Intellectual Property and AI:

Ownership, Authorship, and Innovation in the AI Era

AI-Generated Works: Ownership, Authorship & Emerging Legal Challenges

Welcome & Session Overview

Moderator:

Jack Pringle, JD, CIPP, US Nelson Mullins Columbia, SC

Panel:

Brandon Huffman Odin Law and Media Raleigh, NC

Jessica J. Harrison, BSECE, MSECE, JD Cope Collective Washington, D.C.

Todd Serbin MarynardNexsen Columbia, SC

AI-Generated Works: Ownership, Authorship & Emerging Legal Challenges

Agenda

Key Terms and Context

Current Uses of AI

IP Legal Issues:

- Copyright & Authorship
- Training data & Liability
- Patent Inventorship
- Patentability of AI technology
- Policy and Regulation
- Practical Guidance

Audience Q/A

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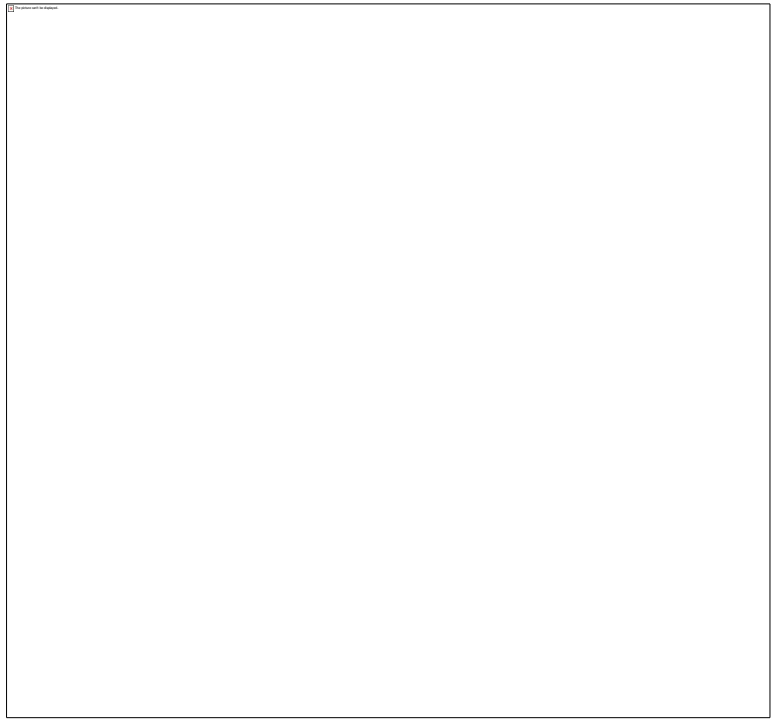

Defining Key Terms

Generative AI: models that create text, images, code, etc.

Machine Learning: systems trained on large datasets

AI-assisted vs AI-autonomous creation – legal distinction

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How and where is AI (Generative AI) currently being used?

- Just about everywhere…
- Scientific discovery
- Software development
- Creative industries
- Search engines and “assistants”
- The legal industry: research and drafting

Why the Law is Struggling

- Rapid innovation
- Little or no guardrails
- No statutory definitions
- Conflicting/changing agency guidance and policy positions
- Conflicting global policy positions
- Courts only beginning to weigh in

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Copyright Basics:

- Human Authorship requirement
- Originality
- Fixation

Copyright Office Guidance

- AI-generated content not protectable
- AI-assisted content *MAY* be protectable
- Disclosure requirement on registration applications

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Copyright Case Law Landscape

- U.S. Copyright Office Position
- Recent federal cases (examples, there are dozens):
- Scraping:
- Advance Local Media LLC et al v. Cohere Inc. (SDNY)
- Dow Jones & Co. and NYP Holdings v. Perplexity AI (SDNY)
- New York Times Company v. Microsoft Corporation, OpenAI
- Copyrightability
  - Zarya of the Dawn (2023)
  - Thaler v. Perlmutter (DC Appeals)

Trademarks, too

- Getty Images (U.S.), Inc. v. Stability AI, Inc. (De)
- Encyclopedia Britannica Inc. v. Perplexity AI (Sep. 10, 2025 SDNY)

Takeaway: Copyright office emphasize HUMAN creative control

Practice Tips:

- Document human contributions
- Clarify rights in contracts
- Manage Client expectations

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A Second Issue– Training Data

The open legal question:

Are AI training datasets a “fair use” of the data, some or all of which may be subject to copyright protection?

How does AI training fit in the “fair use” doctrine

- Purpose and nature of use
- Nature of the copyright work
- Amount and substantiality of the portion used
- Effect of the use on the market for the original works

Recent federal decision/settlement:

- Bartz et al v. Anthropic PBC (NDCa)
- Kadrey v. Meta (NDCa)

EU AI Act- Requires authorized use of copyrighted materials

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Patent Inventorship Requirements

- Conception
- Human contribution required
- AI cannot be an inventor

"The threshold question in determining inventorship is who conceived the invention. Unless a person contributes to the conception of the invention, he is not an inventor." Fiers v. Revel, 984 F.2d 1164, 1168 (Fed. Cir. 1993).

See Pannu v. Iolab Corp., 155 F.3d 1344, 1351 (Fed. Cir. 1998).

See Thaler v. Vidal, 43 F.4th 1207, 1212 (Fed. Cir. 2022) (holding that only a natural person(s) may be listed as an inventor(s)).

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USPTO recently clarified its AI inventorship guidance: with 90 FR 54636:

In the guidance issued November 28, 2025, the Agency stated:

"The guidance issued on February 13, 2024, titled "Inventorship Guidance for AI-Assisted Inventions" is rescinded in its entirety. The approach set forth in that guidance, which relied on the application of the Pannu [2] factors to AI-assisted inventions, is withdrawn. The Pannu factors only apply when determining whether multiple natural persons qualify as joint inventors.[3] Pannu is inapplicable when only one natural person is involved in developing an invention with AI assistance because AI systems are not persons and therefore cannot be "joint inventors" so there is no joint inventorship question to analyze."

The new guidance continued:

AI systems, including generative AI and other computational models, are instruments used by human inventors. They are analogous to laboratory equipment, computer software, research databases, or any other tool that assists in the inventive process. As the case law establishes, inventors may "use the services, ideas, and aid of others" without those sources becoming co-inventors.[16] The same principle applies to AI systems: they may provide services and generate ideas, but they remain tools used by the human inventor who conceived the claimed invention. When one natural person is involved in creating an invention with the assistance of AI, the inquiry is whether that person conceived the invention under the traditional conception standard."

