Implications of Context for Regulation

Jesse Sowell

Engineering Systems Division, MIT
Advanced Network Architecture Group, CSAIL

Overview

- Two distinct privacy regulatory paradigms:
  - **EU**: socially protective
  - **US**: normatively liberal
- **Problem:** Tools available to these two privacy paradigms may not efficiently map to privacy paradigms rooted in a context metaphor
- **Illustrative Instance:** Surfacing the privacy implications of behavioral advertising in information rich contexts
  - Cyber environments
  - Cyber+terrestrial via mobile platforms
  - Smart power grid
- **Question:** How do we create sufficiently responsive standards development processes?
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  - Younger Committee (UK, early 1970's)
  - Westin and Baker's recommendations to National Academies (1972)
  - Nascent articulations in 1970 Fair Credit Reporting Act
  - 1974 Privacy Act
  - COE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981)
  - OECD Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data

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FIPs as Guidelines

- **Openness:** repository known data subjects
- **Access and Correction:** ability to ensure accuracy
- **Collection Limitation:** collected fairly with consent of data subject
- **Use Limitation:** limited to original uses; *relevance*
- **Disclosure Limitation:** data may not be shared with without consent of subject
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1. Control metaphor
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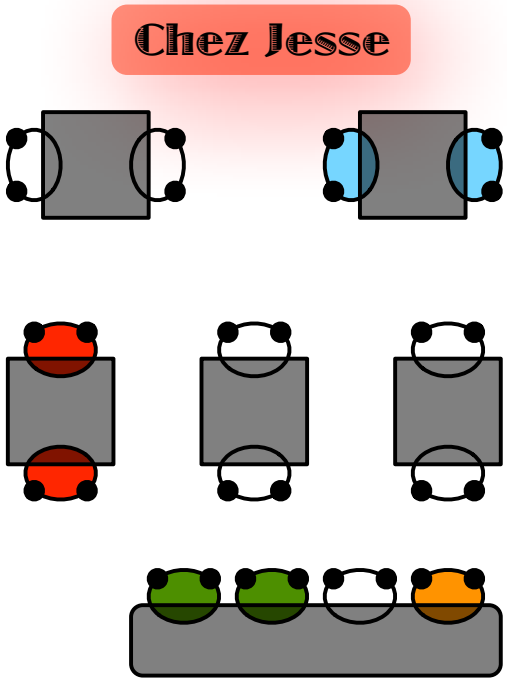
3. What constitutes “personal” is ambiguous
   - Conventional PII captured
   - Aggregate image of attributes . . . ?

FIPs Implementation

- EU
  - Socially protective → privacy is an *inalienable* human right
  - Comprehensive regulation covers public and private sector
  - DPAs implement monitoring, audit, and enforcement
  - Top down comprehensive
  - Failure mode:
    - DPA capacity issues
    - DPA-company communication
- US
  - Normatively liberal → privacy is an *alienable* commodity that may be exchanged for utility
  - Ad hoc, sectoral, chaotic self-regulatory structure
  - Self-help: harms are identified as they emerge
  - Bottom up self-regulatory
  - Failure mode:
    - Information asymmetries
    - Collective action problems
- **Implications of Context?**

Context and Environment

- Environment is the “place”
  - Can be anywhere
  - Online: environment is architected
- Context is a social construction that occurs across environments
  - Rules of appropriateness
  - Rules of distribution



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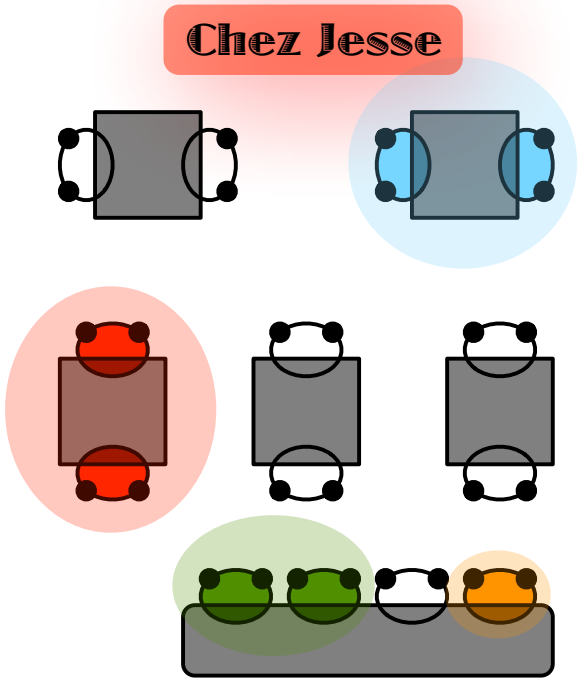

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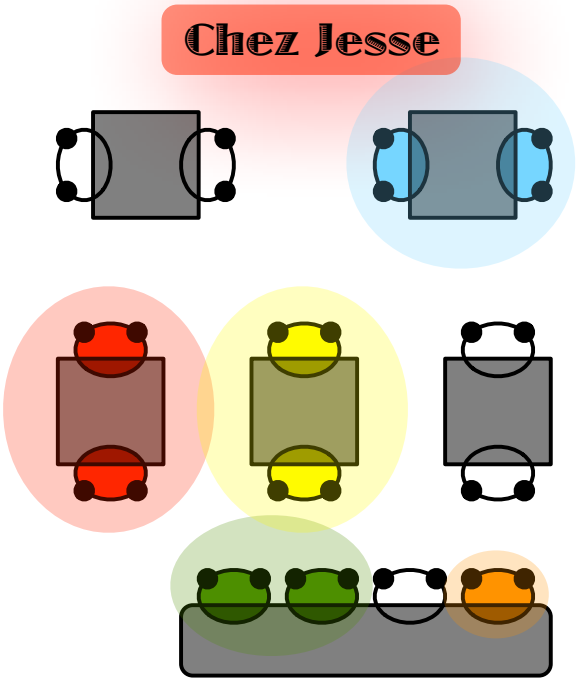

