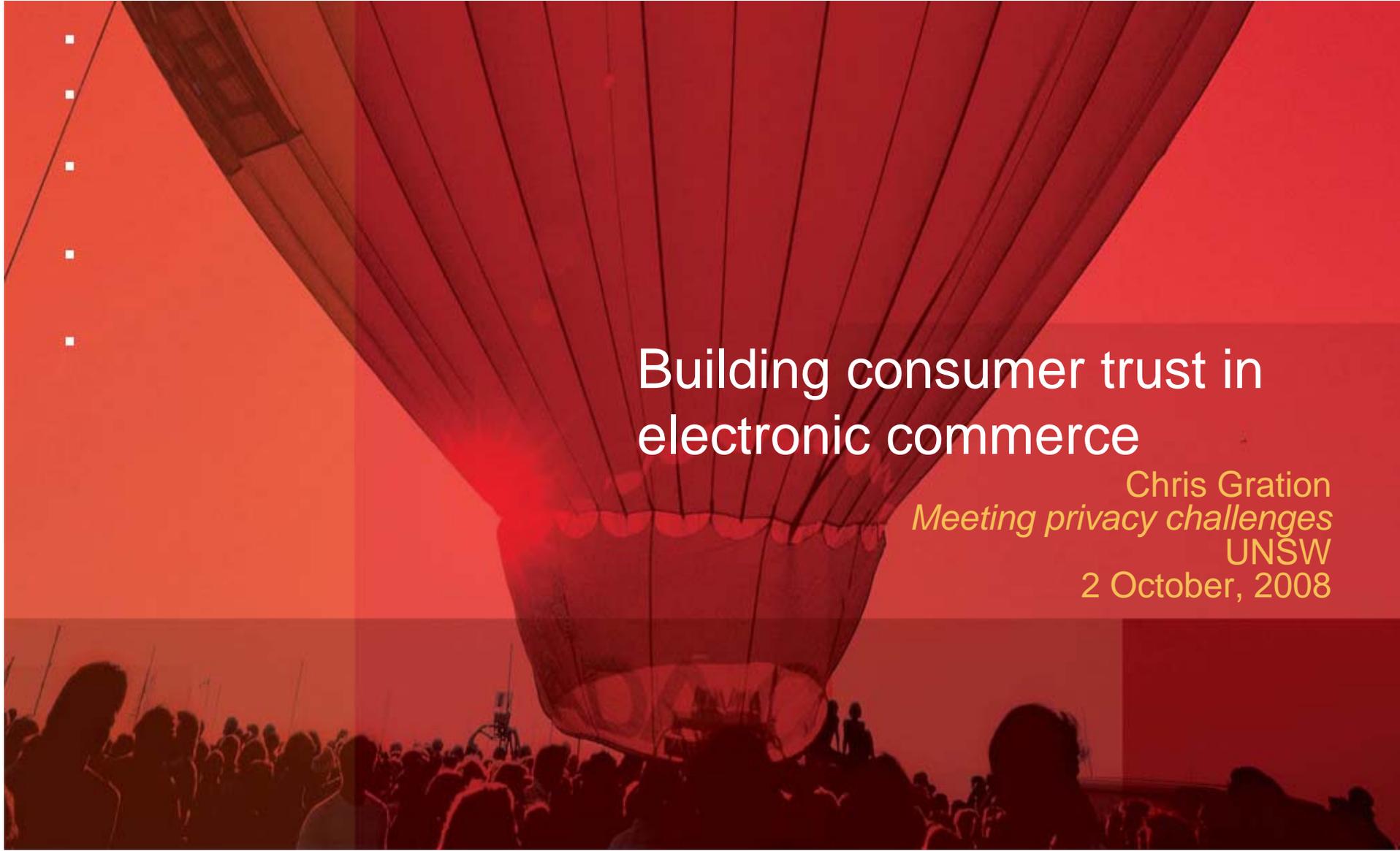


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Building consumer trust in electronic commerce

Chris Gration
Meeting privacy challenges
UNSW
2 October, 2008



□ | Economic interest and human right



This unexpected child, conceived in a union of economics and human rights, born in 1980, ...

Its parents have acknowledged and praised it.

