



# Hyper-personalized advertising: One size does not fit all

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**ReedSmith**  
Driving progress  
through partnership

# Personalization



**Customer location**  
**Region**  
**Urban/Rural**  
**ACORN Classification**

**Age**  
**Gender**  
**Occupation**  
**Socioeconomic Group**

“Customers within 10 miles of the M25”

“A Level University Students”

**Geographic**

**Demographic**

“Customers are wanting a value for money impulse buy”

“Customers who prefer to buy fairtrade food”

**Behavioral**

**Psychographic**

**Rate of usage**  
**Benefits sought**  
**Loyalty status**  
**Readiness to purchase**

**Personality**  
**Lifestyle**  
**Attitude**  
**Class**

# How Target Figured Out A Teen Girl Was Pregnant Before Her Father Did

Creepy marketing: My dad is in assisted living. Today, he received a Christmas basket from the local mortuary.

4:36 PM · Dec 23, 2016



♡ 22    💬 Reply    ↗ Share

[Read 1 reply](#)

From: [adidas Running](#) >



[Hide](#)

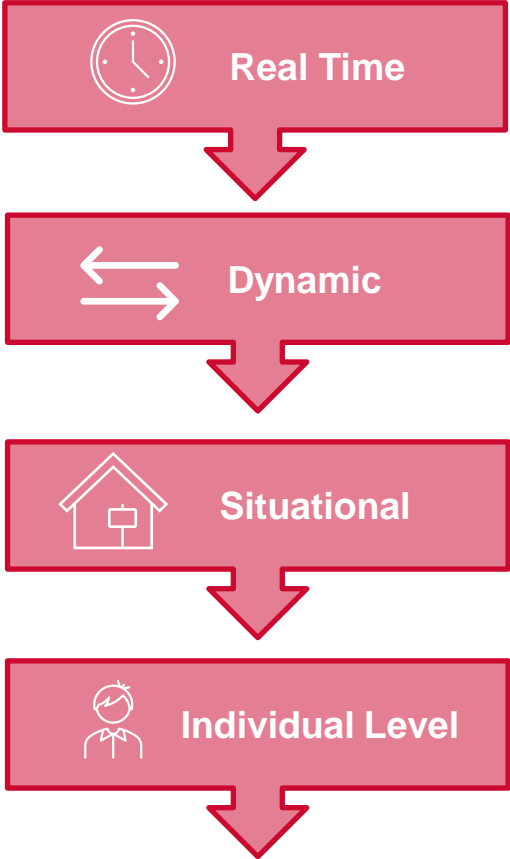
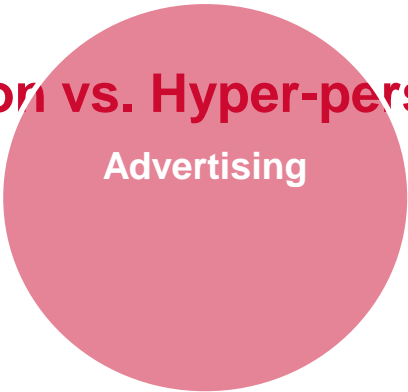
**Congrats, you survived the Boston Marathon!**

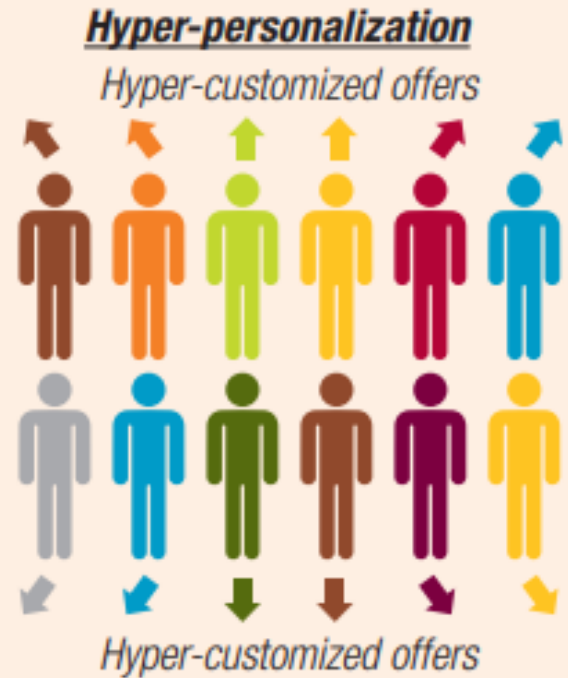
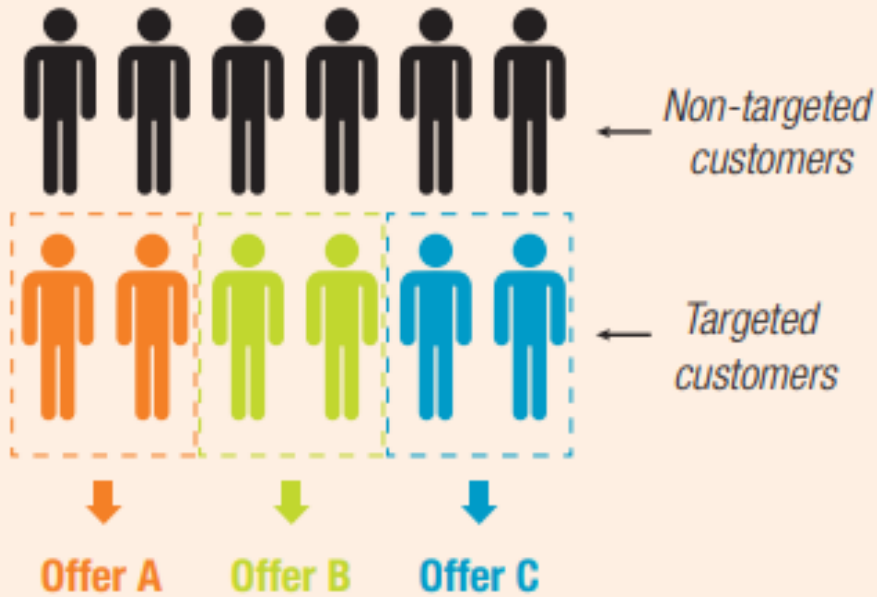
Today at 12:37

[View this email online](#)



