International Municipal Lawyers Association
89th Annual Conference
September 2024

AI and the Practice of Law

Lorena E. Bravo, Esq.
Bryant Miller Olive, P.A.

Bryant Miller Olive

AI: What Is It, How Is It Being Used

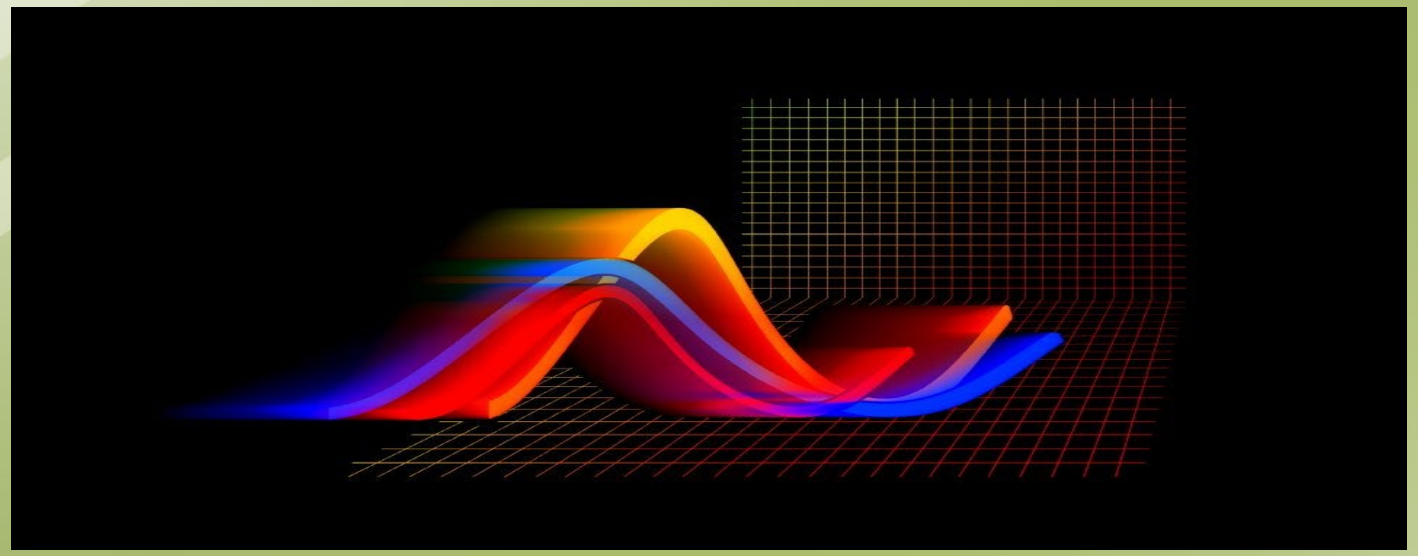
Bryant Miller Olive

Bryant Miller Olive

Generative AI – Is this really *intelligence?*

Generative AI is machine-created, human-like text, images, or other media made in response to prompts.

What AI is doing is very sophisticated next-word probability computation.



It’s guessing the next word (and the next and the next) based on the statistical probability of what follows what came before.

Bryant Miller Olive

The ABCs of Generative AI

- Neural Network
- Large Language Models (LLM)
- Machine Learning
- Reinforcement Learning
- Black Box
- Emergent Behavior
- Synthetic Data
- Anthromorphism

Bryant Miller Olive

Putting It All Together…

Functional Objective:	Given a sequence of text, guess what comes next.
Step 1:	Collect Lots of Data
Step 2:	Build the Neural Network
Step 3:	Train and Fine Tune
Step 4:	Launch!
Result:	Human-like language fluency

Credit: Kevin Roose, *How Does ChatGPT Really Work? Learning How a "Large Language Model" Operates*, N.Y. Times, Mar. 28, 2023

Bryant Miller Olive

What AI Is Not - Yet

Generative AI is not human intelligence – what would be called *General* AI. General AI is still the stuff of science fiction, but there's little doubt it will become reality sooner than we expect and maybe sooner than we want.

