

**Data ethics:  
digital dilemmas  
for the 21st  
century board**



# Just because the law allows you to use data in a particular way, should you?

Just over 10 years since the phrase 'data is the new oil'<sup>1</sup> was coined, the oil rush is gaining momentum. Companies are competing to create new markets and business models enabled by this rise in data, and unearth fresh insights about their customers to gain competitive advantage.

Why is there so much data growth? There are numerous factors, such as the use of smartphones, connected machines, online social interaction and the lower cost of collecting and using data. Data can be used to determine individual preferences, likes and dislikes and therefore how one might behave in different contexts. It is therefore incredibly valuable.

However, the opportunities provided by data come with unique ethical risks. Getting the balance right could give a competitive edge and promote growth. Conversely, getting it wrong could lead to long-term reputational damage and stakeholder mistrust, impacting the bottom line in a way that is often disproportionate and prolonged.

The impact of the digital rush has not been welcomed universally: privacy campaigners criticise the imbalance of power between technology giants and their individual users, and the asymmetrical distribution of economic value generated from data. Furthermore, they point to a lack of choice and transparency about how an individual's personal data is used, and therefore how inroads are being made into that individual's privacy, in the name of profit. For example, terms and conditions for online services can often be difficult to understand and unclear on the use of data, although consumers must make a binary choice to either accept them to access the technology, or refuse and be excluded.

The law sets out a number of requirements regarding the use of data – particularly around data protection, marketing, advertising and cybersecurity - which all companies must comply with. However, our view is that legal compliance is only one standard that a company should consider regarding its treatment of data. Indeed, given the rapid changes in technology as well as the exponential growth in the volume of data coupled with a similar increase in new usages and risks, it has become evident that law and regulation will always remain a few steps behind. As such, a well advised organisation should also assess the ethical standpoint behind their decisions to use data in a particular way.

Above all, boards need to have a clear response to the question, "Just because we can do it, should we?"

At EY, we have gained insights on how and why boards should form their own position on data ethics in the context of their own collective experience and objectives. We have developed tools, including the EY Data Ethics Navigator app, to assist boards to consider how they should act in relation to data ethics, after considering the inherent dilemmas and trade-offs unique to their businesses. A considered data ethics standpoint will enable businesses to make the most of their data by enabling them to implement practical steps to mitigate risks and generate sustainable value over the long-term.

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<sup>1</sup> Clive Humby, 2006 - [http://ana.blogs.com/maestros/2006/11/data\\_is\\_the\\_new.html](http://ana.blogs.com/maestros/2006/11/data_is_the_new.html).



# What is data ethics?



Data ethics looks at the potential moral interpretations of organisations' conduct when processing data, and acts as a compass to guide decision making. This goes beyond legal compliance as not everything that is legal can be said to be ethical. Our view is that as awareness grows of the ways in which data is being analysed, the ethical considerations could drive consumer sentiment in ways not seen before.

**In practice it is not always easy for a business to confidently say what is and what is not ethical. Given that the key tool behind making ethical judgements is logic, data ethics provides a way of analysing a difficult topic tied up with emotion, judgment and bias by using logic and reason.**

We believe that one is able to say that a particular course of action is 'good' or 'bad', and at the same time recognise that there are many different perspectives, none of which are 'right' or 'wrong'. It depends on where you sit on a sliding scale when considering moral trade-offs, such as the greater good vs. the individual, and revenue vs. individual choices.

In the same way that individuals have different perspectives, what is considered to be 'ethical' may be different for each business. Applying the moral trade-offs when considering key strategic questions - in the context of a company's collective experience and objectives - will help a company to develop its own standpoint on data ethics.

# The advantages of being ethical with data



We believe that having a long-term ethical data strategy has the potential to add value to a business by:

### **Building and maintaining trust with employees, customers and investors**

A sound data strategy which incorporates considerations of data ethics could help to engender long-term trust and provide a competitive advantage. For example, whilst an accepted mobile app privacy policy may permit a business to collect data about user movements even when not using the app, when this practice has been revealed to users it has caused concern and mistrust.

### **Protecting against reputational risk**

In the context of data, it is not only cybersecurity breaches that can harm reputation. A negative perception of how a business treats stakeholder data may cause disproportionate and prolonged brand damage. For example, it is possible to present users with different pricing for goods or services based on their mobile operating system (such as using the assumption that iOS users will have more disposable income than Android users). However, such pricing strategies have been viewed as unfair by consumers.

