

Welcome to the Cyber Risk Insights Conference!

Welcoming Remarks



Rebecca Bole
EVP & Editor-in-Chief
Advisen



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The **right** hands at
The **right** time
To power *performance*

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Advisen Lunch Session: Help Us to Create ‘Actionable Intelligence’

***Please join Advisen for this lunch workshop as
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offerings through ‘actionable intelligence’.***



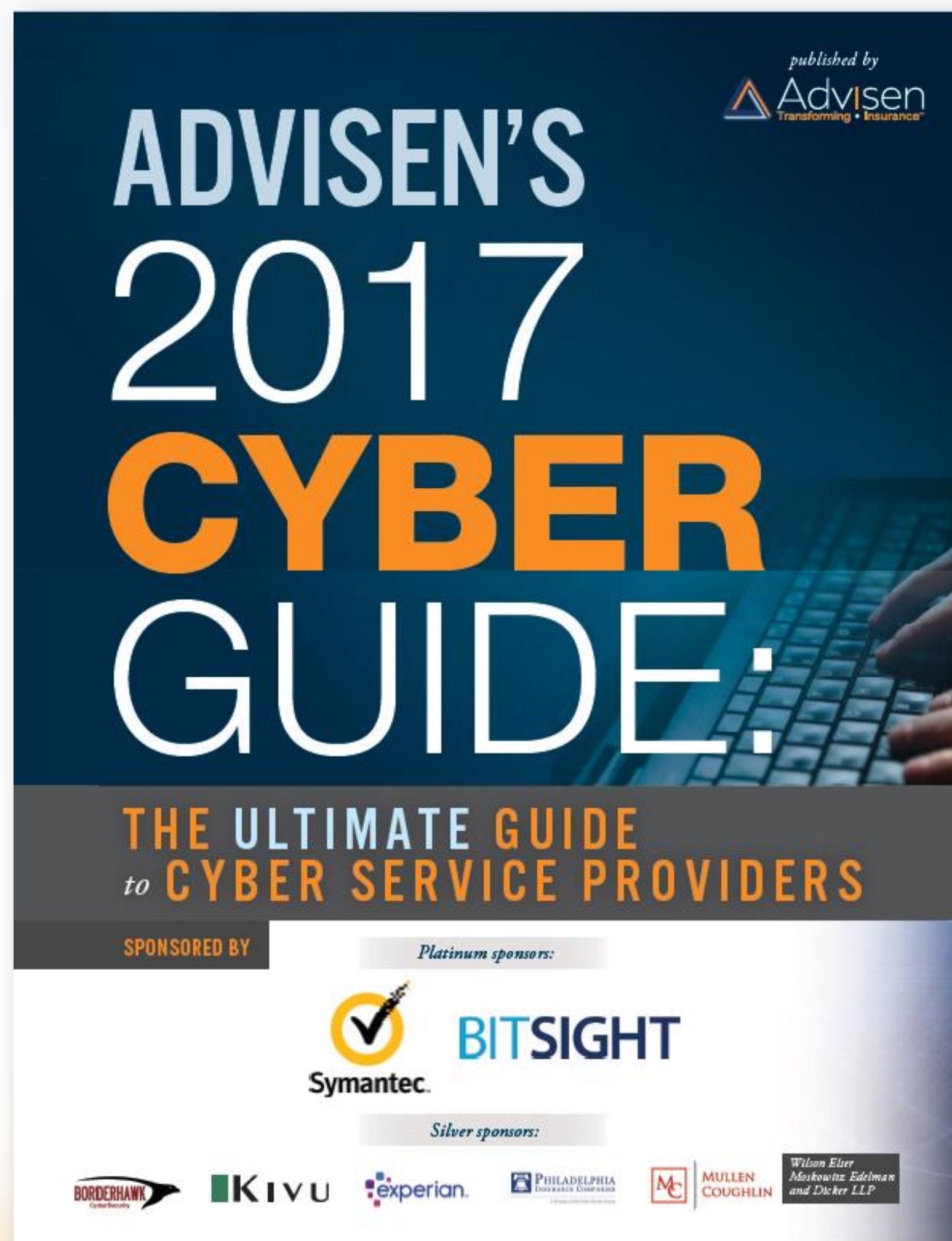
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CYBER RISK INDUSTRY PERSON OF THE YEAR- USA,
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CYBER NEWCOMER OF THE YEAR - **NEW**

CYBER LAW FIRM OF THE YEAR - **NEW**

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Co-Chair Opening Remarks



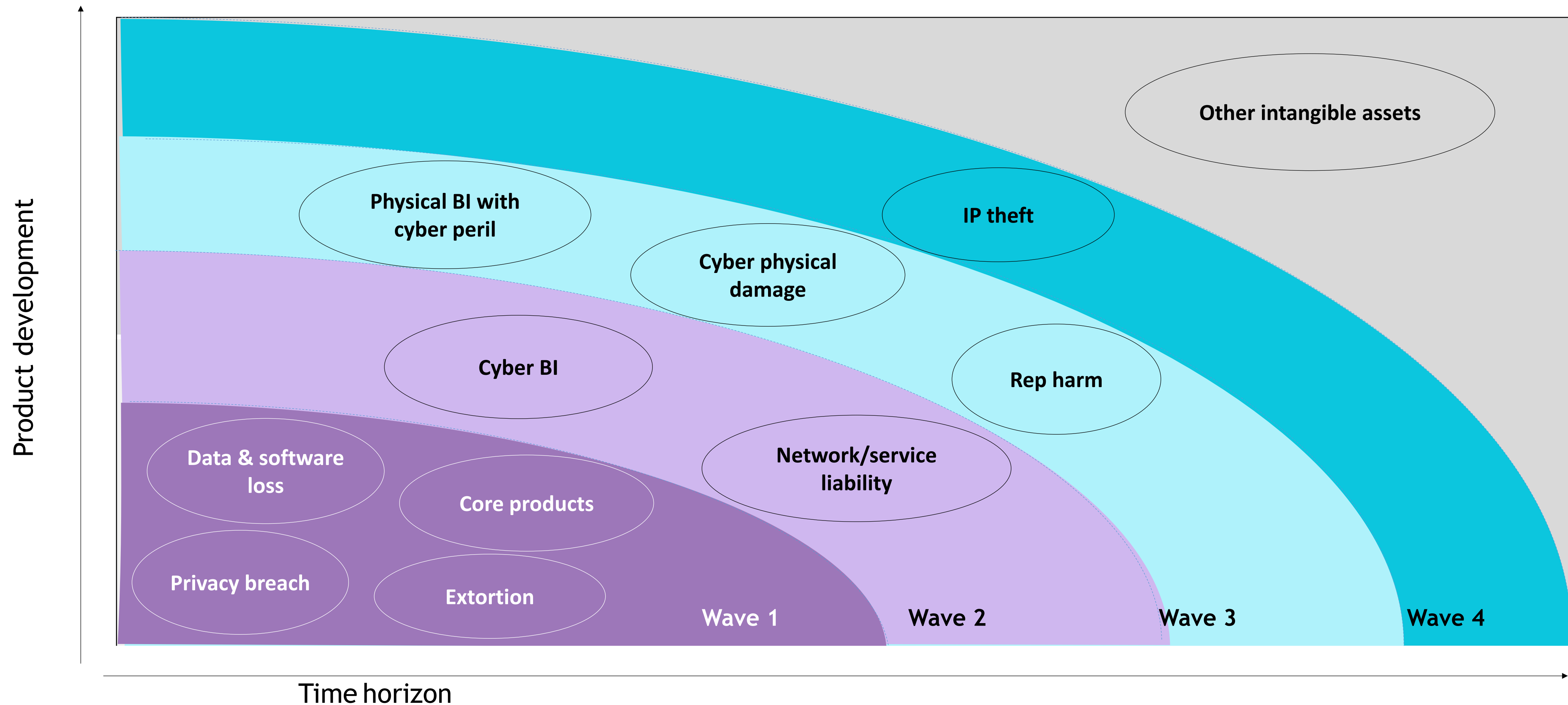
Jacqueline Spencer-Sim
Cyber Liability Class Underwriter
Novae



Sarah Stephens
Head of Cyber, Tech and Media E&O
JLT Specialty

Wave of Cyber Insurance

Development of cyber insurance may follow several waves, gradually expanding from core propositions focusing on digital assets, to new products covering other asset classes or with non-cyber perils.



