Reframing discussions about data privacy and interoperability

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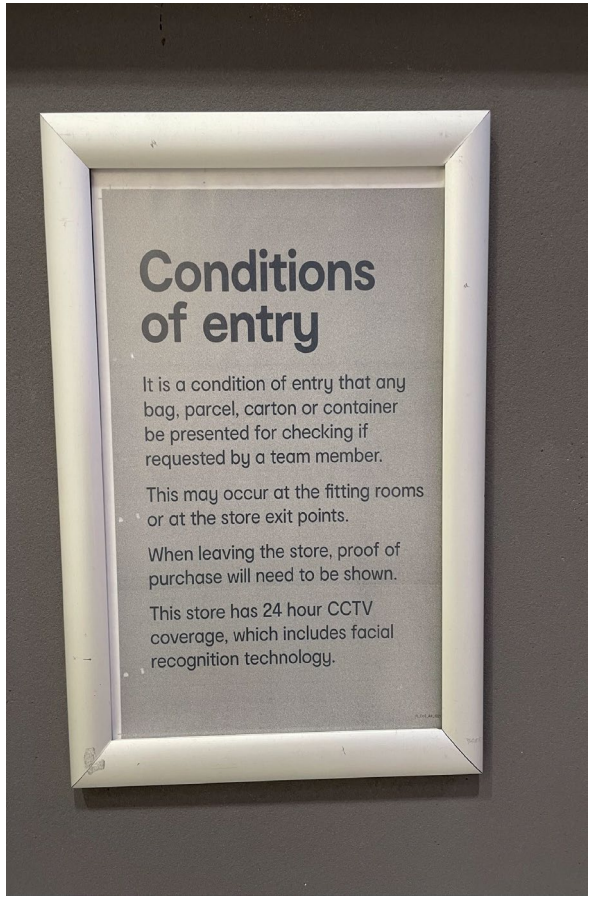
"At Kmart we are trialling facial recognition in a small number of stores for the limited purposes of safety and loss prevention (such as reducing refund fraud)"

"We are disappointed by CHOICE's inaccurate characterisation of Bunnings' use of facial recognition technology in selected stores. This technology is used solely to keep team and customers safe and prevent unlawful activity in our stores, which is consistent with the Privacy Act."

Bunnings notice



Kmart notice

https://www.choice.com.au/consumer-advocacy/policy-submissions/2022/june/complaint-oaic-on-use-of-facial-recognition

https://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/kmart-bunnings-and-the-good-guys-using-facial-recognition-technology-in-store

