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The real Black Mirror: Navigating the law through the AI revolution

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17 May 2018

Agenda

- Introductions
- What is AI?
- Legal risks of AI
- Questions

AI: What it is and why it matters

Understanding Intelligent Automation

From RPA to AI

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ORCHESTRATING THE WORLD'S WORK

About Symphony

By scale, experience and accreditation, we are the leading and largest global RPA pure play, with the only fully integrated Intelligent Automation Platform

Consulting

- Vision Workshops
- Future of Work Accelerator
- RPA COE Design & Training

Implementation

- Proofs of Technology
- Proofs of Concept
- Pilots

Managed Services

- RPA Helpdesk
- Ongoing Transformation
- Monitoring & Support

Intelligent Automation Platform (The Symphony Platform)

- RPA As-a-Service
- Cognitive Learning Engines
- OCR Data Extraction
- Chatbots
- Virtual Hosting

Most accredited Blue Prism 'Pure Play' Partner

UiPath Strategic Partner & Largest Training Capability

'Leading Service Delivery Automation (SDA) Providers

'Cool Vendor' in the Business Process Services category

#1 Leading Robotic Process Automation (RPA) Pure Play

Best Intelligent Automation Pure-Play 2016

Blue Prism Implementation & Best Practice Leader 2017 – US/LatAm

GSA Digital Champion of the Year 2017

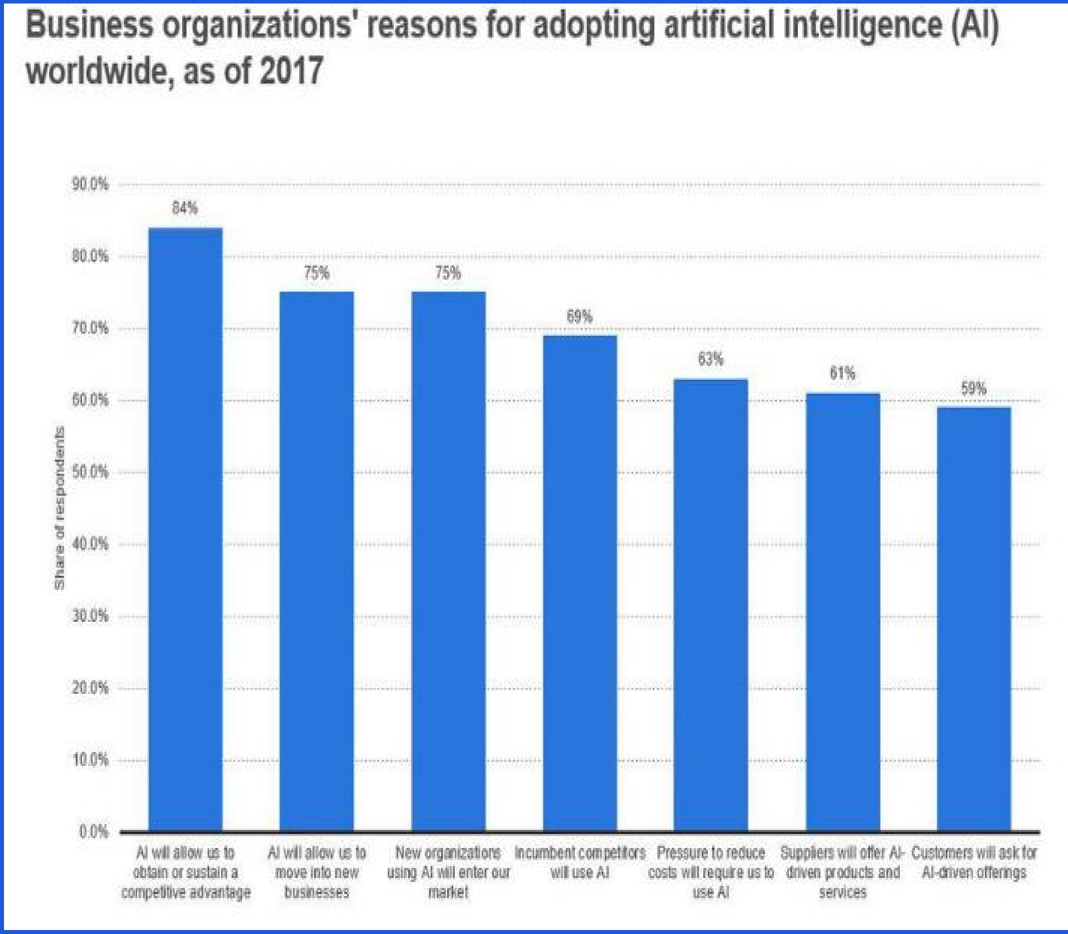
Introduction

Today, just 15% of enterprises are using AI. But 31% said it is on the agenda for the next 12 months. *(Source: Adobe)*