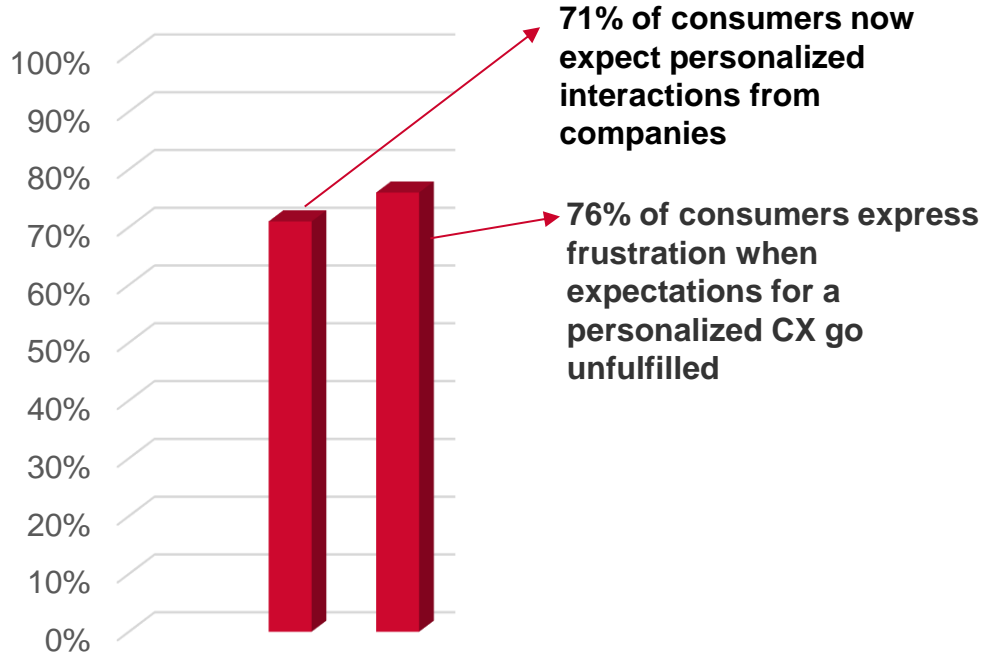
# Personalization vs. Hyper-personalization





# McKinsey Report

## Consumers



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## Customized customer experiences (CXs) can:



Lift revenues by 5-15%

Increase marketing ROI by 10-13%

Some companies even saw revenue growth of up to 25%



Reduce customer acquisition costs as much as 50%

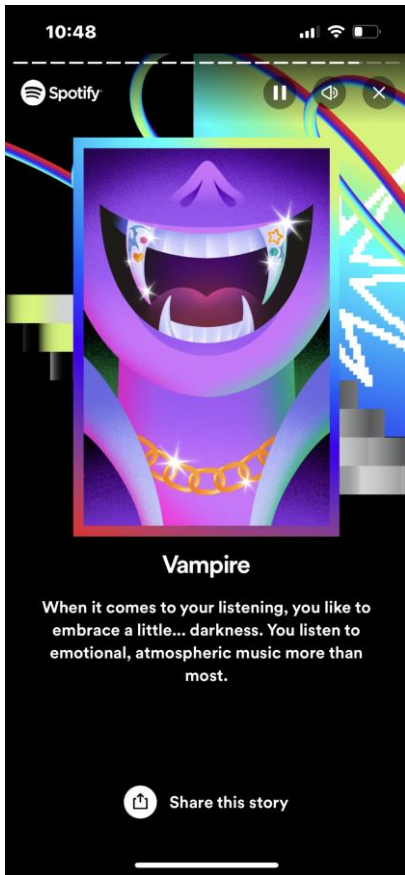
## What makes it hyper personalized vs personalized

- **Not just segments but your unique behavior and preferences**
- **Changes in real time based on external factors**
- **Adapts as you adapt**

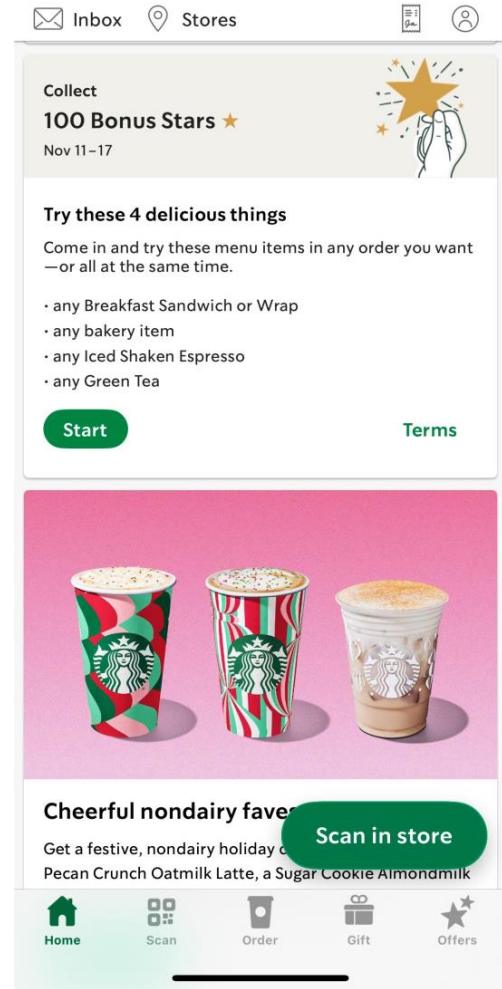
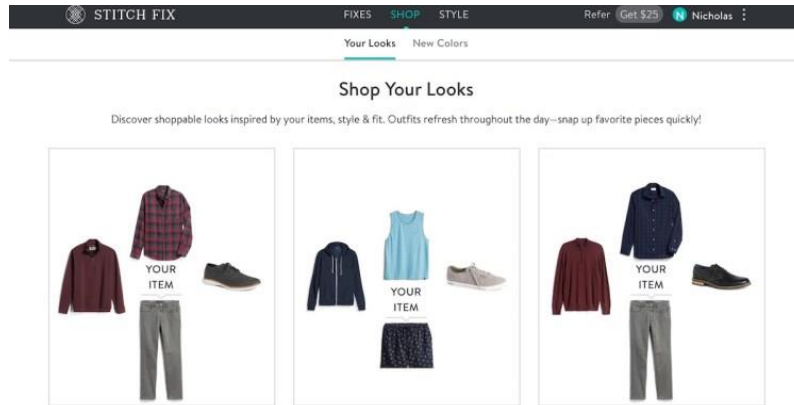
## Examples of hyper-personalization

- **Recommendation engines**
- **Offer structures**
- **Individual goals and metrics**
- **Unique content**
- **Custom deals**
- **Virtual assistants**