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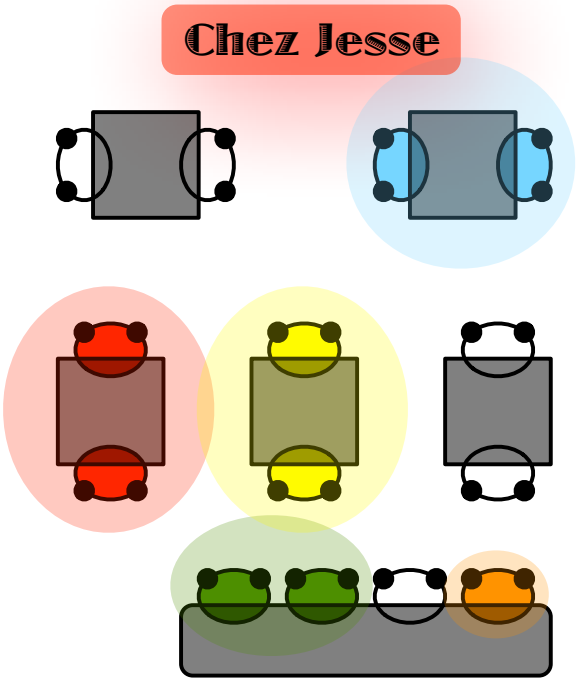
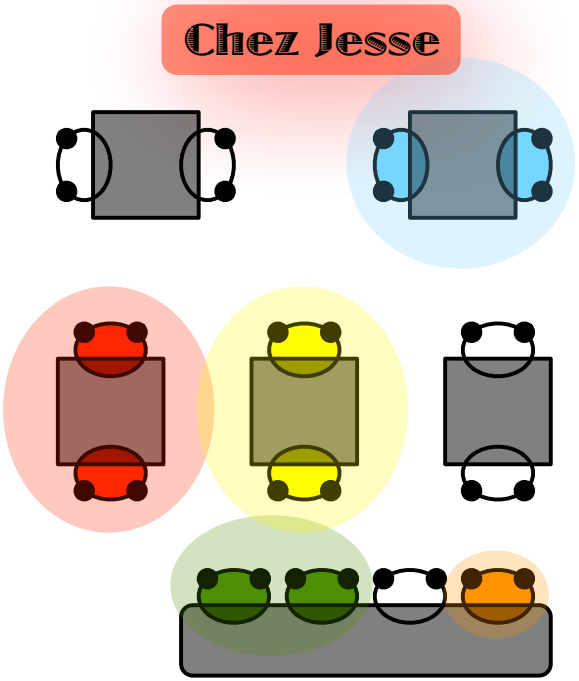


Trust and Visibility

Contextual integrity is based on trust amongst actors in a context and understanding the dynamics of the environment

Tractability of Mixed Context

- Architectural dynamics defies establishing a trust relationship
  - Context different on each visit
  - Different actors “at the table”
- Lack of policy transitivity
  - OSP policy rooted in limiting liability
  - Contractual info absent



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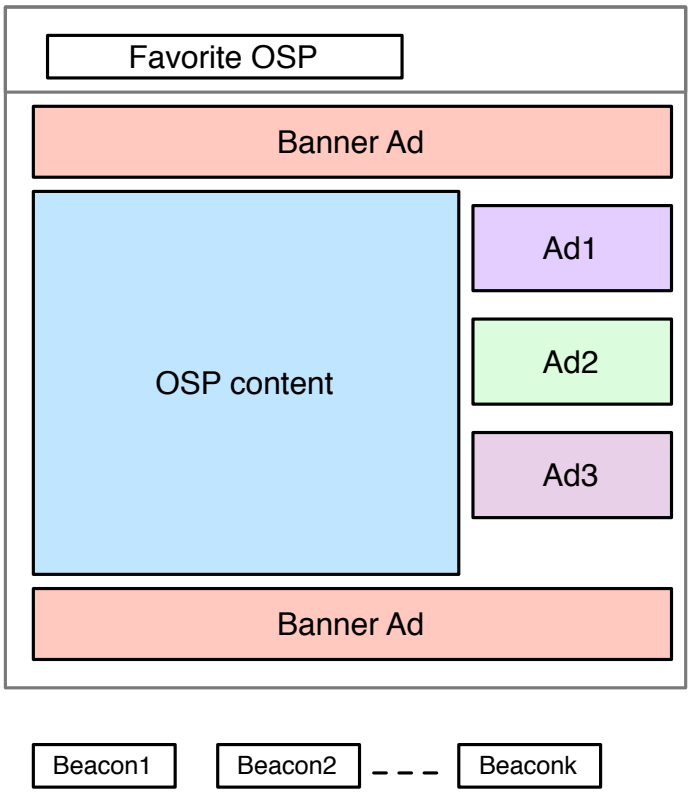

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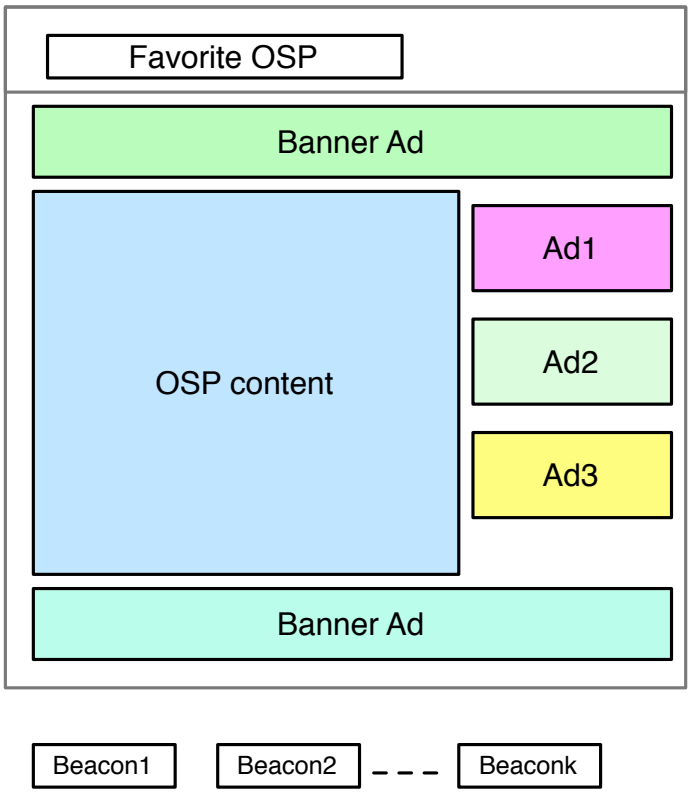

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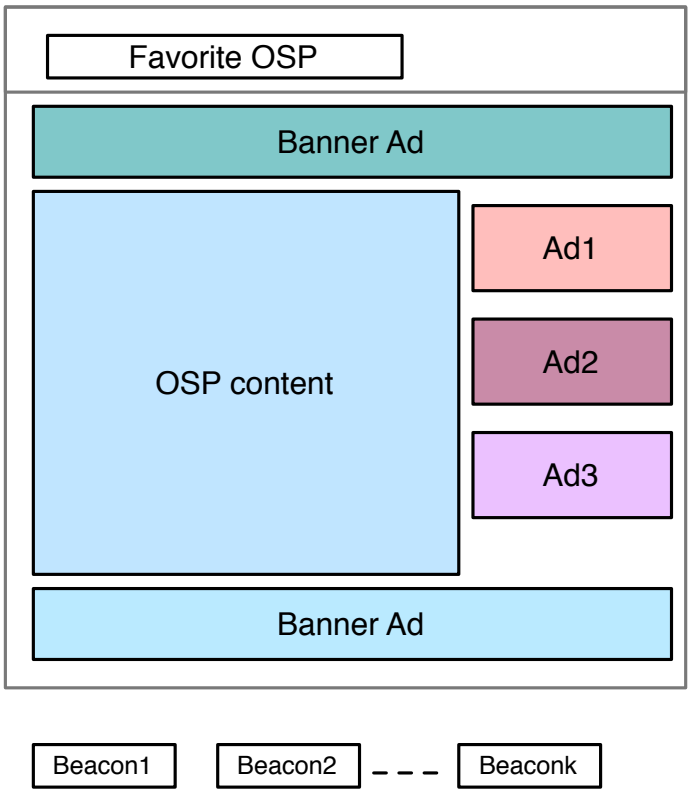