Sixty-one percent of those who have an innovation strategy said they are using AI to identify opportunities in data that would otherwise be missed. Only 22% without a strategy said the same.
(Source: Narrative Science)

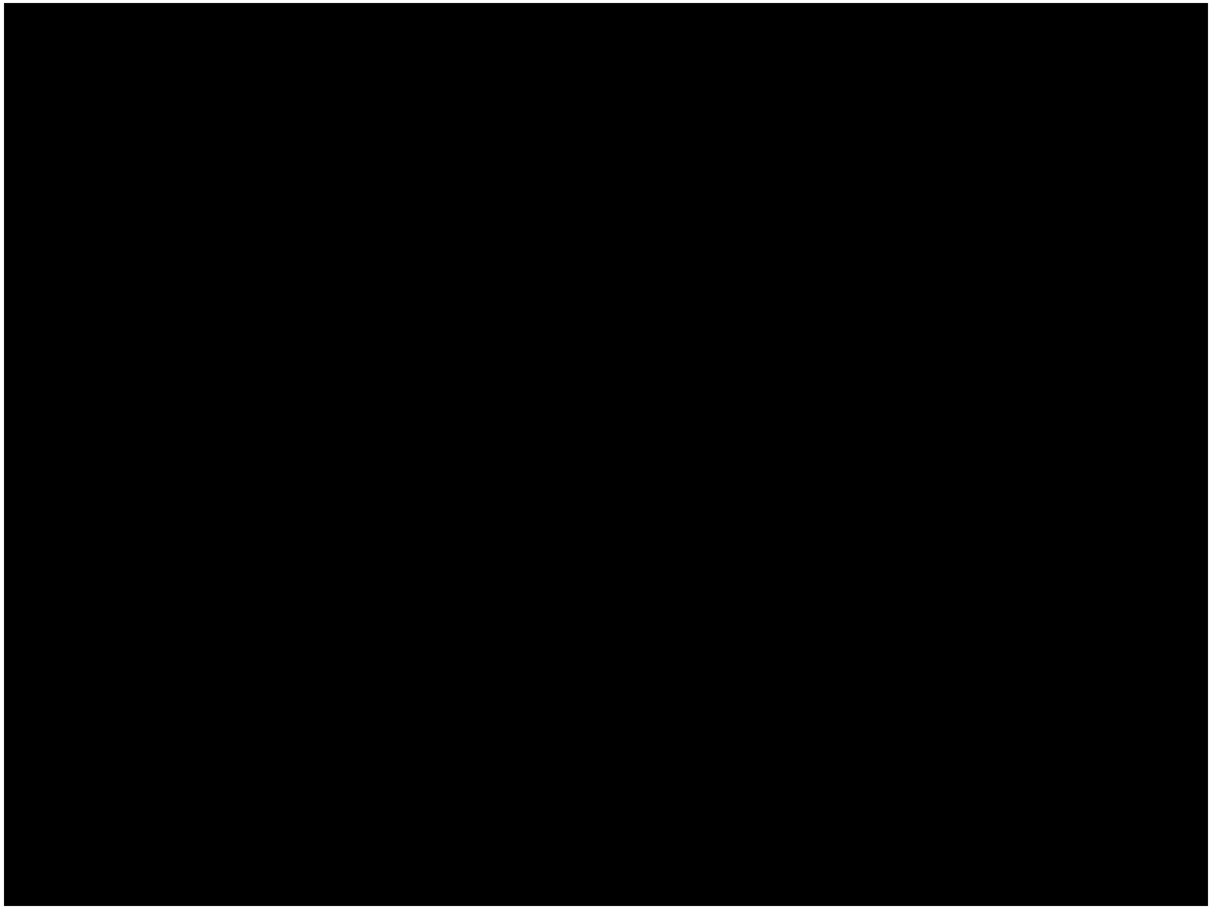
Consumers use more AI than they realize. While only 33% think they use AI-enabled technology, 77% actually use an AI-powered service or device.
(Source: Pega)

84% of enterprises believe investing in AI will lead to greater competitive advantages. 75% believe that AI will open up new businesses while also providing competitors new ways to gain access to their markets. 63% believe the pressure to reduce costs will require the use of AI.
(Source: Statista).



