

# Data Privacy and Use: What every compliance professional should know

Society of Corporate Compliance and Ethics  
Regional Compliance & Ethics Conference  
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## Overview

### Building and Maintaining Compliant Privacy and Data Security Programs

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### Spotlight – Artificial Intelligence

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Microsoft Corporation

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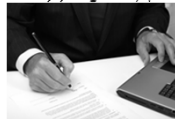
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## #1: Know Your Structure



- Know who is responsible for privacy and security program(s)
- Document YOUR policies and procedures



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## #2: Know the Language



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## #2: Know the Language

- Personal Data / Personally Identifiable Information / Personal Information
- Non-PII / Pseudonymous / De-Identified / Anonymous
- Data Controller / Data Processor
- Industry Specific Terms
  - Protected Health Information (HIPAA)
  - Nonpublic Personal Information (GLBA)
  - Customer Proprietary [Network] Information

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## #3 Know What Consumer Information Is Collected



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#### #4 Know How You Use and Share Consumer Information

##### Internal Uses

- Service Delivery
- Research / Development / Analytics
- Marketing / Advertising

##### External Sharing

- Service Providers / Data Processors
- Affiliates
- Business Partners
- Unaffiliated Third Parties

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#### #5: Know the Laws and Regulations that Apply

##### United States

- Federal
- State



##### Europe

- Data Protection Authorities



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#### #6: Know Your Commitments

##### privacy policy

- consumer choices
- how honored



##### contractual commitments

- PCI
- Self-Regulatory Programs



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## #7: Know How Your Information Is Secured

### Risk-Based Security

*"Implement appropriate technical and organizational measures" taking into account "the state of the art and the costs of implementation" and "the nature, scope, context, and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons"*

*"Implement a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the [entity] and the nature and scope of its activities."*



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## #8 Know What Insurance Coverage You Have

- Data security breaches routinely excluded from general liability policies
- Policies are starting to be more standardized.
- Some policies have extremely broad exclusions that effectively eviscerate most types of costs and claims that your organization may see.
- Policies differ on whether they cover data *privacy* issues as opposed to data *security* issues.
- **What to look for:**
  - ✓ "Sub-limits" on coverage amounts must match the risk.
  - ✓ "Sub-retentions" should not be set so high that they would almost never be reached.
  - ✓ The biggest risks should be covered (e.g., PCI fines, class actions, AG investigations).
  - ✓ "Voluntary" notice to impacted individuals should be covered.
  - ✓ Know who the "panel" attorneys are and whether all fees are covered.

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## #9: Know Your Service Providers and Their Practices

- Take steps #1 through #8, then apply them to your service providers / data processors
  
- Regulators will hold you accountable for the actions of the entities to whom you entrust your data

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**#10: Know What to Do When You Have a Problem**



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**#10: Know What to Do When You Have a Problem**

1. Incorporate legal counsel to preserve privilege.
2. Assign specific leadership and investigative responsibilities.
3. Provide a clear internal escalation plan.
4. Address the need for preserving evidence and provide appropriate resources.
5. Include internal and external communications plans.
  - a) Employees
  - b) Consumers
  - c) Insurance carriers and other third parties
  - d) Law enforcement
  - e) Government officials
  - f) Media
6. Include contact information for internal resources and pre-approved external resources.
7. **Be communicated, reviewed and tested**

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**Summary**

1. Know Your Structure
2. Know the Language
3. Know What Consumer Information Is Collected
4. Know How You Use and Share Consumer Information
5. Know Your Regulators
6. Know Your Commitments
7. Know How Your Information Is Secured
8. Know What Insurance Coverage You Have
9. Know Your Service Providers and Their Practices
10. Know Your Service Providers and Their Practices

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## Spotlight – Artificial Intelligence



Title

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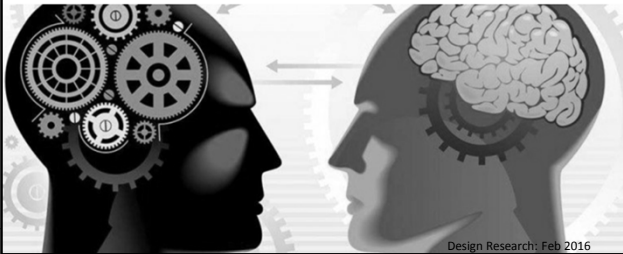
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## What is AI?



Design Research: Feb 2016

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## What is AI?

The theory and development of computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.

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### How is this a New Frontier?

- We're teaching machines to adapt to us
- We're enabling smarter use of machines
- We're democratizing the internet and the use of data

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### What Makes this possible?

