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The Interface Between Copyright and Data Regulation

Data as a subject matter of EU legal acts

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Starting points regarding the data concept

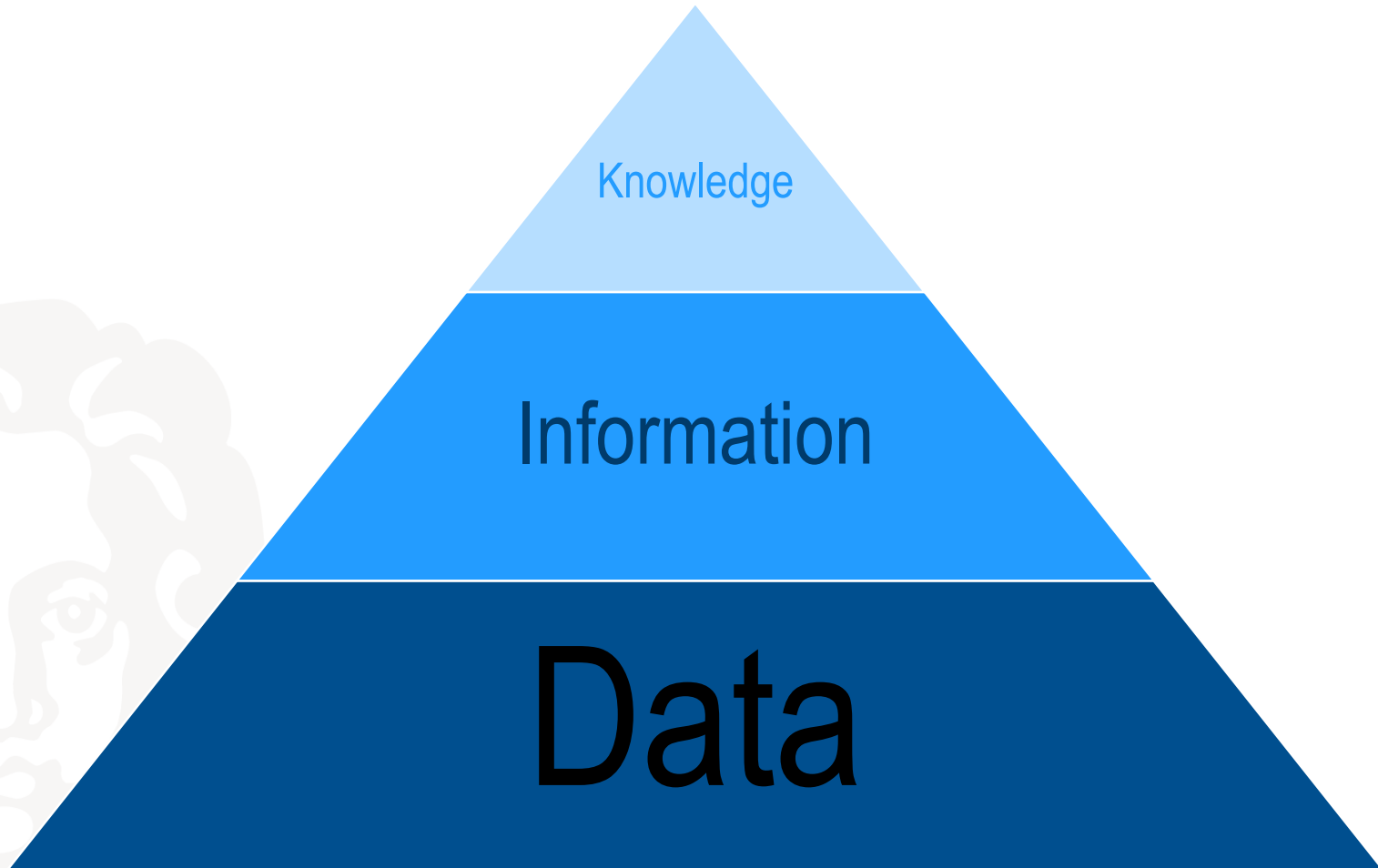
1. Centrality
2. Normativity
3. Fuzziness

Mapping legal terminology

<u>Information</u>		
Liability of information society services		
Personal data = information		
Trade secret = information		

Mapping legal terminology

<u>Information</u>	<u>Data undefined</u>	
Liability of information society services	Database copyright/ sui generis right	
Personal data = information	Text and data mining	
Trade secret = information	Digital content = data in digital form	
	Reg 2018/1807 on the free flow of non-personal data	



Mapping legal terminology

<u>Information</u>	<u>Data undefined</u>	<u>Data defined</u>
Liability of information society services	Database copyright/ sui generis right	Data Governance Act
Personal data = information	Text and data mining	Digital Markets Act
Trade secret = information	Digital content = data in digital form	Data Act (→ via art. 35 also Database Dir)
	Reg 2018/1807 on the free flow of non-personal data	European Health Data Space Act