Expert Systems

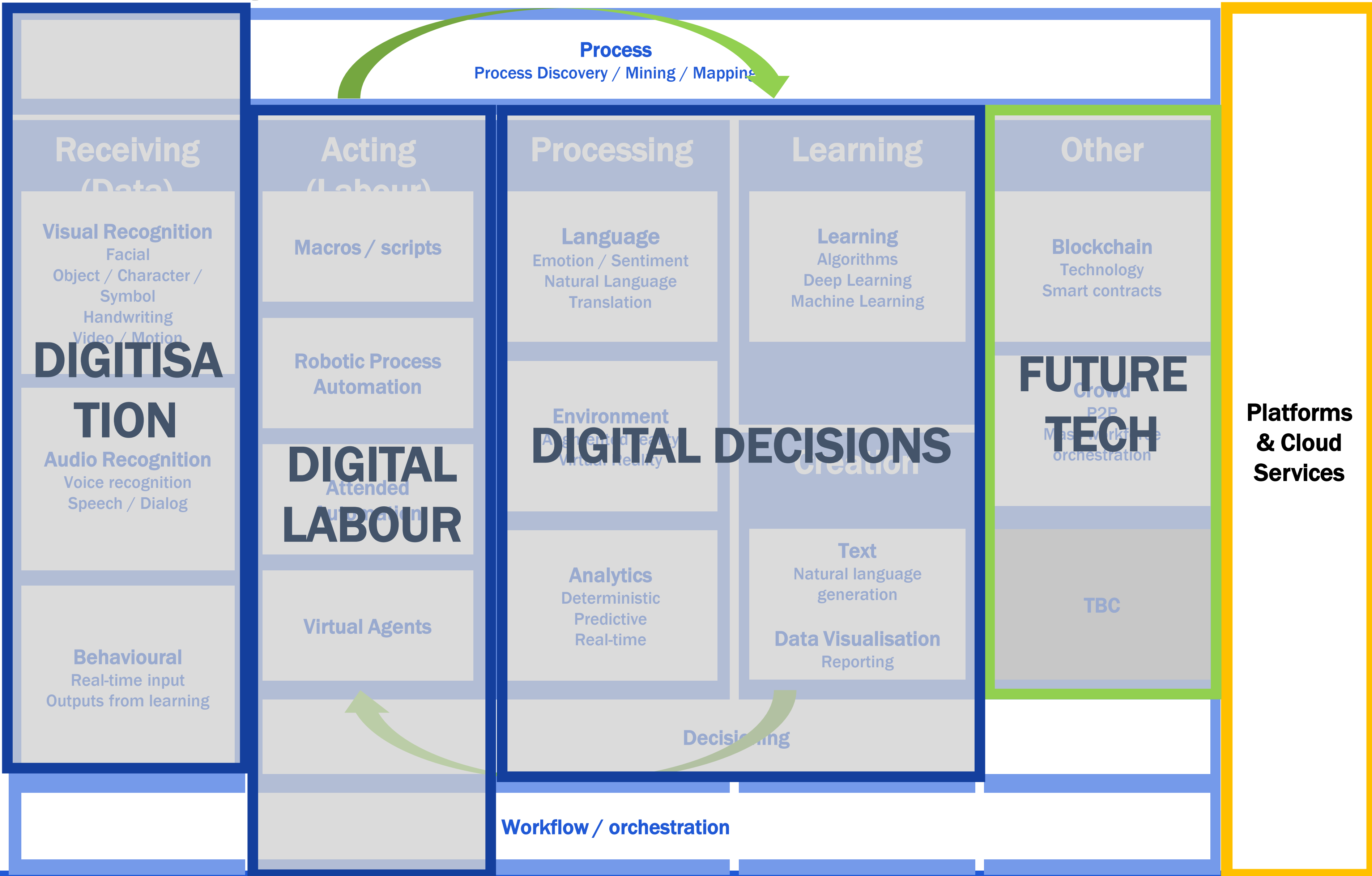
Versus AI



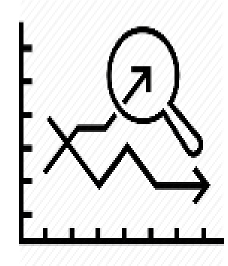
There is a lot of head scratching and tinkering