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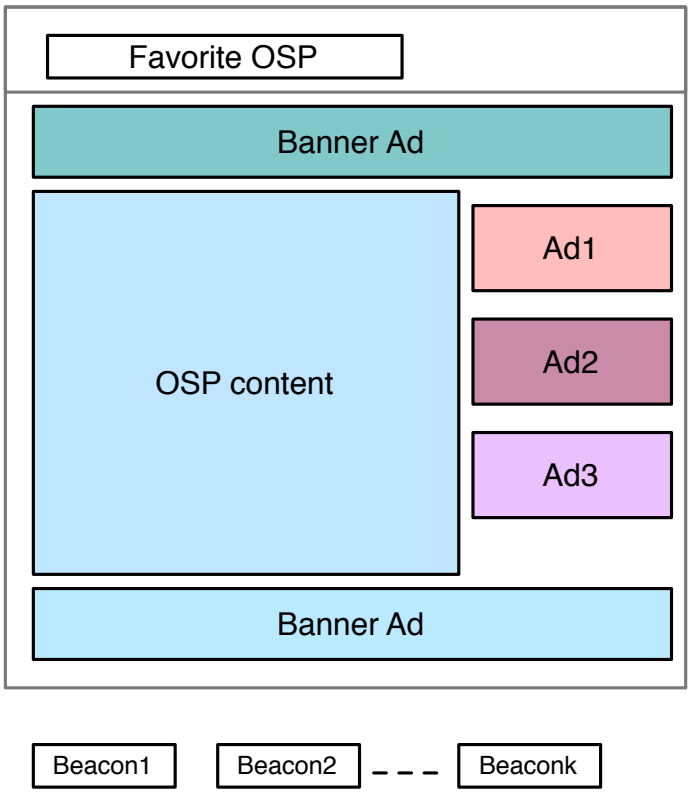

Context and Trust Revisited

Tractability issues ultimately undermine the ability to develop a genuine trust relationship with an OSP

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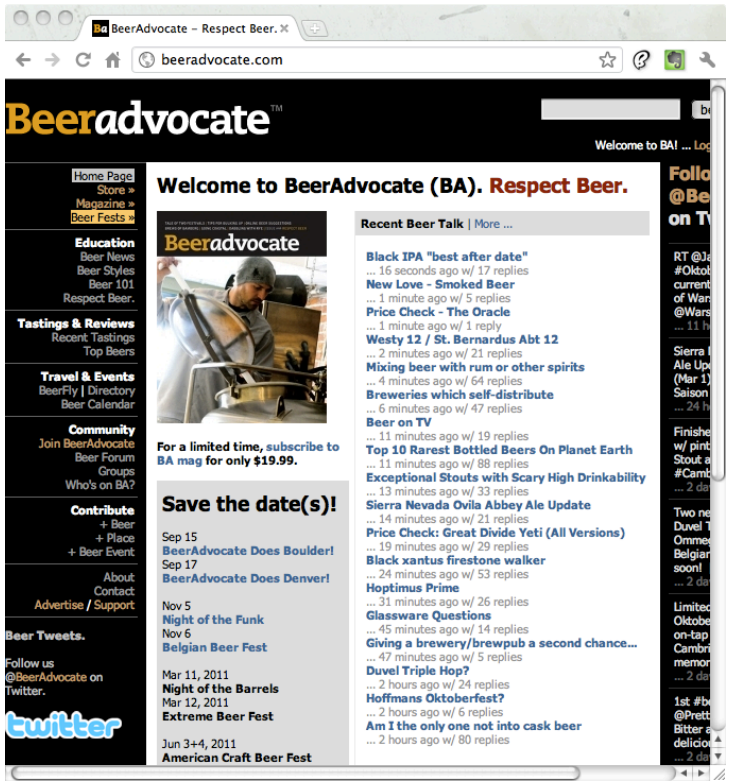

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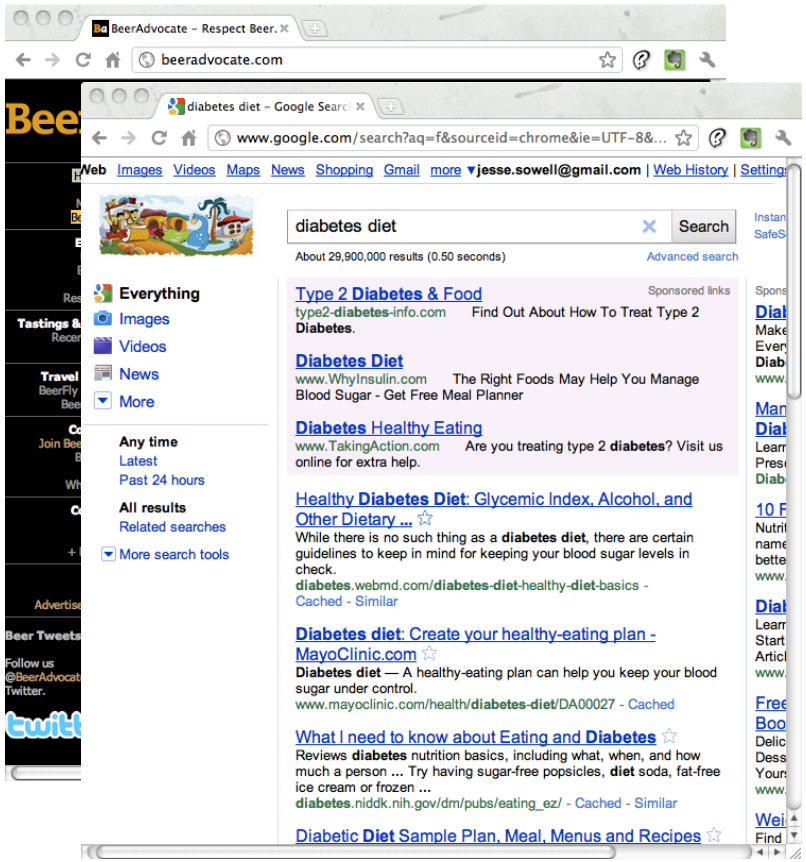

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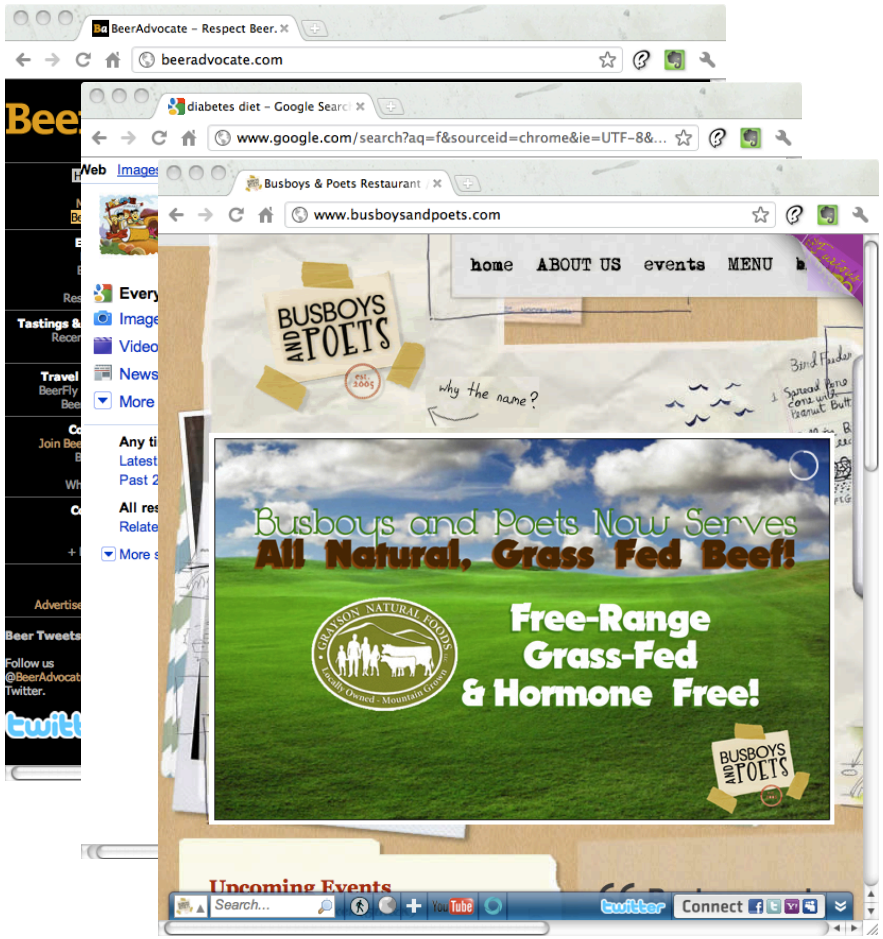

