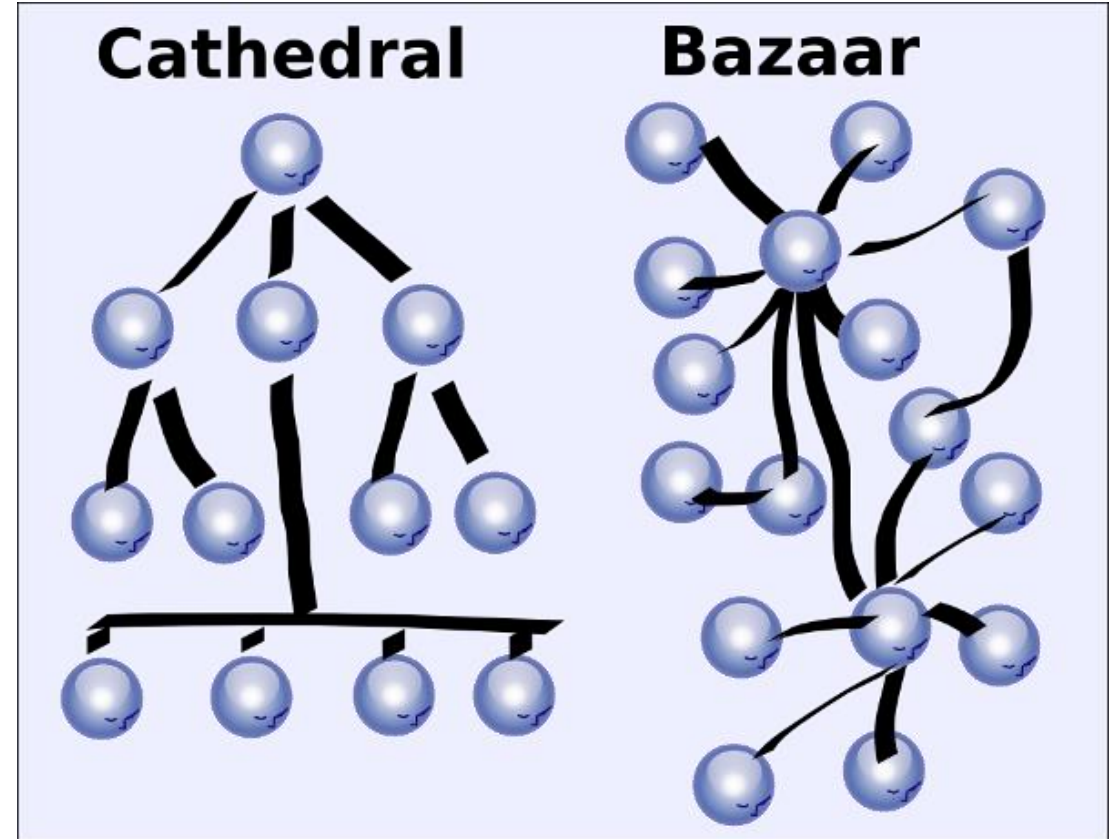
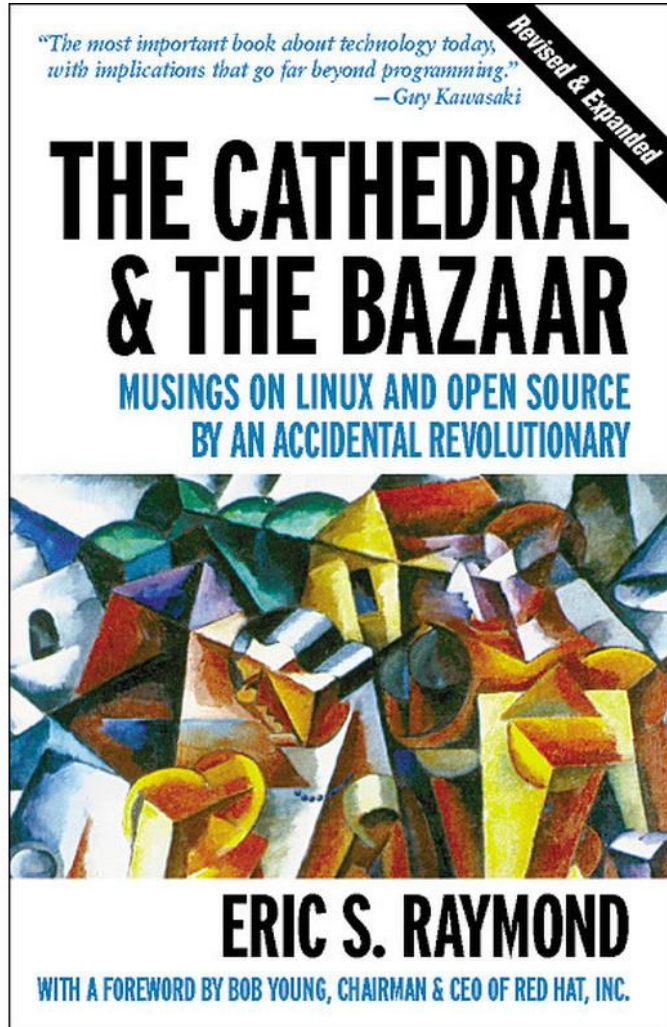