Guidance does not change human conception requirement – it merely "corrects" the legal reasoning

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A second issues with patents and AI inventions –

Patent Eligibility of AI systems and AI integrated into software applications

35 U.S.C. §101 and the abstract idea judicial exception

Alice Corp. Pty. Ltd. V. CLS Bank Intl., 134 S.Ct. 2347 (2014).

Improvements to computer technology eligible

Current USPTO position:

Ex Parte Desjardins, Appeal No. 2024-000567 (PTAB September 26, 2025, Appeals Review Panel Decision)

Improvements to technology eligible

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Open Questions and Practical Takeaways:

- Future regulatory/statutory changes (No Fakes Act, Generative AI Copyright Disclosure Act, No AI Fraud Act)
- International policy divergence
- Ownership vs Inventorship
- Human oversight required – no AI inventorship
- Maintain clear invention/AI use records
- clients using AI must develop prompt management recordkeeping and management policies
- Consider trade secret protections

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AI impact on Contractual & Licensing Issues

- Vendor agreements
- Indemnification
- Data Provenance

Litigation: Spoliation

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Common Client Questions

- Who owns the output?
- Can w patent this?
- Is our training data lawful?

Counseling Framework

- Stay current
- Issue spotting
- contract Drafting
- IP strategy Alignment with business goals
- Anticipate regulatory shifts and build flexibility

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Audience Q/A

Thank you for joining us. Please reach out if you'd like copies of the slides or further resources or have additional questions.

BIAS AND ETHICAL AI

Gary Moore

Assistant Dean for Academic Technology
Executive Director, TechInLaw
University of South Carolina
Joseph F. Rice School of Law

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WHAT IS THE DEFINITION OF AI?

AMERICAN BAR ASSOCIATION

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HISTORY OF AI

A PROPOSAL FOR THE

DARTMOUTH SUMMER RESEARCH PROJECT

ON ARTIFICIAL INTELLIGENCE

J. McCarthy, Dartmouth College
M. L. Minsky, Harvard University
N. Rochester, I. B. M. Corporation
C. E. Shannon, Bell Telephone Laboratories

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  Welcome to
                 EEEEEE  LL      IIII   ZZZZZZ   AAAAA
                 EE      LL       II       ZZ   AA   AA
                 EEEEE   LL       II     ZZZ    AAAAAAA
                 EE      LL       II    ZZ      AA   AA
                 EEEEEE  LLLLLL  IIII ZZZZZZ    AA   AA

  Eliza is a mock Rogerian psychotherapist.
  The original program was described by Joseph Weizenbaum in 1966.
  This implementation by Norbert Landsteiner 2005.


ELIZA: Is something troubling you ?
YOU:   Men are all alike.
ELIZA: What is the connection, do you suppose ?
YOU:   They're always bugging us about something or other.
ELIZA: Can you think of a specific example ?
YOU:   Well, my boyfriend made me come here.
ELIZA: Is it important to you that your boyfriend made you come here ?
YOU:   He says I'm depressed much of the time.
ELIZA: I am sorry to hear that you are depressed.
YOU:   It's true. I am unhappy.
ELIZA: Can you explain what made you unhappy ?
YOU:
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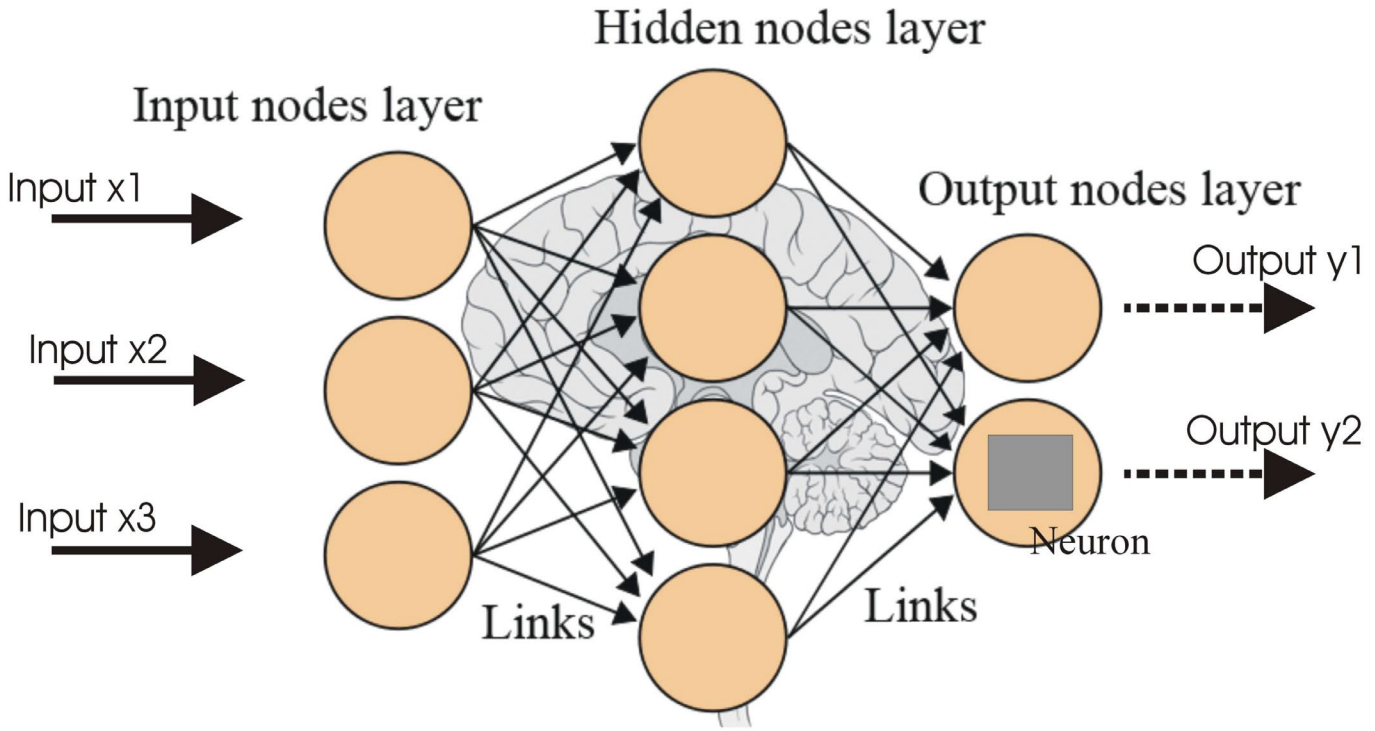
NEURAL NETWORKS

