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Generative AI & the Law: Latest Developments & Ethical Issues

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Presenters



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According to ChatGPT...

What were the top three legal/AI developments in 2024, described in less than 20 words?

1. Lawsuits over AI training on copyrighted data.
2. Global AI regulations, including the EU AI Act.
3. AI-powered legal tools revolutionized law practices.

Can you turn that into a picture?



And a video?



Agenda

1. *Very Brief* Introduction to Artificial Intelligence & Machine Learning
2. Significant AI Regulations
3. Major Developments in Private Litigation
4. Using AI in Legal Practice: Ethical Considerations

Generative AI

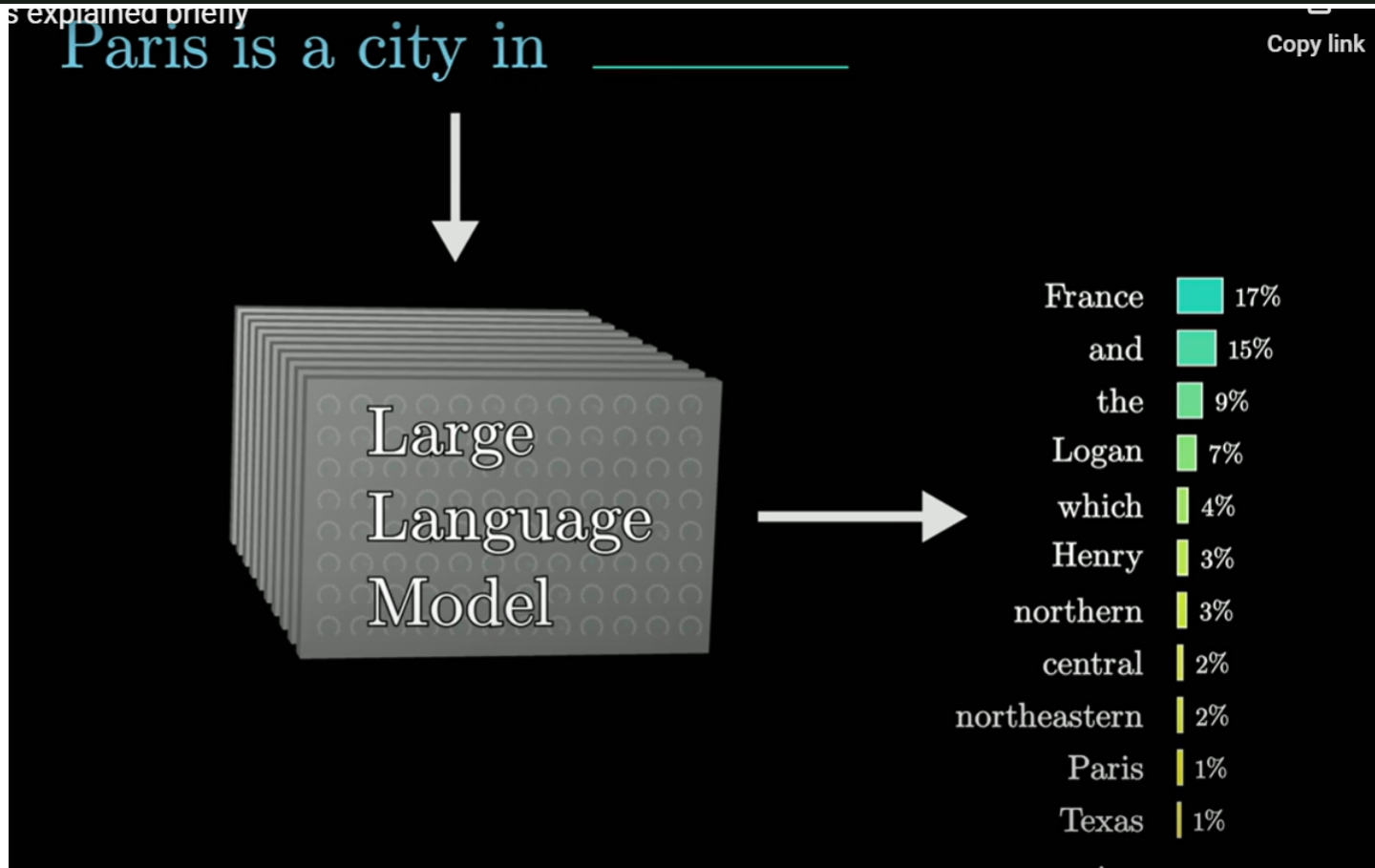
Artificial Intelligence

- Set of analytical approaches to problem solving, including natural language processing and machine learning

Generative AI

- AI system capable of generating new content (text, images, sound, video, and more)

Large Language Models



Large Language Models

If you had to describe how an LLM is developed in just three simple steps, what would you say?