Yet the world of today...has changed beyond recognition...

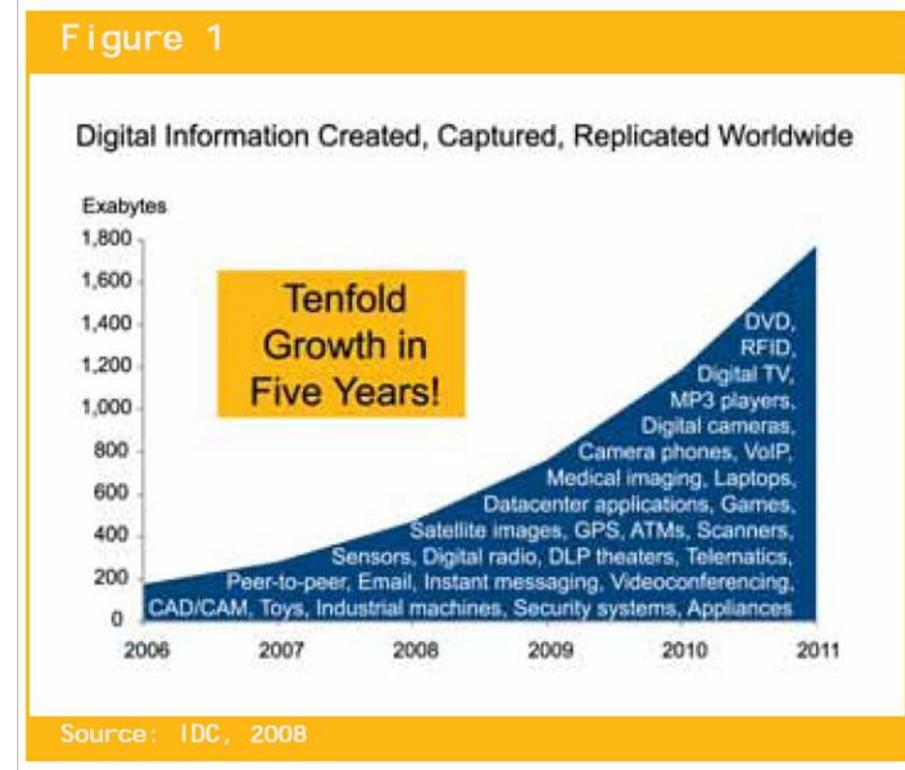
It is timely to consider the changes and some of their implications.

Michael Kirby, 1999

□ | Trust overhang



- 281 billion gigabytes in 2007
- The digital universe will be 10 times bigger in five years.
- Some of this information can be networked.
- Predictive analytics
- Digital shadows



□ | ALRC – stronger foundations



✓ Maintenance

- Objectives and definitions
- Privacy Commissioner powers
- Uniformity of laws
- Data breach

X But regulation of information networks still weak

- Huge weight on consent
- Credit and health information
- Complex, multiple regulators, prescription
- Future growth of information networks

■ **Conflict of objectives?**

- information asymmetry: an economic, public good
- regulated as a human right
- not tradable (privacy advocates)

■ **Balancing rights?**

- Individual right vs. public good
- Law does this with less ease than courts



Complexity, prescription, inertia

□ | Fast reform, simple muscular regulation



CREDIT IN AUSTRALIA AS A PERCENTAGE OF NOMINAL GDP



Before 1953 the series relates only to credit provided by banks, after that it includes credit provided by all intermediaries.
Sources: ABS, RBA.

□ | Too much weight on consent?



Consent: an individual solution to a systemic issue?

The notion that you could control this penumbra of information about yourself, the zone of privacy...was very quickly overtaken by technology. ...

It is a parable that you can ...try to do the moral and ethical thing.

...

The technology will outpace in its capacity, the imagination of even the most clever law makers. ...

Of course that is not a reason to do nothing.

Michael Kirby, 2008

Legal framework

- Clear, simple, muscular laws
- Scope for courts
- Strong regulator
- Stronger, flexible data governance
- More public scrutiny & audit
- Less weight on consent

Phase 1:

1. Simplicity of drafting
2. Reduce prescription

Phase 2 reforms:

1. Cause of action
2. Regulator powers