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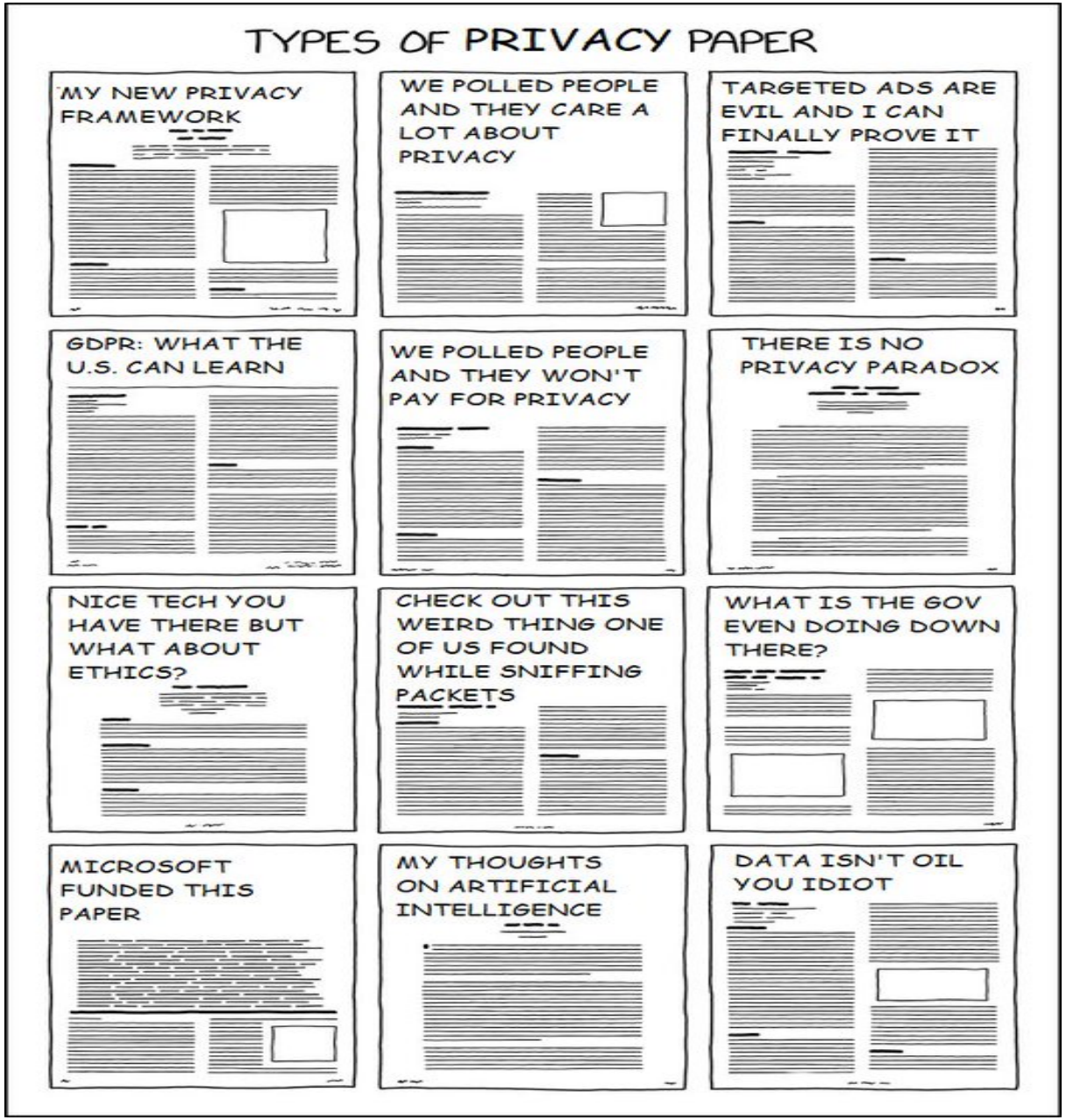
are we even talking about the same thing?

old frames about *data privacy disclosures*, *consent* and *individual entity compliance*

new frames of *information security*, *buyer's reasonable expectations*, *reliability/reliance*, *competitive neutrality* and *trustworthiness of multiparty data ecosystems*



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an emerging ‘digital trustworthiness’ debate

- new regulator and advocate focusses: *opaque* = misleading or untrustworthy, *excessive surveillance* through profiling, uses of geolocation tracks and biometrics, *safety* of children and other vulnerable groups
- transparency + understandability + user opt in/out controls + not misleading – no longer just ‘enhanced consent’
- no longer *papering your way to compliance:* new regulator focus on risk mitigation through PETs (privacy enhancing technologies) and ‘effective anonymisation’
- knowing what the other guy is *really* doing - multiparty data ecosystem management
- harms risk assessment and unanticipated profiling/singling out
- *fair and reasonable*: necessity + proportionality, but also user expectations
- no go zones, guardrails and codes

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new competitive pressures

- protection of identity: excessive surveillance, children and vulnerable groups, and attribute verification: a new battleground
- from BoTPA to BoS and BoT : SOCI, user security, hackers, password managers and passkeys – back to walled gardens?
- partitioning of data about users
- CX and data interoperability – the Australian CDR case study
- standards, codes and reasonable expectations: legislators and regulators passing the buck, or empowering industry?
- managing complexity: many issues, many regulators and many codes
- global regulatory divergence, not convergence – except for standards!

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It isn't easy to be 'responsible'

- compliance with law
- fair (incl. value allocation)
- transparent
- consumer expectations (sentiment)
- reasonable (not excessive: reasonably necessary and proportionate)
- safeguards + controls (accountability for shared data ecosystems and reliable outputs)
- who facilitates sensible user decisions about reliance?

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