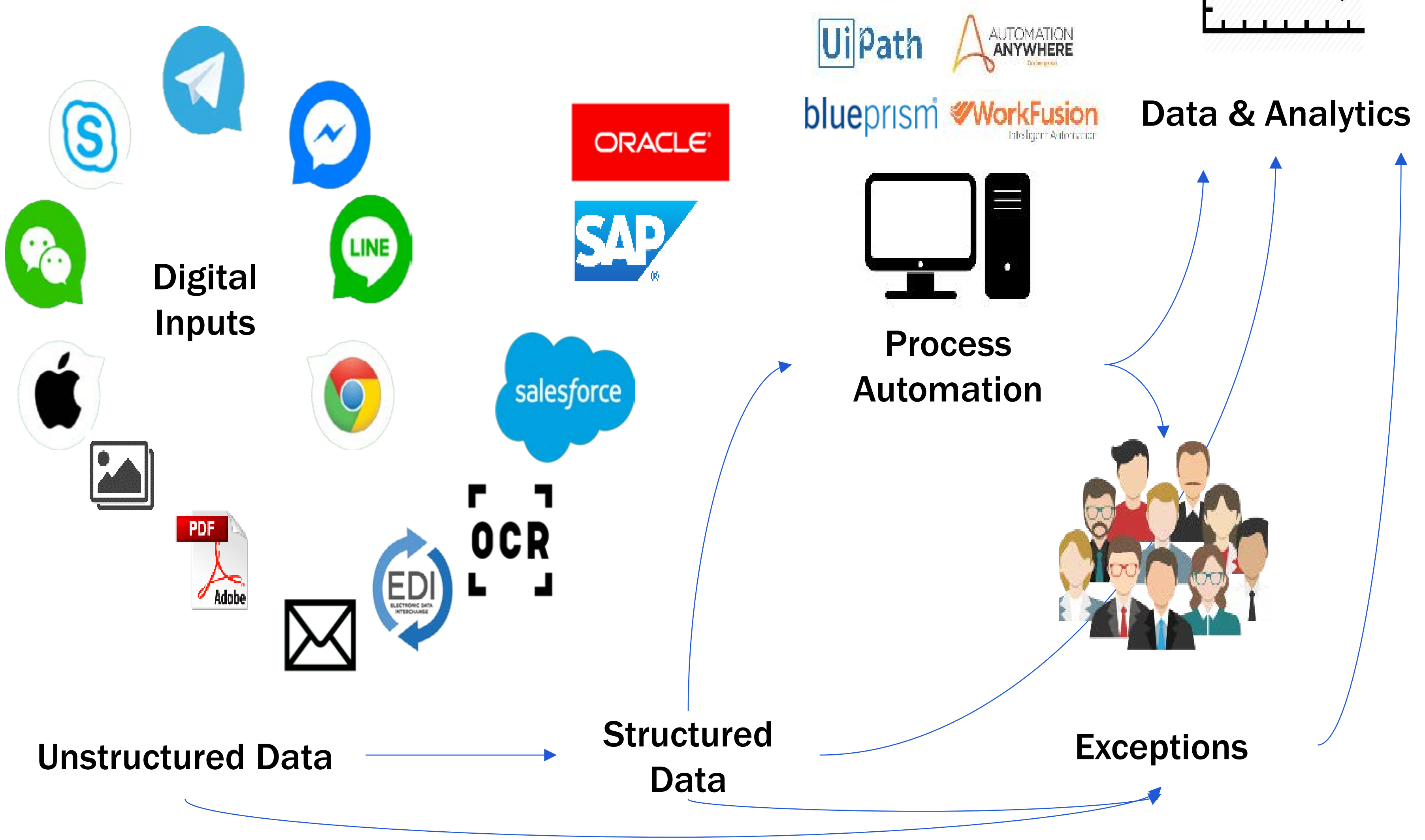
"your scientists were so preoccupied with whether or not they could, they didn't stop to think if they should."