Keynote Address



General Sir Richard Barrons KCB CBE
Commander, Joint Forces Command
2013-2016

ADVISEN CYBER RISK INSIGHTS CONFERENCE 7 MARCH 2017

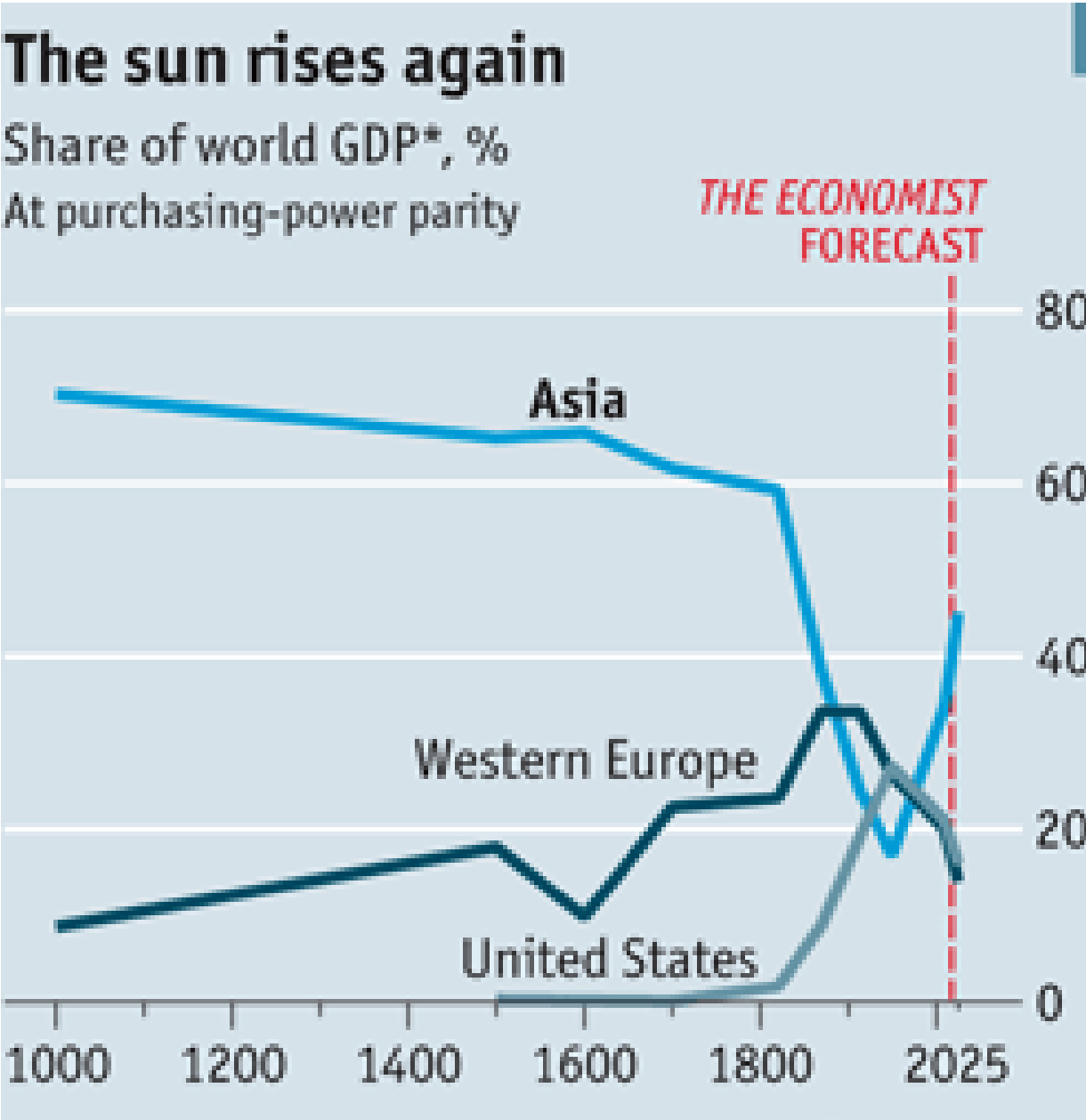
GENERAL SIR RICHARD BARRONS

CYBER RISK

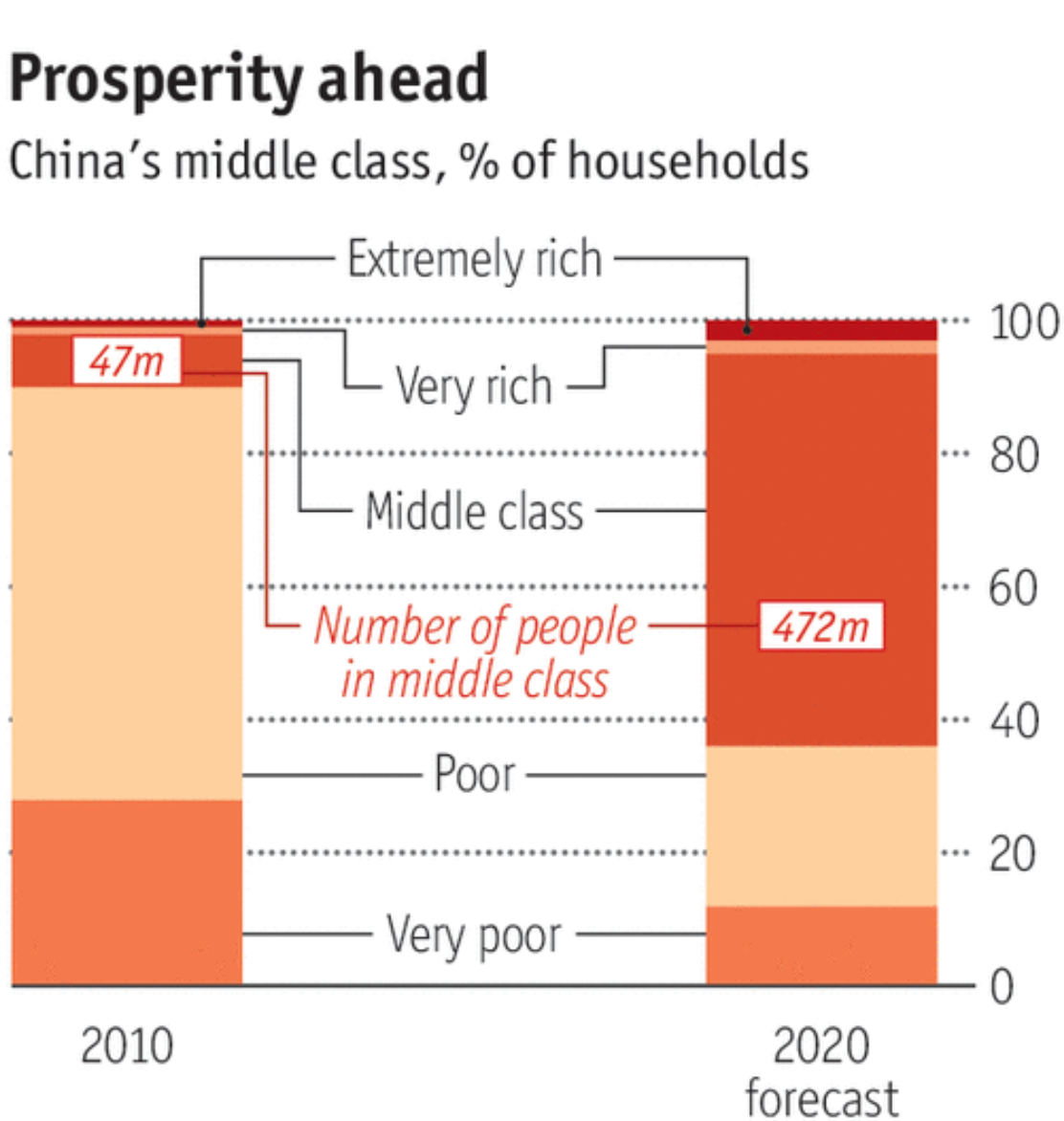
- \$3trillion: cost to the global economy from cyber crime in 2015. Likely to double by 2021.
- Cyber insurance premiums to reach \$20 billion by 2026.
- 60% of UK small businesses experienced a cyber attack in 2014, at an average cost of £90,000.
- Hiring a botnet costs \$38/hr and the average cost to a target company is £40,000.
- Top 5 sectors: healthcare, manufacturing, financial services, govt, transport.
- Most common attack methods: Insider, DDoS, Malware.

