

(Intellectual) Ownership of Consumers' Information in the IoT

A New Proposed Taxonomy for Personal Data



Introduction

Different problems...

- 💧 Inadequacy of actual taxonomy of Personal data
- 💧 A problem of ownership in the IoT: the grey area

A common solution!

The need for a new taxonomy: the *grey area* between IP and Data Protection

- ◆ Data mining and innovative profiling
- ◆ Algorithms of personality
- ◆ Customer data as (database sui generis right or, better) Trade Secret of companies => Cognitive property
 - ◆ Right to be forgotten vs. Integrity of Companies' IP
 - ◆ Right to access vs. Right to secrecy of trade
 - ◆ Right to data portability vs. competition law

A new taxonomy

Two interesting caveats:

- ◆ This new taxonomy is transversal to the other categories:
 - ◆ In particular, sensitive data can well coexist with this new taxonomy
- ◆ It is already “in” the law: this is not a proposal “de iure condendo”

A starting point



The degree of
relationship between
individuals and data.

- The proper definition of **Personal data**, at article 4(1), GDPR
- “any information *relating* to an identified or identifiable natural person ‘data subject’ ”

Two connected variables:

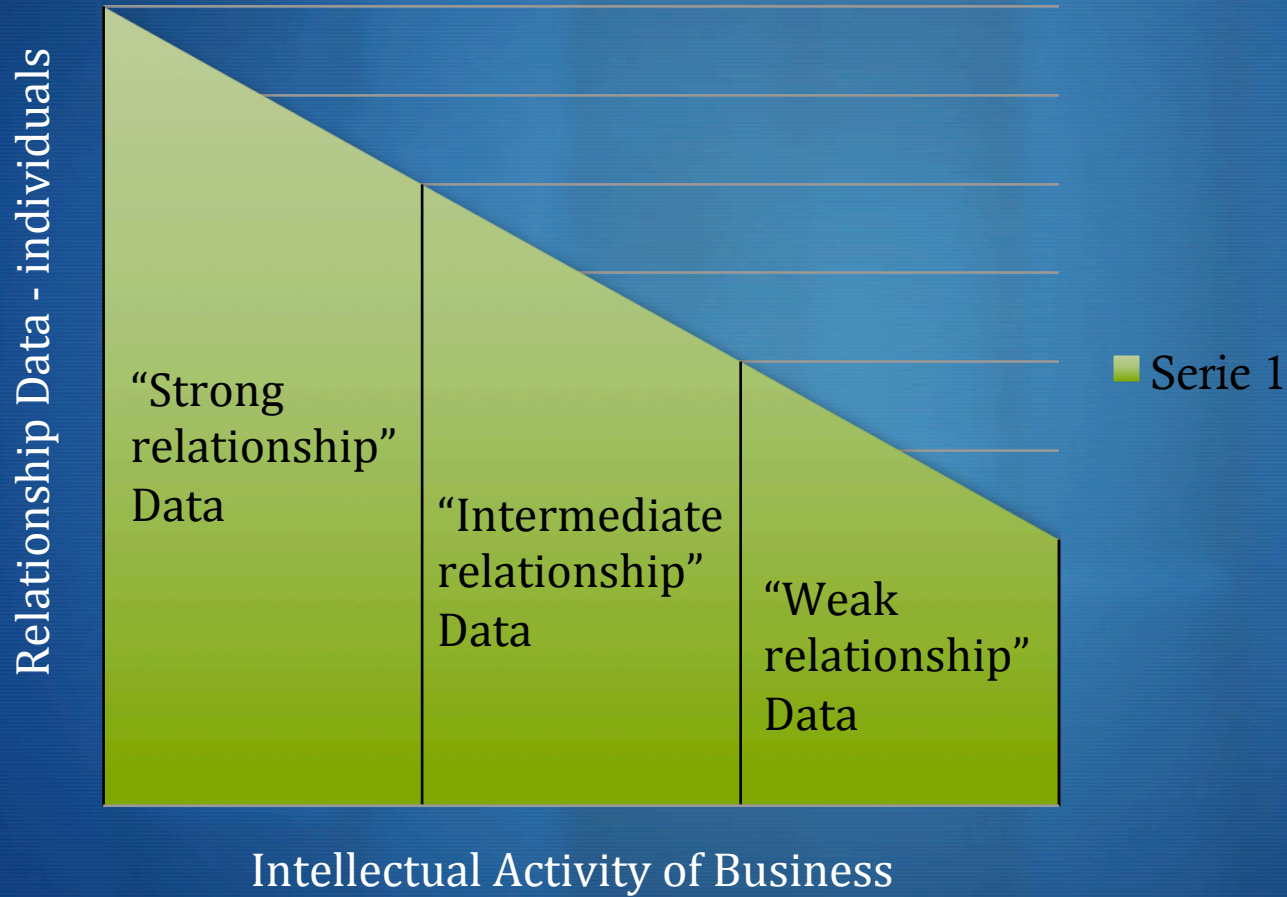
- The degree of relationship between data and subjects (y)
- The degree of intellectual activity of businesses in processing data (x).