### **Complementing a business' Corporate Social Responsibility (CSR) standards and reporting**

There are numerous areas where companies commonly invoke standards which go well beyond the requirements imposed by law, such as anti-bribery and anti-slavery policies. In our view, companies should also consider whether it is appropriate for them to have ethics incorporated into their data strategy and information management processes. There is a case for addition of data as an asset to corporate sustainability reporting and management of that asset in an ethical manner. For example, the Sustainability Accounting Standards Board (SASB) already includes data security and customer privacy as material sustainability issues.

### **Guiding long-term decision making on data**

A coherent position on data ethics may help businesses to make decisions on how to unlock the value in data for the present day and for the long-term. Although it should be noted that there are a number of instances where short-term decision making has been reconsidered when the long-term effects have become evident. For example, a European financial institution reversed its decision to share profiled information on user's spending habits when it was clear that this could impact future revenues if users elected to use other payment methods in protest.

# Why isn't compliance with the law enough?

It may be. However boards need to consider how their decisions will impact on the perception of their business. In particular, whether the use of data in ways which are technically compliant but which may give stakeholders or investors cause for concern is the correct way to run the business.

Most compliance professionals would say that compliance is not just about managing the risk from failing to obey the law but also failure to adhere to standards and ethical principles. Boards are expected to have clear ethical positions and stakeholders are unlikely to treat kindly corporate leaders who defend their actions on the grounds that such actions are not illegal and should therefore be tolerated. For example, there are numerous instances where boards have been forced to backtrack on perfectly legal executive remuneration packages where these have been perceived as unethical compared to the pay of ordinary workers.

From a corporate perspective, one could argue that all that matters is that companies act in the interests of their shareholders and this interest is the pursuit of profit. However, this is

a very narrow world view focusing on short term outlook only. Companies do not exist in a vacuum. They form an important part of society and communities. Why else bother with a CSR agenda? Some cynics would say these agendas are pursued for reasons of etiquette or aesthetics but the resource and commitment behind some programmes would suggest otherwise. The vast majority of organisations - even the ones that have only a few token lines in their annual accounts about how they have met their compliance obligations - do not pursue profit without limits.