The Digital Operations Toolkit

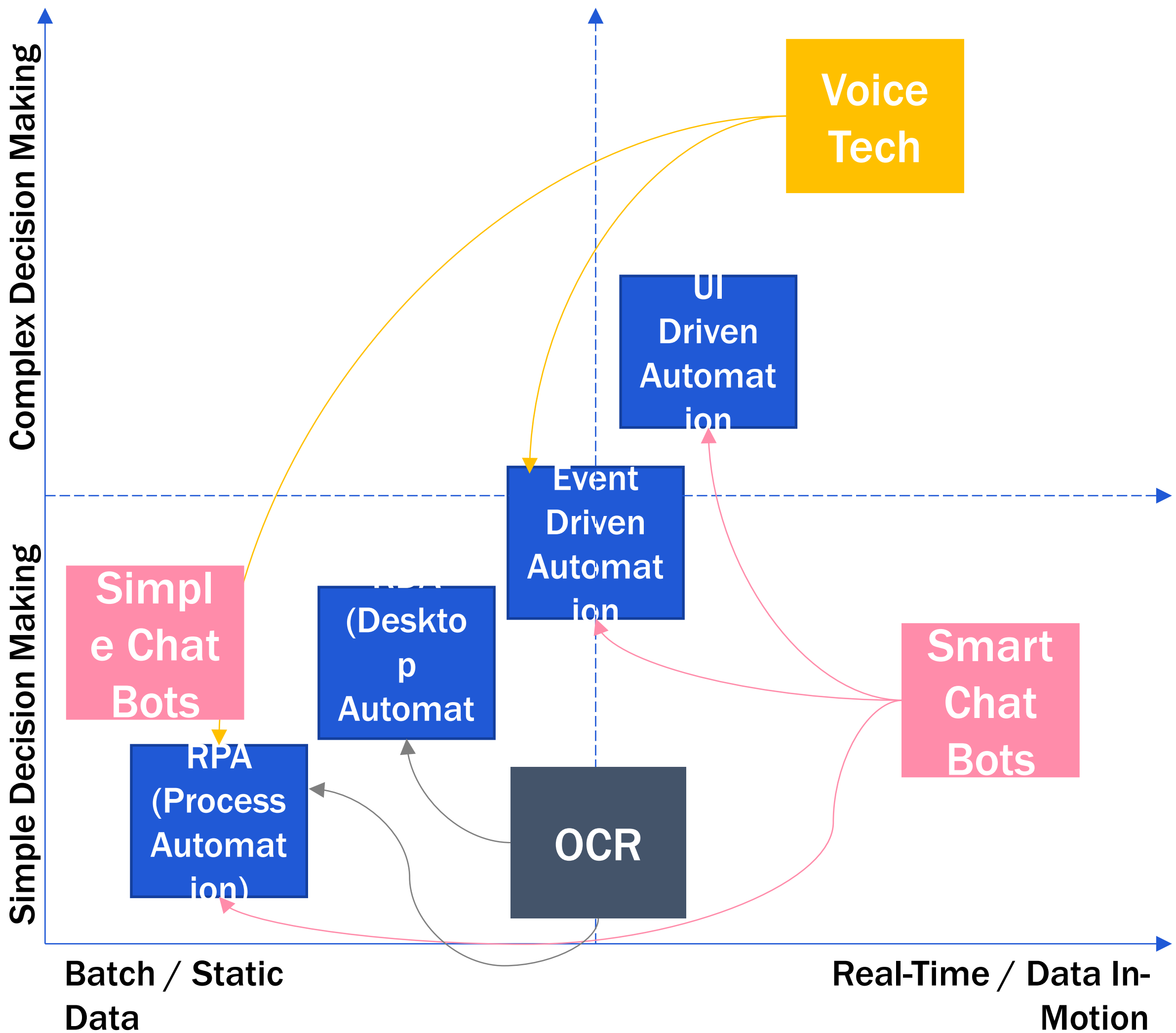


Pillar 1: Digitisation





Pillar 2: Digital Labour



Decision Making

Simple	Complex
- Low variability - highly repetitive - Process-based rules – no judgement	- High variability, potentially low repetition - Data based rules, high levels of judgement

Data Motion

Static	Real-Time
- Processed in batches - Data stored in a single location - Data is historical	- Processed as it comes in - Data potentially stored across multiple locations - Data is being created in real-time