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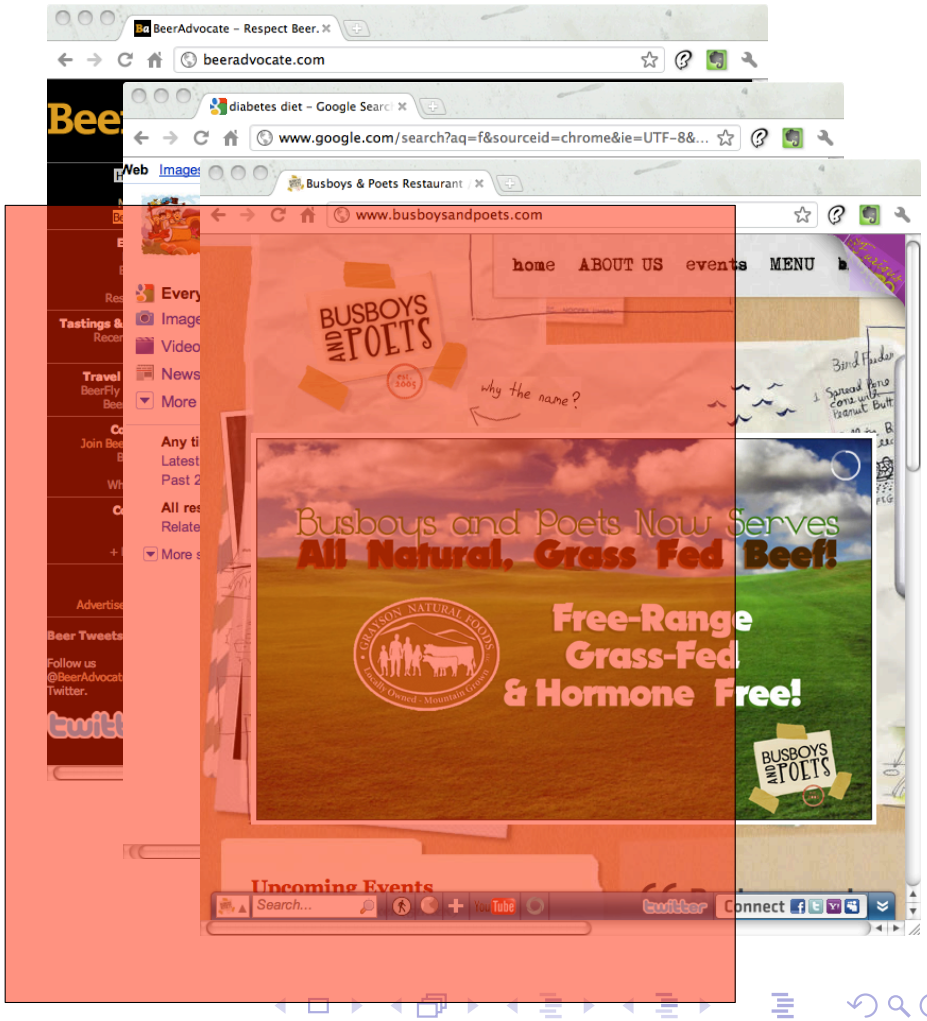

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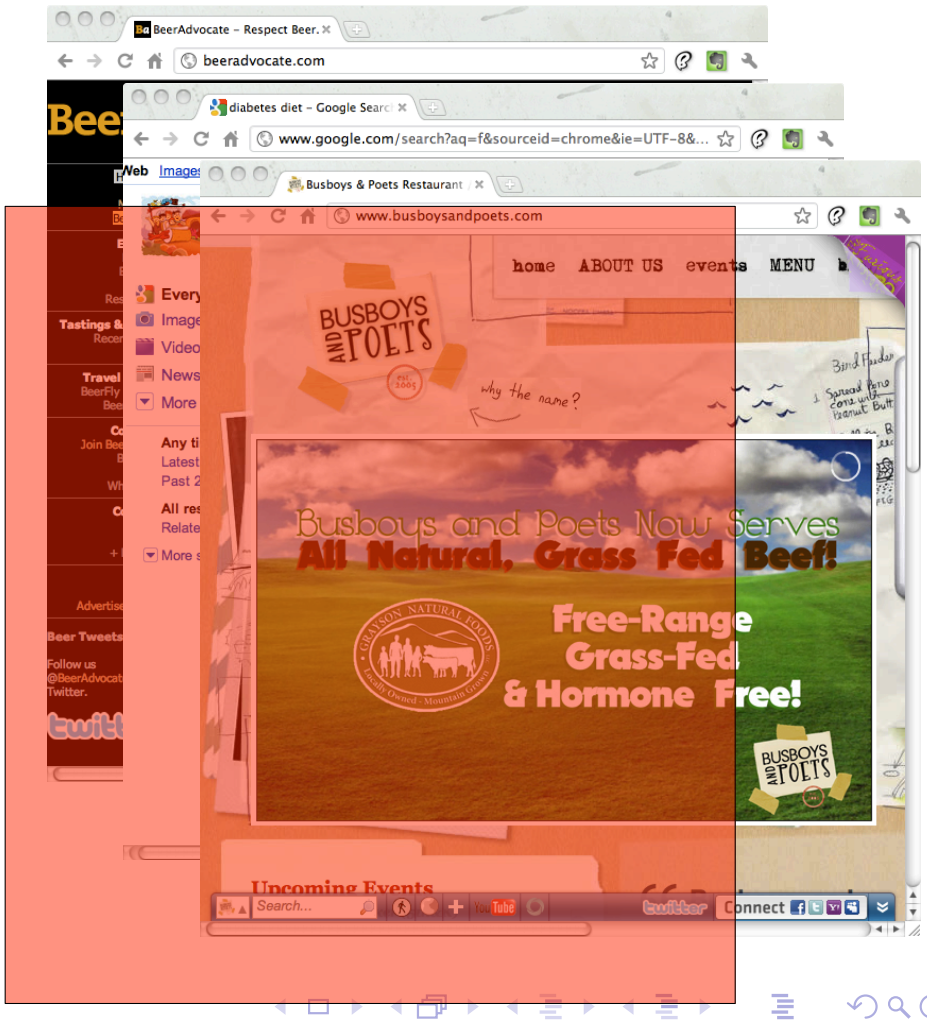
- Privacy violation or appropriate mixing?
  - Depends on privacy preferences