GLOBAL COLLISIONS: The Asian Century

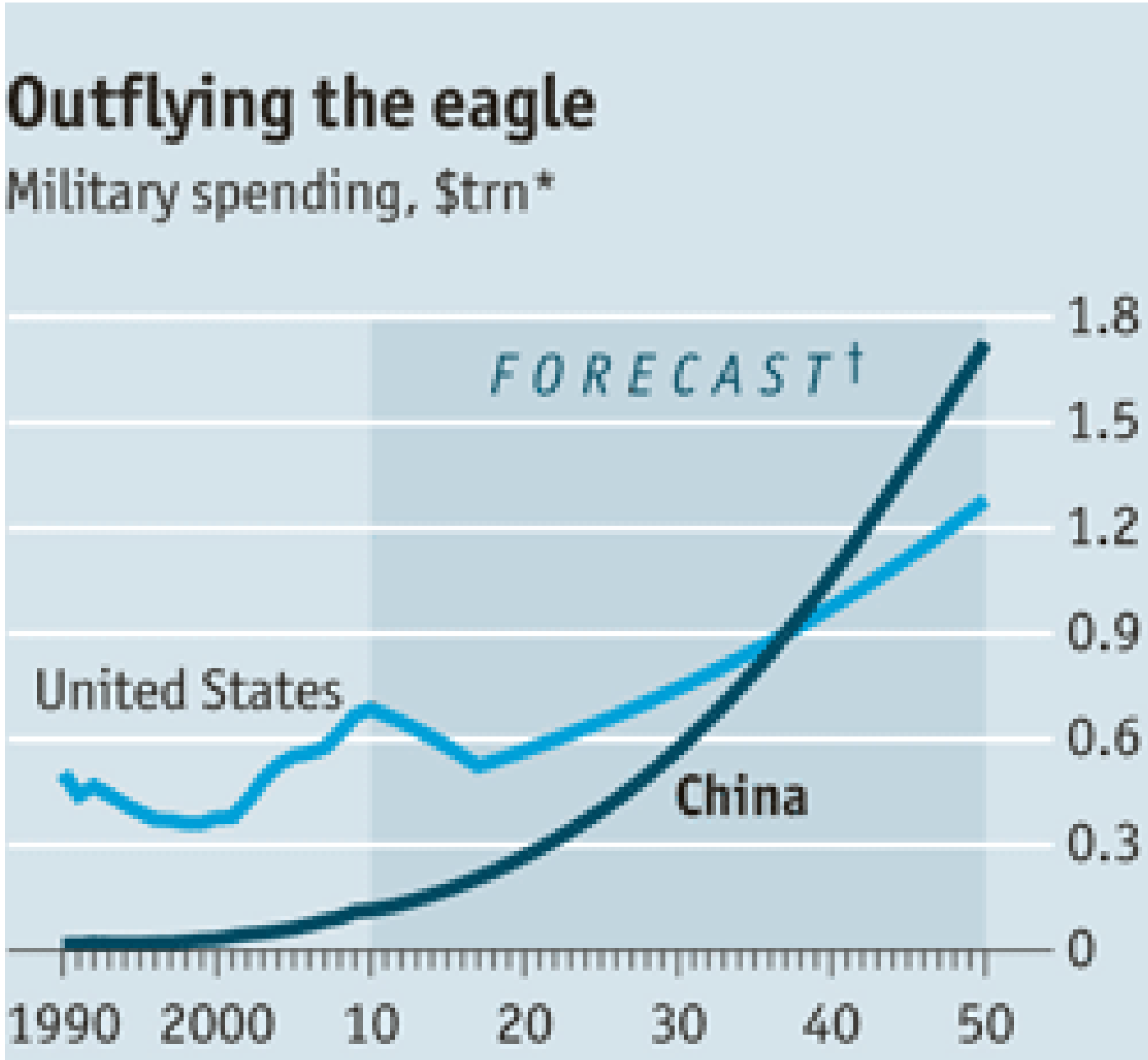
GDP



Wealth

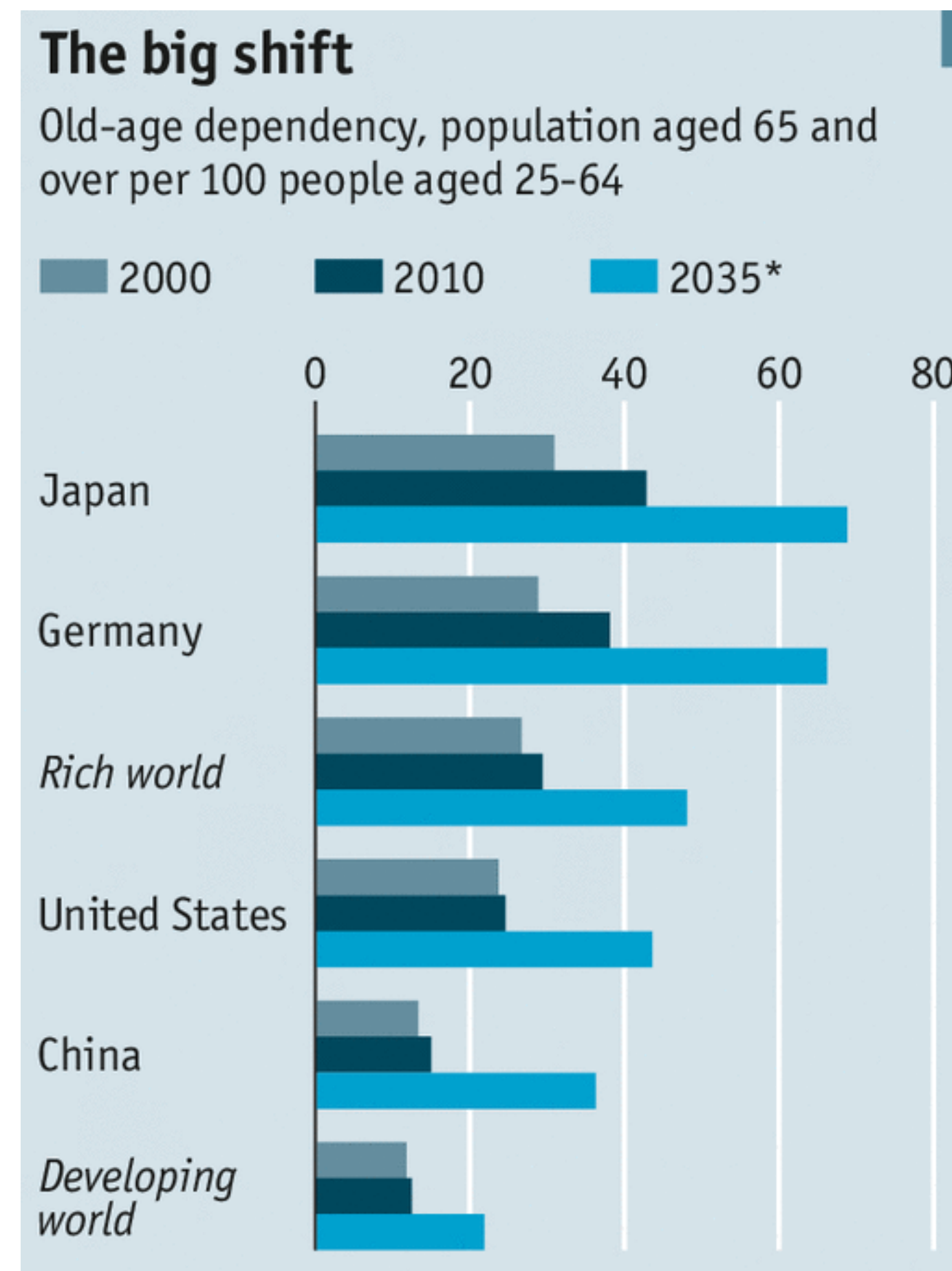
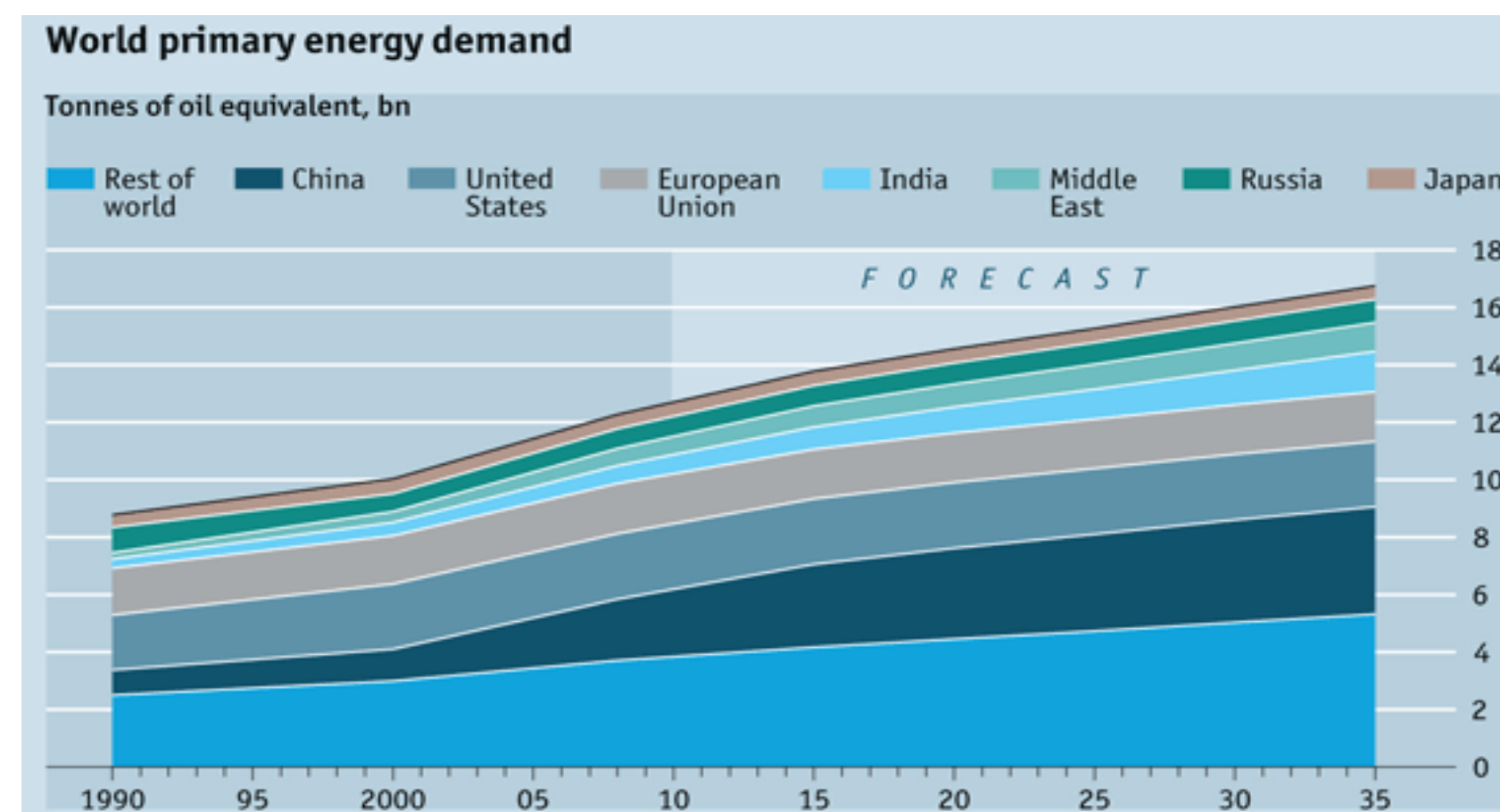
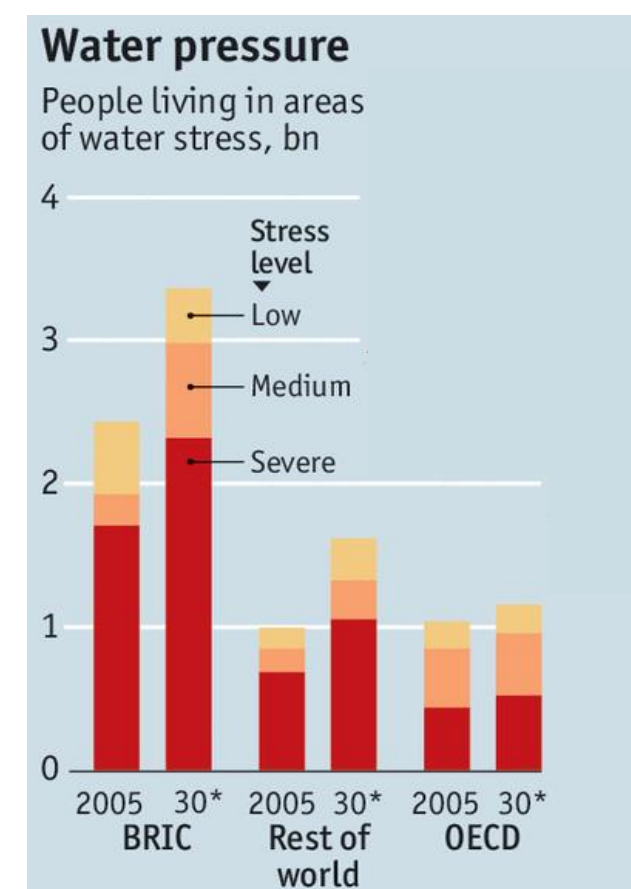
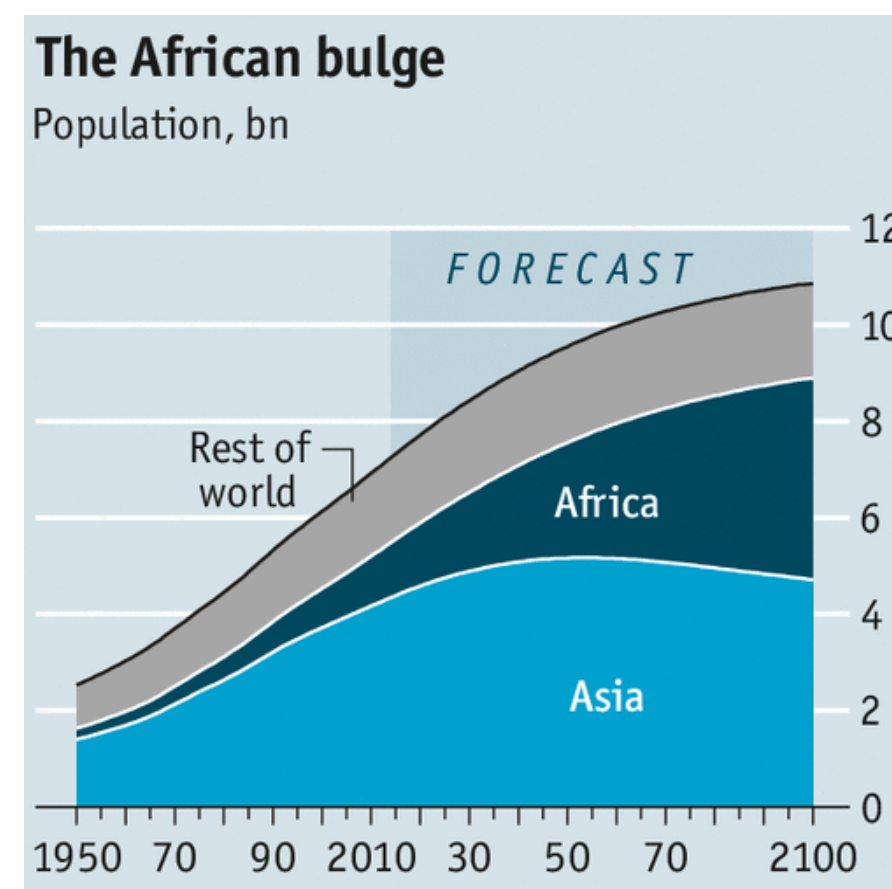