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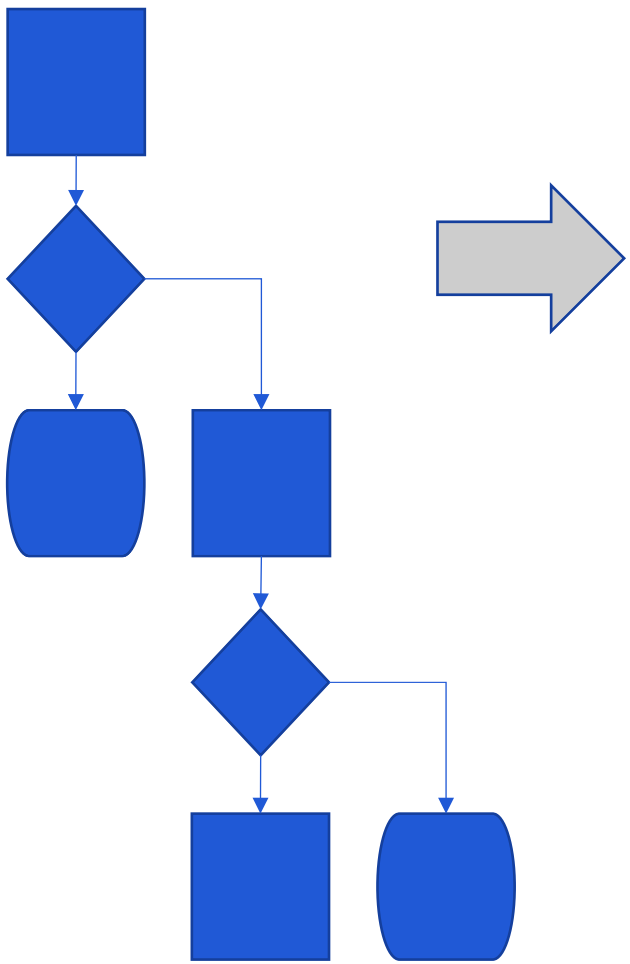
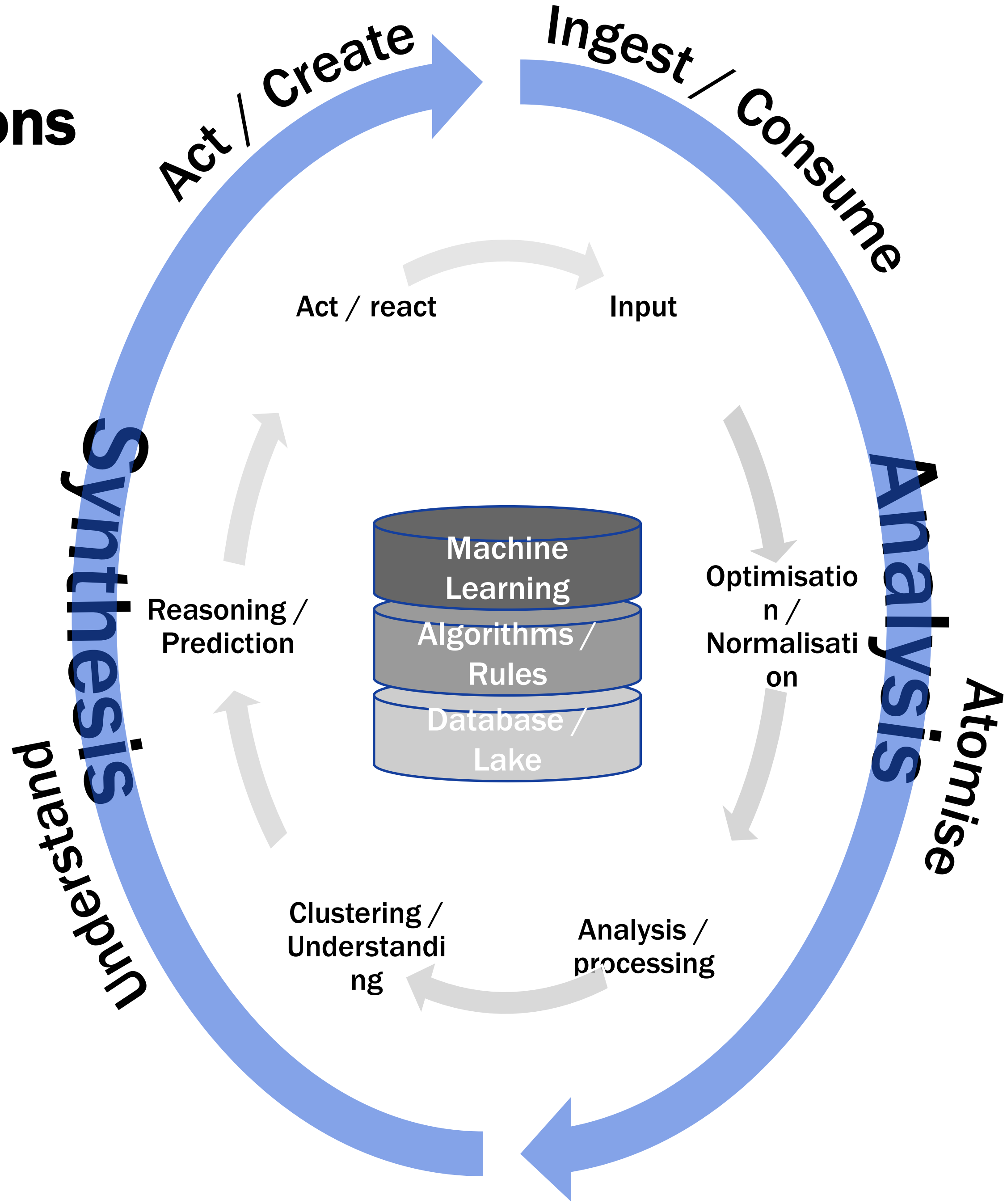
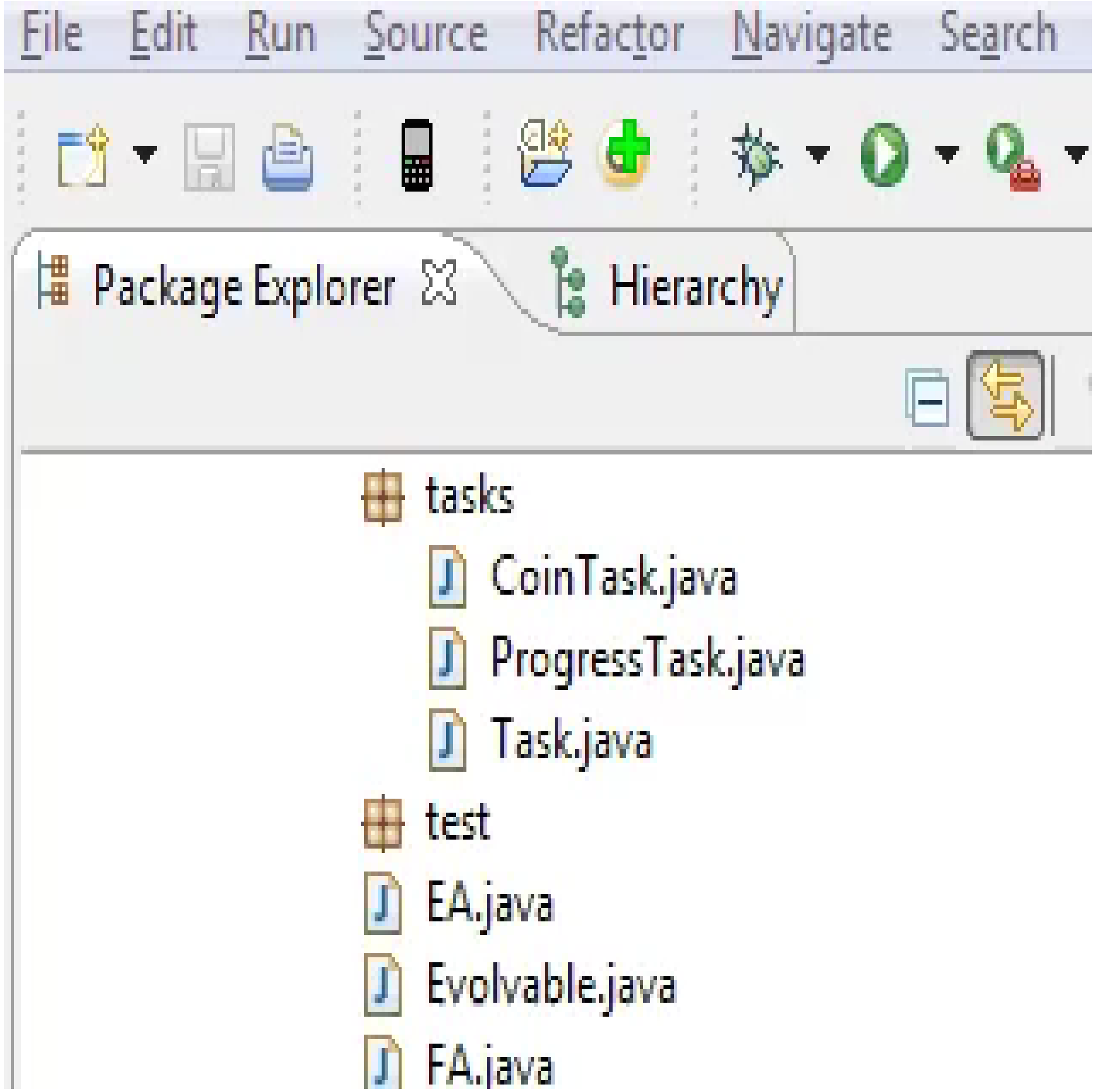
Pillar 3: Digital Decisions