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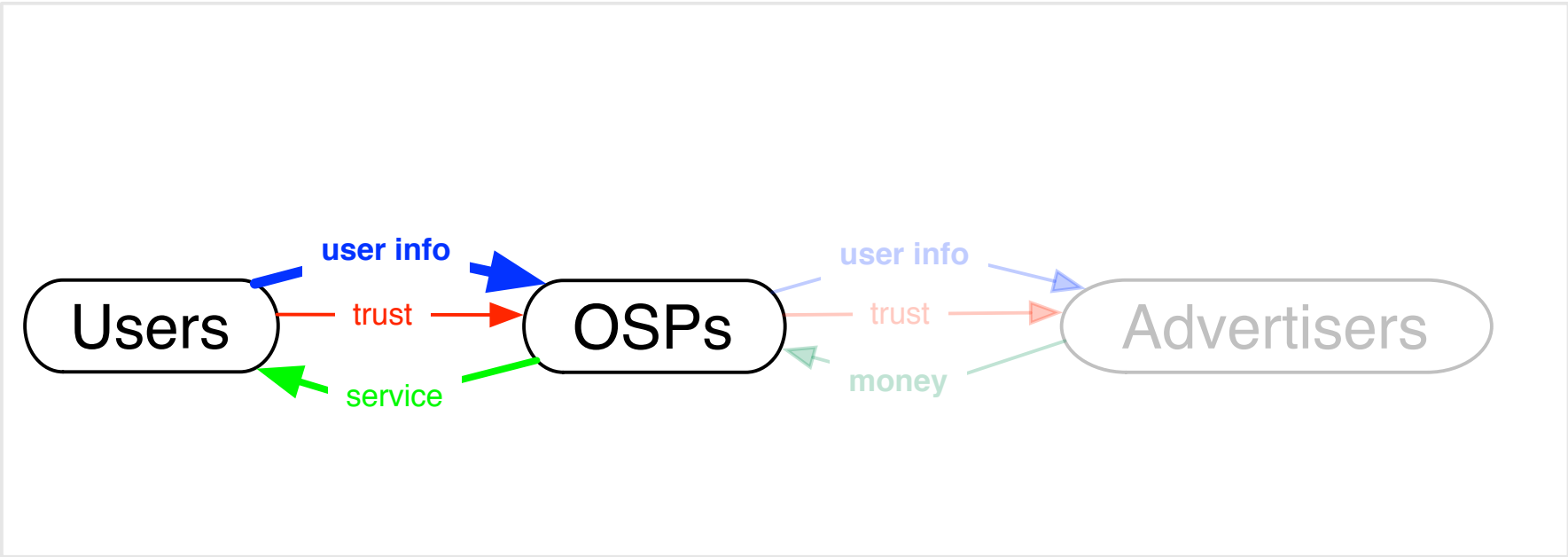

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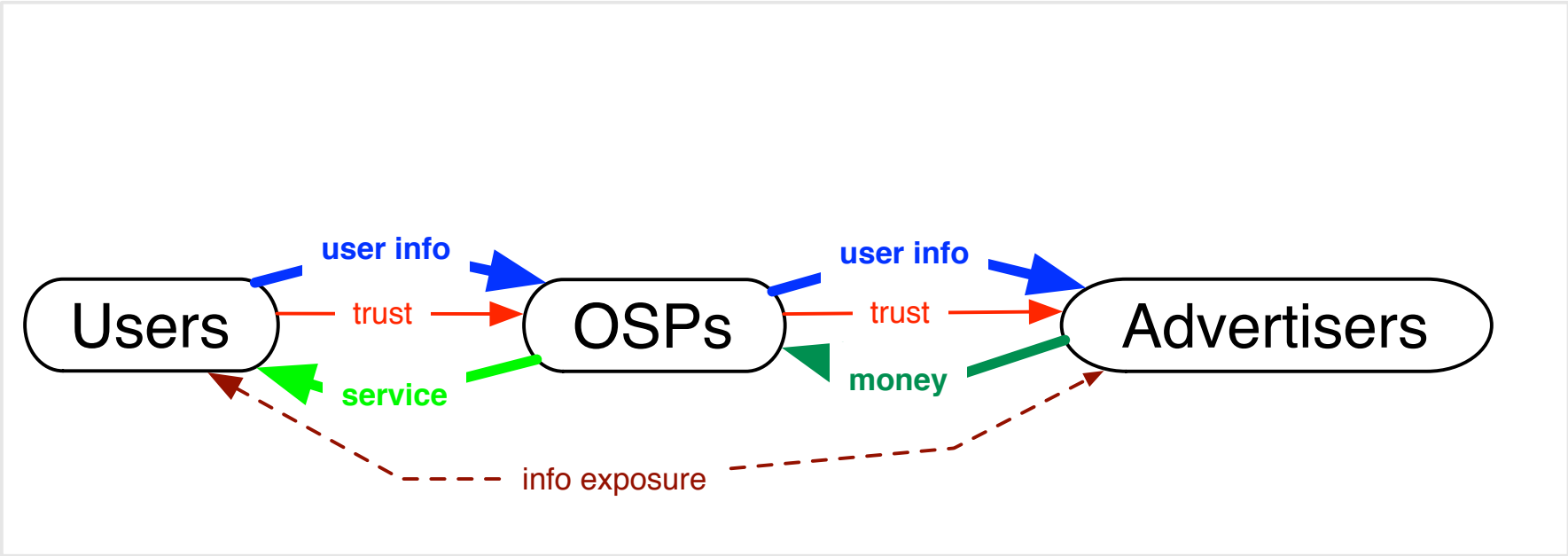

