of manipulation*
- *Undermines autonomy*





# Is there any harm in personalised advertising?

*Today's companies fastidiously study consumers and, increasingly, personalize every aspect of the consumer experience. Furthermore, rather than waiting for the consumer to approach the marketplace, companies can reach consumers anytime and anywhere. The result of these and related trends is that firms can not only take advantage of a general understanding of cognitive limitations, but can uncover, and even trigger, consumer frailty at an individual level.*

Ryan Calo, 'Digital Market Manipulation' (2014) 82 *George Washington Law Review* 995.



# **What law applies to protect consumers from the harms of personalised advertising?**



# *Privacy Act 1988 (Cth)*

APP 1: Open and transparent management of personal information, including a clearly expressed and up to date privacy policy

APP 3: Collection of solicited personal information, primarily only where it is reasonably necessary for the organisation's functions or activities



# Reform? Privacy Act

## Digital Platforms Inquiry Report

### Recommendation 16(b)

Strengthen notification requirements: Require all collection of personal information to be accompanied by a notice from the APP entity collecting the personal information.

### Recommendation 16(c)

Strengthened consent requirements and pro-consumer defaults.



# Australian Consumer Law (*Competition and Consumer Act 2010* (Cth) Schedule 2)

## Section 18

A person shall not, in trade or commerce, engage in conduct that is misleading or likely to mislead



# Litigation on misleading conduct around data protection

The ACCC has commenced enforcement action against:

<https://www.accc.gov.au/media-release/google-allegedly-misled-consumers-on-collection-and-use-of-location-data>

ACCC v Google (2021) FCA 367

<https://www.accc.gov.au/media-release/correction-accc-alleges-google-misled-consumers-about-expanded-use-of-personal-data>

Also on differential pricing and Tinder <https://www.choice.com.au/electronics-and-technology/internet/using-online-services/articles/tinder-plus-costs-more-if-youre-older>



# Reform? ACL

## Digital Platform Inquiry

### **Recommendation 21: Prohibition on certain unfair trading practices**

Amend the Competition and Consumer Act 2010 to include a prohibition on certain unfair trading practices.



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# Thank you

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