Military

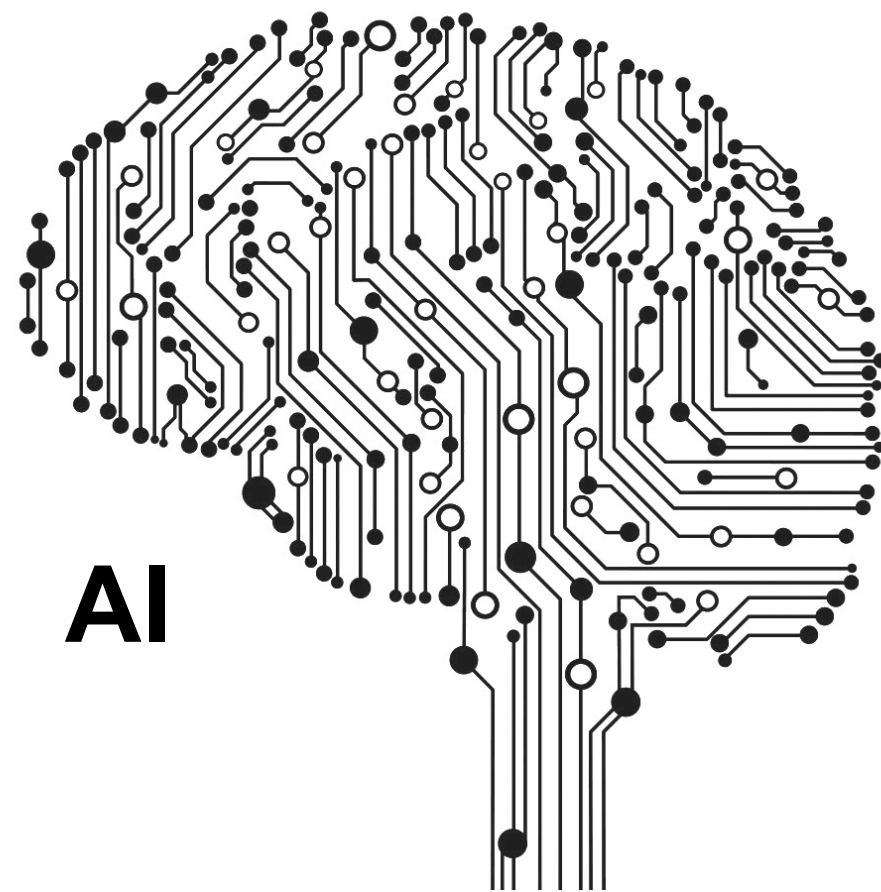


Source: The Economist

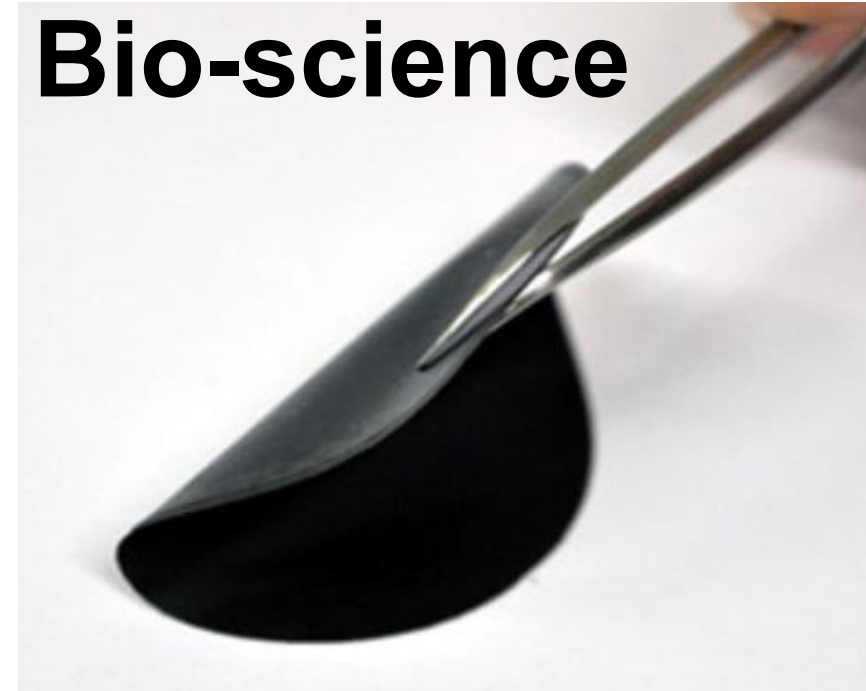
GLOBAL COLLISIONS: A Changing World



GLOBAL COLLISIONS: The Fourth Industrial Revolution



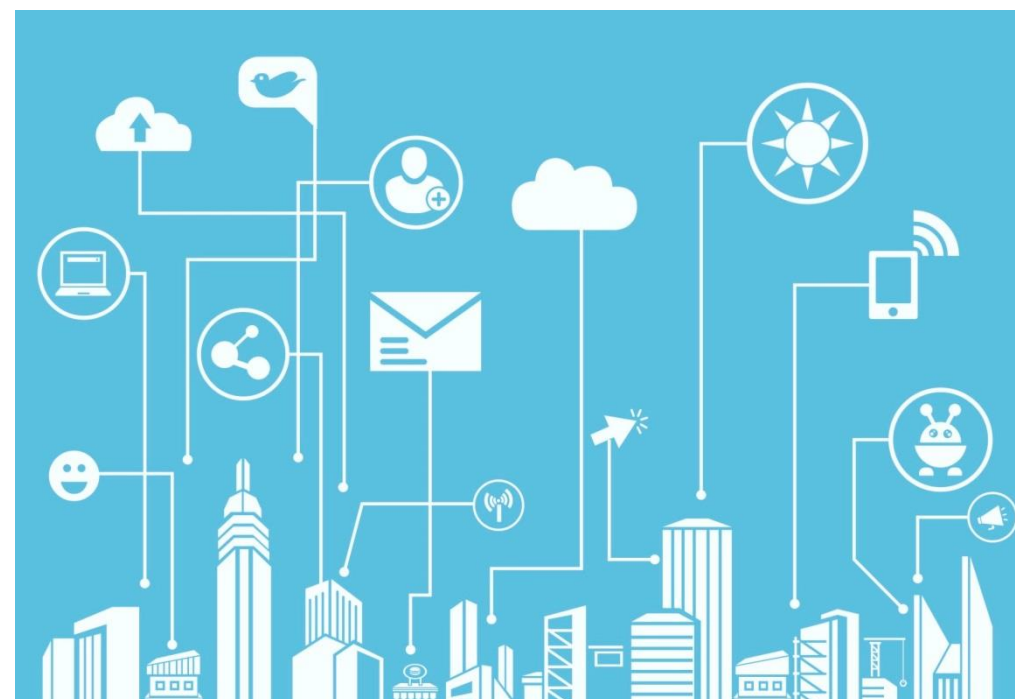
AI



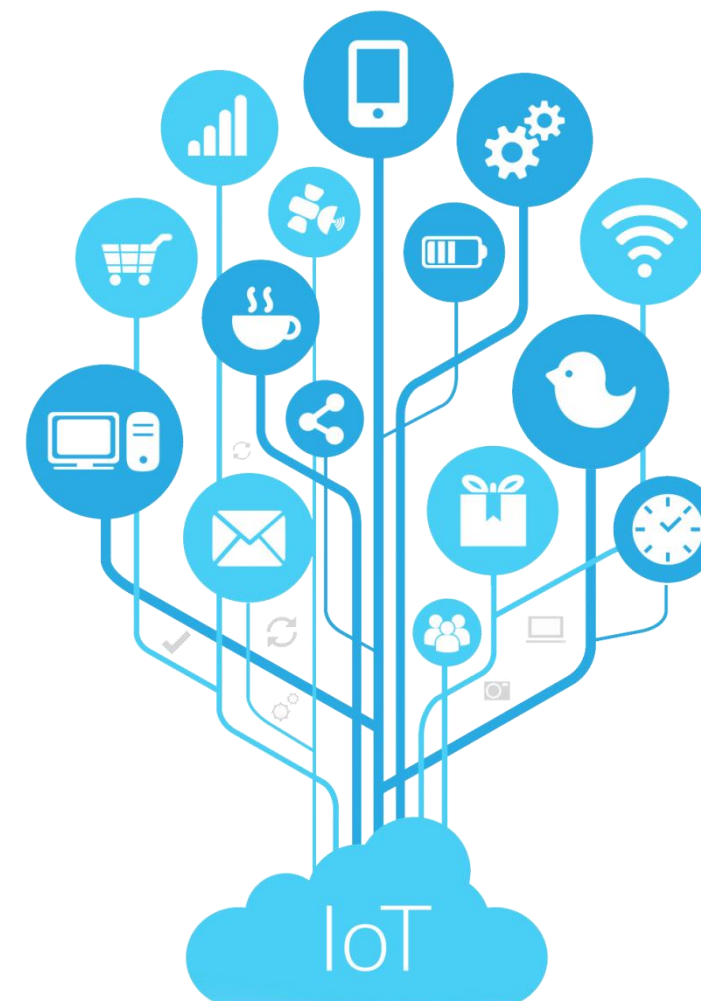
Bio-science



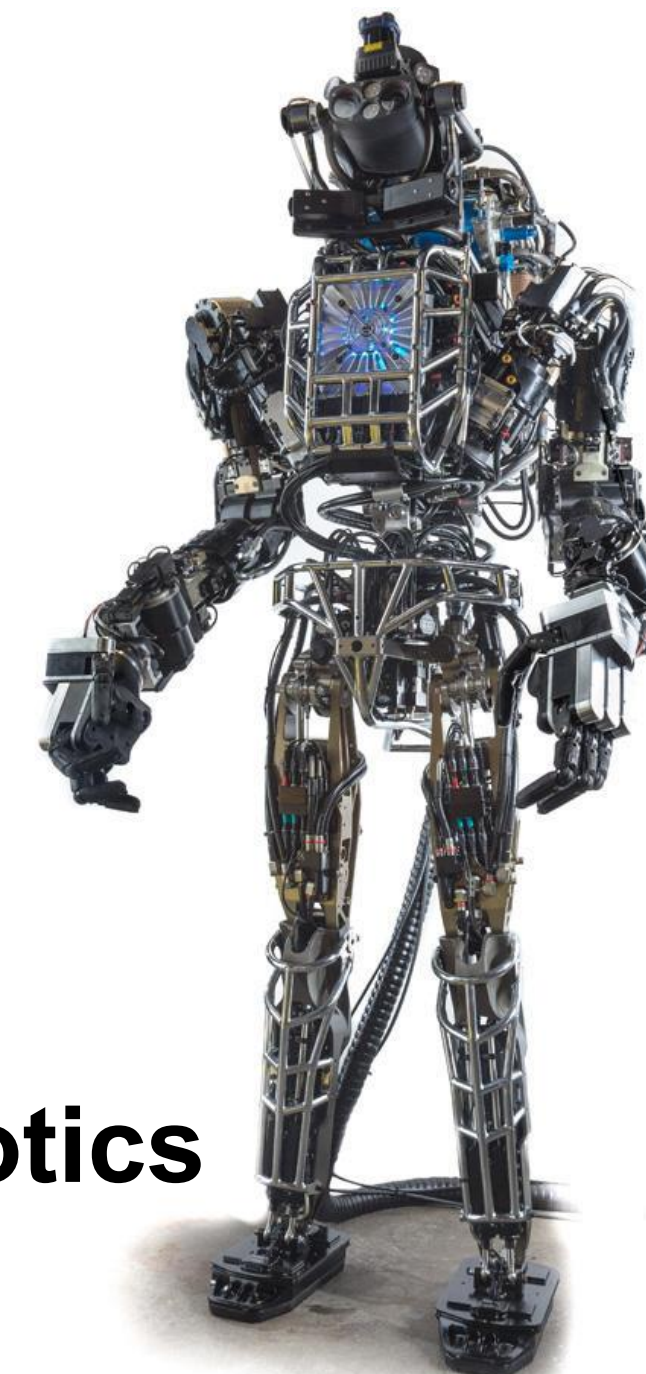
Space



Connectivity



IoT



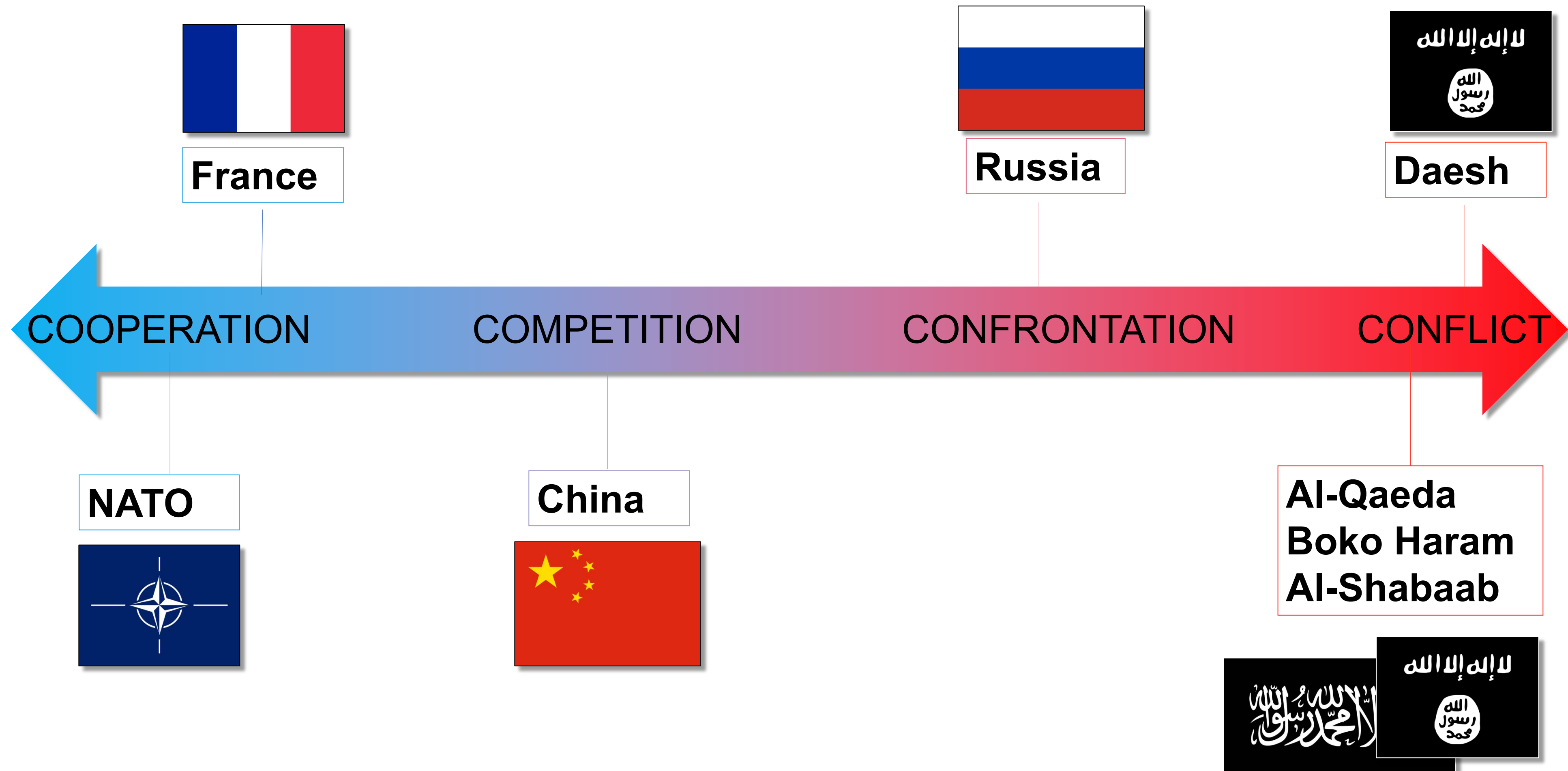
Robotics

War in the 21st Century



A collage of images depicting various scenes of conflict and war. The top left shows a military aircraft on fire with the tail code 'WV 694'. The top center shows a soldier crouching behind barbed wire. The top right shows a tank engulfed in flames. The middle left shows a soldier in a trench. The middle center shows a child with a raised fist, a symbol of protest or resistance. The middle right shows soldiers in a field. The bottom left shows a soldier in a trench. The bottom center shows a soldier in a field. The bottom right shows a soldier in a field. The text 'OSMAN SAGIRLI' is visible in the bottom right corner.