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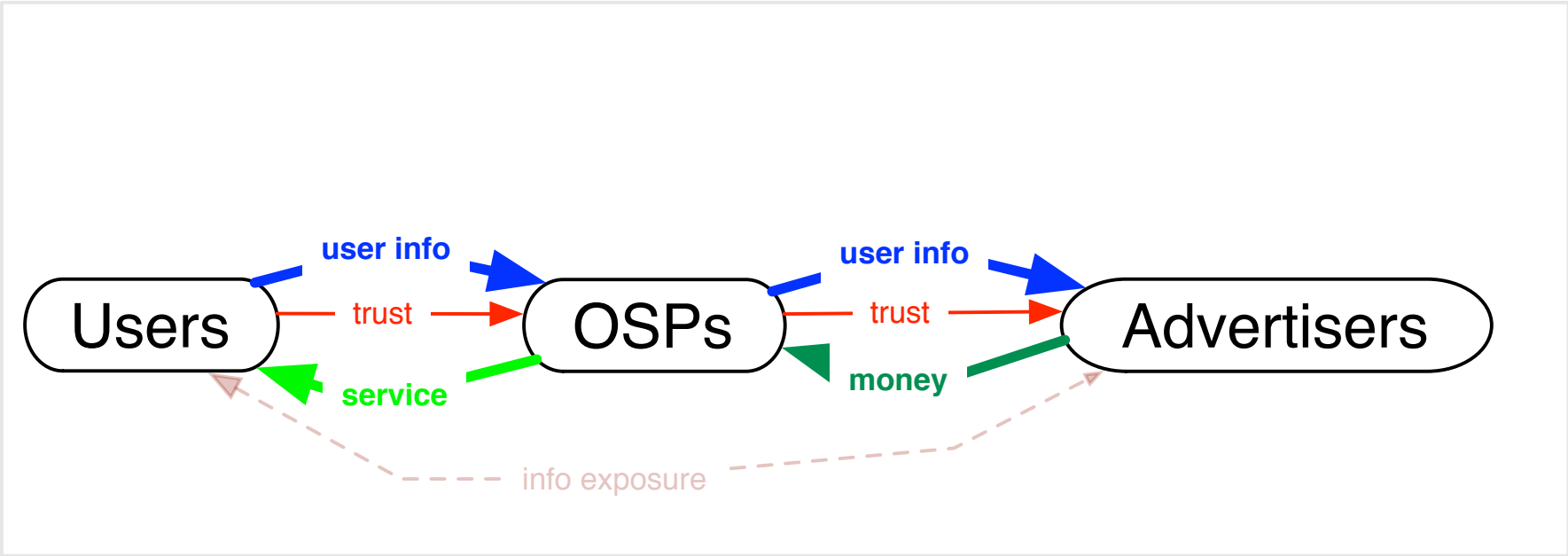

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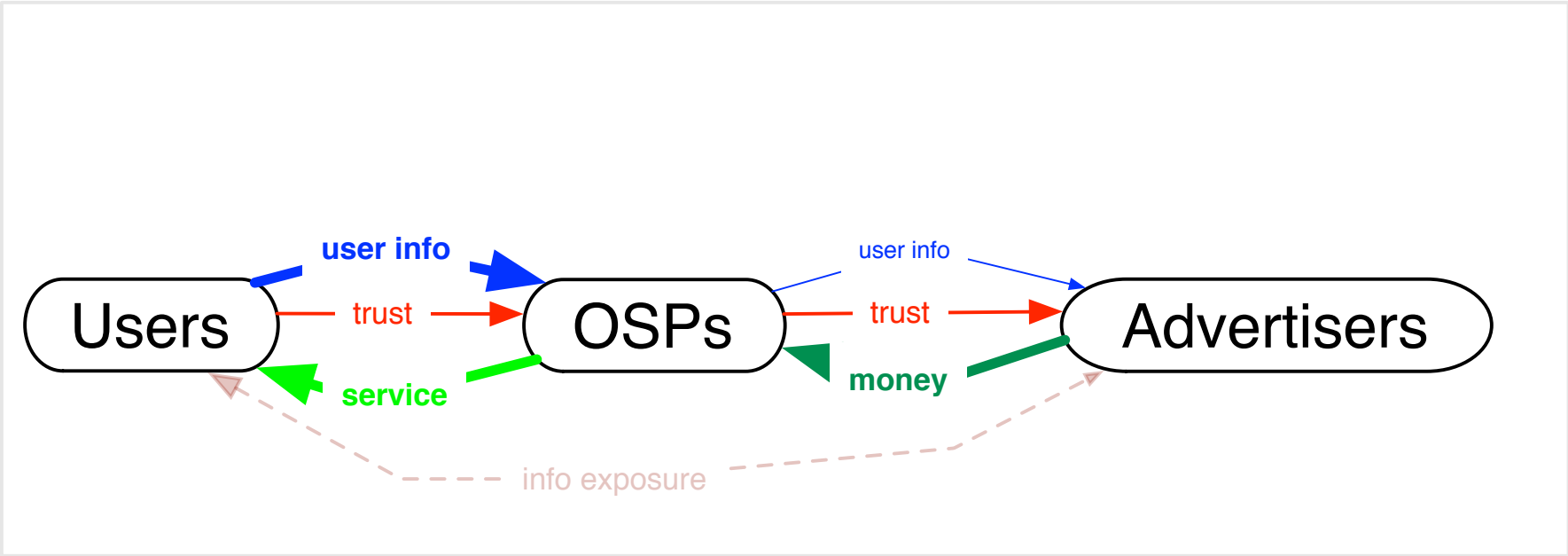

(Ideal) Recommendation?

Highlight Mixed Context

Augment architecture to make environment highlight context

- Ad networks' blue "i" a start
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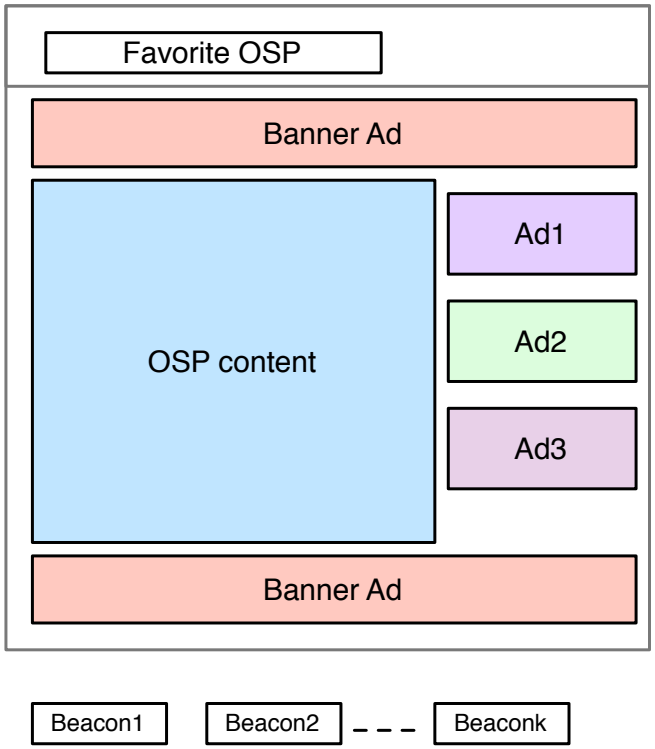
  - Data sharing amongst relevant actors
  - Natural experiments to collect actual preferences
- Advertiser reputation market
  - OSP rating transitivity
  - OSP-advertiser relationship



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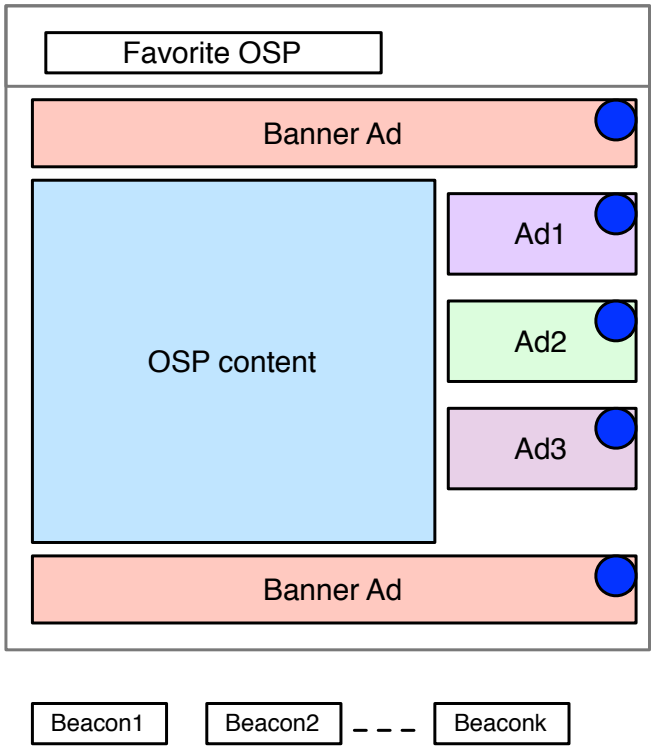