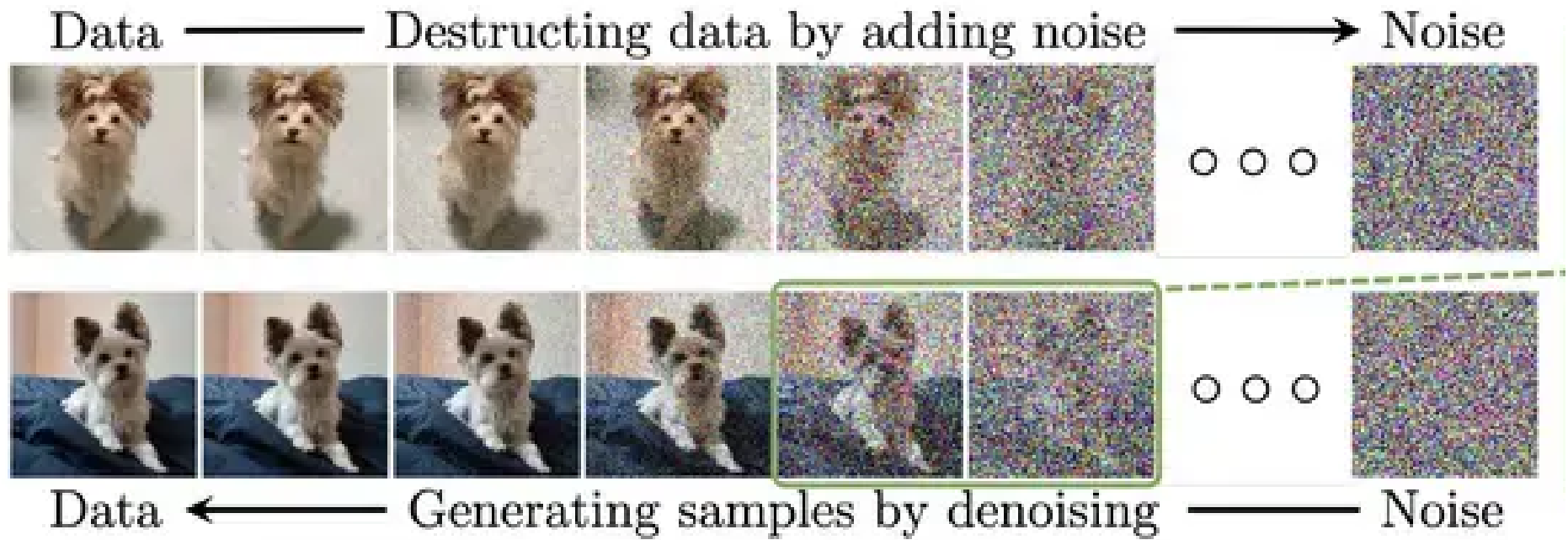


If I had to break it down into three super simple steps:

1. **Gather Data:** Collect a large amount of text data from various sources to teach the model about language.
2. **Train the Model:** Use powerful computers to teach the model patterns and relationships in the data.
3. **Deploy and Improve:** Put the model to use, gather feedback, and fine-tune it for better performance.

Short, sweet, and to the point!