It's even harder to define General AI than it is to define Generative AI, but the core idea seems to boil down to

A COMPUTER THAT CAN REASON AND CAN DO ANYTHING THE HUMAN BRAIN CAN

Bryant Miller Olive

AI Tools in the Practice of Law

The current state of law practice AI apps appears to be focused on analyzing and revising language and automating repetitive tasks. Typically, apps do one or more of:

- Drafting documents
- Accessing research resources
- Analytics
- Legal research
- Document review



Creator – Tom Ventura – Image proportions modified
License: https://creativecommons.org/licenses/by/2.0/deed.en

Bryant Miller Olive

Law Firms Are Using AI Now

Early adopters of legal AI use it now to:

- Manage and streamline work flow
  - Firms formally integrate what AI is good at – first drafts, revisions, annotation, research – into work flow practices
- Improve marketing
  - From website interactions to creating pitch presentations, AI is both improving content and cutting the time investment
- Enhance trial presentation
  - AI excels at creating exhibits, demonstratives, indices, and cross-referencing, making for a more polished and impressive trial presentation
- Create first drafts of standard documents
  - AI can review firm document libraries and be trained to create first drafts of contracts and other documents

Possible Risks, Potential Benefits

Bryant Miller Olive

RISKS

Disclosure of confidential information (data security)

Inaccuracy of AI-generated results (hallucinations, bias)

Misuse of (copyrighted) information

Measurement

Alignment, Disinformation, Deepfakes

BENEFITS

Time-savings, elimination of repetitive tasks

Competitive edge

Improved work product, including increased consistency

Access

BIAS



Workday urges judge to toss bias class action over AI hiring software

May 14, 2024 https://www.reuters.com/legal/transactional/workday-urges-judge-toss-bias-class-action-over-ai-hiring-software-2024-05-14/

May 14 (Reuters) - A federal judge in San Francisco on Tuesday seemed inclined to rule that Workday must face a novel proposed class action claiming that artificial intelligence software the company uses to screen out job applicants for other employers is discriminatory.

U.S. District Judge Rita Lin held an hour-long hearing on Workday's motion to dismiss the 2023 lawsuit by Derek Mobley, who claimed he was passed over for more than 100 jobs at companies that contract with Workday to recommend candidates for job interviews.

The case is the first of its kind and could set important precedent on the legal implications of using AI to automate hiring and other employment functions, which most large companies are now doing.

The lawsuit claims Workday uses data on a company's existing workforce to "train" its AI software to screen for the best applicants without accounting for the existing discrimination that it may reflect. Mobley, who is Black, over 40 and has anxiety and depression, accused Workday of race, age and disability discrimination in violation of Title VII of the Civil Rights Act of 1964 and other federal laws.

Workday says it is not covered by those laws because it was not Mobley's prospective employer and is not an "employment agency" that can be held liable for discrimination since it does not make hiring decisions for its customers.

Lin on Tuesday did not say how she would rule, but had far more skeptical questions for Workday's lawyer, Erin Connell, than for Lee Winston, who represents Mobley.

The judge said she was concerned that shielding software vendors from Title VII would leave victims of discrimination with no legal recourse.

"What troubles me about Workday's interpretation is the concept that the employer would not be liable for intentional discrimination unless they knew that the software was (biased)," said Lin, an appointee of Democratic President Joe Biden.

Lin noted that courts have long favored a broad application of Title VII in order to carry out the law's purpose of eradicating discrimination. That includes applying the law to entities that can affect a worker's access to job opportunities, she said.

Connell argued throughout the hearing that Title VII and other laws hold employers liable for discrimination when it is caused by a contractor or other third party. But no court has extended that to a third-party business with no control over hiring decisions, she said.

"We're simply saying that as a software vendor, we're not covered by these laws," Connell said.

Winston, Mobley's lawyer, told Lin that Workday was seeking to carve out an exemption from Title VII for software providers that does not exist in the law.

"The only exemption is for religious organizations, and AI is not a church that entitles [Workday] to an exemption," Winston said.

Lin did not indicate when she would rule on Workday's motion.

The U.S. Equal Employment Opportunity Commission, which enforces Title VII, filed a brief last month urging Lin to let the case proceed. The agency said that Title VII can be applied to Workday because its software decides whether applicants will be considered for a job at all.

The case is Mobley v. Workday Inc, U.S. District Court for the Northern District of California, No. 3:23-cv-00770.