Relationship Data - individuals

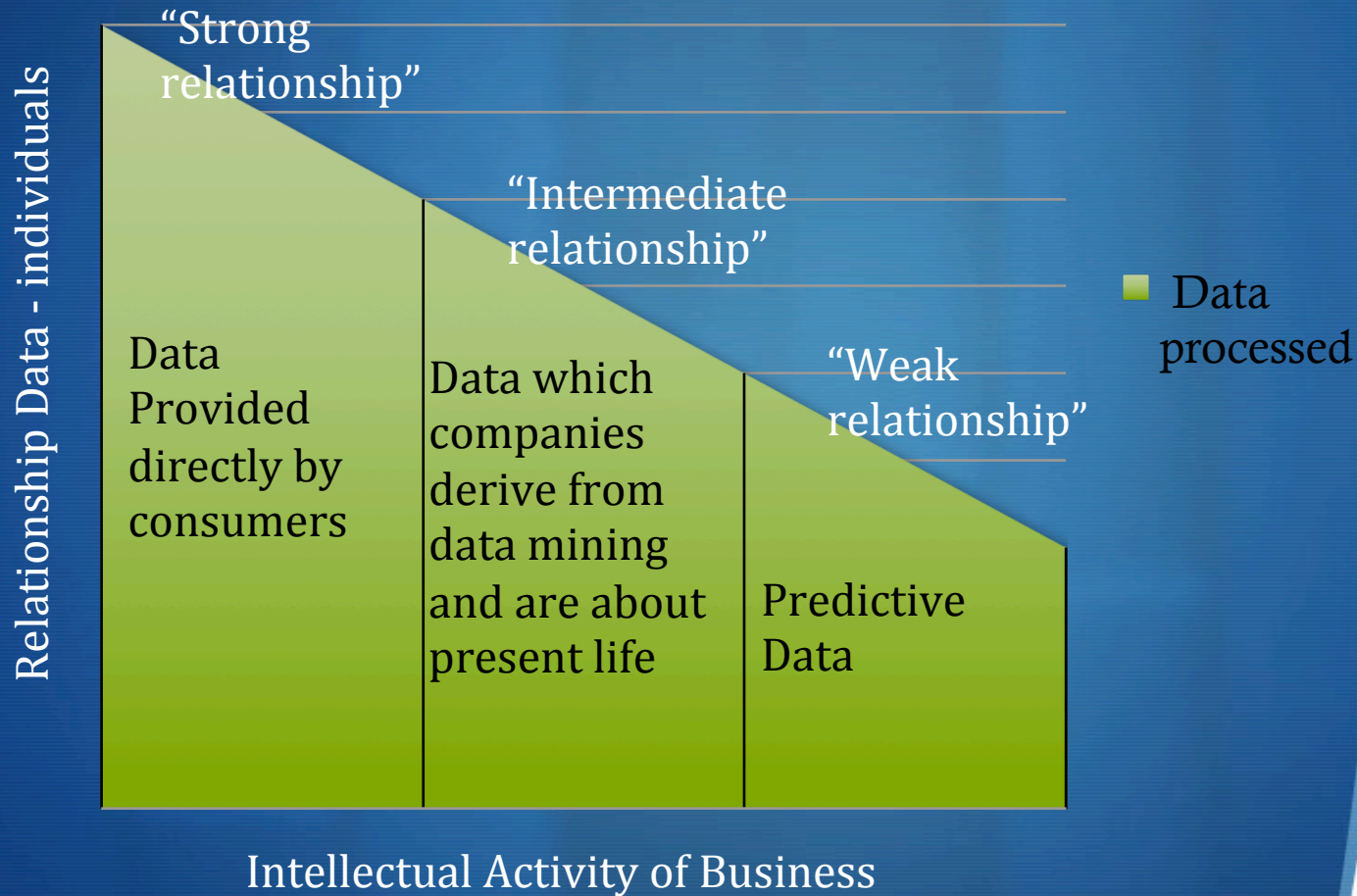
■ Data
Processed