Diffusion Models



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Global Overview: European Union

Country	Status	Coverage
European Union	EU AI ACT <i>In effect (since August 1, 2024)</i>	Risk-based approach: <ul style="list-style-type: none">• Regulates AI systems based on risk classification• Prohibits eight specific AI practices• Gives citizens right to lodge complaints• Hefty sanctions for violations





Global Overview: China

Country	Status	Coverage
China	Artificial Intelligence Regulations In effect (since ~2023)	Series of regulations, including: <ul style="list-style-type: none">• Generative AI Measures• Deep Synthesis Provisions• Ethical Review Measures• Algorithm Recommendation Provisions



Global Overview: United States and Canada

Country	Status	Coverage
United States 	Over 120 bills introduced, but no comprehensive national AI law	N/A
Canada 	Artificial Intelligence and Data Act (AIDA) In Committee (Oct. 20, 2025 deadline)	“High-Impact” system obligations: <ul style="list-style-type: none">• Assessing, mitigating and monitoring risk• Maintaining records• Publishing description of AI systems in use• Providing notice of harm

State Overview: California

State	Status	Coverage
California	<p>More than a dozen AI-focused laws</p> <p>Many in effect; some become operative January 1, 2026</p>	<p>Patchwork of laws covering topics such as:</p> <ul style="list-style-type: none">• Voice and likeness protection• Election integrity• Platform transparency• Sexual exploitation protection• Consumer privacy <p>Some target large platforms (e.g., 1M+ monthly users)</p> <ul style="list-style-type: none">• SB 942 (AI detection tools must be provided)• AB 2655 (identification and removal of deceptive content related to elections)• <i>But vetoed SB 1047 (targeting most resource-intensive models)</i>

State Overview: Colorado and Utah

State	Status	Coverage
Colorado	Colorado AI Act Goes into effect February 1, 2026	<p>Aimed at “high-risk” AI systems and their potential to cause algorithmic discrimination</p> <ul style="list-style-type: none">• “High-risk” AI systems play substantial factor in “consequential decisions”• Requires a developer to disclose type of data used for training, measures taken to mitigate algorithmic discrimination, and more
Utah	Utah Artificial Intelligence Policy Act In Effect	<p>Regulated occupations (those requiring licenses/certification) must “prominently” disclose AI interactions upfront</p> <p>Companies cannot blame generative AI tools for violation of Utah consumer protection law</p>

Copyright Office



Zarya of the Dawn case: Copyright Office rejected Midjourney AI art as not copyrightable.

“Sufficient human authorship” may allow copyright but remains undefined.

Thaler v. Perlmutter (2023): D.D.C court affirmed “human authorship” as bedrock of copyright law.

Different countries taking different approaches (China allows AI copyright).

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Private Litigation: Big Picture

- Litigation against AI companies is growing
- Lawsuits provide first look into novel issues
- Litigants are bringing claims related to:
 - Copyright & Digital Millennium Copyright Act
 - Trademark
 - Right of Publicity
 - Invasion of Privacy
 - Other Federal & State Laws