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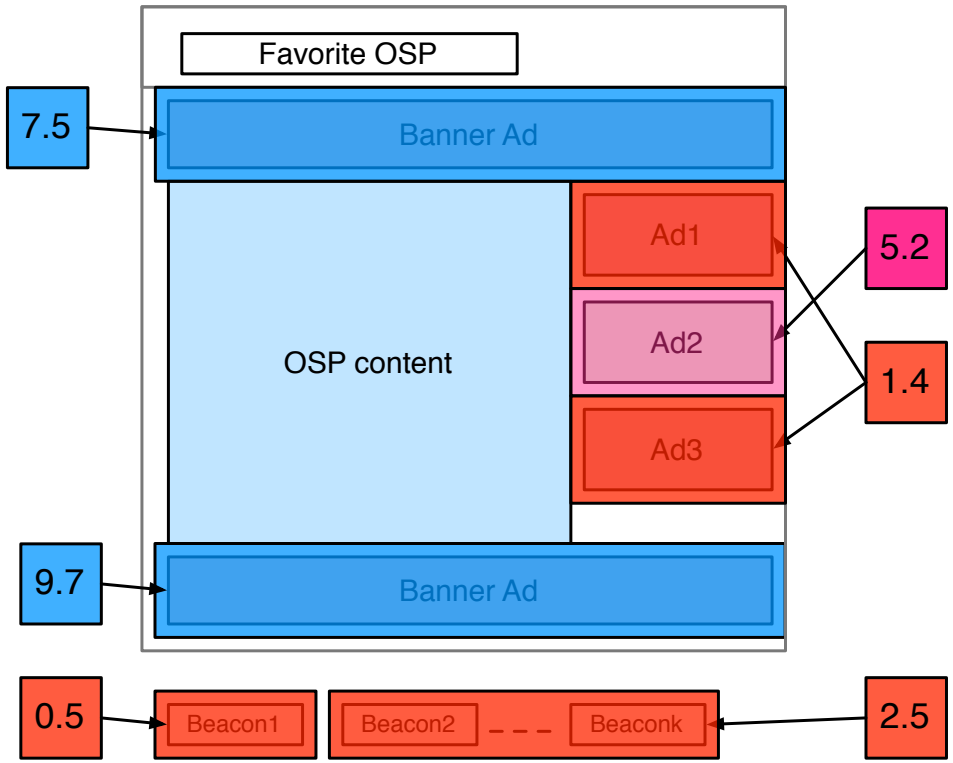

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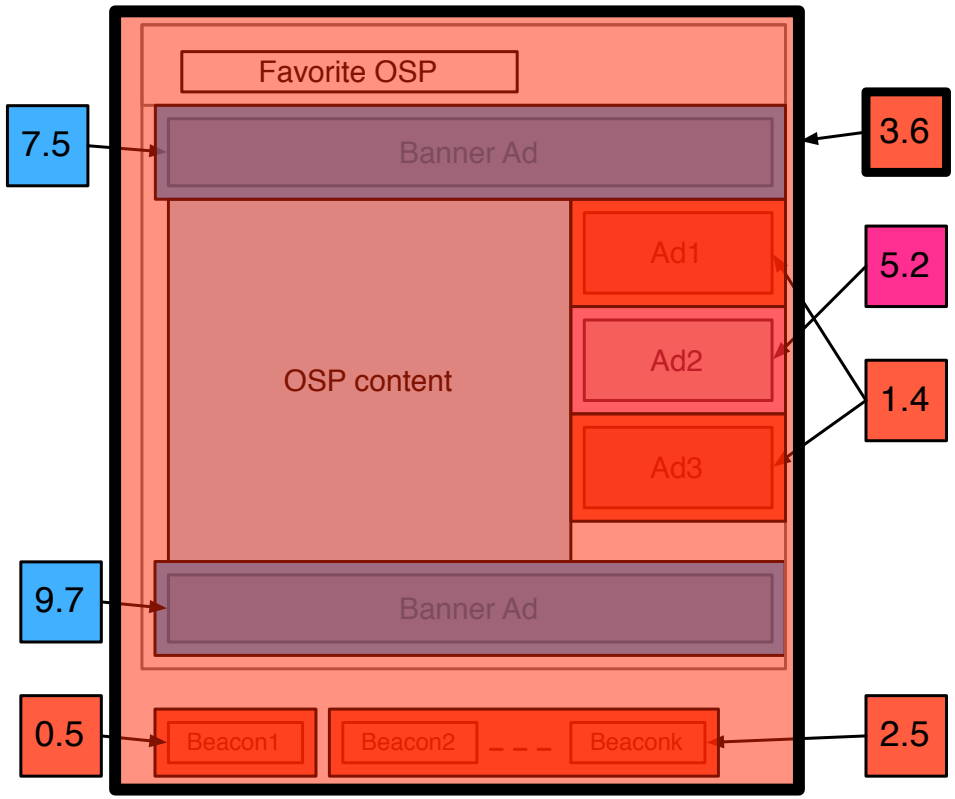

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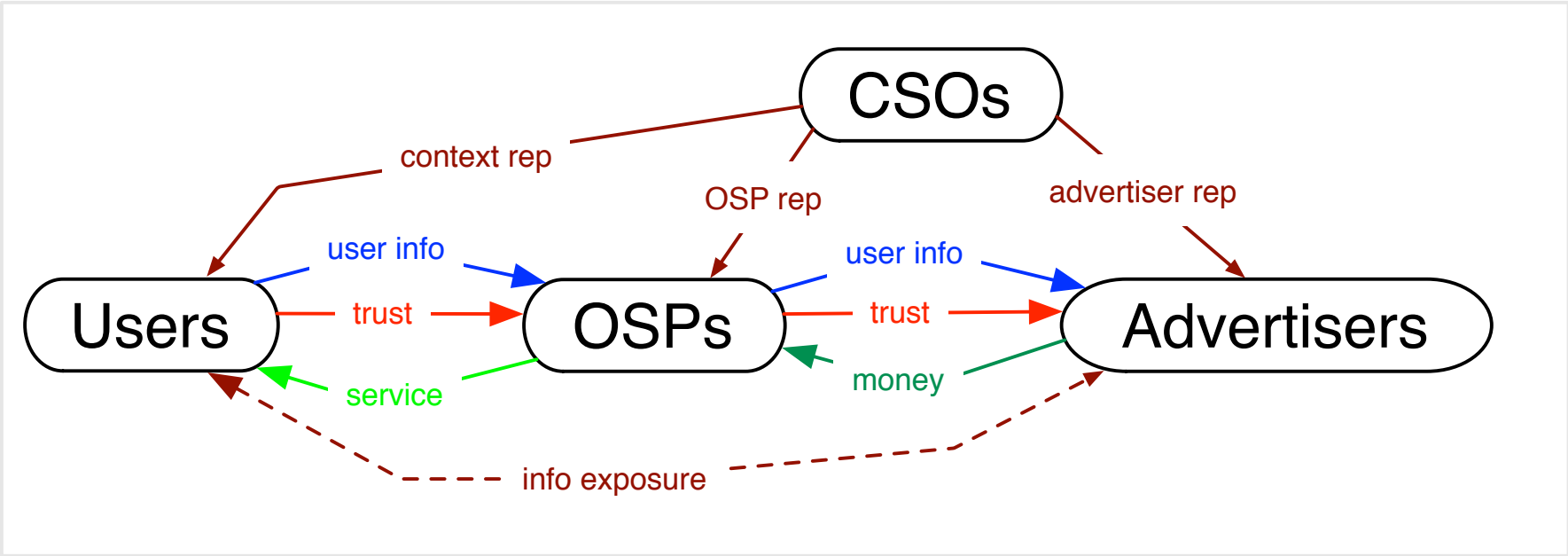