Intellectual Activity of Businesses

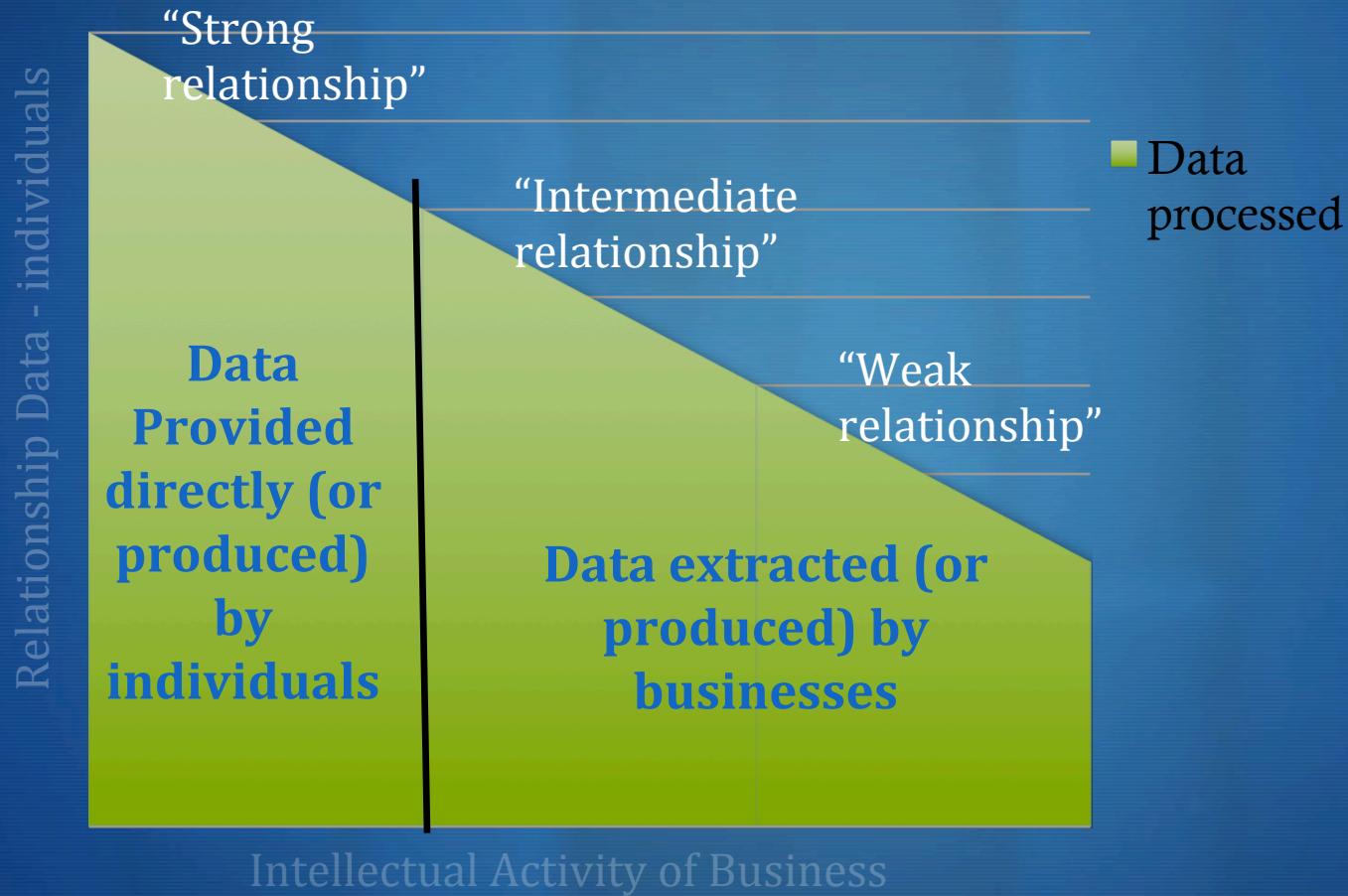