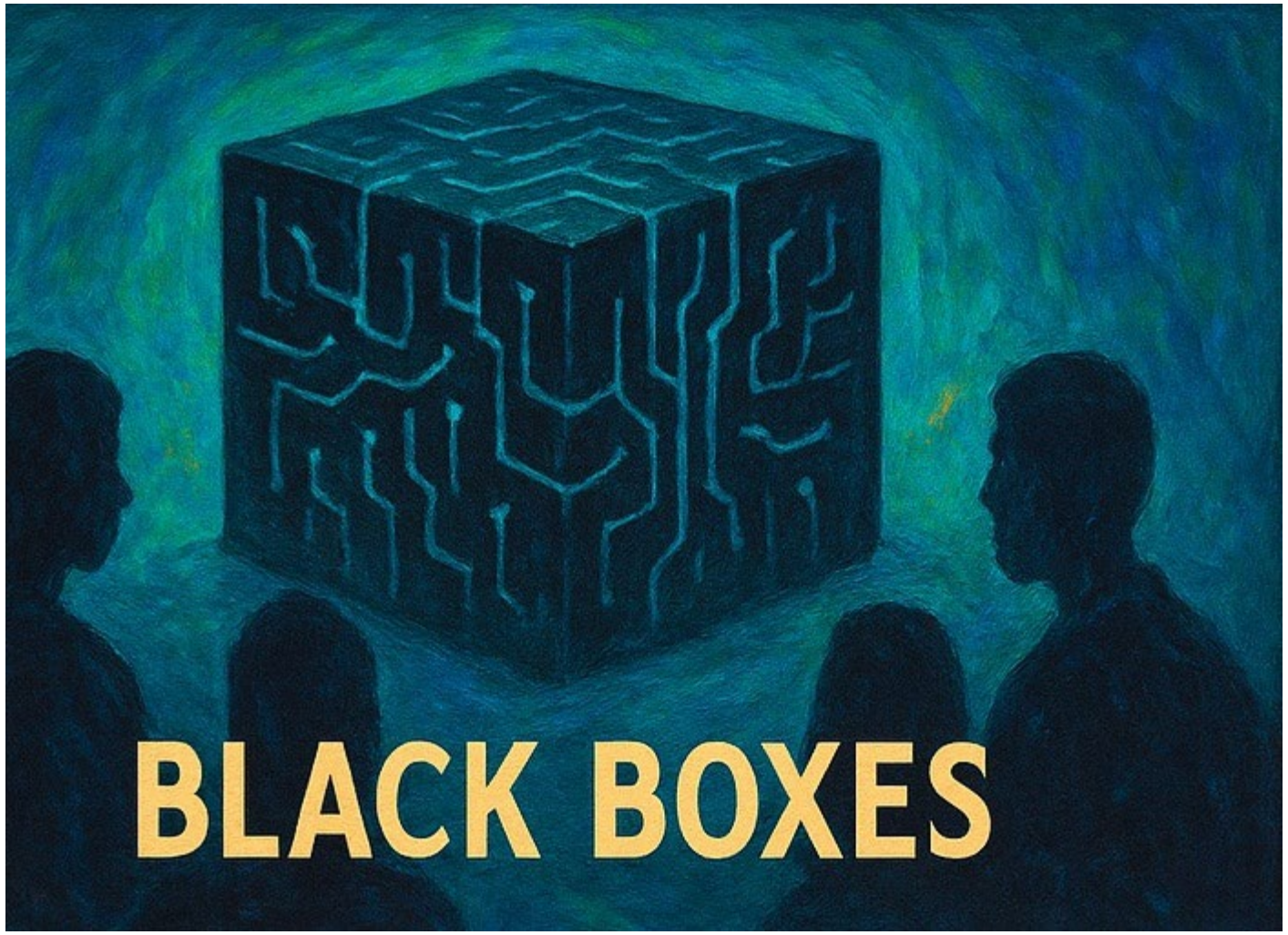


WHAT IS GENERATIVE AI ?

"Generative AI is a branch of artificial intelligence that can create *new* content — text, images, music, video, or even code — that didn't exist before...

At its core are *generative models*, such as large language models (LLMs) like GPT-5, or image models like DALL·E and Midjourney. These models learn statistical relationships between words, pixels, or sounds. When prompted, they generate plausible new combinations that fit those learned patterns. For example, if you ask a generative AI to "write a short story about a lawyer who defends a robot," it doesn't retrieve a prewritten text — it invents one word by word based on its learned understanding of stories, law, and robots.

This works through a process called *transformer-based deep learning*, where the model predicts the next element in a sequence — a word, note, or pixel — by analyzing context. Over time and massive training, **this predictive ability becomes creative generation**."


BLACK BOXES

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LAW SCHOOL

← All faculty

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Vice Dean for Library and Information Resources

Faculty Director, Berkman Klein Center for Internet and Society

Professor of Computer Science, Harvard School of Engineering and Applied Sciences

Professor of Public Policy, Harvard John F. Kennedy School of Government

Jonathan Zittrain is the George Bemis Professor of International Law at Harvard Law School. He is also a Professor of Public Policy, Harvard John F. Kennedy School of Government, a professor of computer science at the Harvard School of Engineering and Applied Sciences, director of the Harvard Law School Library, and co-founder and director of Harvard's Berkman Klein Center for Internet & Society.

His research interests include the ethics and governance of artificial intelligence; battles for control of digital property; the regulation of cryptography; new privacy frameworks for loyalty to users of online services; the roles of intermediaries within Internet architecture; and the useful and unobtrusive deployment of technology in education.

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INTELLECTUAL DEBT

WITH GREAT POWER COMES GREAT IGNORANCE

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WHY IS INTELLECTUAL DEBT WORRISOME WHEN IT COMES TO GENERATIVE AI?