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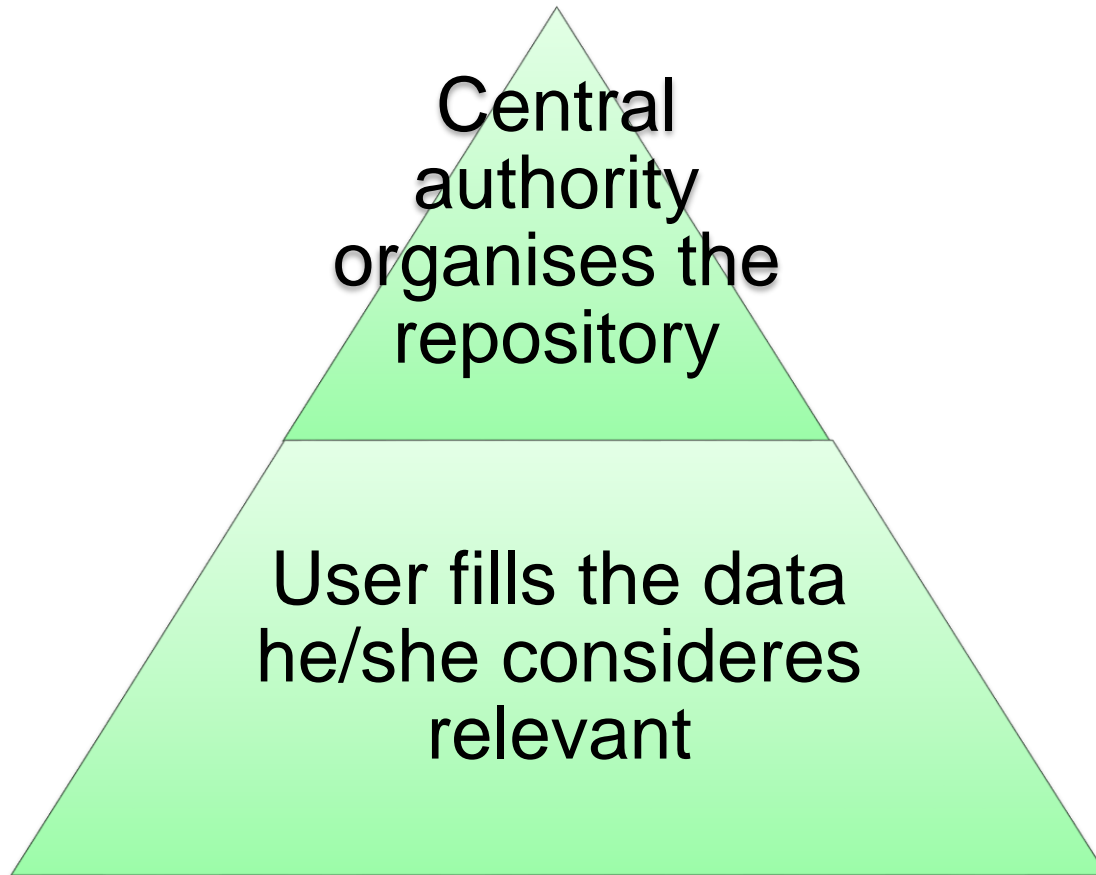
Legal aspects of data-sharing