A new taxonomy of Personal Data



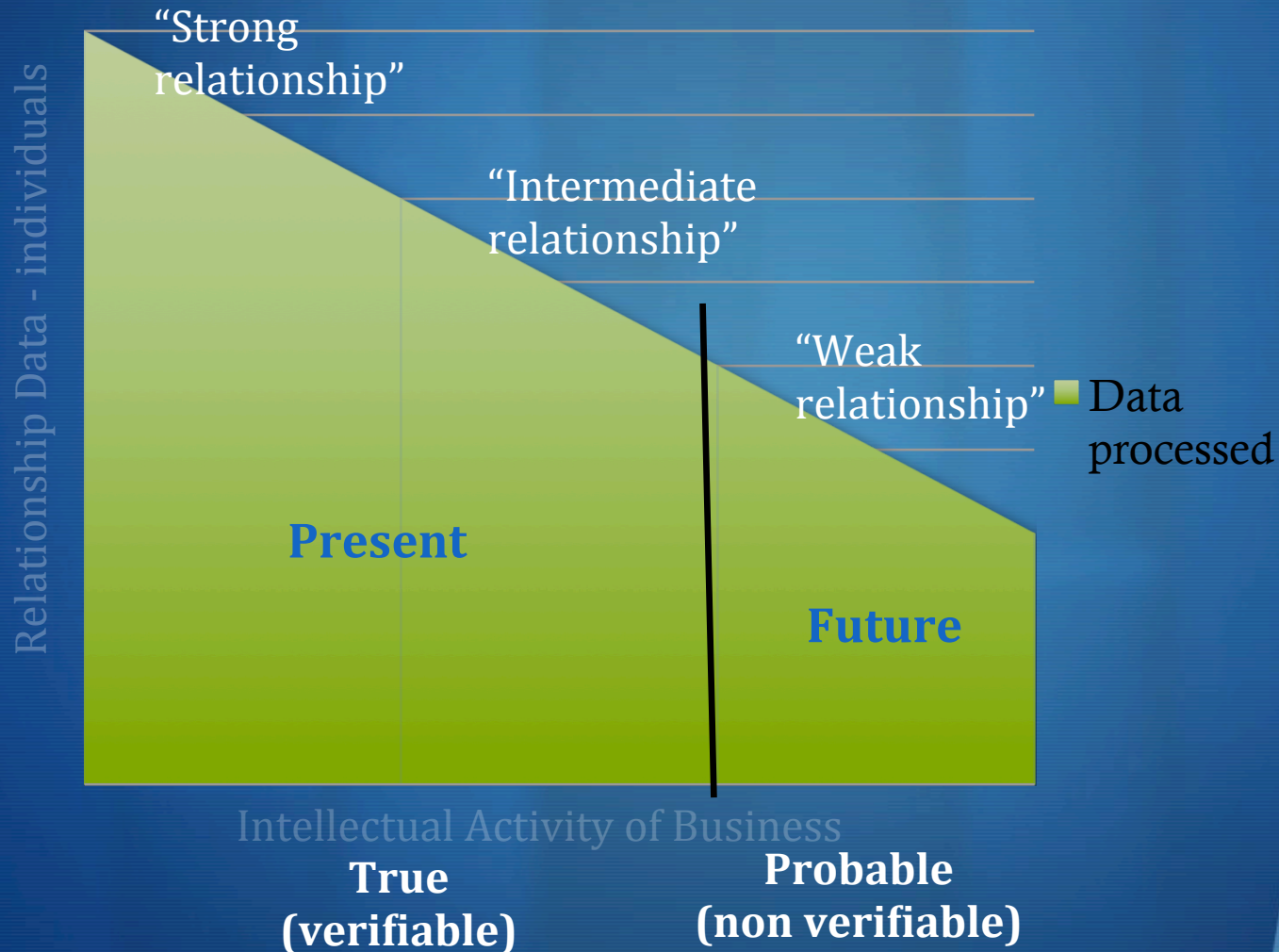
Data processing