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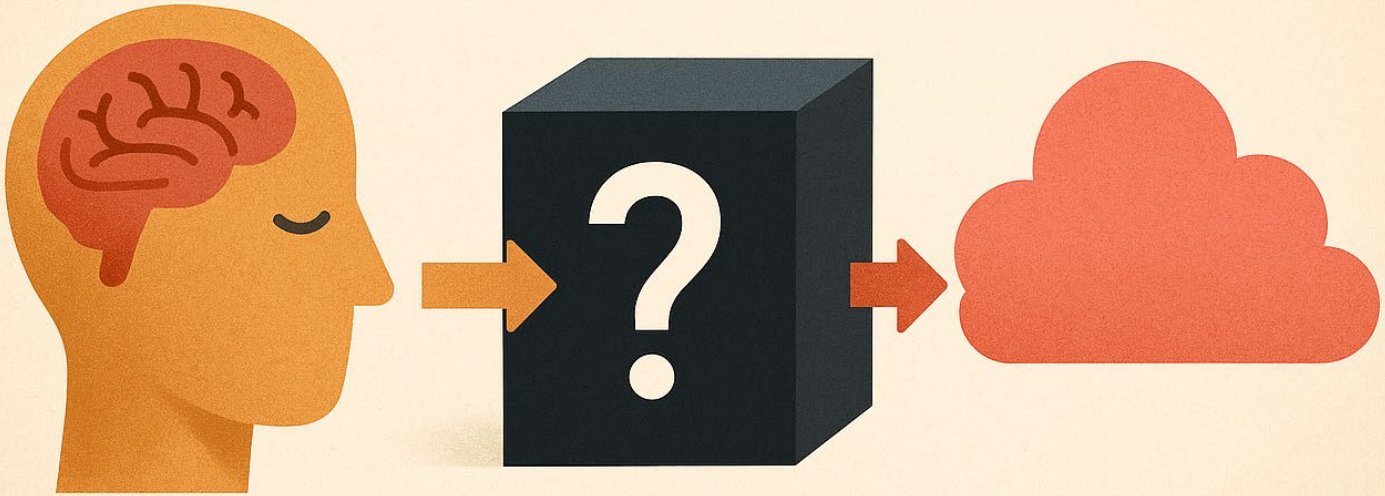
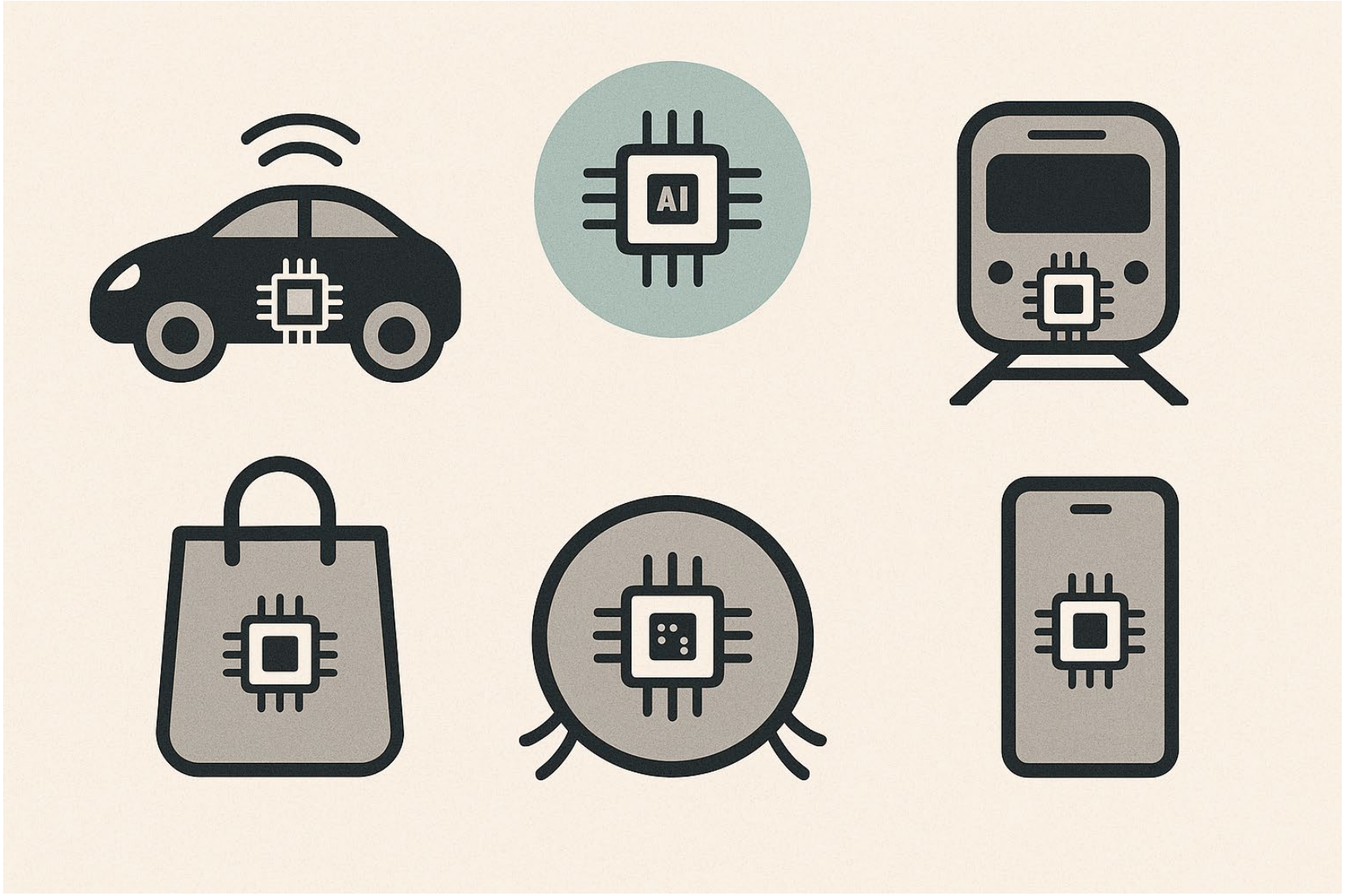
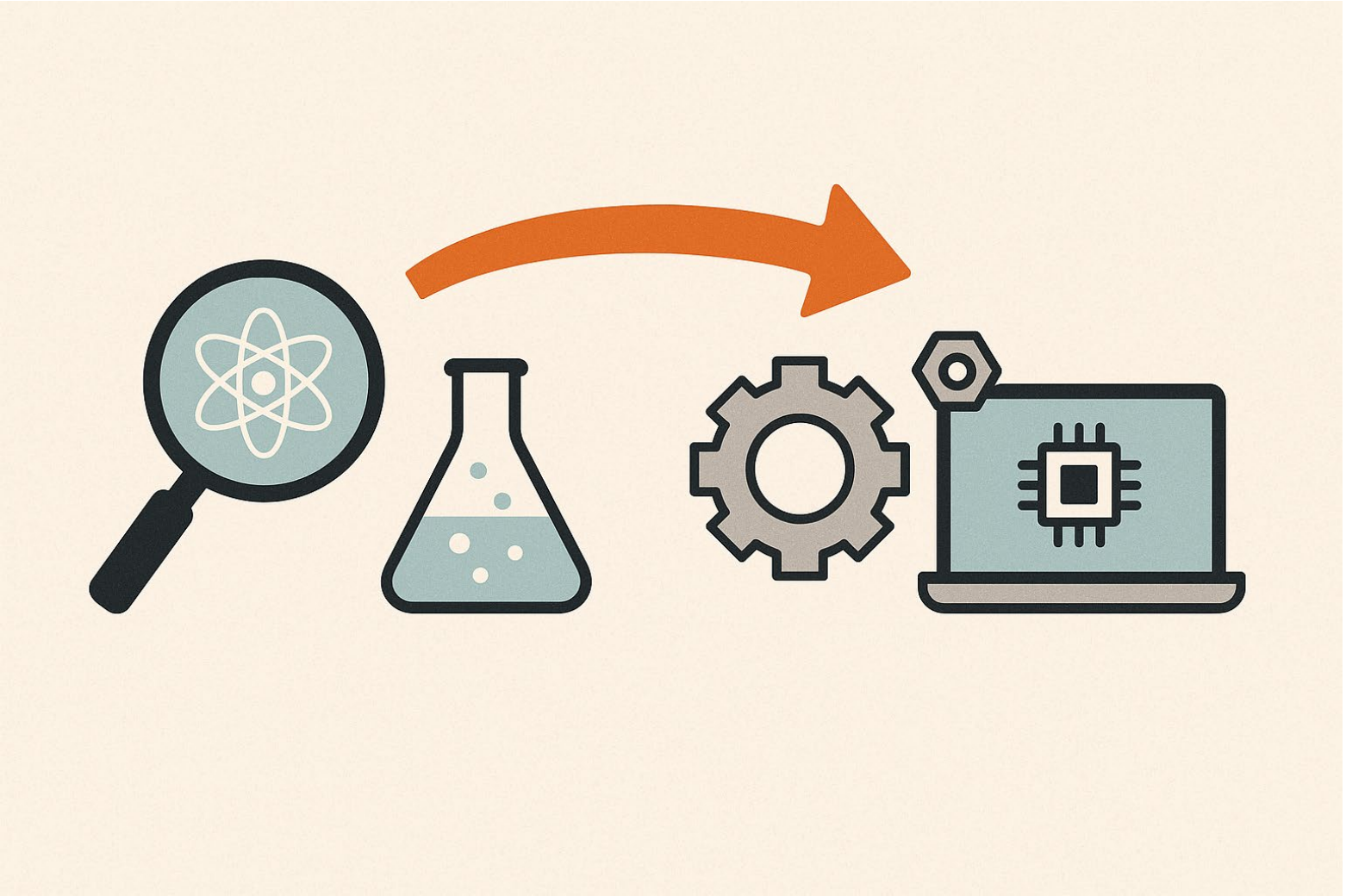
When we don’t know how something works, it becomes hard to predict how it will adapt to unusual situations.