The data definition

‘data’ means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording

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The data definition

- Systematic argument: data in cybersecurity and AI legal acts
 - Cyber Resilience Act (CRA) Proposal: “‘electronic information system’ means any system ... capable of **processing, storing or transmitting digital data**”
 - AIA Proposal: training, validation, testing, input data

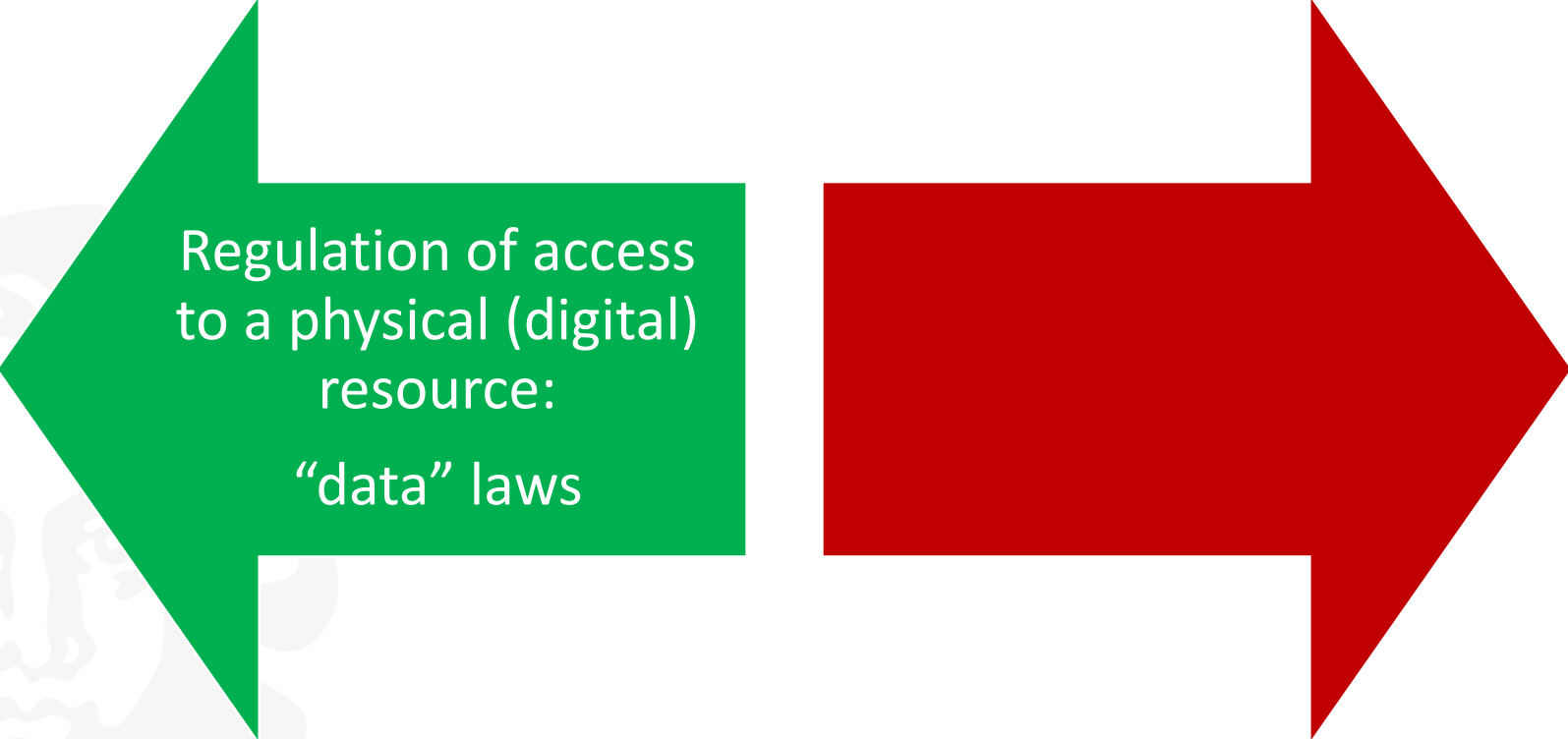
The data definition

- Legislative history of the data definition (cf. [SWD\(2022\) 34](#), p. 1)
 - “This wide definition ensures consistency with the Data Governance Act and builds on a time-tested approach in the field of open data where a similar definition has been in force since 2003.”
 - → ‘document’ = “any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (paper, or electronic form or as a sound, visual or audiovisual recording)” (recital 30 Dir 2019/1024)
 - Thus: data = document minus paper

The data definition

- The purpose of the EU strategy for data (COM/2020/66):
- “Data is ... the **basis** for many new products and services ... It is an **essential resource** for ... SMEs. The **availability of data** is essential for training artificial intelligence systems ... we have to find our European way, balancing the **flow and wide use of data**, while preserving high privacy, security, safety and ethical standards.”
 - Data as a digital resource

Concluding remarks



Regulation of access
to a physical (digital)
resource:
“data” laws

Concluding remarks

Problematic
!?

Regulation of access
to a physical (digital)
resource:
“data” laws

Protection of an
intangible good:
information/IP