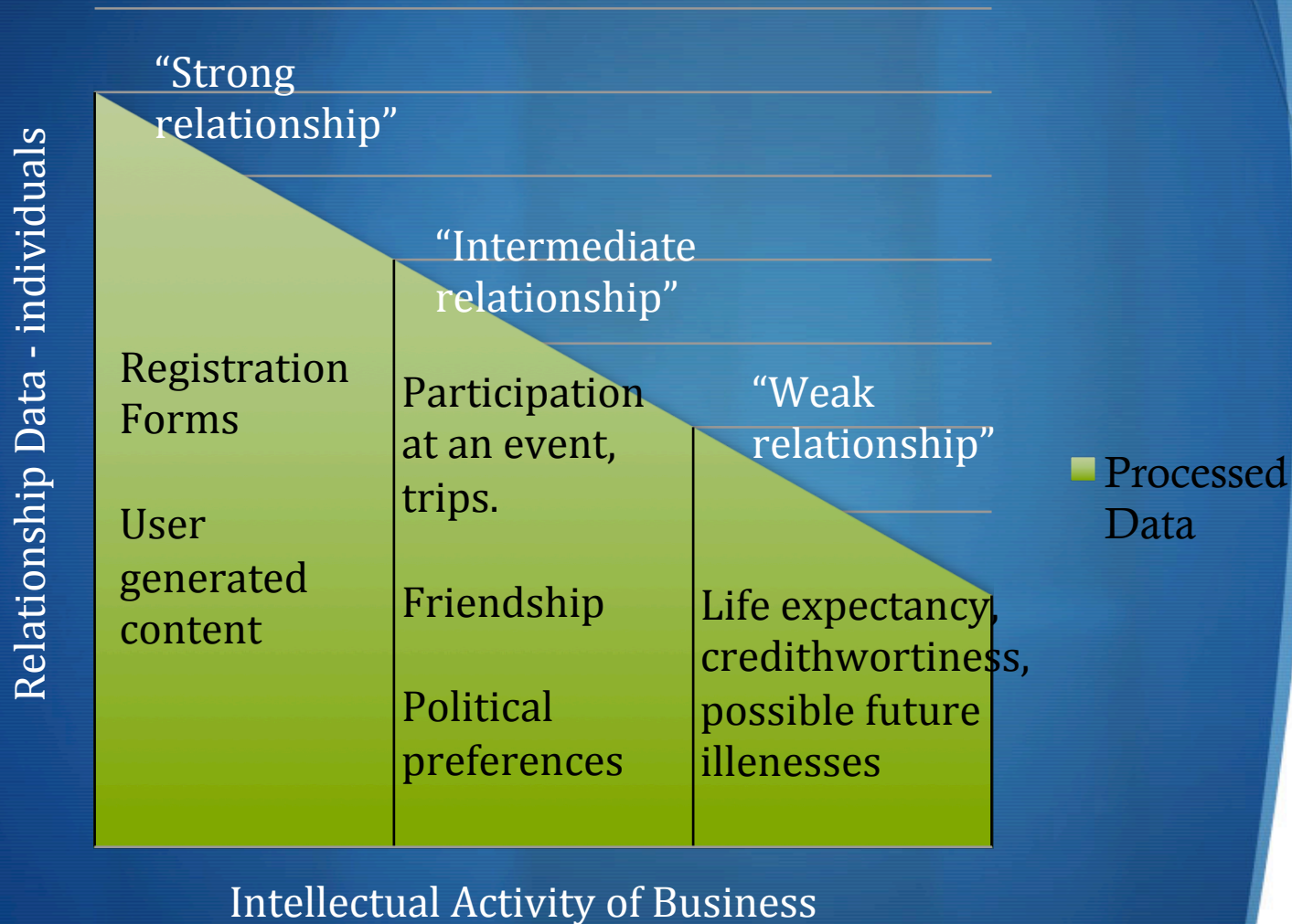
The first division: who “produces” which data