Mario AI


File Edit Run Source Refactor Navigate Search
Package Explorer
Hierarchy
tasks
CoinTask.java
ProgressTask.java
Task.java
test
EA.java
Evolvable.java
FA.java

Insurance

Davies

TRACTABLE

Legal

ROSS

Banking

J.P.Morgan

Concepts applied to the Document / Contract Lifecycle

Broader AI + Analytics + Workflow and Alerting + Blockchains

Self-service + user portals + apps

Dynamic forms + RPA / RDA

RPA + NLP + Fraud Detection + Decisioning

Store and Discovery - OCR + Meta-tagging + NLP

Machine Learning

Human (e-signature)

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Thank You

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AI: Legal Risks

Data Protection, Employment Law Issues, IPRs & Regulation

AI: Legal Risks / Data Protection

- **Legal risks arising from use of data as the "raw material" of AI**
- **Automated Decision-Making**:
  - EU General Data Protection Regulation (GDPR): an individual has the right "*not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.*"
    - Exemptions:
      - contractual necessity
      - authorised by EU or Member State law
      - based on individual's explicit consent
    - an individual must be able to obtain human intervention and contest an automated decision

AI: Legal Risks / Data Protection

- **Automated decision-making** - individuals should receive:
  - fair processing information
  - meaningful information about the logic involved
  - explanation of the significance and envisaged consequences.
- **AI design implications**:
  - consider human intervention
  - designing AI systems to meet data privacy requirements from the outset

AI: Legal Risks / Employment Law Issues

- **Recruitment and the use of AI**

Example

A Co offers a graduate programme and there are hundreds of candidates. An AI system is used to analyse the results of a personality test and the text of each CV to shortlist candidates.