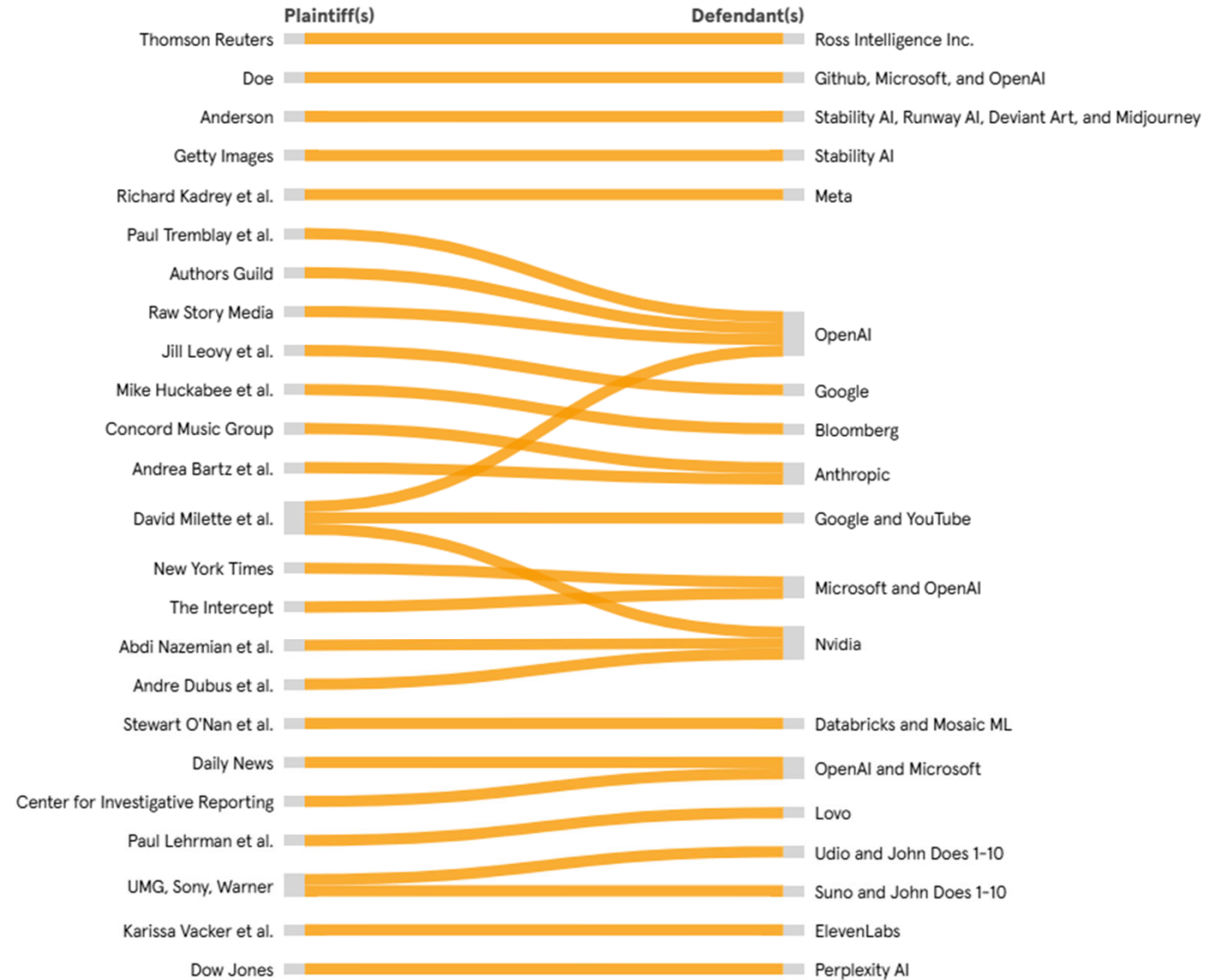


Firefly

Source: Adobe Firefly

Copyright

Who's Suing Who?



Source: Wred

Digital Millennium Copyright Act (DMCA)

- **Content management information (“CMI”)**
 - “Information conveyed in connection with copies . . . of a work . . ., including in digital form,” such as title, author’s name, copyright owner, terms (§ 1202(c))
- **§§ 1202(b)(1), (3) – no knowing removal/alteration of CMI**
 - “No person shall . . . (1) intentionally remove or alter any copyright management information, . . . or (3) distribute . . . copies of works. . . knowing that copyright management information has been removed or altered . . . , knowing . . . that it will induce, enable, facilitate, or conceal an infringement of any rights under this title.”

Trademark: *Getty Images (US) v. Stability AI*



Source: First Amended Complaint, *Getty Images (US) v. Stability AI*



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Right of Publicity: *Young v. NeoCortex, Inc.*