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# Agenda

1. Advertising Considerations
2. Privacy Considerations
3. AI Considerations
4. Questions?

# Advertising Considerations



# Active vs. Passive Personalization

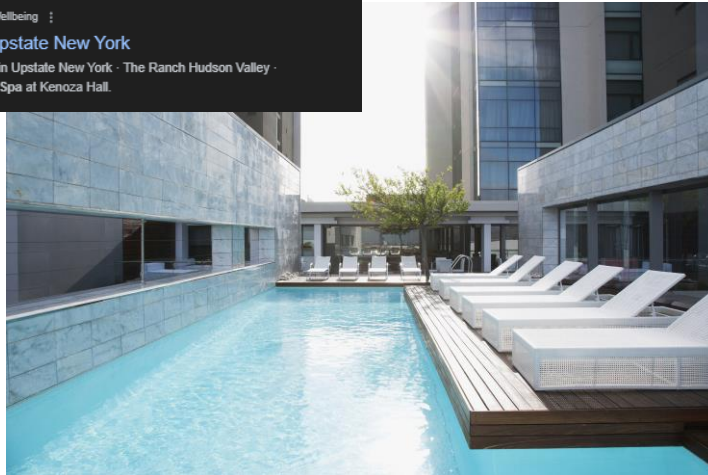
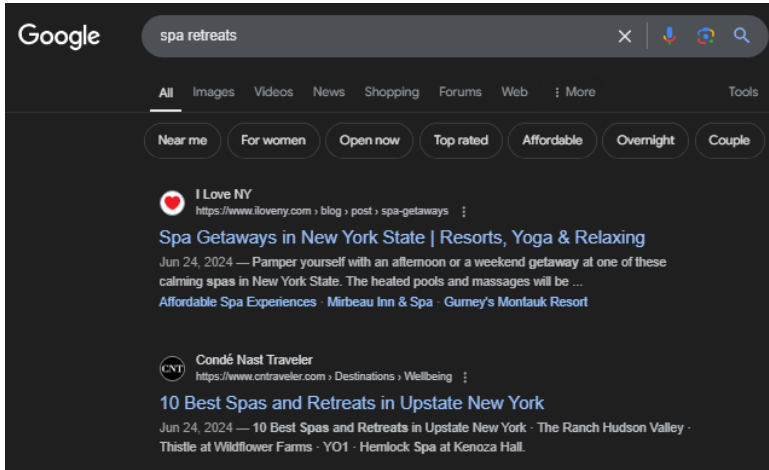
## Passive

- Via ad tracking and pixels
- Anticipating needs and wants via data and AI
- Generating images and content
- Listening

## Active

- Consumer input and known engagement with brand
- Use of surveys
- Experiences and events
- Less “creepy” more opportunity for disclosures and consent

# Travel company adapts its website based on the keyword a user types and which paid ad they click on.



By **hand-picking hotels and holidays** for members, company acts as an agent for the suppliers, tour operators and hotels featured on the site.

Here are our top deals of the week! With even bigger discounts, these are some of our best offers to book right now, but **they're up against the clock**, so if you want to snap up these savings **you'll have to be quick**.

These **special prices on handpicked offers** give you the very best value that you won't find anywhere else.

**Don't hit snooze** on these savings, find your dates and **book fast!**



# Legal Considerations

- Tracking
- Claims that items are “Hand picked” or personally curated
- Pricing and discount claims, using AI to provide pricing
- Speed to commit / Avoiding dark patterns
- Geolocation data

# Personalized Pricing

- Requires large datasets with fast analysis. Tailors price to the individual customer's perceived value of the product and their engagement with it.
- Challenges: data analysis and management, as well as the risk of antitrust claims, price discrimination and false or misleading advertising.
- FTC warned that the use of algorithms to assist in determining prices may violate federal antitrust laws, regardless of the business or industry.



# False or Misleading Claims

- “Hand picked” or “Personally curated” options
- “We choose only the best options for our customers”
- Materiality to purchase decision?
- Consider whether the ad is aimed at children?
- Context considerations





# Speed to Commit/Dark Patterns

## Personalization + Speed to Commit + Additional Tech

### FTC takes issue with:

- Hiding or delaying the disclosure of information that might affect a consumer's purchase decision
- Interface interferences - techniques such as obscuring important information or preselecting options that frame information in a way that steers consumers toward making decisions more favorable for the business
- Obstruction and/or Misdirection
- Encouraging individuals to provide more personal information than they intended or need to provide



Give up trash. Start eating Keto.

Finish your order in  
**15 minutes**, and save

**EXTRA 15% OFF!**

**1 5 : 0 0**

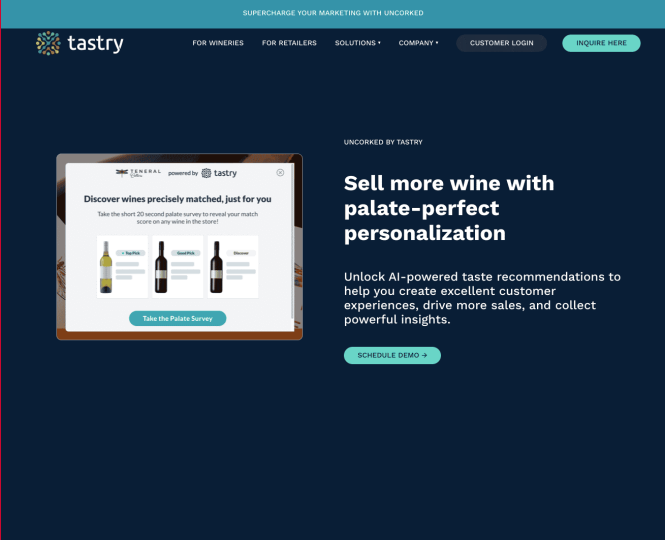
Can't resist 🤪

To <b>Los Angeles</b>	Arrival <b>14:25</b> Sat 08 Nov	Stops <b>1</b> ⓘ	Flight duration <b>9h 65m</b>
Only 1 seat left at this price!			
To <b>London</b> Heathrow	Arrival +1 <b>12:00</b> Fri 21 Nov	Stops <b>none</b>	Flight duration <b>6h 45m</b>
Only 8 seats left at this price!			

€ 222.<sup>18</sup>

# Use of Consumer Surveys

- **Generate more personalized content and recommendations**
- **Consider the nature of the data needed**
- **Recommendations sent via text or email, consider TCPA, Can-Spam, as well as the nature of the information that may be delivered in email (is it sensitive?)**
- **Use of data for training AI**



The screenshot shows the Tastry website interface. At the top, the Tastry logo is on the left, and navigation links for 'FOR WINERIES', 'FOR RETAILERS', 'SOLUTIONS', 'COMPANY', 'CUSTOMER LOGIN', and 'INQUIRE HERE' are on the right. Below the navigation, there is a section titled 'UNCRORKED BY TASTRY'. The main content area features a survey titled 'Discover wines precisely matched, just for you' with a sub-header 'Take the short 20-second palate survey to reveal your match score on any wine in the store!'. Below the text are three wine bottle images and a 'Take the Palate Survey' button. To the right of the survey, there is a headline 'Sell more wine with palate-perfect personalization' and a sub-headline 'Unlock AI-powered taste recommendations to help you create excellent customer experiences, drive more sales, and collect powerful insights.' Below this is a 'SCHEDULE DEMO' button.



# Virtual Influencers

- Avoid making direct claims that indicate the character actually “used” the product or took part in the experience that is being promoted
- Disclose material connections to brand
- Avoid misrepresenting brand’s efficacy through images
- Disclosure requirements
- Platform considerations
- Creator Liability



# Bot Disclosure Laws

Requires bot deployers to disclose that users are interacting with bots when bots are used to "knowingly deceive" a person for the purpose of incentivizing a commercial transaction or influencing a vote in an election.