For Mobley: Lee Winston and Roderick Cooks of Winston Cooks

For Workday: Julie Totten and Erin Connell of Orrick, Herrington & Sutcliffe

Bryant Miller Olive

What Could Possibly Go Wrong?

Credit: Daniel Weissner , *Workday Urges Judge to Toss Bias Class Action Over AI Hiring Software*, Reuters, May 14, 2024

UNAUTHORIZED USE OF INTELLECTUAL PROPERTY

AI may or may not be using protected intellectual property. There are already several lawsuits against AI platforms for infringement. Who needs that headache?

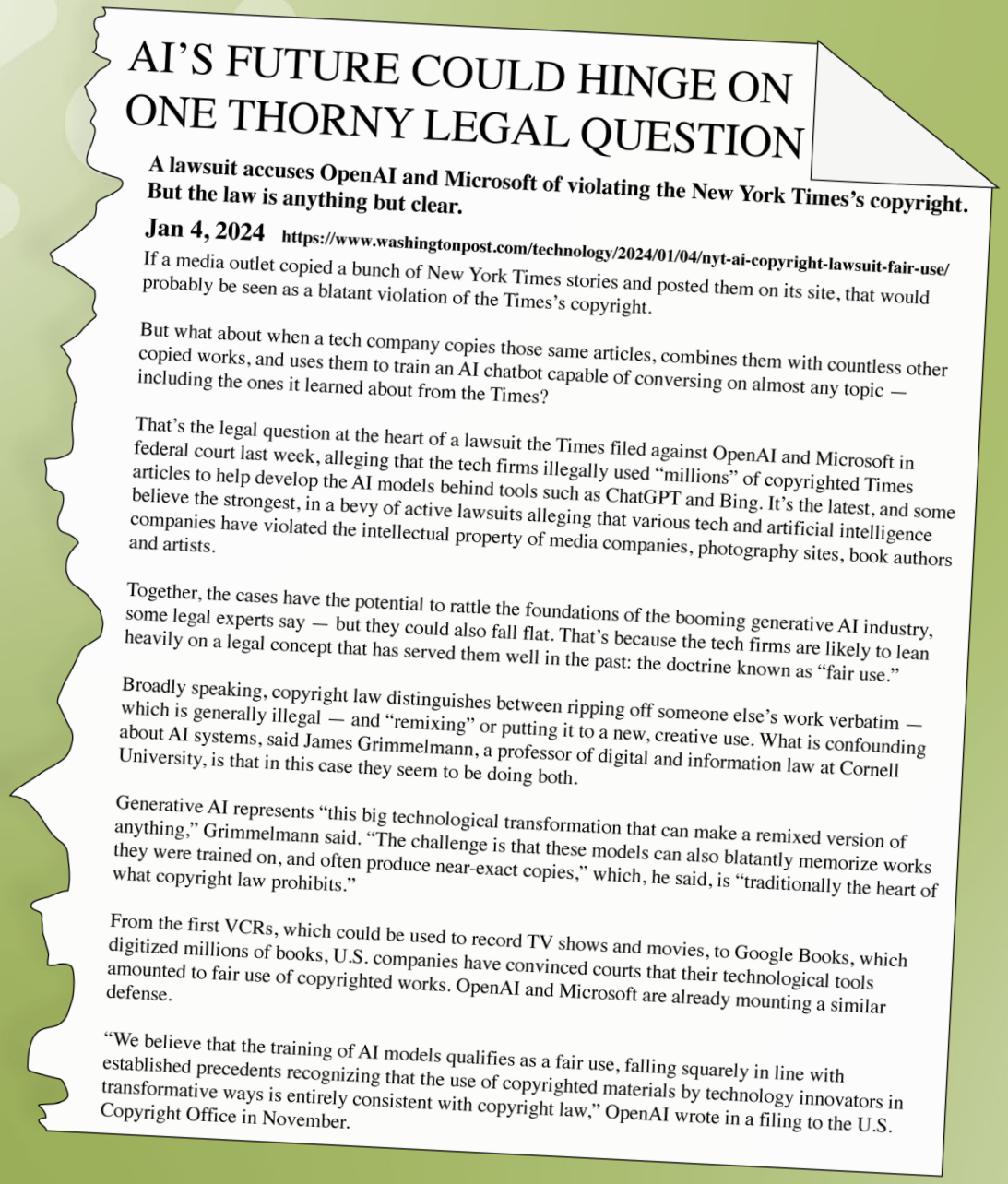


Creator: Dep't of Foreign Affairs
License: https://creativecommons.org/licenses/by/2.0/deed.en

Bryant Miller Olive

What Could Possibly Go Wrong?