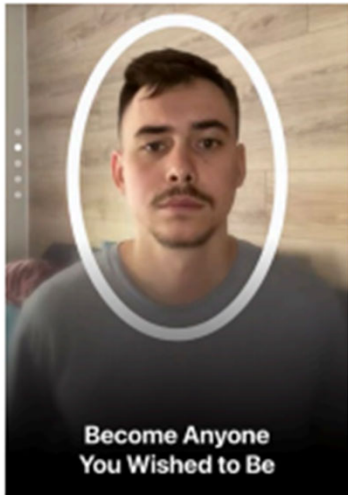


Figure 1

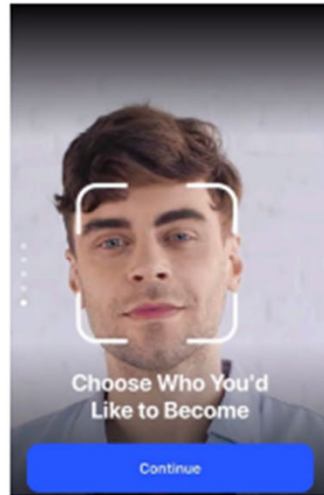


Figure 2

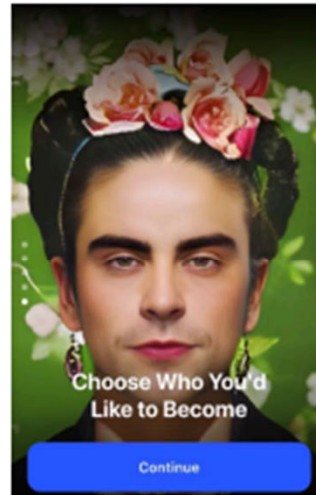


Figure 3

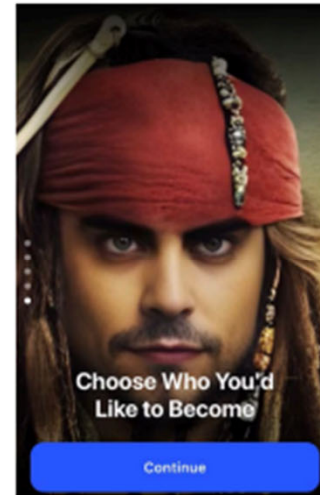


Figure 4

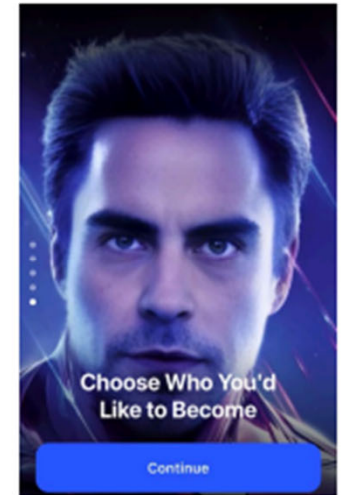


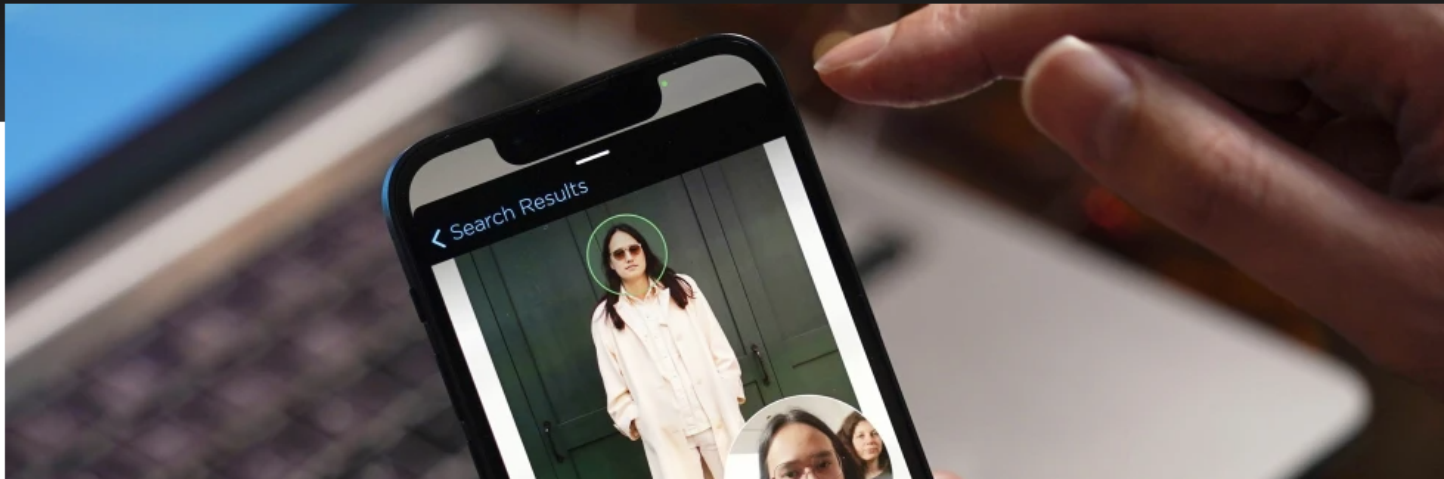
Figure 5

Source: Complaint, *Young v. NeoCortex, Inc.*

Invasion of Privacy

U.S. NEWS

Facial recognition startup Clearview AI settles privacy suit



Other Claims

Breach of Contract

- Sources of training data are governed by licensing agreements & violate terms of service

Computer Fraud and Abuse Act (CFAA)

- Intentionally accessing protected computers without authorization through AI plug-ins

Other State Laws

- Competition Laws
 - *E.g.*, California Unfair Competition Law
- Consumer Protection Laws
 - *E.g.*, Illinois Consumer Fraud and Deceptive Business Practices Act
- Unjust enrichment, libel, defamation, negligence, conversion, & more

Private Litigation: What's Next?