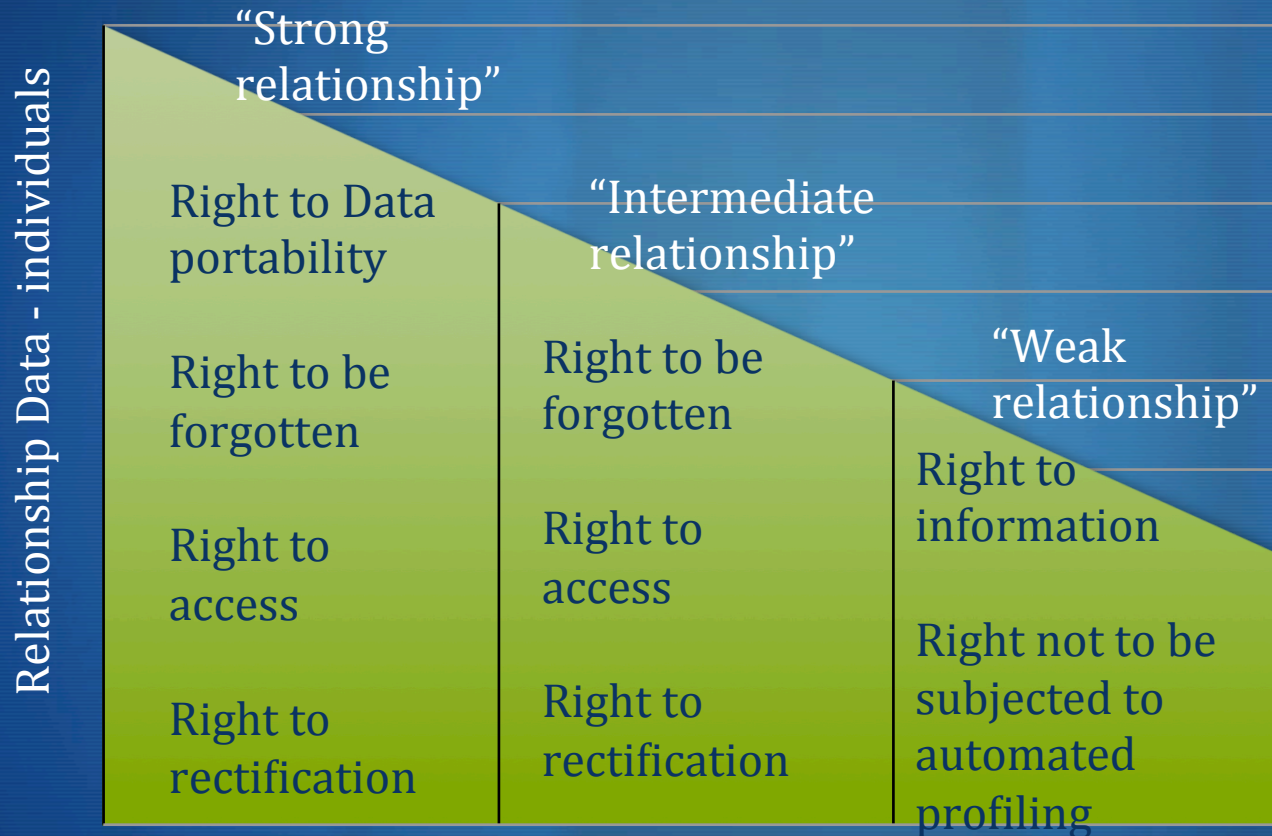
The second division: verifiability



Concrete Examples of each category



Rights at issue per each category

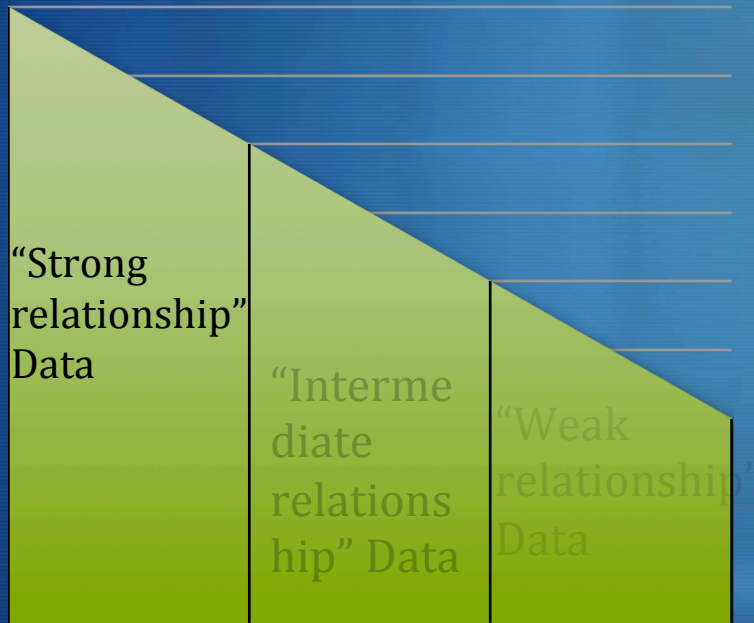


Intellectual Activity of Business

“Strong relationship” data

Relationship Data - individuals

Data processing



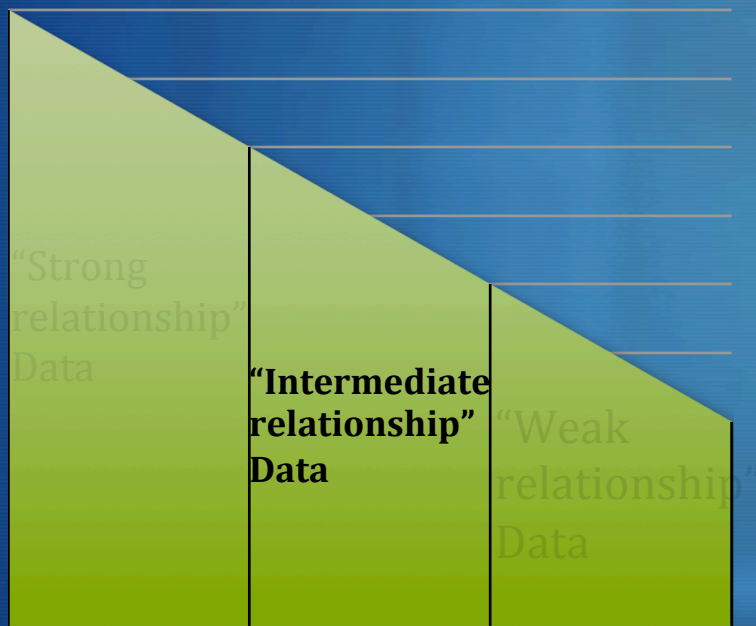
Intellectual Activity of Business

- Explicitly provided by consumers, and not just on which consumers has given consent (e.g. cookies)
- Every control right, including Data Portability, Article 18 GDPR: “data which [the data subject] has provided to a controller” (and where the processing is automated and based on consent, or on a contract).
