

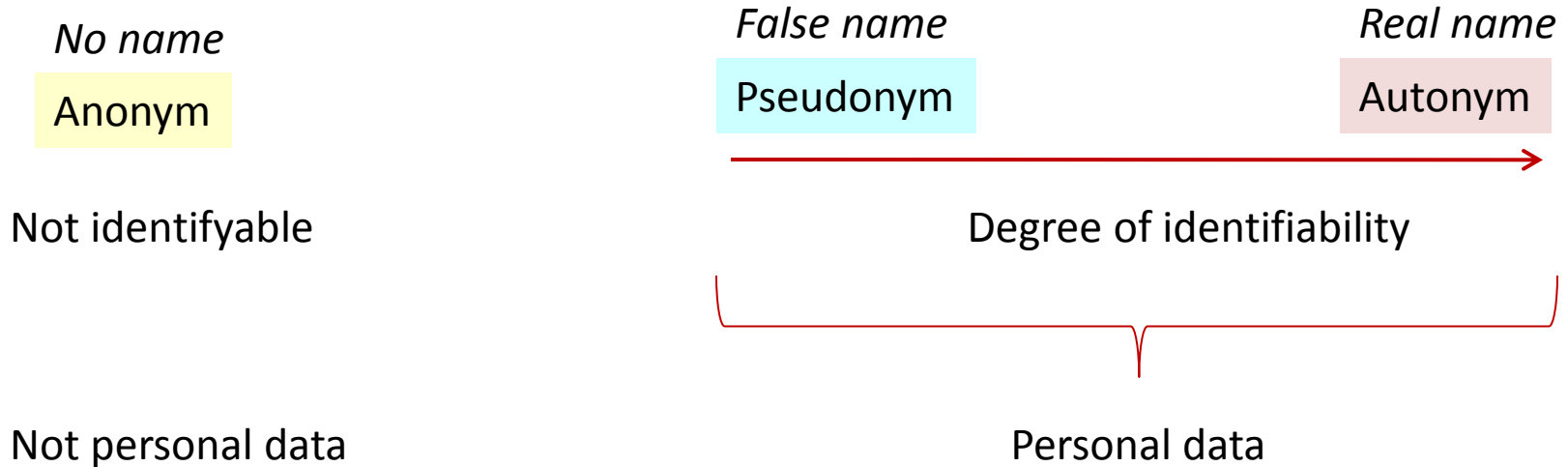
Identity and biometrics from a legal perspective

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Identity and self-determination

- The right to privacy and data protection is founded on the autonomy of individuals, in particular regarding personal data
- Personal data is any information which directly or indirectly may be connected to a specific *identifiable person*
- Identification (actual or potential) is in other words the key to the private sphere which shall be protected
- Autonomy regarding identification is prerequisite for autonomy of personal data
- Thus, the first fortification against intrusion of the private sphere relates to how well identification is protected

From anonymity to autonomy



Reliable identification of individuals are often of crucial significance to *quality of personal data*, because it makes it possible to link/combine information from different sources (particularly important when processing is automatic and carried out without the presence of the individual in question)

Thus, biometrics may in concrete cases be positive for data protection

...But the general picture is probably that biometrics is intrusive

How intrusive?

Intrusion: The product of reduced autonomy, potentials of the revealed information, and cognitive potentials

- Two main purposes of biometrics
 - Identification typically more intrusive than authentication
- Two main aspects of identification and authentication
 - Person typically more intrusive than role

Purpose	Person	Role	
Identification	1	2	(who are you?)
Authentication of identity	3	4	(prove that your are who you claim to be)

- Use of biometrics as part of fully automated systems, typically less intrusive than manually operated or supervised systems
- Biometrics and other technologies which “read the body” may be regarded particularly intrusive because it circumvents the mind of the person

Legal regulation of biometrics in Norway

- General regulation in the Data Protection Act:

Section 12 Use of national identity numbers, etc.

National identity numbers and other clear means of identification may only be used in the processing when there is a objective need for certain identification and the method is necessary to achieve such identification.

The Data Inspectorate may require a controller to use such means of identification as are mentioned in the first paragraph to ensure that the personal data are of adequate quality.

[...]

- The Passport Act (section 6 and 6a)
- The Immigration Act (chapter 12)

Legal political considerations and possible side-effects

- Some employment of biometrics is fully acceptable and even desirable
- However, introduction of biometric technology may be seen as representing a possible inauguration of an era where technology is developed to circumvent the will and interpretations of targeted individuals (cf. lie detectors, brain fingerprinting, drug detectors, body scanners)
- Failure Acceptance Rate (FAR) and Failure Rejection Rate (FRR) of 1% imply a great number of failures in some fields of utilisation
- Special attention should be directed to biometric technology as mass-technology (integrated in access control, payment devices etc)
- Attention should be drawn on possible side-effects (threat to witness protection programs and protection of victims of violent crime, ability for investigators to operate anonymously etc?)