- Many defenses remain untested
- Without broad federal legislation or regulation, law will be made by the courts
- Plaintiffs' bar focused on AI companies now, but may expand



Source: Runway AI

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Potential Uses for AI in Legal Work (Eventually)

- Legal research
- Document review
- Summarization
- Fact research or investigation?
- Risk prediction?
- Drafting pleadings??



Numerous companies are already working on all of these...

How judges are thinking about AI

US judge runs 'mini-experiment' with AI to help decide case

By Nate Raymond

September 6, 2024 2:02 PM PDT · Updated 5 months ago



U.S. Circuit Judge Kevin Newsom appears in an official court photo. 11th U.S. Circuit Court of Appeals/Handout via REUTERS [Purchase Licensing Rights](#)

Two US appeals courts form committees to examine AI use

By Nate Raymond and Sara Merken

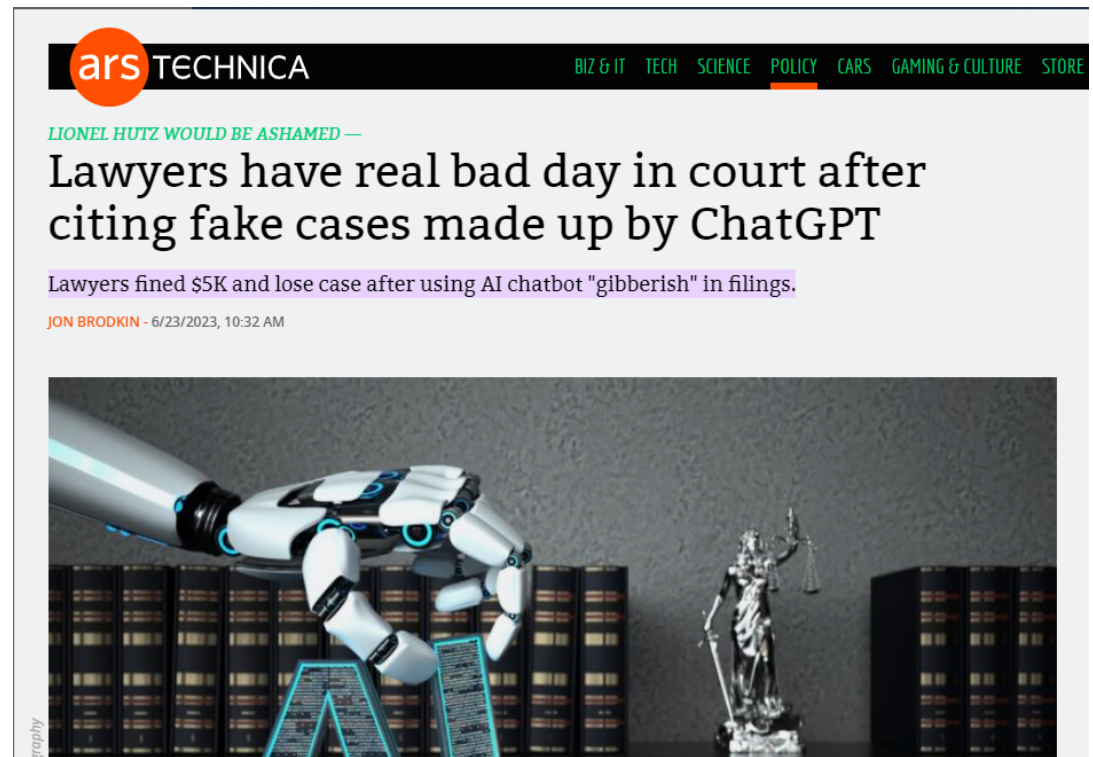
January 25, 2024 3:21 PM PST · Updated a year ago



Now-U.S. Circuit Judge Eric Miller of the 9th U.S. Circuit Court of Appeals appears before the U.S. Senate Judiciary Committee during his nomination process on Oct. 24, 2018, in Washington, D.C. U.S. Senate/Handout via REUTERS [Purchase Licensing Rights](#)

What are the risks of using AI in legal work?