- User-generated content, Joint-controlling (article 24, GDPR).

“Intermediate relationship” data

Relationship Data - individuals

Data processing



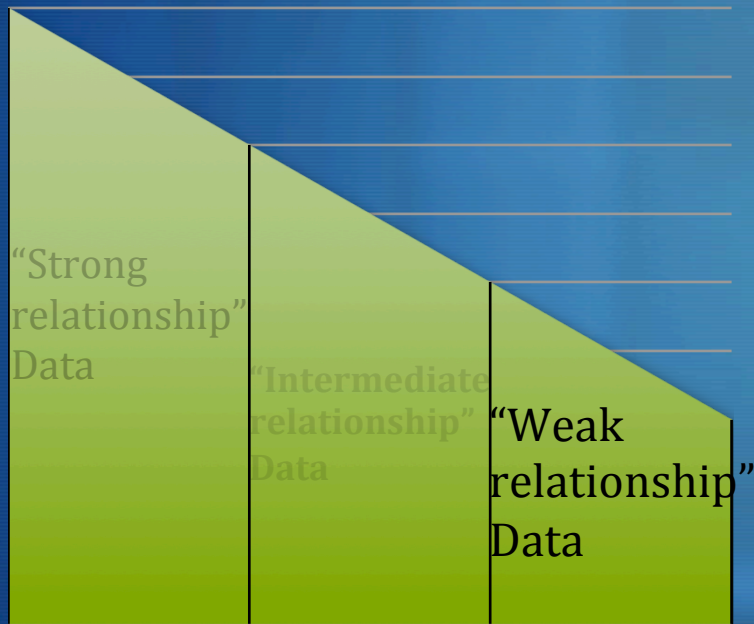
Intellectual Activity of Business

- Any data not directly provided, but verifiable in the present life (e.g. trips, preferences, friendships, etc.)
- Here the intellectual activity of business grows, but as such data are verifiable in the present, their relationship with individuals is strong.
- No right to data portability, but right to access cannot be denied (minimum intellectual effort of companies)
- All other control rights