- Technological advances in software, hardware
- Deep neural networks (deep learning)
- More data – images, speech, social networks – means greater precision
- Cloud data centers with scalable compute resources

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Conversation is the new platform for online experiences

Systems like Windows, Facebook, Slack and WeChat are introducing conversational services in order to make their platforms more engaging

And a set of new apps is developing that focus on conversation-based experiences, like InvisibleGirlfriend; and Xiaoice

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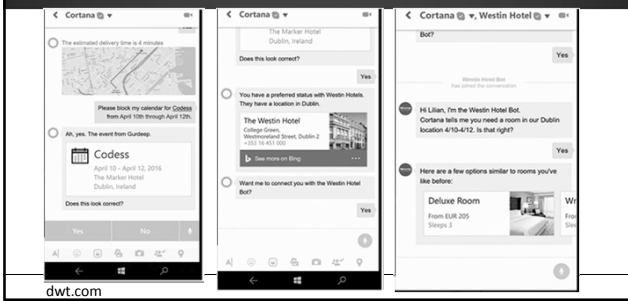
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**AI POWERED AGENT- YOUR NEW PERSONAL ASSISTANT - booking your trip**



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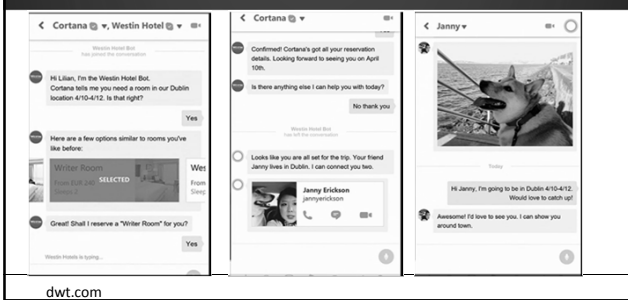
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**AI POWERED AGENT- YOUR NEW PERSONAL ASSISTANT- making your plans**



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**Facebook M**

M is a digital assistant that's part AI, part human. No gender personality, or voice, so far, but unique in its ability to complete real-world tasks.

- Human-assisted AI (hybrid)
- Digital assistant
- User starts a conversation with M



Until recently, M would draw users a picture when asked

Unlike most DAs, M can complete real-world tasks, including make purchases, planning weddings, and negotiating with cable companies. Top request so far: Restaurant suggestions and reservations.



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## Xiaoice

- Xiaoice is a natural language chat bot with the personality of a teenage girl and a rich database of online human conversations from which to draw.
- AI
- Social bot
- User must start a conversation with her on some platforms; on others she can proactively post

Xiaoice has a massive following and is particularly popular among men 16-24. Users share secrets with her and seem to think of her as a friend. Her image recognition feature is fun (and shareable!).



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amazon echo  
amazon.com/echo



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Microsoft

## Cognitive Services

My account

Home APIs Applications Developers Pricing

Vision	Speech	Language	Knowledge	Search
Computer Vision	Bing Speech	Bing Spell Check	Academic	Bing Autosuggest
Emotion	Custom	Language	Entity Linking	Bing Image Search
Face	Recognition	Understanding	Knowledge	Bing News Search
Speaker	Recognition	Linguistic Analysis	Exploration	Bing Video Search
Video	Recognition	Text Analytics	Recommendations	Bing Web Search
		WebLM		

Still looking for the right API? See the entire collection >

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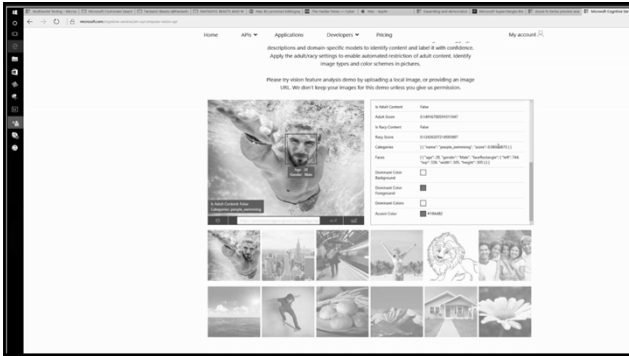
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**Privacy Issues to Consider**

Privacy issues to consider

- Notice and Consent in a new context
  - Protecting the Data from 3rd parties, rogue and government

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### Applying principles in a new context

- **Principles of Notice and Consent** – apply principles from cases involving online terms and ensure you obtain affirmative assent to terms within the experience
  - *Nguyen v. Barnes; Nicosia v. Amazon; Salameo v. Gogo*
- **Consider the context and ensure you factor in specific statutes** –
  - your child's playmate; factor in Children's Online Privacy Protection Act ("COPPA")
  - you're collecting biometric data; Illinois's Biometric Information Privacy Act ("BIPA"); *In re Facebook Biometric Information Privacy Litigation*, No. 15-cv-03747 (N.D. Cal. May 5, 2016).

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### Third Party Access

- **What's at Stake** – *Riley v. California*, 134 S. Ct. 2473 (2014), "Privacies of Life"
- **Issues to consider** –
  - cyber-security and rogue actors – have you adequately secured the data? FTC's expectations from Wyndham and beyond.
  - state actors – consider recent litigation from Apple and Microsoft in considering the balance between effective law enforcement and access to private data

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