UK Relationships On The Spectrum Of Cooperation To Conflict



Extremism and Terrorism



'GREY SPACE'/HYBRID CONFLICT

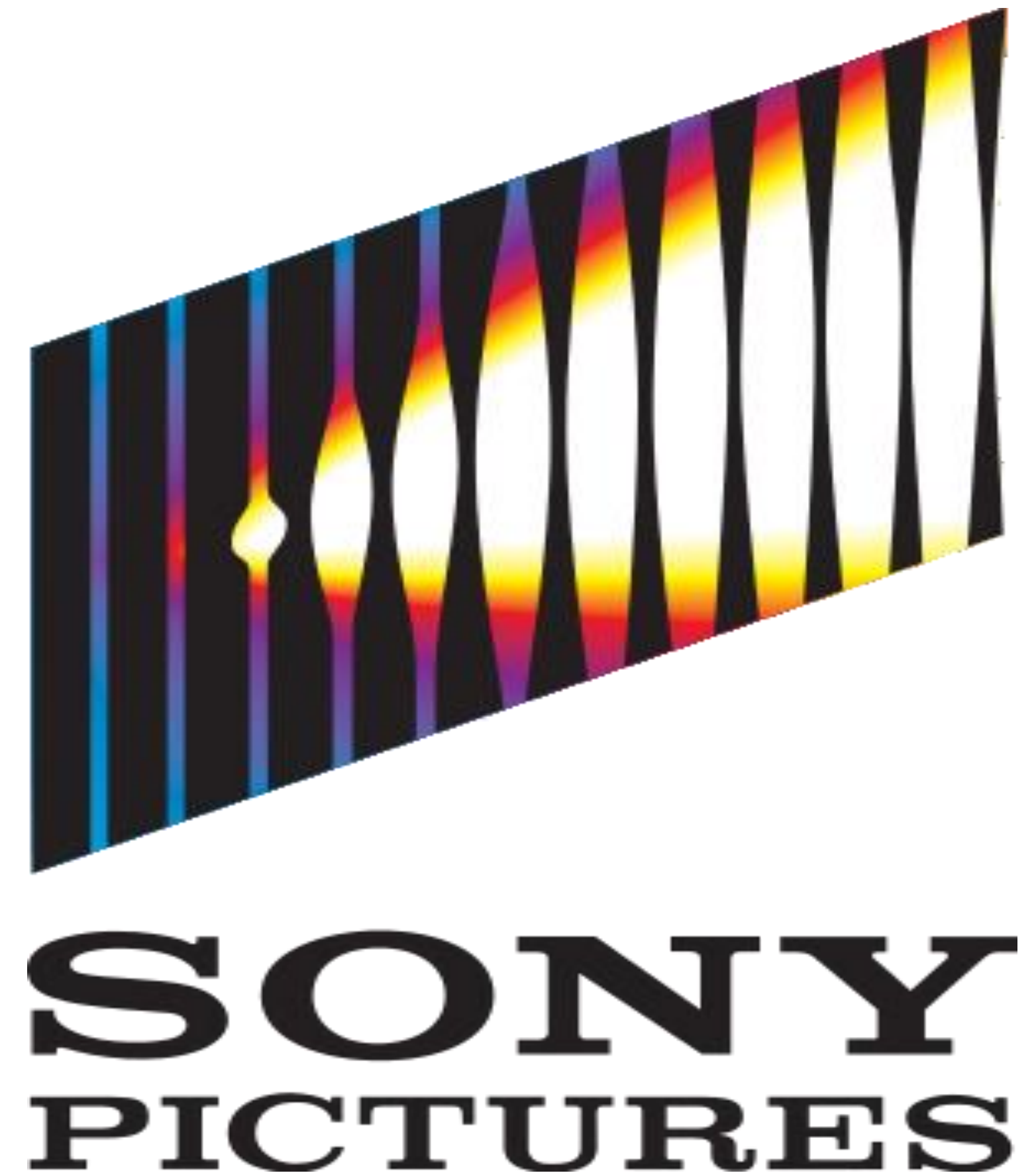
States Behaving Like Violent Extremists



Violent Extremists Behaving Like States

Disruptive: Sony Pictures Entertainment

- 24th November 2014
- Huge amount of data deleted.
- Data also released onto open source platforms.
- Sony Pictures Entertainment crippled and for several weeks – employees resorted to hand-written internal communications instead of email.
- **Likely perpetrator: DPRK government**



Disruptive: **Dyn (DNS Provider)**

- 21st October, 2016
- `www.google.co.uk` = 216.58.195.68
- DDoS attack targeted Dyn's servers overpowering them
- Consequently, firms who use Dyn as their DNS provider (e.g. Twitter) found Internet users could not access their websites.
- Several million Internet users in the US were left unable to reach desired sites for a total of nearly 6 hours.
- **Likely perpetrator: Unknown**



Offensive: Estonia

- Beginning 26th April 2007
- Three weeks of sustained DDoS attack against all aspects of Estonia's civil society:
 - Government
 - Political Parties
 - Banking System
 - Education Facilities
 - News media
 - Businesses
- Dubbed 'Web War One'
- **Likely perpetrator: Russia**



Offensive: Ukrainian National Grid

- 23rd December 2015
- Malware cyberattack against the Ukrainian National Grid
- 230,000 homes without power for 6 hours
- 6 months to remove the malware from the network
- A demonstration of capability
- **Likely perpetrator: coordinated by Russia**



War Against Daily Life



Emotion and Perceptions beat Facts.



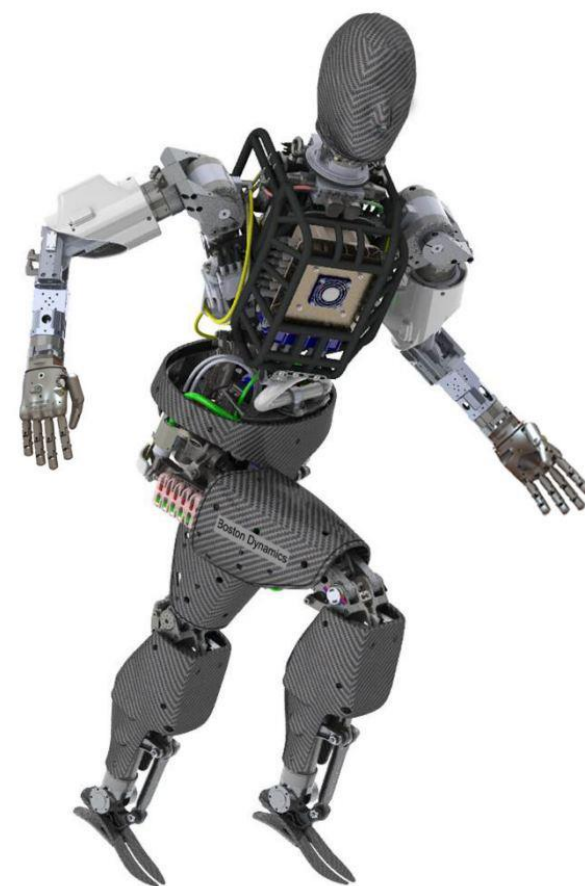
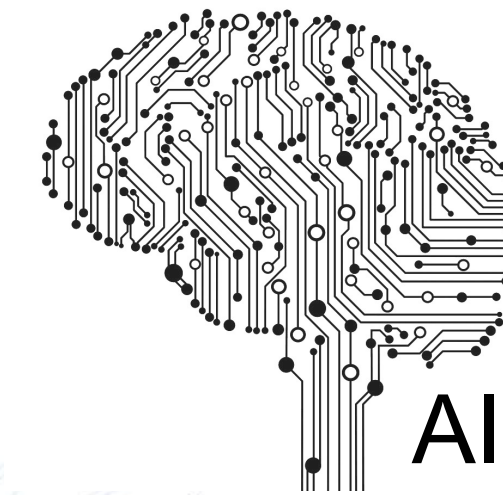
CYBER: WHERE WE ARE NOW

- Acknowledged as a major standing risk to enterprises and institutions. 50% of CEOs think they have some cyber insurance, 10% actually do.
- Limited by habit and preference to the level of an event connected to criminality, espionage, or influence – not to state confrontation or conflict. Does intent and attribution affect insurance, and can it be proven?
- Supported better by Govt: the National Cyber Security Centre, but a mix of standards and recommendations. Boards often lack cyber expertise.
- Led by cooperation, not much law or regulation – the EU GDPR will change aspects of this, but is a policy of consent and consensus robust enough?
- No alliance structures for directed cyber coordination in conflict.