Michal Koščík
Masaryk University

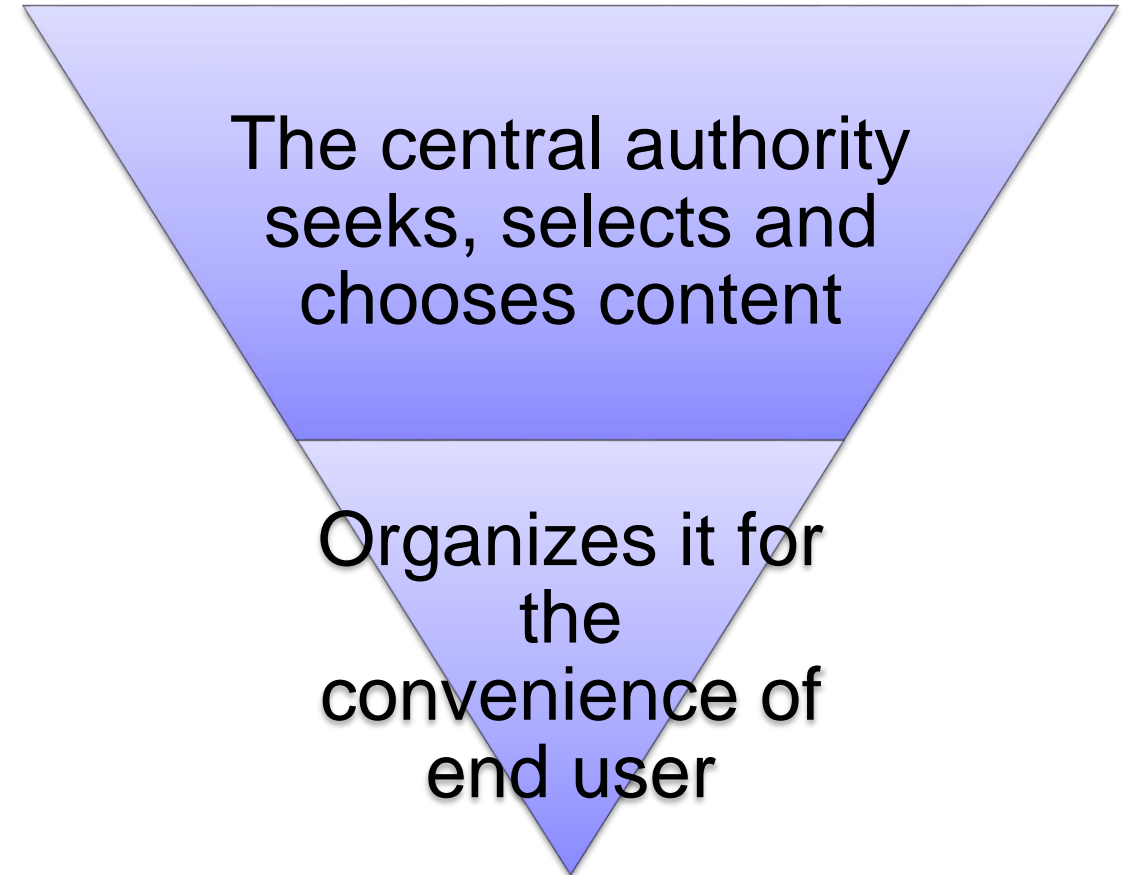


The lessons for data-sharing infrastructure

BOTTOM UP



TOP DOWN



Data sharing design and law

Law is predominantly based on the presumption of “top down” design

- It is easy to identify person with responsibility/liability
- It is easy to attribute “ownership”

Law is very bad at anticipating the potential of technology

Short term concerns outweigh long term potential



The emergence of “bottom up” in IT brings us new tools, that we are still learning to use

- Safe harbor regimes
- Codes of conducts
- Free licenses

Main legal issues in data-sharing

Intellectual property rights

- Authorship of database
- Sui generis database rights
- Rights to primary data (maybe in the future)

Data protection rights, Privacy

- GDPR, general privacy rules

Right to access to information

- Public sector information
- Knowledge rights
- Data-mining exceptions

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Intellectual property rights

WHO OWNS THE DATA ?