AI



ED WALTERS QUOTE ABOUT AI STATISTICAL RESULTS

"GPT Tools, these transformers are not truth engines. What they are designed to do is to create something that is statistically likely.

Which means that they are creating sort of average answers to questions, but not true answers to questions.

This is why people see hallucinations when using ChatGPT, where the tool creates the statistically likely answer, but not the truth.

Transformers aren't trying to find the truth.

They are trying to find something statistically likely."

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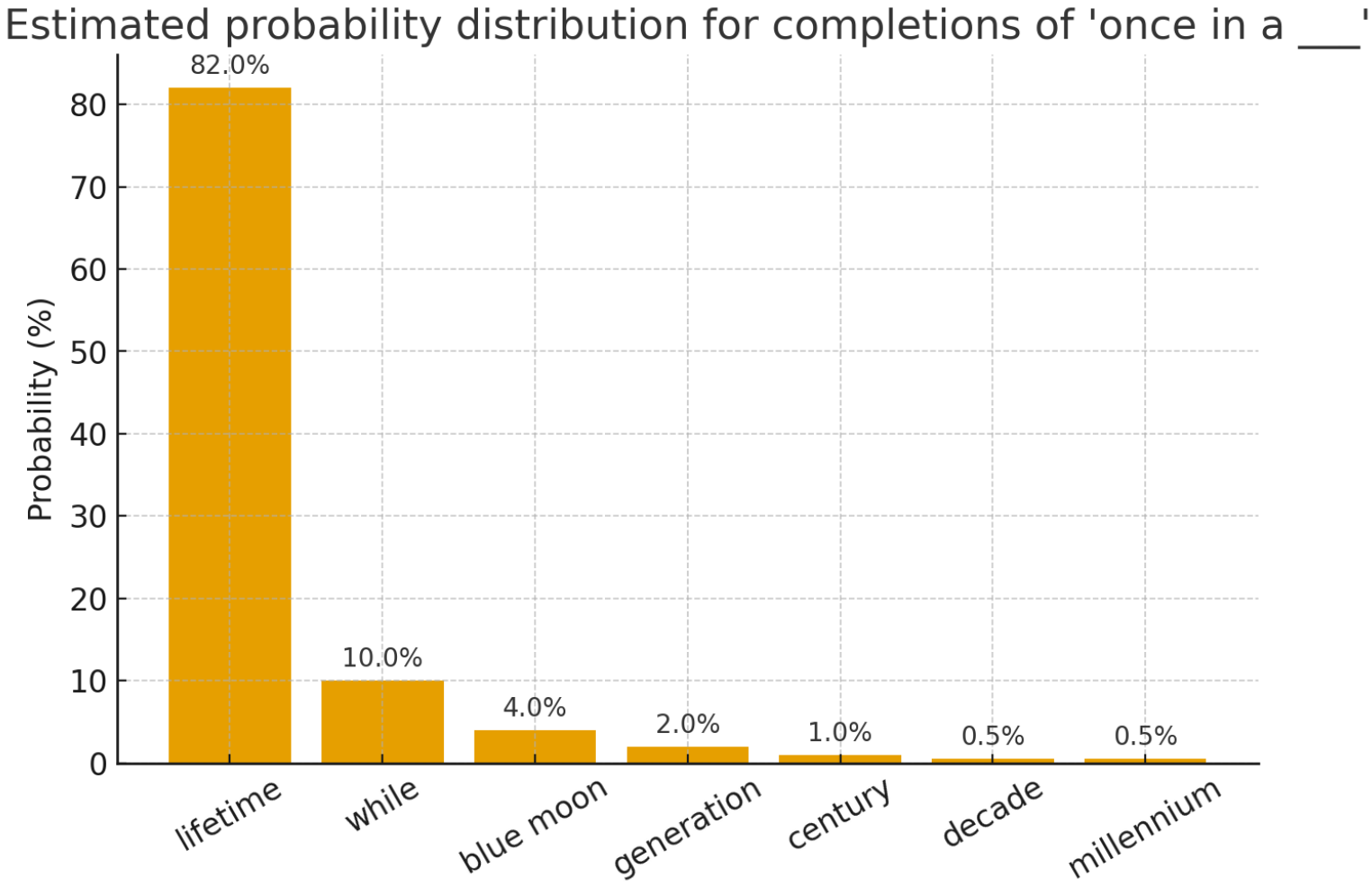