Combinations of technologies will win the future in all walks of life



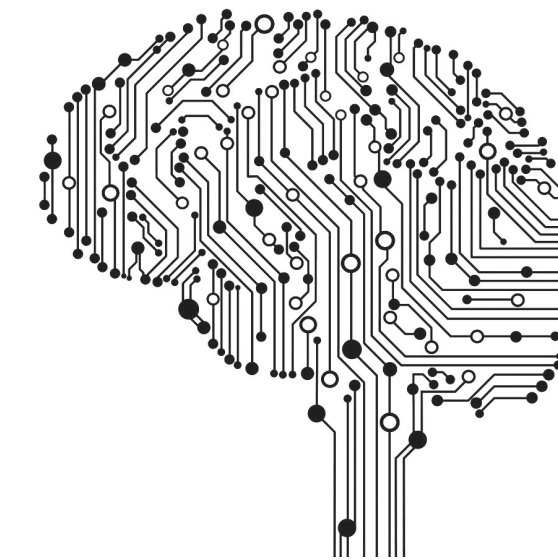
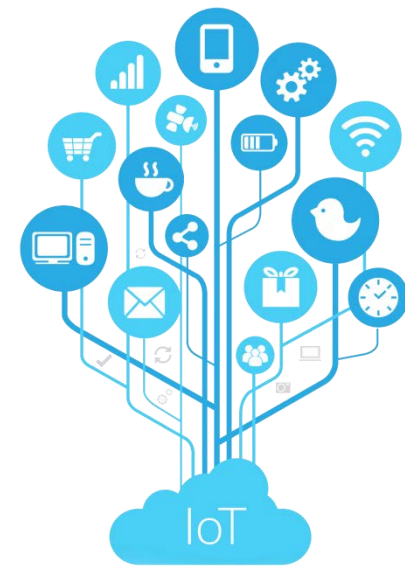
Complex networks of new technologies bring new value and new risks



Death By Toaster



Cyber 'Full Spectrum' Implications



CYBER: THE FUTURE

- New risks: expanding from networks and data to widespread AI, robotics, drones, AR, and autonomy in innovative combinations in the 'metaverse'.
- Boards must be held to account for how value, operations, and reputations are protected against cyber as often it will be their greatest strategic risk.
- Cyber insurance will need to consider bounding: accidents, negligence, crime, disaster, terrorism, state confrontation, and conflict.
- Cyber insurance will be a core aspect of investor and customer assurance, a source of competitive advantage, and an important resilience tool.
- A stronger Govt/private sector partnership will be required, underpinned by common education & training, law, regulation, sharing of intelligence, and communication
- Somebody will make a fortune.

The Buyer's Perspective

The Buyer's Perspective



Sarah Stephens

Head of Cyber, Tech and Media E&O
JLT Specialty
Moderator



The Buyer's Perspective

- **Sarah Stephens**, Head of Cyber, Tech and Media E&O, JLT Specialty (Moderator)
- **Philippe Cotellet**, Head of Insurance and Risk Management, Airbus Defence and Space
- **Emily Jenner**, Head, Insurable Operational Risk, Standard Chartered Bank
- **Alan Kurth**, Director of Risk Management, Marsh & McLennan Companies, Inc.

The Buyer's Perspective



Sarah Stephens
JLT Specialty



Philippe Cotelle
Airbus Defence and Space



Emily Jenner
Standard Chartered Bank



Alan Kurth
Marsh & McLennan



Morning Break

Coming up next...

Track 1

Taking place in this room

“How to Identify Cyber Risk in your Organisation”

Track 2

**Taking place next door in
Broadgate 1**

“Breaking the Mould: How New Exposures are Shaping the Insurance Industry”

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Track 1

How to Identify Cyber Risk in Your Organisation

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How to Identify Cyber Risk in Your Organisation



Tim Stapleton
Senior Vice President,
Cyber/Tech Product Manager
Chubb
Moderator

How to Identify Cyber Risk in Your Organisation

- **Tim Stapleton**, Senior Vice President, Cyber/Tech Product Manager, Chubb (Moderator)
- **John Boles**, Director, Navigant
- **Manish Karir**, Director of Product Management, FICO
- **Mark Lopes**, Partner, Liberty Advisor Group

How to Identify Cyber Risk in Your Organisation



Tim Stapleton
Chubb



John Boles
Navigant



Manish Karir
FICO



Mark Lopes
Liberty Advisor Group

How Do You Quantify Cyber Threats in Your Organisation?

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Matthew Hogg

Underwriting Manager, Strategic Assets
Liberty Specialty Markets
Moderator



How Do You Quantify Cyber Threats in Your Organisation?

- **Matthew Hogg**, Underwriting Manager, Strategic Assets Liberty Specialty Markets (Moderator)
- **Neil Hare-Brown**, CEO, STORM Guidance
- **Ryan Jones**, Director of Cyber Risk Intelligence, Cyber & Technology Division, BMS Group
- **Winston Krone**, Managing Director, Kivu
- **Bret Padres**, CEO, The Crypsis Group

How Do You Quantify Cyber Threats in Your Organisation?



Matthew Hogg
Liberty Specialty Markets



Neil Hare-Brown
STORM Guidance



Ryan Jones
BMS Group



Winston Krone
Kivu



Bret Padres
The Crypsis Group

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Track 1



What Is Covered Under a Cyber Policy?

What Is Covered Under a Cyber Policy?



Erica Constance
Senior Vice President
Paragon Brokers
Moderator

What Is Covered Under a Cyber Policy?

- **Erica Constance**, Senior Vice President, Paragon Brokers (Moderator)
- **Laila Khudairi**, Deputy Underwriter, Tokio Marine Kiln
- **Edward Smerdon**, Partner, Sedgwick, Detert, Moran & Arnold LLP
- **Matthew Webb**, Group Head of Cyber, Hiscox

What Is Covered Under a Cyber Policy?



Erica Constance
Paragon Brokers



Laila Khudairi
Tokio Marine Kiln



Edward Smerdon
Sedgwick LLP



Matthew Webb
Hiscox

Engaging the C-Suite: How to Get Buy-in for Insurance

Engaging the C-Suite

David Bradford
Co-Founder & Chief Strategy Officer
Adv|sen
Moderator



Engaging the C-Suite

- **David Bradford**, Co-Founder & Chief Strategy Officer, Advisen (Moderator)
- **Michael Bruemmer**, Vice President, Data Breach Resolution Group, Experian
- **Wendel Verbeek**, Director, London, Brunswick Group

Engaging the C-Suite



David Bradford
Advisen



Michael Bruemmer
Experian



Wendel Verbeek
Brunswick Group



Afternoon Break

Coming up next...
Claims and Volatility



Track 2

Breaking the Mould: How New Exposures Are Shaping the Insurance Industry

Breaking the Mould



Max Perkins

Senior Vice President,
Global Cyber & Technology
Lockton Companies LLP
Moderator

Breaking the Mould

- **Max Perkins**, Senior Vice President, Global Cyber & Technology, Lockton Companies LLP (Moderator)
- **Russell Kirby**, Account Engineering Group Manager, FM Global
- **Geoff Pryor-White**, CEO, Tarian Agency Limited
- **Juliet White**, VP, Underwriter Cyber / Technology, XL Catlin

Breaking the Mould



Max Perkins
Lockton Companies LLP



Russel Kirby
FM Global



Geoff Pryor-White
Tarian Agency Limited



Juliet White
XL Catlin



Exposure Management in the Insurance Sector

Exposure Management in the Insurance Sector

Patrick Bousfield
Broker
Capsicum Re
Moderator



Exposure Management in the Insurance Sector

- **Patrick Bousfield**, Broker, Capsicum Re (Moderator)
- **Nick Beecroft**, Director, Product Innovation & Strategy, Sciemus
- **Oliver Brew**, Global Head of Cyber Risk, Aspen Insurance
- **Rory Egan**, Cyber Consultant, MunichRe
- **Ashwin Kashyap**, Director – Product Management, Symantec
- **Scott Stransky**, Assistant Vice President, Principal Scientist Research and Modeling, AIR Worldwide

Exposure Management in the Insurance Sector



Patrick Bousfield
Capsicum Re



Nick Beecroft
Sciemus



Oliver Brew
Aspen Insurance



Rory Egan
MunichRe



Ashwin Kashyap
Symantec



Scott Stransky
AIR Worldwide

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Art versus Science

Art versus Science



Bob Parisi
Managing Director
Marsh
Moderator

Art versus Science

- **Bob Parisi**, Managing Director, Marsh (Moderator)
- **Roger Francis**, Security Consulting Services, Mandiant, A FireEye Company
- **Jacob Olcott**, Vice President – Strategic Partnerships, BitSight Technologies
- **Dan Trueman**, Chief Innovation Officer and Head of Cyber, Novae

Art versus Science



**Bob Parisi
Marsh**



**Roger Francis
Mandiant, A FireEye Company**



**Jacob Olcott
BitSight Technologies**



**Dan Trueman
Novae**



Communication and Confidentiality: The Privacy Debate



Communication and Confidentiality

Vince Vitkowsky
Partner
Seiger Gfeller Laurie LLP
Moderator



The Legal Question

The Legal Question

To what extent can the information disclosed in applications, pre-commitment and pre-breach cybersecurity risk assessments, and post-event forensic reports be obtained by third parties?

Privileges and Protections

There is no general insured-insurer privilege. For communications to be shielded from third parties, they need to fall within:

**Attorney-Client Privilege
Work Product Protection
The Common Interest Doctrine**

Attorney-Client Privilege

Treatment of attorney-client privilege varies depending on the state and the court.