Affected companies need to disclose that they are utilizing bots to interact with consumers and other covered entities.

Such disclosures must be "clear, conspicuous, and reasonably designed to inform persons with whom the bot communicates or interacts that it is a bot."

Cal. Bus. & Prof. Code  
§ 17940-17942.



## More...

- **Utah**
- **Colorado**
- **New York**
- **Global requirements**
- **Platform disclosures**

# Incorporating UGC

- Joan is Awful Campaign
- Viewers were invited to upload photos of themselves and 'join the Streamberry family', only to find themselves designed into a drama.
- Promotional
- Disclosures
- License



A close-up photograph of two hands reaching towards each other, with one hand's index finger touching the other's. The background is dark and blurred. A white rectangular box is overlaid on the left side of the image, containing the text 'Privacy Considerations'. A white line extends from the top right corner of this box, passing over the hands and ending at a smaller, semi-transparent white box on the right side of the image.

# **Privacy Considerations**

The background of the slide features silhouettes of five people holding hands in a circle, set against a vibrant sunset or sunrise sky with warm orange and yellow tones. The silhouettes are dark, creating a strong contrast with the bright background. The overall composition is centered and balanced.

# **Hyper- personalization vs. Data Privacy**





# Evolution of Personal Data

“Personal information” “means information that identifies, relates to, describes, is *reasonably* capable of being *associated* with, or could *reasonably* be *linked*, directly or indirectly, with a particular consumer or household.” - CCPA



# Considerations for Optimization:

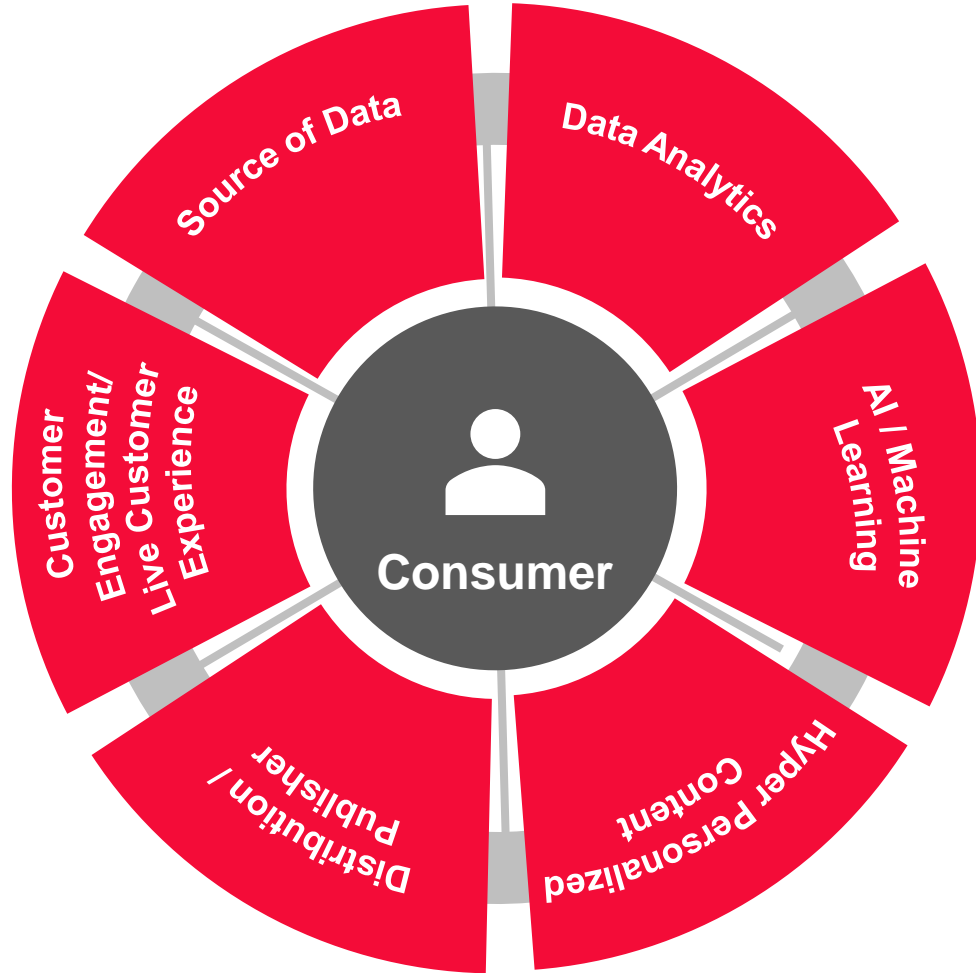
- Is **consent** necessary?
- Do you have adequate **disclosures**?

## Data Subject Rights/Scrubbing

- “Targeted advertising”/”Shares”
- “Sales”
- Limit the Use & Disclosure of Sensitive PI
- Withdrawn Consent
- Covered Profiling



Sources of Data



# Data Analytics: Target Profiles/Audiences

Engaged in *covered profiling*?

“**Profiling** in furtherance of **decisions** that produce legal or similarly significant effects concerning a consumer”

“Profiling” can include automated processing of PI to analyze or predict personal aspects about a person’s preferences, interests, location, behavior, among other traits