WHO OWNS THE DATA ?

Is a very inaccurate question

Ownership is possession of the storage medium

- Does not grant the exclusive rights

Better question is “who owns IP rights to the data”

IP RIGHTS TO THE DATA

Database Authorship

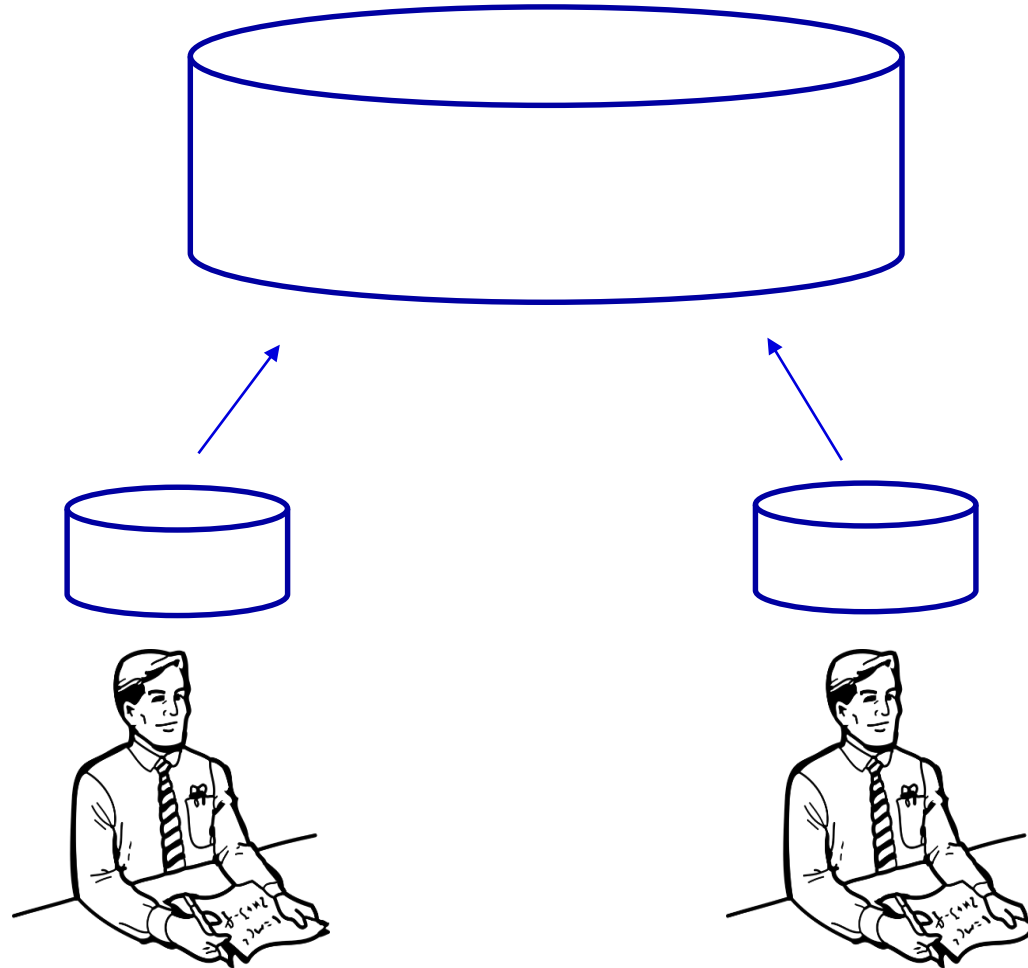
- Protects creative input to collection of the data