- It can get things horribly —but very confidently—wrong



What are the risks of using AI in legal work?

- The information you put into chatbots may not stay confidential

Gemini Apps Help

🔍 Describe your issue

How human reviewers improve Google AI

To help with quality and improve our products (such as generative machine-learning models that power Gemini Apps), human reviewers read, annotate, and process your Gemini Apps conversations. We take steps to protect your privacy as part of this process. This includes disconnecting your conversations with Gemini Apps from your Google Account before reviewers see or annotate them. **Please don't enter confidential information in your conversations or any data you wouldn't want a reviewer to see or Google to use to improve our products, services, and machine-learning technologies.**

What does the California State Bar have to say?

**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT**

**PRACTICAL GUIDANCE FOR THE USE OF
GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW**

EXECUTIVE SUMMARY

Generative AI is a tool that has wide-ranging application for the practice of law and administrative functions of the legal practice for all licensees, regardless of firm size, and all practice areas. Like any technology, generative AI must be used in a manner that conforms to a lawyer's professional responsibility obligations, including those set forth in the Rules of Professional Conduct and the State Bar Act. A lawyer should understand the risks and benefits of the technology used in connection with providing legal services. How these obligations apply will depend on a host of factors, including the client, the matter, the practice area, the firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary formats.

Generative AI use presents unique challenges; it uses large volumes of data, there are many competing AI models and products, and, even for those who create generative AI products, there is a lack of clarity as to how it works. In addition, generative AI poses the risk of encouraging greater reliance and trust on its outputs because of its purpose to generate responses and its ability to do so in a manner that projects confidence and effectively emulates human responses. A lawyer should consider these and other risks before using generative AI in providing legal services.

What are the ethical implications of using AI in legal work?

Duty of Competence

- Rule 1.1
 - A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
 - Competence in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.

What are the ethical implications of using AI in legal work?

Duty of Confidentiality

- Rule 1.6
 - Lawyers must protect information relating to the representation and take steps to prevent unintended disclosure or unauthorized access to that information

Supervision and Unauthorized Practice

- Rules 5.1, 5.3
 - Lawyer with supervisory authority over non-lawyer must make reasonable efforts to ensure non-lawyer's compliance and may be responsible for non-compliance
- Rule 5.5
 - Lawyer cannot “knowingly assist a person in the unauthorized practice of law”

Duty of Confidentiality Bus. & Prof. Code § 6068(e)

Rule 1.6

- “A lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections.”
- “A lawyer or law firm should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols.”
- “A lawyer who intends to use confidential information in a generative AI product should ensure that the provider does not share inputted information with third parties or utilize the information for its own use in any manner, including to train or improve its product.”

Duties of Competence and Diligence

Rule 1.1

Rule 1.3

- “It is possible that generative AI outputs could include information that is false, inaccurate, or biased.”
- “A lawyer must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand... **The duty of competence requires more than the mere detection and elimination of false AI-generated results.**”
- “A lawyer’s professional judgment cannot be delegated to generative AI and remains the lawyer’s responsibility at all times.”

Duty to Supervise Lawyers & Non-Lawyers

Rules 5.1-5.3

- “Managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI and make reasonable efforts to ensure that the [organization] adopts measures that give reasonable assurance that the [organization’s] lawyers and non-lawyers’ conduct complies with their professional obligations when using generative AI.”
- “A subordinate lawyer must not use generative AI at the direction of a supervisory lawyer in a manner that violates the subordinate lawyer’s professional responsibility [] obligations.”
- **These issues are non-exhaustive; the Practical Guidance document addresses additional issues**

Takeaways

Ethical use of AI in legal practice

- Do not put confidential, privileged, or non-public information into chatbots
- If you use AI for legal work, do so with extreme caution and full duplication through other means
- Cannot delegate your professional judgment to generative AI
- Set policies and conduct trainings
- Keep track of developments and guidance—things will change fast

Thank you!