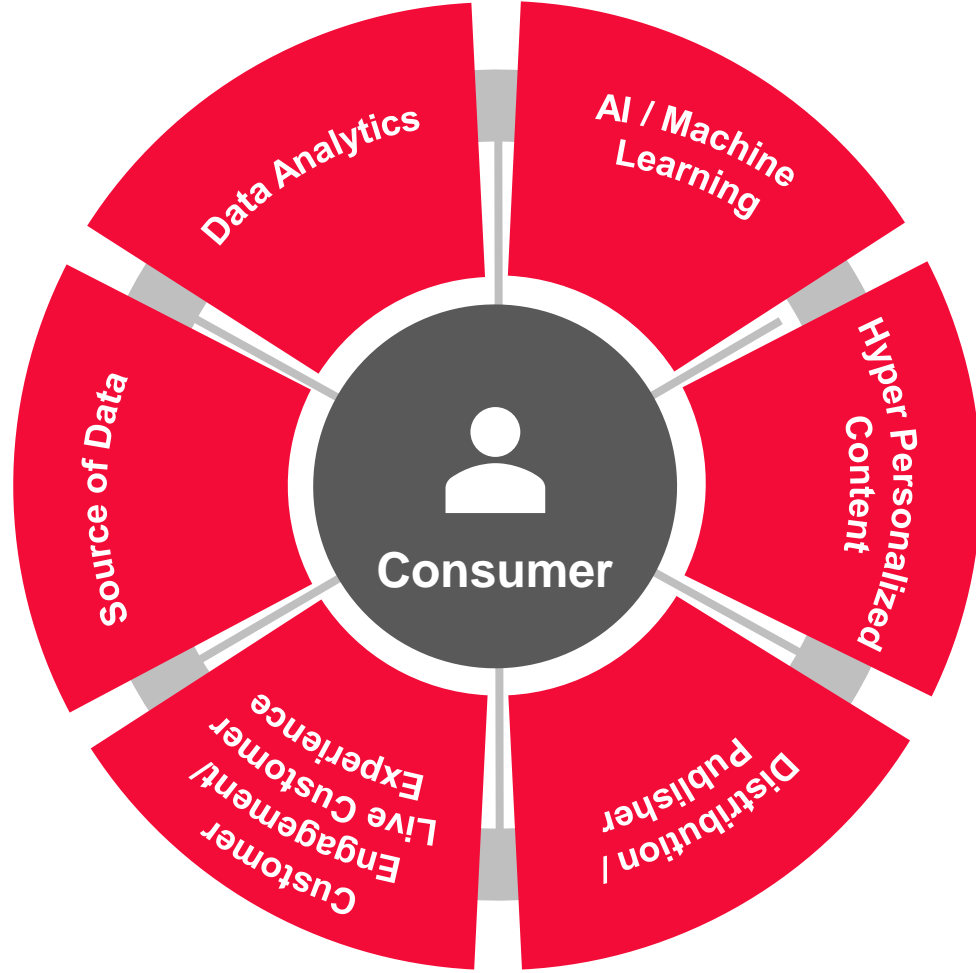
“Decisions that produce legal or similarly significant effects concerning a consumer” can include decisions that results in the **provision** or **denial** of financial services, housing, healthcare services, access to essential goods or services, among other items.

- Colorado Privacy Act



## User Profile







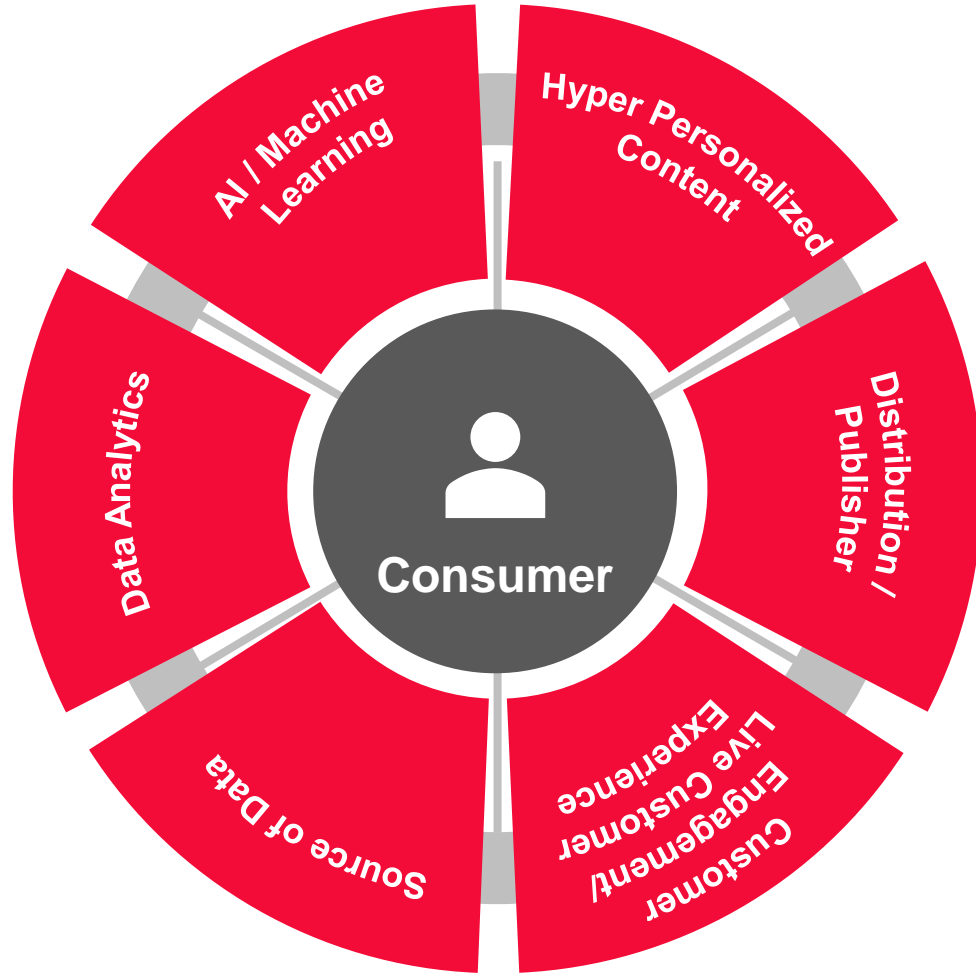
## AI & Data Privacy

What guardrails are in place for data inputs?

What about data out-puts?

“Personal information...can exist in various formats, including, but not limited to... [a]bstract digital formats, including compressed or encrypted files, metadata, ***artificial intelligence systems that are capable of outputting personal information.***”

- CCPA (as amended by S.B. 1223)