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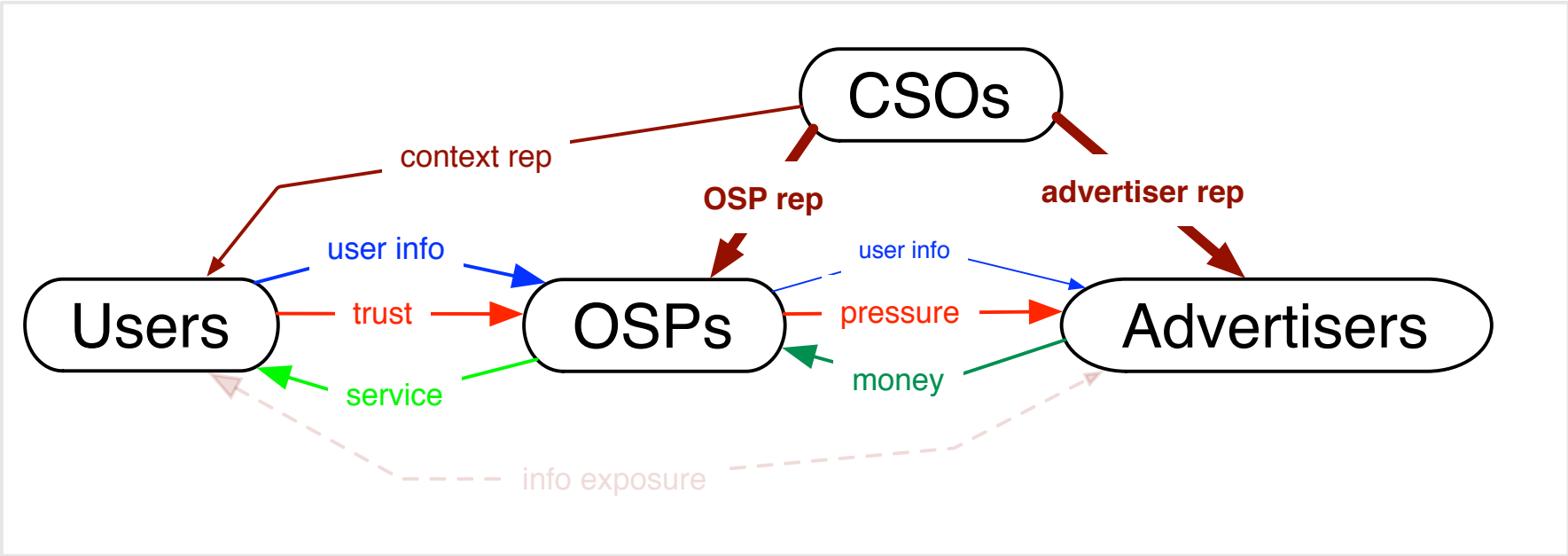

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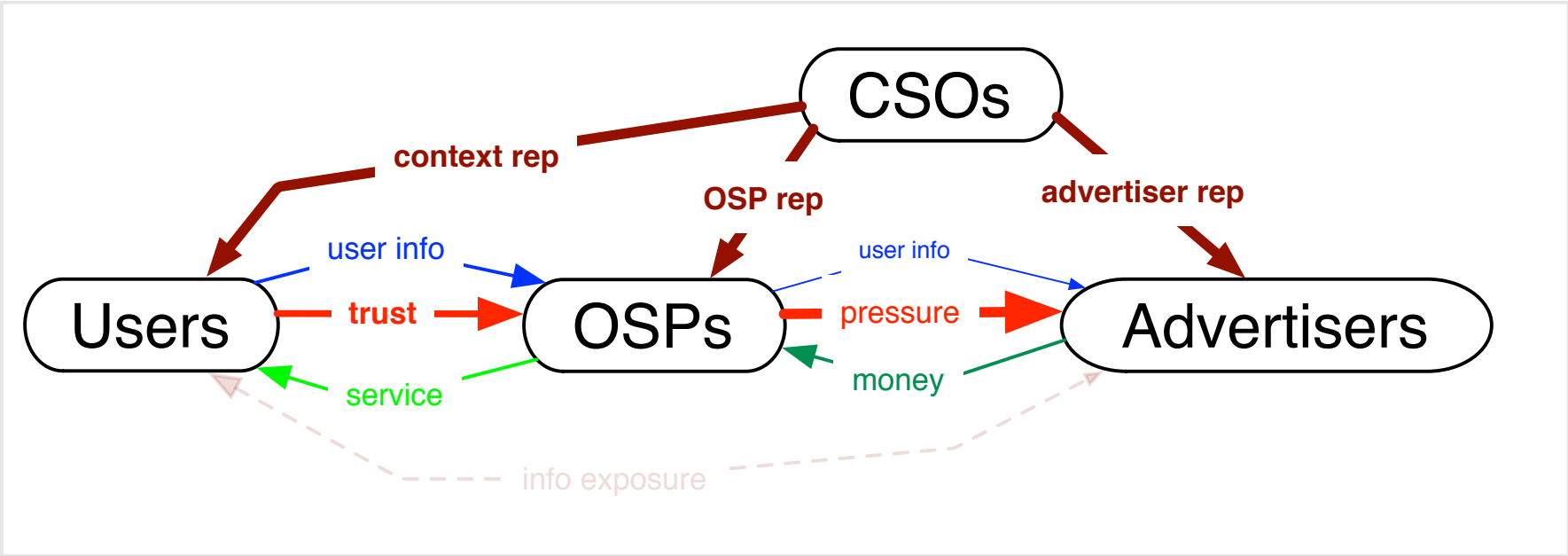

How Idealistic?

- Back to initial questions . . .
  - What is the role of regulatory bodies?
  - What is missing from this hybrid regime?
    - Self-reinforcing mechanisms . . .
  - What are the politically and strategically feasible incentive structures for developing supporting metrics?
- A few more . . .
  - "Ideal" CSO solution is one particular end point
  - *Are there* there politically and strategically feasible options? How can we tell?
  - What characterizes the collection of entry points to a critical path to this type of collaborative solution?
  - How can we use this to compare options?