ChatGPT's Probability Distribution Chart

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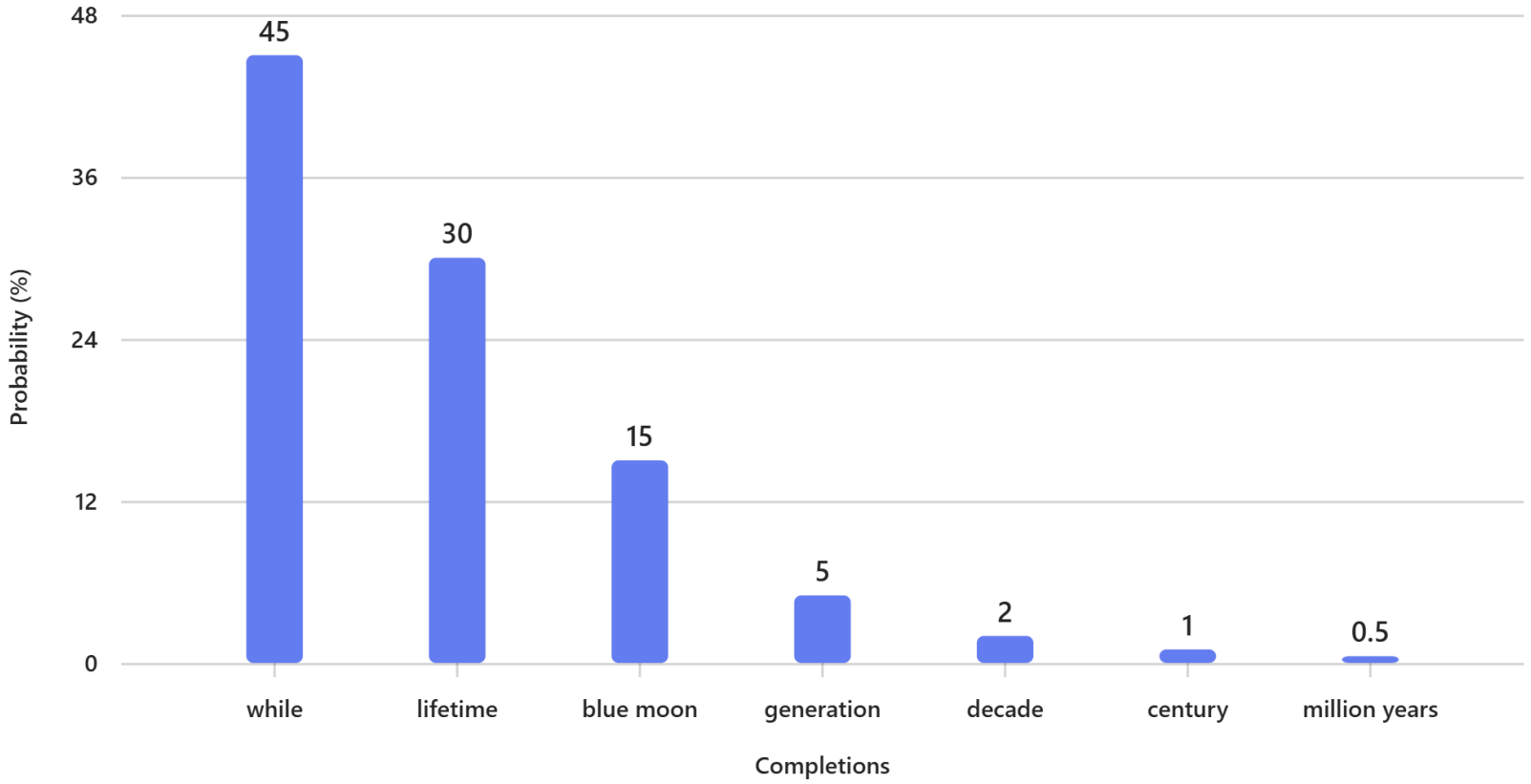
Blu-ray.com