“Weak relationship” data

Relationship Data - individuals

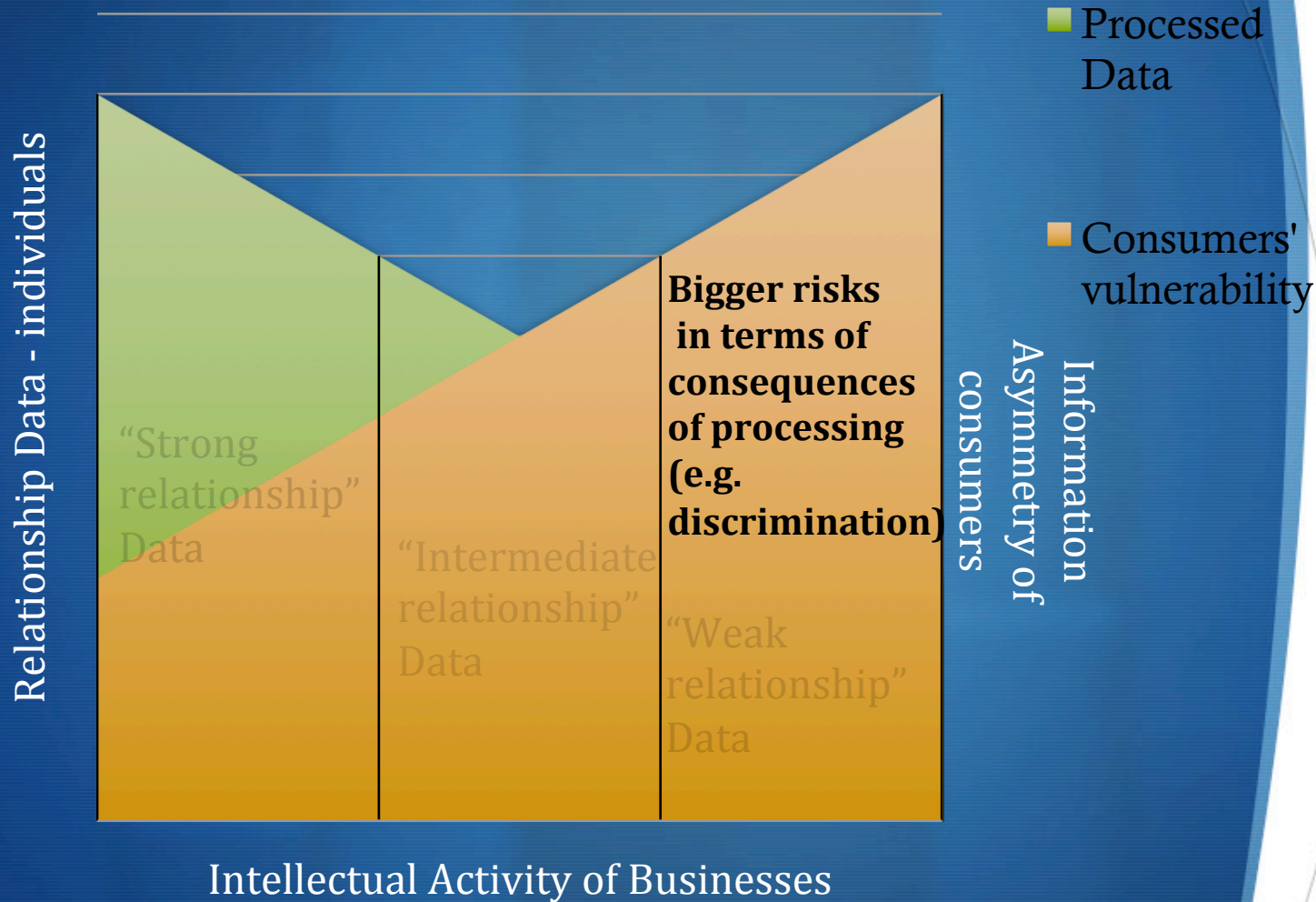
Data processing



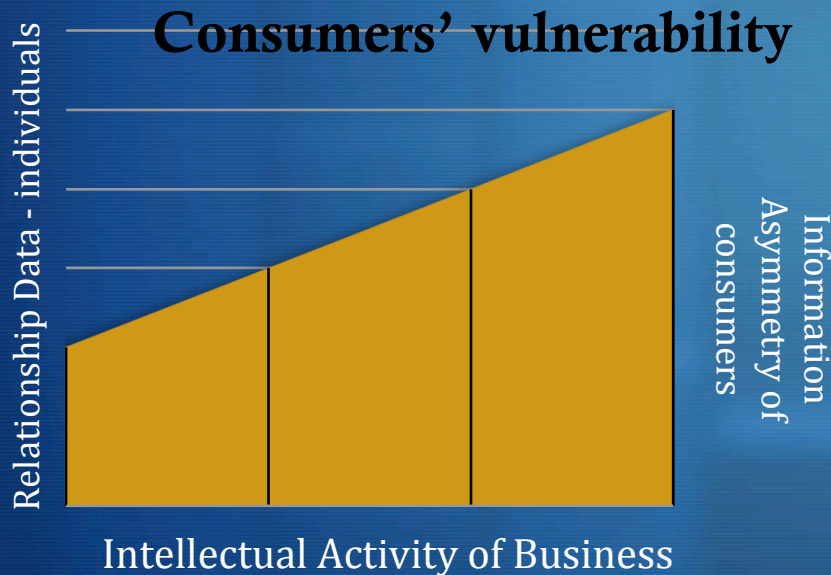
Intellectual Activity of Business

- Here the intellectual activity of businesses is total.
- No control rights.
- Not just “decisions” or “evaluations”.

Data processing



Protecting consumers' vulnerability



- ◆ **A change of paradigm:** from control rights to “reaction rights”
- ◆ Right to information about the processing (vs. right to access to the content of the processing), art. 14, GDPR.
- ◆ Right not to be subjected to automated decisions referred to personality (not for pre-contractual relationship), art. 20, GDPR.

Profile generation vs. Profile application

- ◆ Consumers can react to the consequences of processing, but it is not necessary to control the content of the processing
- ◆ Misleading action (Art. 6, 2005/29/EC) ⇔ Right to information (art. 14, GDPR)

Thank you!

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