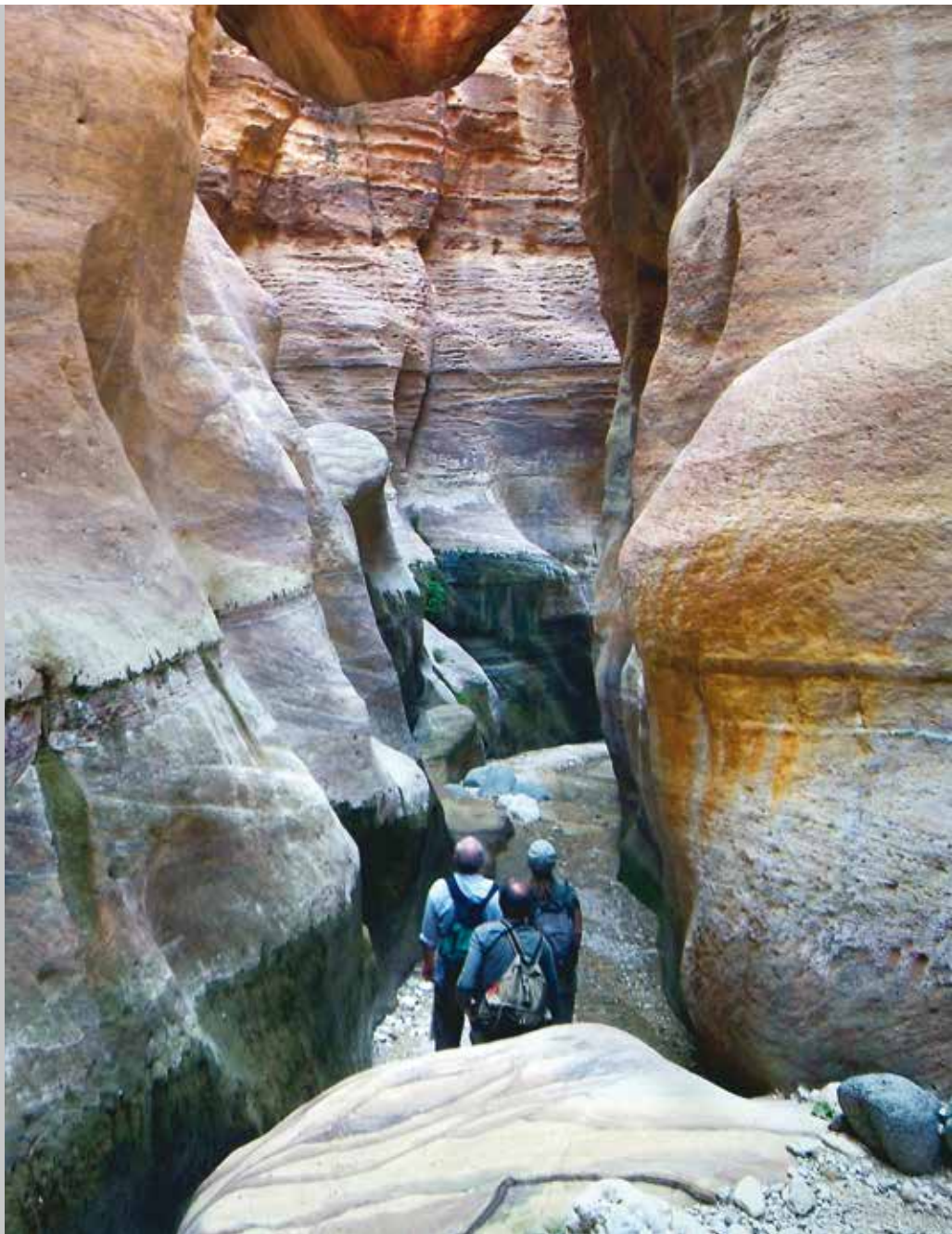
The law, and the process of enacting laws, is a response to developments in society. Laws change to reflect changing society and new laws are enacted to deal with novel situations. In respect of rapid changes to technology, the law is almost always having to play catch-up. One example is the e-Privacy Directive which was passed by the European Union in 2002. Since it was drafted there has been an explosion in the use of instant messaging, voice over internet protocols and email applications that simply have not been catered for in the legislation.

Accordingly, whilst the law lags behind practice, there is the possibility for companies to take advantage of seeming loopholes in the current regulations to drive profits. However, this may be at the expense of customer or investor trust, the risk of long-term brand damage or even regulatory action. For example, where organisations have crossed the 'red line' and are now being pursued by the regulators through laws being applied retrospectively such as in case of where entities have exploited tax loopholes which were legal at the time.

Of course, companies and those that lead them are subject to the rule of law: behind the rule of law are assumptions about what is or is not morally right. This is not a question about whether or not you should obey the law but about engaging in debate about whether data should be used at all costs, particularly as society and technology changes.



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# How can a board use ethics to impact their decision making about data?

Ethics gives the board the opportunity to take a long-term view by applying clarity of thought when making challenging decisions as to the use of data. This is after all what stakeholders demand when they call for good corporate governance: they demand that leaders of the companies they invest don't merely bounce from quarterly earnings report to quarterly earnings report but provide value over the long-term.

Leaders need to have high quality boardroom conversations that clarify the underlying ethical issues and then use those decisions and trade-offs to keep business moving.



CEOs and boards can draw upon their own expertise and the collective knowledge that resides within their companies to then put data ethics into practice. Due to the pervasive nature of data, this strategy could be relevant to many elements of a business, in particular, when:

**Articulating the purpose, vision and brand**

**Making decisions as to what data is collected and why, how it is monetised, what inferences to make from analysed data and whether (and if so how) the value from data is redistributed with all the stakeholder groups**

**Forming internal culture based on a data ethics code of conduct/moral data governance**

**Developing services, new functionality and capabilities**

# How to bring data ethics to life

A company that has a clear vision on what conduct it considers to be ethical is able to:

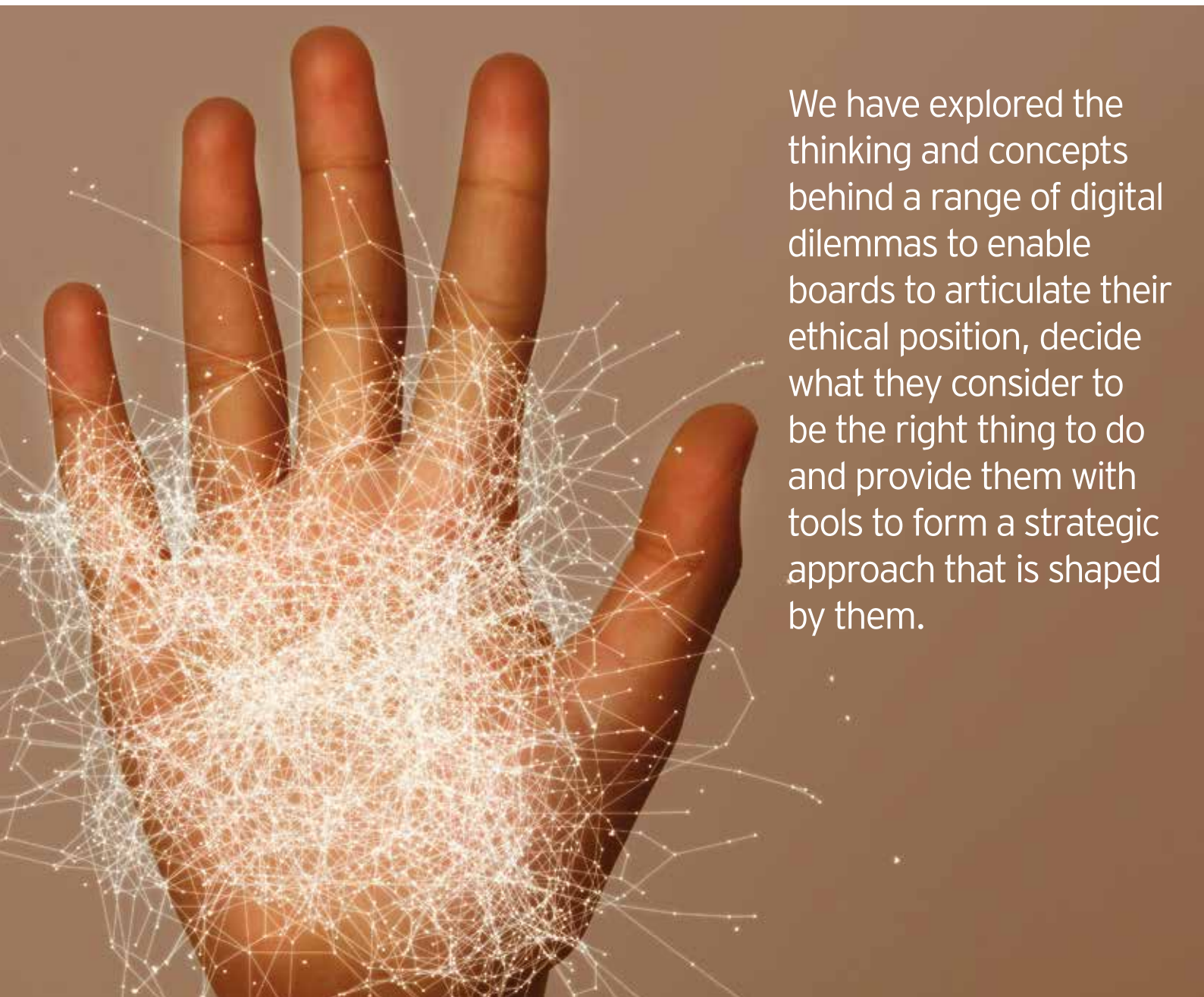
Set the 'red lines' it will not cross when using data (no matter if legal today).

Assess the potential ethical risks of treating data in a certain way.

Raise awareness within that business with a data ethics policy, and have a clear basis for challenging decision making on the treatment of data.

Communicate its ethical standpoint to employees, customers and investors.

Prepare for the rise of artificial intelligence (AI), where some decision making will eventually move from humans to machines. As AI is based on data, humans will need to train the machines to make decisions within acceptable ethical parameters.



We have explored the thinking and concepts behind a range of digital dilemmas to enable boards to articulate their ethical position, decide what they consider to be the right thing to do and provide them with tools to form a strategic approach that is shaped by them.

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