CoPilot's Probability Distribution Chart

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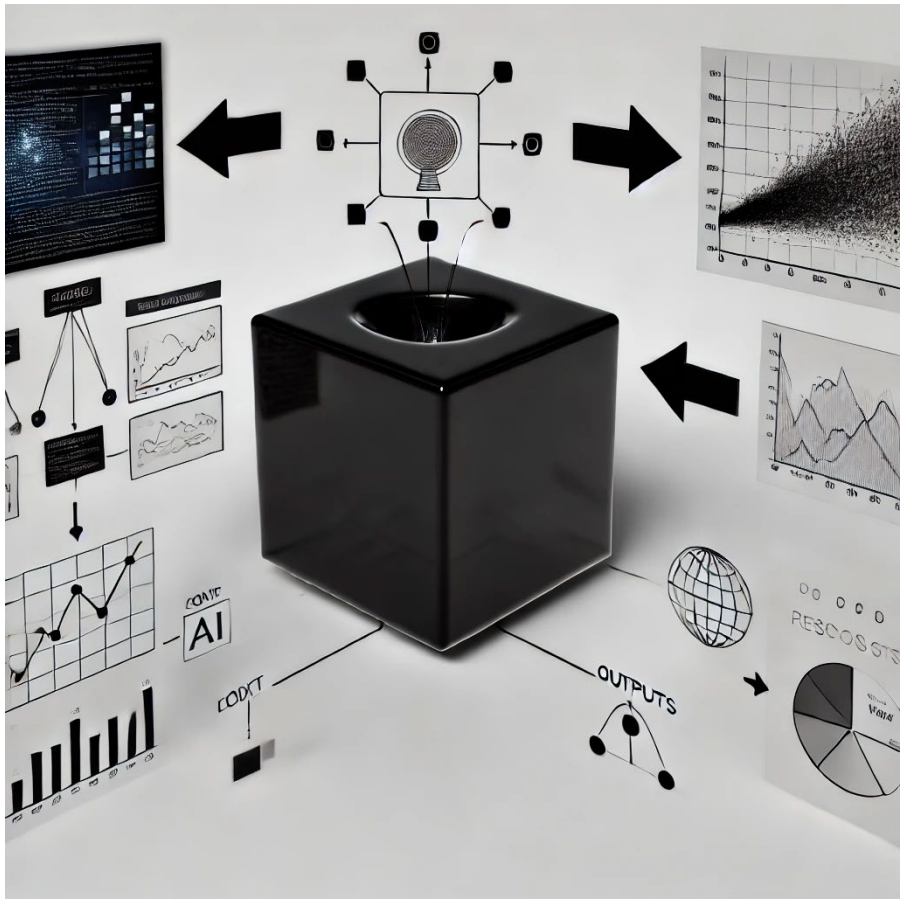
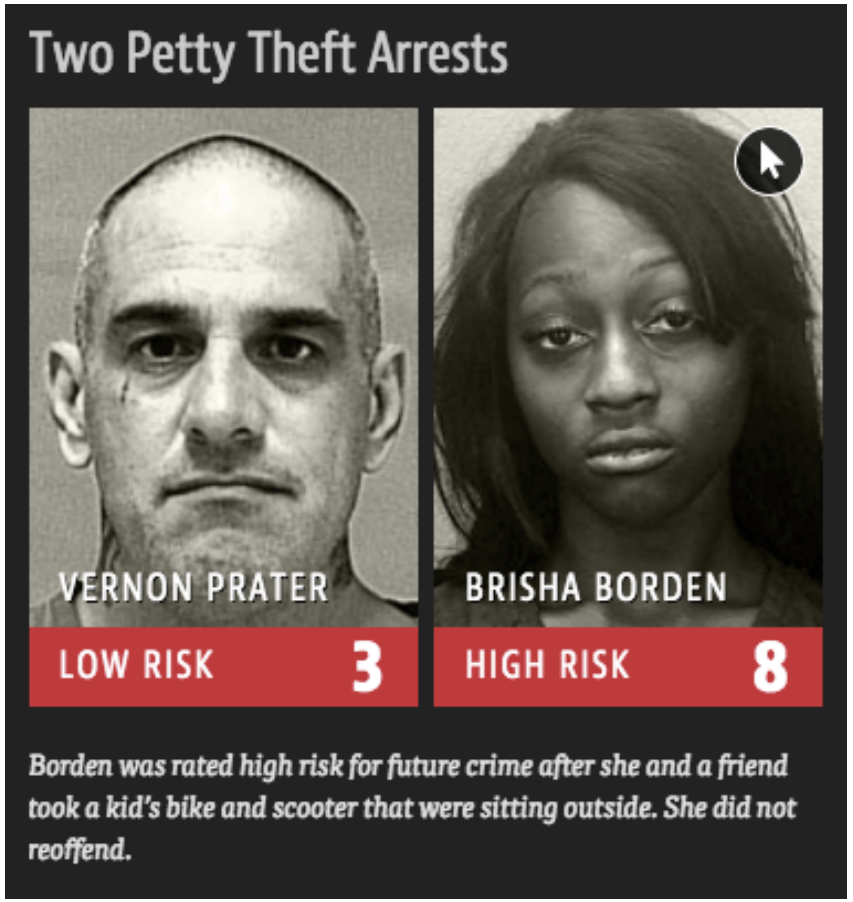
ABA TECHREPORT 2024 ON AI

- AI Tool Usage
  - ChatGPT (52.1%)
  - Thomson Reuters CoCounsel (26.0%)
  - Lexis+ AI (24.3%)


AI
OUTPUTS


Two Petty Theft Arrests
VERNON PRATER
LOW RISK 3
BRISHA BORDEN
HIGH RISK 8
Borden was rated high risk for future crime after she and a friend took a kid's bike and scooter that were sitting outside. She did not reoffend.

POLITICS

Judge sanctions lawyers for brief written by A.I. with fake citations

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WATCH LIVE

KEY POINTS

- A New York federal judge sanctioned lawyers who submitted a legal brief written by the artificial intelligence tool ChatGPT, which included citations of non-existent court cases.
- In addition to each paying a $5,000 fine, the attorneys, Peter LoDuca and Steven Schwartz, and their Levidow law firm, were ordered Thursday to notify each judge falsely identified as the author of the bogus case rulings about the sanction.
- Judge P. Kevin Castel said he might not have punished them if attorneys if they had come “clean” about using ChatGPT to find the purported cases the A.I. cited.

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The S.C. Rules of Professional Conduct are available on the S.C. Judicial Department's website. Click the following links to view the Preamble and Scope. The full list of rules may be accessed here by scrolling to Rule 407.

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ETHICAL RULES INVOLVING BLACKBOXES/EXPLAINABILITY

ABA Formal Opinion 512 regarding ABA Model Rule 1.4(b)
NC Rules & SC Court Rules of Professional Conduct 1.4(b)
Explaining to a client how the technology works, at least a bit (RPC 1.4, NY)
CA Bar – Practical Guidance for the Use of Gen AI in the Practice of Law

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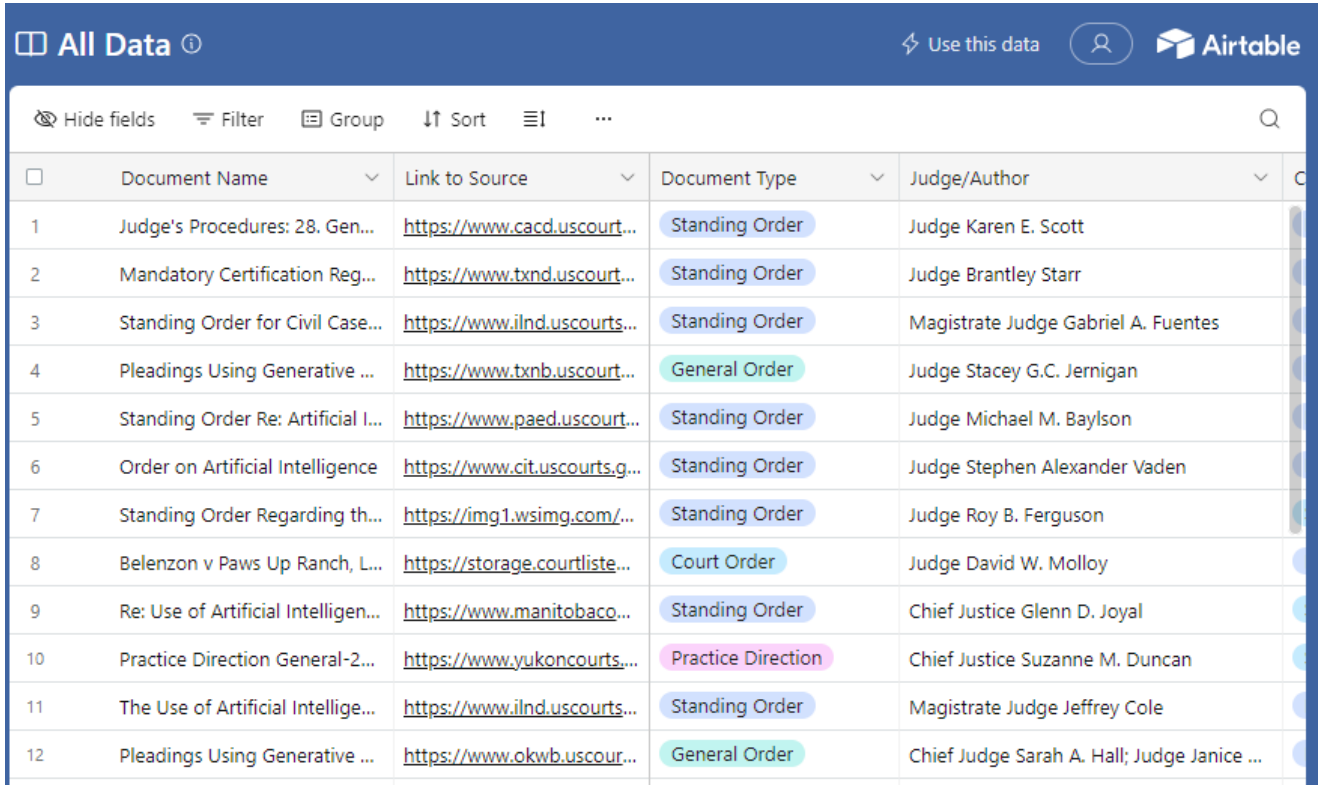
USE OF AI IN COURTS