Sui generis database rights

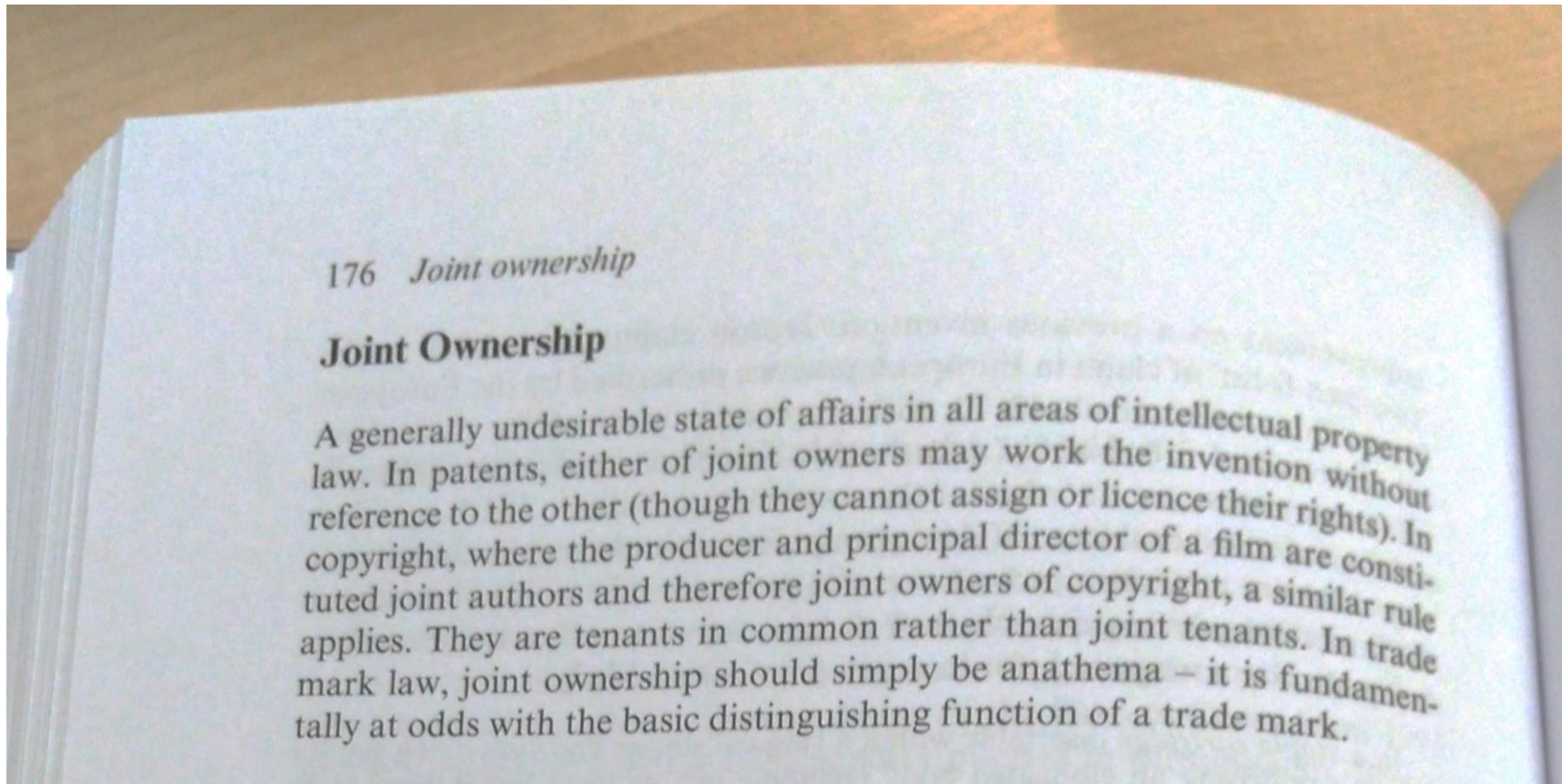
- Protects the investment

Not every dataset is protected !!!

Bottom up approach is a challenge



Owning the data jointly



Possible outcomes

$1+1=1$ – desired outcome – merging two databases into one „joint database “

$1+1=0$ – merging two databases without substantial investment might create dataset without „database right protection“

$1+1=2$ – mere process of merging two databases does not constitute a substantial investment or original element. Therefore the two database rights exist independently

$1+1=3$ – the newly created database gains protection but the two original databases are still protected

$0+0=1$ – ideal situation – the datasets which would not be protected individually are protected as a whole

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DATA PROTECTION RULES

Major concerns of research institutions

Consent:

- Open consent
- Blank consent
- Re-consent

Anonymisation, pseudonymisation

- fluid concepts
- blurred order

Biological samples

- Is the sample itself personal information
- Cultivated samples
- National provisions on biobanking and tissues

Archiving and processing records of qualitative research

- Sociological, Psychological, Ethnological,

Heritage data

Data sharing, Open data,

Deceased persons

- Persons presumed to be deceased

Medical research

- Analysis of data by provider
- Analysis of data by researcher outside hospital
- Merging data from several providers

Public interest

- Which research is in public interest?
- Is research public interest itself?