In general, to be privileged, communications must be made in confidence, for the purpose of obtaining or providing legal advice or assistance.

Under the “significant purpose” rule, not universally adopted, but which has begun to emerge in the last few years, if there are multiple or blended reasons for a corporate internal investigation, the privilege attaches as long as providing legal advice was a significant purpose of the investigation.

Transmission to third parties waives the privilege.

Work Product Protection

This is a doctrine based on procedural rules. It protects from disclosure documents or tangible evidence prepared by a party or the party's attorney in anticipation of litigation, unless there is a showing of substantial need and undue hardship. Opinion work product, which reflects mental impressions or conclusions, opinions or theories of counsel or consulting experts, cannot be disclosed unless there is a showing of extraordinary need.

Work product protection is more robust than attorney-client privilege. The general rule is that transmission to third-parties does not waive the protection unless doing so substantially increases the opportunities for adversaries or potential adversaries to obtain the communications.

Many documents will be subject to both attorney-client privilege and work product protection.

Common Interest Doctrine

The Common Interest Doctrine extends attorney-client privilege and work product protection. It permits sharing of communications with certain parties without waiving them as respects others.

The original communications must themselves meet the requirements of privilege or work product protection.

Common Interest Doctrine

What is a “Common Interest”?

This varies across jurisdictions. Some require the parties’ legal interests to be identical, but most do not.

Some courts recognize a common interest even where the interests are less than “identical” and it appears the parties would become adverse in the future. It is sufficient that a limited common purpose makes disclosure to another party necessary, even where a subsequent lawsuit between those parties is foreseeable.

However, in a 9/11 insurance litigation case, insurers successfully sought to compel testimony on communications between the attorneys for the Silverstein parties (the insured) and their broker, Willis. The SDNY found that the interests of Silverstein and Willis may have been aligned against the insurers, but were not “identical” enough for the common interest doctrine to apply.

A leading formulation in the Second and Third Circuits is that communications are protected when the parties engage in a common legal enterprise and are part of an ongoing and joint effort to set up a common legal strategy.

Common Interest Doctrine

At What Point Does It Attach?

This too varies across jurisdictions. It may or may not require a that there be a reasonable anticipation of litigation.

Applications and Non-Disclosure Agreements

Applications

Sophisticated insureds with large programs tend to request that the insurers execute non-disclosure agreements.

Pre-Commitment and Pre-Breach Cybersecurity Risk Assessments

Pre-Commitment and Pre-Breach Cybersecurity Risk Assessments

In analyzing these, the best analogy is to internal corporate compliance investigations. For privilege to attach, the investigation needs to be expressly for the purpose of facilitating the rendition of legal advice or service in the course of a professional relationship, or at least that needs to be a significant purpose. The law varies across jurisdictions.

The CRA should be directed by outside counsel.

The consultants and other experts should be engaged by outside counsel.

Communications in the course of the investigation should be directed by counsel.

Courts have recognized sham attempts such as simply involving outside counsel in an investigation spearheaded internally by business people. They have referred to them as “gimmicks” and not found their communications to be privileged.

Post-Event Forensic Reports

Guidance So Far, As Against Third-Party Claimants

***Genesco, Inc. v. Visa U.S.A., Inc., et al*, 302 F.R.D. 168 (M.D. Tenn 2014)**
Genesco is trying to recover \$13.3 million in non-compliance fines and reimbursement assessments which it paid to merchant banks, on the grounds that the fines and assessments lack a factual basis. Following a breach in 2009-10, in addition to the PCI forensic investigator, Genesco hired a cybersecurity firm to provide technical and consulting services to outside counsel. Visa sought discovery of their communications. Applying California law, the court protected the materials under the attorney-client privilege and work product protection, as well as the non-testifying expert privilege. This holding was reaffirmed in a subsequent Order entered on March 25, 2015, extending it to a third cybersecurity investigator.⁸⁶

Post-Event Forensic Reports

In re Target Corporation Customer Data Security Breach Litigation, MDL No. 14-2522 (PAM/JJK) (D.Minn. Oct 23, 2015)

After Target's 2013 Data Breach, Verizon Business Network Services investigated the breach, and established two separate teams within Verizon. One team conducted the PCI investigation on behalf of the credit card companies. This was a non-privileged, ordinary-course-of-business investigation. The second team was engaged by Target's outside counsel within the framework of a "Data Breach Task Force" created to enable counsel to provide legal advice to Target, including legal advice in anticipation of litigation and regulatory inquiries. The two teams did not communicate with each other about the substance of the attorney-directed investigation. After an *in camera* inspection, the Magistrate upheld Target's attempt to withhold materials from its Data Breach Task Force on grounds of attorney-client privilege and work product protection. The Magistrate protected communications with the Verizon team assigned to the Data Breach Task Force, Verizon's report to the Task Force, and emails among the Task Force members, which included lawyers and non-lawyers. The only exception to protection were email updates from Target's CEO to the Board of Directors.

Note: Target did produce documents and tangible things, including forensic images, from which plaintiffs could learn how the data breach occurred and Target's response. Thus plaintiffs could not make a showing of substantial need that might have overcome work product protection.

Practice Pointers

Practice Pointers

Primary or excess insurers can enter into a written Confidentiality, Non-Waiver and Common Interest Agreement with the Insured, making a record that the privilege is being relied on contemporaneously. It should:

Define common interests;

Confine disclosures to those that support common interests;

State that no disclosures with respect to adverse interests will be made; and

Memorialize the expectation of privacy and incorporate mechanisms to promote it.



Communication and Confidentiality

- **Vince Vitkowsky**, Partner, Seiger Gfeller Laurie LLP
(Moderator)
- **Phil Mayes**, Senior Class Underwriter, Talbot Underwriting
- **Margaret Murphy**, Claims Director, CFC

Communication and Confidentiality



Vince Vitkowsky
Seiger Gfeller Laurie LLP



Phil Mayes
Talbot Underwriting



Margaret Murphy
CFC



Afternoon Break

Coming up next...
Claims and Volatility

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Claims and Volatility

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Hans Allnutt
Partner
DAC Beachcroft LLP
Moderator



Claims and Volatility

- **Hans Allnutt**, Partner, DAC Beachcroft LLP (Moderator)
- **Noona Barlow**, European Head of Liabilities & Financial Lines Claims, AIG
- **James Burns**, Cyber Product Leader, CFC
- **Ben Hobby**, Partner, RGL Forensics
- **Glyn Thoms**, Executive Director Cyber & TMT, Willis Towers Watson

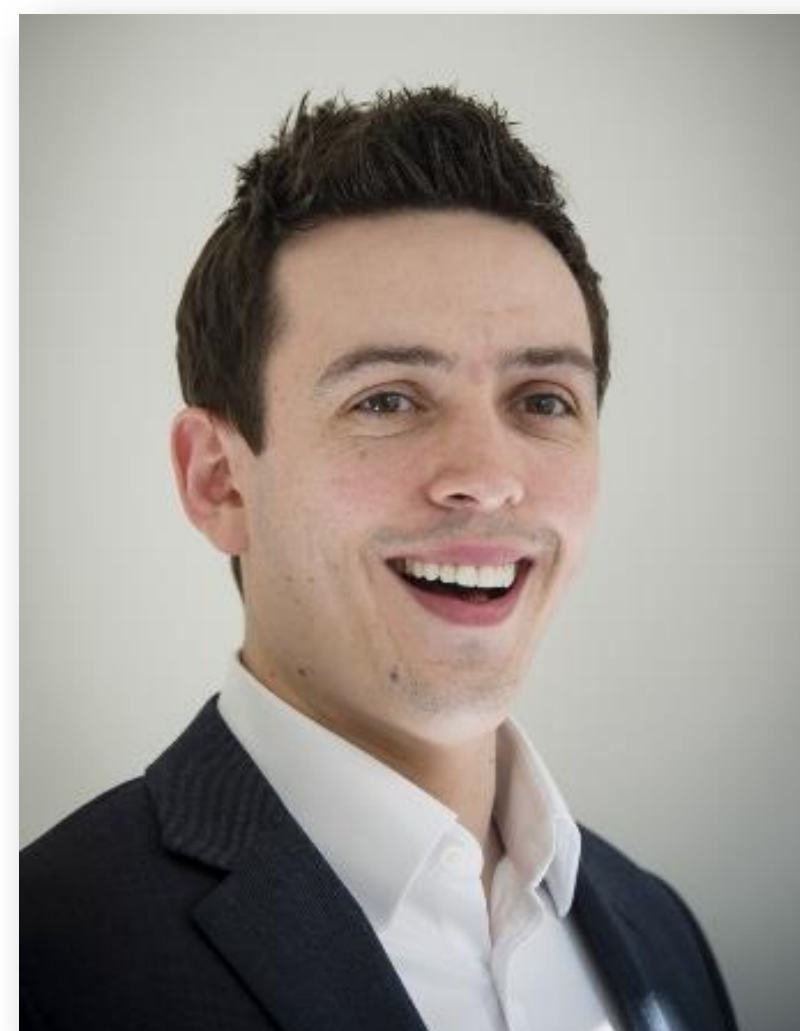
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Willis Towers Watson



Reaching Capacity?

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Jacqueline Spencer-Sim
Cyber Liability Class Underwriter
Novae
Moderator

Reaching Capacity?

- **Jacqueline Spencer-Sim**, Cyber Liability Class Underwriter, Novae (Moderator)
- **Alec Cramsie**, US TMB Team Leader & Underwriter, Beazley
- **Jack Lyons**, Partner – Cyber, Content, and New Technology Risks Team, JLT Specialty
- **Peter Schwartz**, Consultant, Holman Fenwick Willan LLP

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Closing Remarks & Reception

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