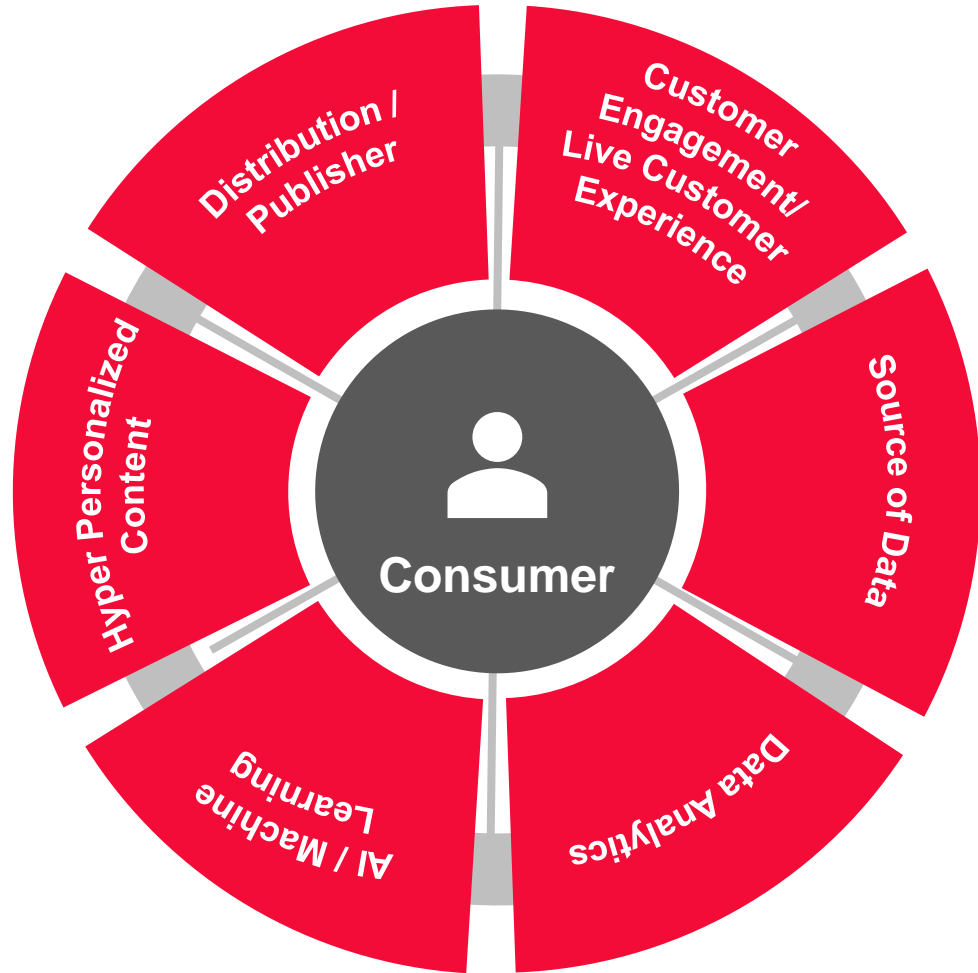
# Hyper-personalized Content



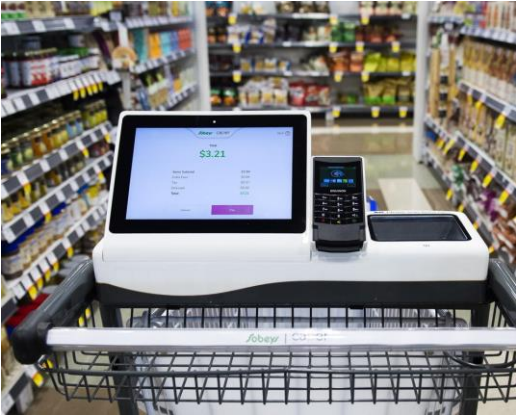
## Netflix Movie Poster Personalization

Which genre is *Goodwill Hunting*?

- (A) Comedy
- (B) Romance
- (C) Another genre



# Live Consumer Experience



# Sensitive Personal Information

“Precise geolocation data” means information derived from technology, including, but not limited to, global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with precision and accuracy within a radius of one thousand seven hundred fifty feet.

-Connecticut Data Privacy Act



# Minor Data

## Maryland Online Data Privacy Act

“A controller may not process personal data...for the purpose of targeted advertising if the controller knew or should have known that the consumer is under the age of 18 years old.” - Section 406(A)(4)

## New York Child Data Protection Act

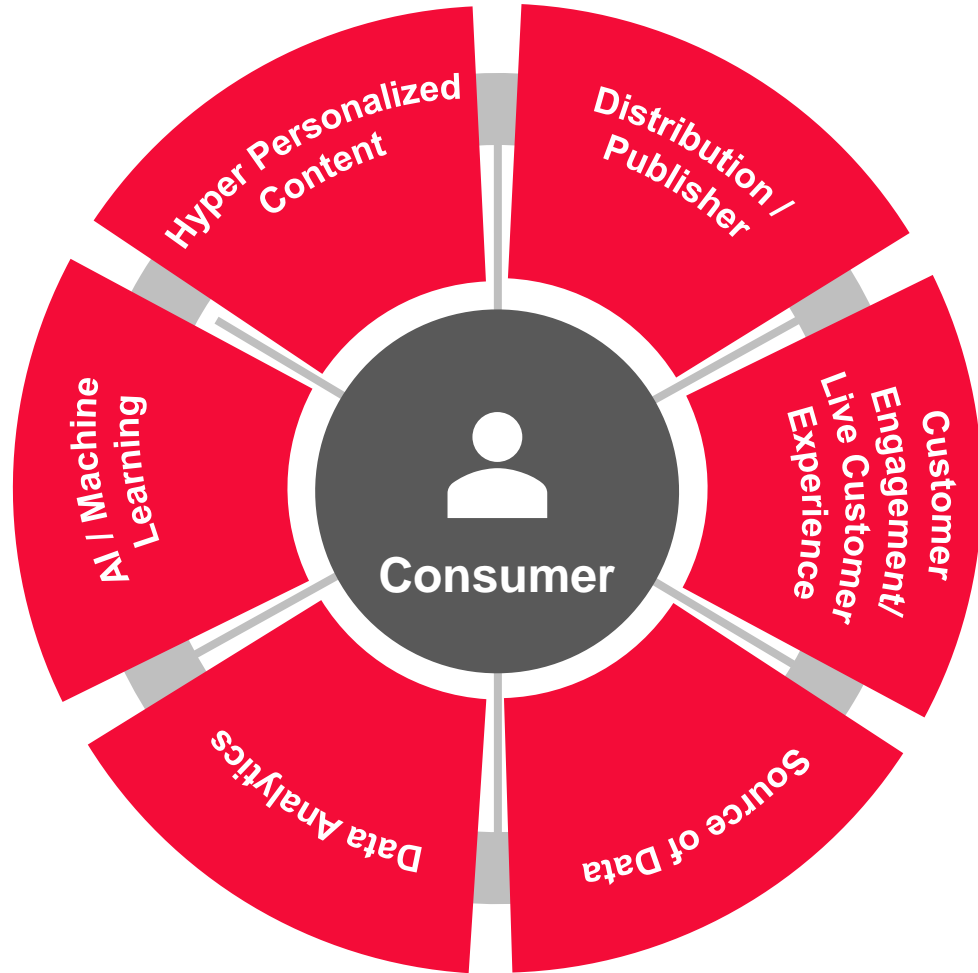
Generally regulates covered operators that have actual knowledge that the data subject is a minor under 18 or the site is “primarily directed to minors”