Access to data by third authorities

Interference with the physicians – patient privilege

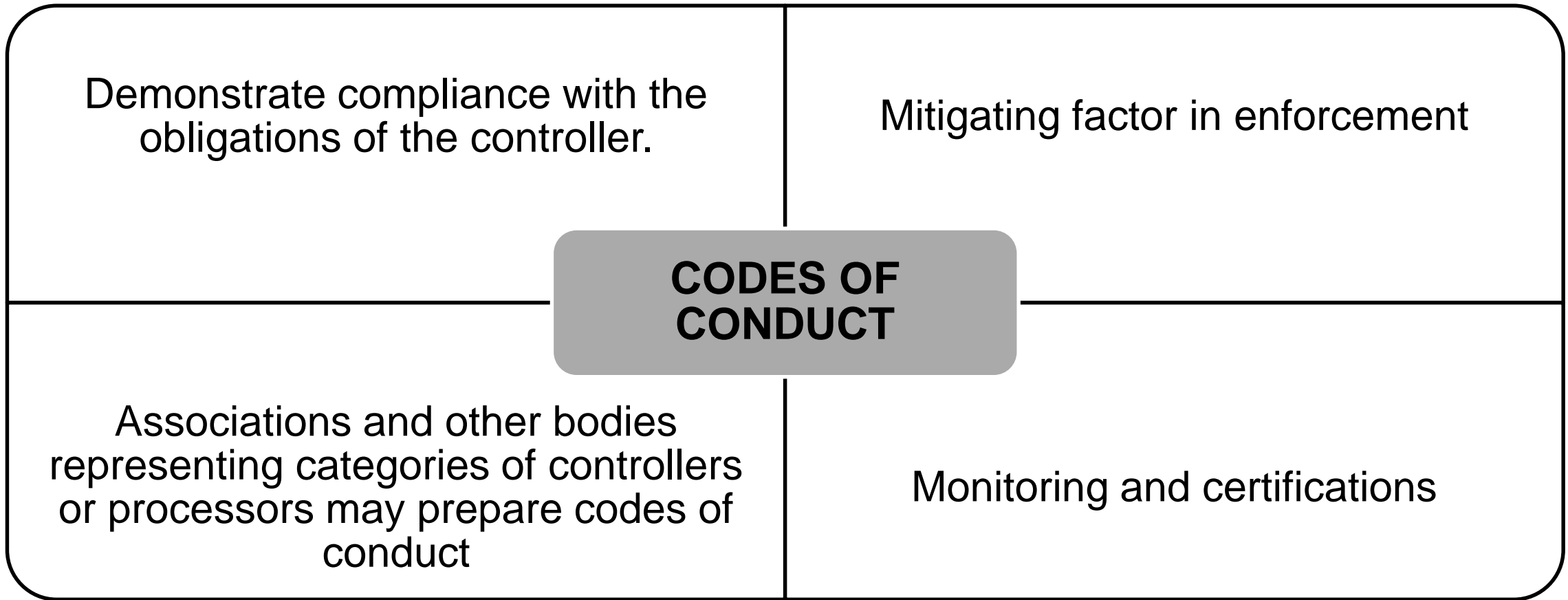
GDPR an actual opportunity for bottom up approach

It does not prescribe sets of measures to be taken

It puts the person who controls the data into driving seat

- It is up to him to determine what is necessary to protect the data

It allows for sector specific codes of conduct



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Right to know (?) and information access

There are other rights that have to be balanced towards “restrictive rights”

Freedom of speech

Freedom of information

Freedom of the arts and sciences

Transparency of public sector

Strong message from the EU

It is not desirable to monopolize or proprietise mere information.

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Thank you