RAILS
RESPONSIBLE AI IN LEGAL SERVICES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6	Order on Artificial Intelligence	https://www.cit.uscourts.g...	Standing Order	Judge Stephen Alexander Vaden
7	Standing Order Regarding th...	https://img1.wsimg.com/...	Standing Order	Judge Roy B. Ferguson
8	Belenzon v Paws Up Ranch, L...	https://storage.courtliste...	Court Order	Judge David W. Molloy
9	Re: Use of Artificial Intelligen...	https://www.manitobaco...	Standing Order	Chief Justice Glenn D. Joyal
10	Practice Direction General-2...	https://www.yukoncourts....	Practice Direction	Chief Justice Suzanne M. Duncan
11	The Use of Artificial Intellige...	https://www.ilnd.uscourts...	Standing Order	Magistrate Judge Jeffrey Cole
12	Pleadings Using Generative ...	https://www.okwb.uscour...	General Order	Chief Judge Sarah A. Hall; Judge Janice ...

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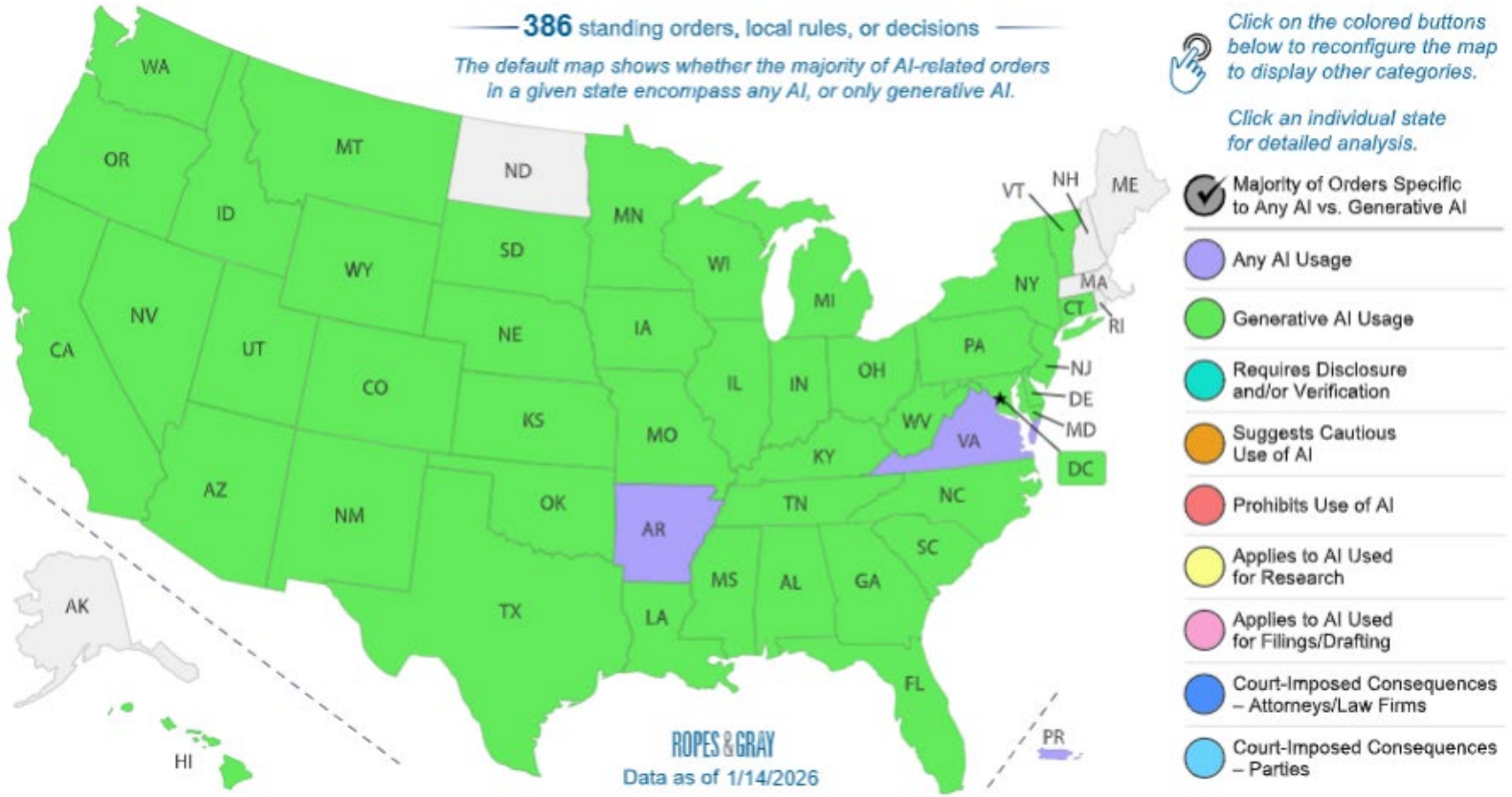

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