# Geofencing Considerations

## Washington My Health My Data Act

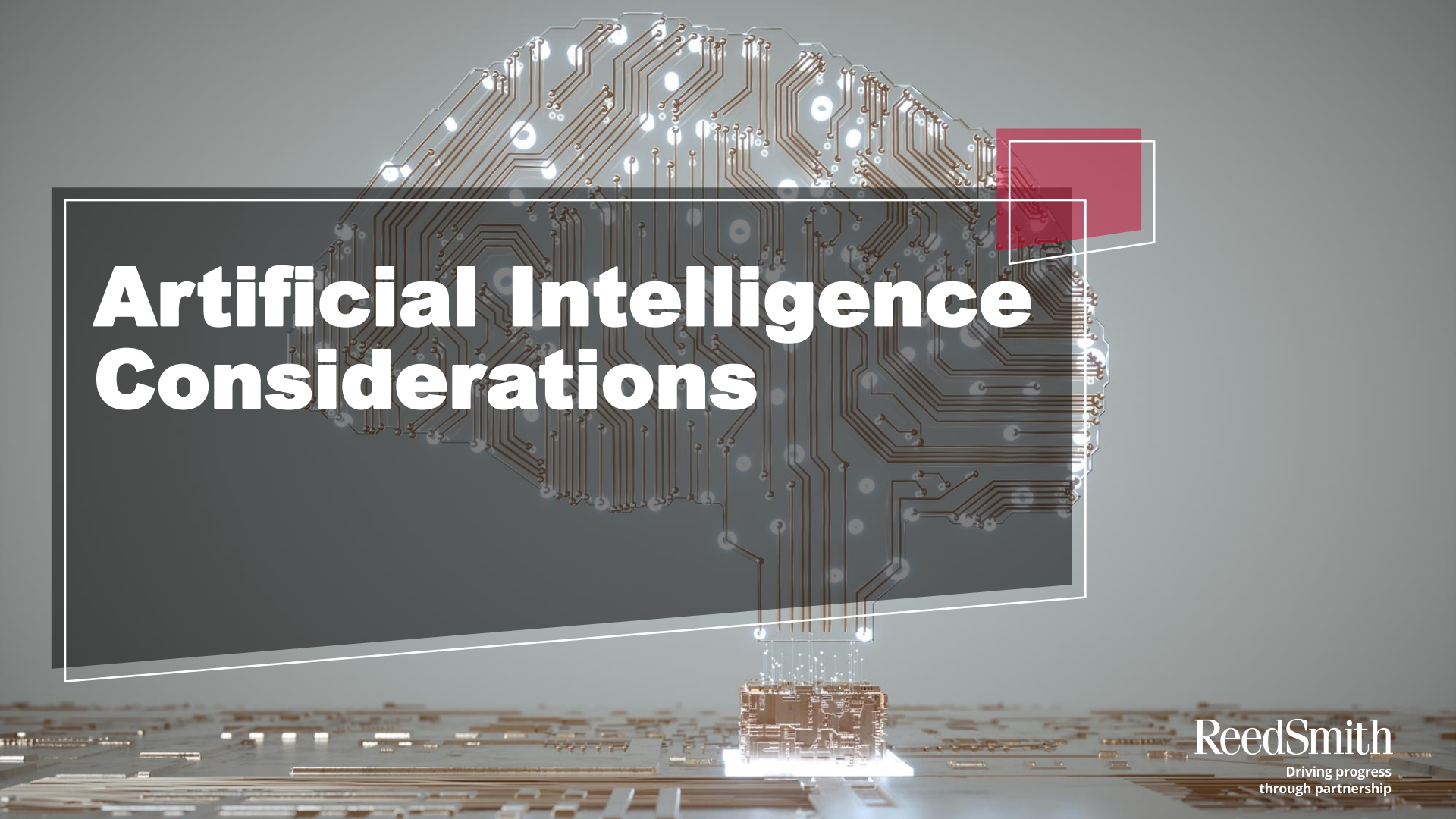
**“It is unlawful for any person to implement a geofence around an entity that provides in-person health care services where such geofence is used to: (1) Identify or track consumers seeking health care services; (2) collect consumer health data from consumers; or (3) send notifications, messages, or advertisements to consumers related to their consumer health data or health care services.” Section 10**



# Distribution/Published Content

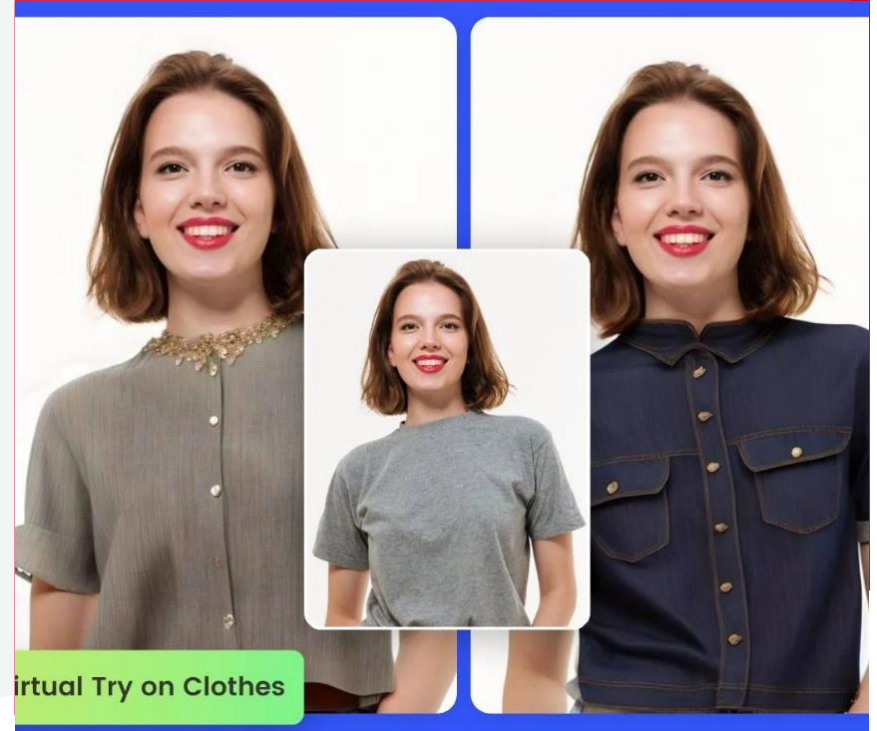






# Artificial Intelligence Considerations





# Risks

**False / Misleading  
Information**

**Bias**

**Accountability**



# False / Misleading Information





Here is an image of a business leader in a modern office setting, radiating professionalism and confidence. Let me know if this is along the lines of what you were looking for or if you'd like any adjustments!



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Here's a different image of a CEO in a modern office setting, exuding an approachable yet visionary presence. Let me know if it fits what you're looking for or if you'd like further variations!