- **Legal risks**
  - Automated decision-making
  - Undetectable bias
  - Legal responsibility to avoid discrimination

AI: Legal Risks / IPRs

- **IPRs ownership for AI:**
  - ownership for new works and inventions created by AI is unclear
  - agreements should be used to clearly set out IPRs ownership

- **Infringement of third party IPRs:**
  - responsibility for third party IP infringement claims is unclear

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AI: Legal Risks / Regulation

- **Direct regulation of AI**
  - EU: no regulation governing AI technology yet
  - European Parliament recommendations:
    - the creation of a European agency for AI
    - framework for the design, production and use of AI
    - mandatory registration of AI
  - UK: House of Lords Select Committee on AI
- **Indirect regulation of AI**
  - Industry specific regulation
  - Codes of conduct
  - Existing regulation for technology

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AI: Legal Risks

Liability

AI: Legal Risks / Liability

Overview

- Legal risks arising from use of artificial intelligence in business
  - “public” law aspect
  - tortious issues
  - contractual issues
- Not:
  - ethical / human rights issues with AI
  - accountability / legal personality
  - consumer protection
  - use of AI in legal industry

AI: Legal Risks / Liability

A litigator's view of AI…

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Science & Environment

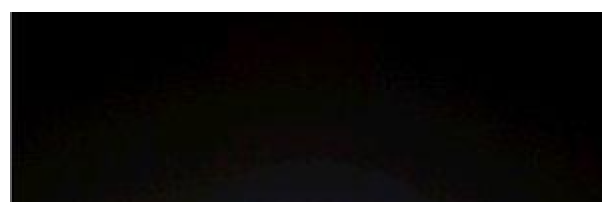
UK's Skynet military satellite launched

By Jonathan Amos
Science correspondent, BBC News

19 December 2012

Share

A powerful new telecommunications satellite for the UK military has blasted into orbit.



AI: Legal Risks / Liability

"Public" law aspects

- Legal risks affecting the wider public
  - Use of AI in society rather than in private law contracts
  - Consumer protection
  - More about physical harm than economic harm

  e.g. autonomous vehicles

- Issues which may arise:
  - Certification / licensing / regulation of AI
  - Strict liability v fault-based liability
  - Private or state-funded compensation
  - Insurance availability and coverage

AI: Legal Risks / Liability

Tortious issues

- Physical or economic harm to person(s) arising out of negligence
  - Could arise where AI goes wrong causing harm
  - Generally where no contractual relationship or remedy, and perhaps no regulation / standards

Example

A Co supplies AI software used to detect and repair faults in medical equipment used by B Authority. AI malfunctions and equipment causes harm to patients treated by B Authority.

- Who owes a duty of care towards the patient?
- Has there been a breach?
- Has the breach caused loss to the patient?

AI: Legal Risks / Liability

Contractual issues

- Contracts allow parties to allocate responsibility and risk through e.g.:
  - Primary obligations i.e. performance
  - Rights arising on certain events e.g. termination rights or liquidated damages
  - Allocation of liability e.g. limitation or exclusion clauses
- Challenge with AI (at least in short term) is uncertainty
  - What risks are there with the relevant AI?
  - Can you establish which party should be responsible for those risks?
  - If so, how do you deal with liability for those risks?
  - How do you deal with unforeseeable risks?

AI: Legal Risks / Liability

Contractual issues (2)

Example

- Z Co, mobile network operator, purchases X Co's chatbot software for customer service queries. Y Co assists Z Co in developing the software.
- Chatbot incorrectly advises Z Co's users in relation to a new network fault arising in handsets, causing them to break.

- X Co-Z Co Contract:
  - X Co may say not liable if unforeseeable issue or if Z Co / another party programmes software
  - X Co may exclude liability for indirect / consequential loss
- Y Co-Z Co Contract:
  - Y Co may say not liable for any issues at all; should be Z Co who is liable
  - X Co may exclude liability for indirect / consequential loss

AI: Legal Risks / Liability

Limitations on limiting liability: Unfair Contract Terms Act

- UCTA applies to clauses that seek to limit / exclude liability in B2B contracts if based on one party's standard terms of business.
- Standard terms of business unless "*substantial variations*".
- UCTA covers clauses limiting / excluding liability, but also:
  - Clauses rendering performance substantially different from that which was reasonably expected
  - Clauses allowing party not to perform at all
  - Making liability or enforcement thereof subject to onerous conditions or restricting remedy available to innocent party
- If caught by UCTA, clause will be unenforceable unless "reasonable"
  - Sched 2 Guidelines plus judicial guidance on what is "reasonable" but how will this apply to liability in AI?

Key contacts

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