# Actual CEOs



**Thasunda Brown Duckett**  
CEO, TIAA



**Priscilla Almodovar**  
CEO, Fannie Mae



**Marvin Ellison**  
CEO, Lowe's



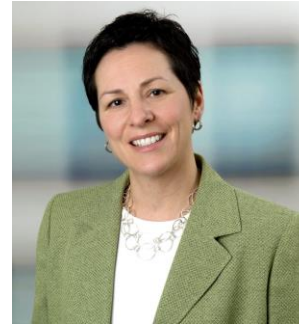
**Corie Barry**  
CEO, Best Buy



**Safra Catz**  
President, Oracle



**Bom Suk Kim**  
CEO Forward Ventures

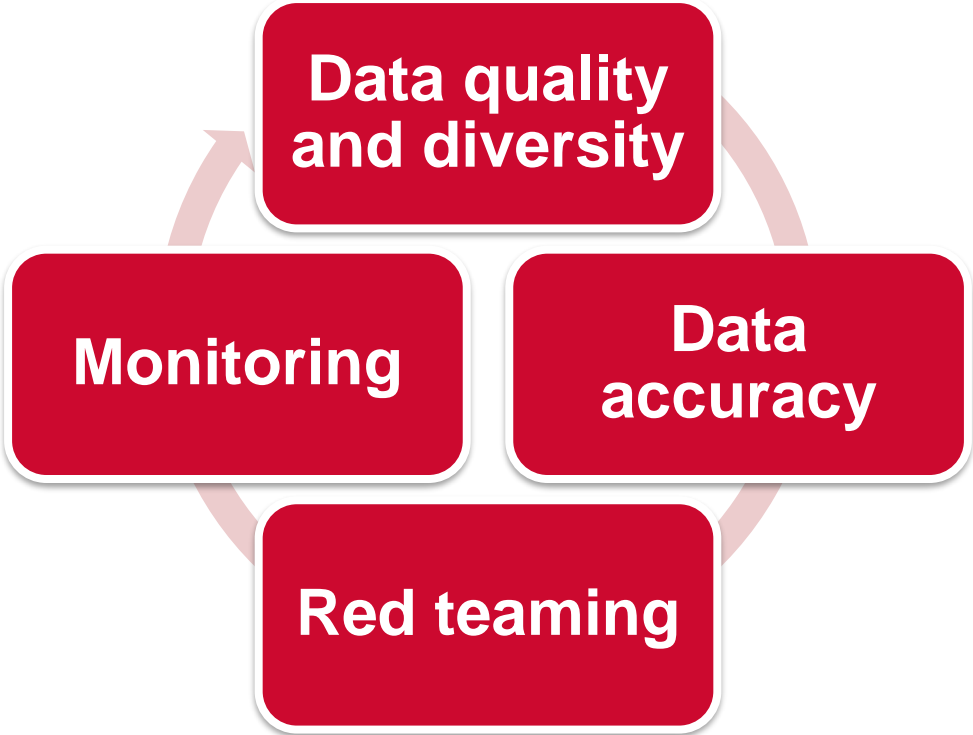


**Christine Leahy**  
CEO, CDW



**Rosalind Brewer**  
Former CEO, Walgreens

# Steps for Mitigation

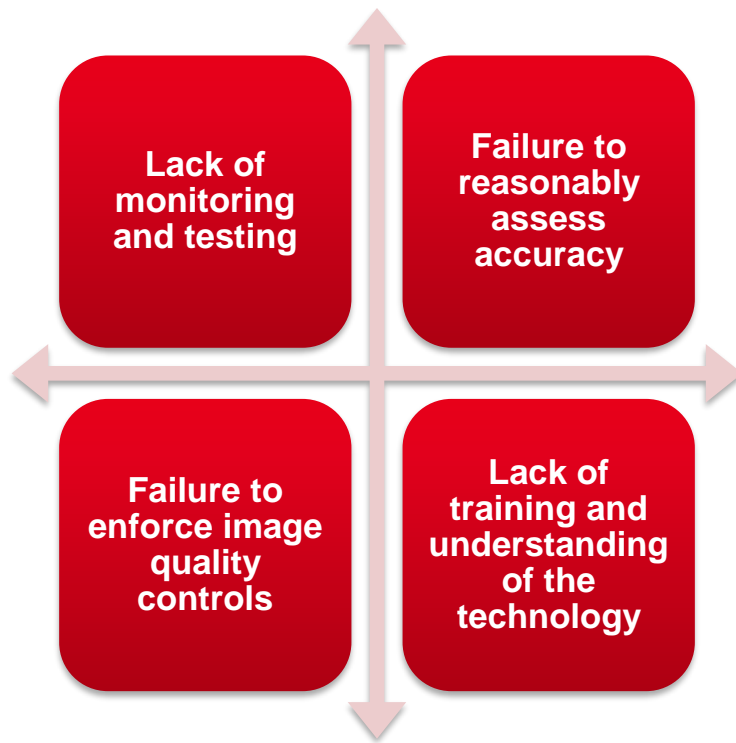




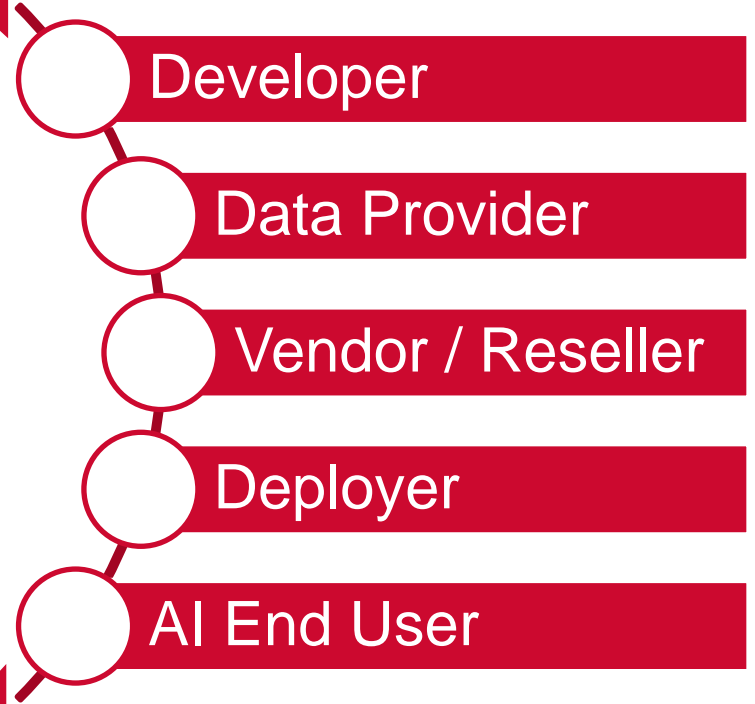


**FTC v. Rite Aid**

# Where it went wrong



# Accountability



# Personal Bubbles



Limited content  
diversity



Confirmation bias



Limited progress



Narrow view of the  
universe

Collect  
**100 Bonus Stars** ★  
Nov 11–17



### Try these 4 delicious things

Come in and try these menu items in any order you want—or all at the same time.

- any Breakfast Sandwich or Wrap
- any bakery item
- any Iced Shaken Espresso
- any Green Tea

Start

Terms



### Cheerful nondairy faves

Get a festive, nondairy holiday coffee with Pecan Crunch Oatmilk Latte, a Sugar Cookie Almondmilk

Scan in store

# Questions?





Monique (Nikki) Bhargava,  
*Partner, Chicago*



Sarah Bruno, *Partner,*  
*San Francisco*



Idara Udofia, *Partner,*  
*Chicago*

# Thank You!

[Insert > Header and Footer to change footer text]

# Who we are

We are a dynamic international law firm with...

**3,000** people

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including...

**1,600+** lawyers

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We work internationally across more than...

**30** offices

throughout the United States, Europe, Asia and the Middle East

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