UNAUTHORIZED USE OF INTELLECTUAL PROPERTY



AI'S FUTURE COULD HINGE ON ONE THORNY LEGAL QUESTION

A lawsuit accuses OpenAI and Microsoft of violating the New York Times's copyright. But the law is anything but clear.

Jan 4, 2024 **https://www.washingtonpost.com/technology/2024/01/04/nyt-ai-copyright-lawsuit-fair-use/**

If a media outlet copied a bunch of New York Times stories and posted them on its site, that would probably be seen as a blatant violation of the Times's copyright.

But what about when a tech company copies those same articles, combines them with countless other copied works, and uses them to train an AI chatbot capable of conversing on almost any topic — including the ones it learned about from the Times?

That's the legal question at the heart of a lawsuit the Times filed against OpenAI and Microsoft in federal court last week, alleging that the tech firms illegally used "millions" of copyrighted Times articles to help develop the AI models behind tools such as ChatGPT and Bing. It's the latest, and some believe the strongest, in a bevy of active lawsuits alleging that various tech and artificial intelligence companies have violated the intellectual property of media companies, photography sites, book authors and artists.

Together, the cases have the potential to rattle the foundations of the booming generative AI industry, some legal experts say — but they could also fall flat. That's because the tech firms are likely to lean heavily on a legal concept that has served them well in the past: the doctrine known as "fair use."

Broadly speaking, copyright law distinguishes between ripping off someone else's work verbatim — which is generally illegal — and "remixing" or putting it to a new, creative use. What is confounding about AI systems, said James Grimmelmann, a professor of digital and information law at Cornell University, is that in this case they seem to be doing both.

Generative AI represents "this big technological transformation that can make a remixed version of anything," Grimmelmann said. "The challenge is that these models can also blatantly memorize works they were trained on, and often produce near-exact copies," which, he said, is "traditionally the heart of what copyright law prohibits."

From the first VCRs, which could be used to record TV shows and movies, to Google Books, which digitized millions of books, U.S. companies have convinced courts that their technological tools amounted to fair use of copyrighted works. OpenAI and Microsoft are already mounting a similar defense.

"We believe that the training of AI models qualifies as a fair use, falling squarely in line with established precedents recognizing that the use of copyrighted materials by technology innovators in transformative ways is entirely consistent with copyright law," OpenAI wrote in a filing to the U.S. Copyright Office in November.

Bryant Miller Olive

What Could Possibly Go Wrong?

Credit: Will Oremus & Elahe Izadi, *AI's Future Could Hinge on One Thorny Legal Question*, Wash. Post, Jan 4, 2024

YOUR INPUT IS NOT CONFIDENTIAL

Plus, your information is retained and reused by the platform – for other users. Your information is thrown in the data pool the LLM uses for generation. You could wake up one morning and find your information in another organization's material.



Bryant Miller Olive

What Could Possibly Go Wrong?

DEEP FAKES AND DISINFORMATION



The New York Times Magazine | https://www.nytimes.com/2024/07/31/magazine/sabrina-javellana-florida-politics-ai-porn.html

Trolls Used Her Face to Make Fake Porn. There Was Nothing She Could Do.

Sabrina Javellana was a rising star in local politics — until deepfakes derailed her life.

By Coralie Kraft

Coralie Kraft covers culture for The Times and other outlets. Over the course of 10 months, she spoke with 33 sources, including 11 victims, about A.I.-generated pornography.

July 31, 2024

Most mornings, before walking into City Hall in Hallandale Beach, Fla., a small city north of Miami, Sabrina Javellana would sit in the parking lot and monitor her Twitter and Instagram accounts. After winning a seat on the Hallandale Beach city commission in 2018, at age 21, she became one of the youngest elected officials in Florida's history. Her progressive political positions had sometimes earned her enemies: After proposing a name change for a state thoroughfare called Dixie Highway in late 2019, she regularly received vitriolic and violent threats on social media; her condemnation of police brutality and calls for criminal-justice reform prompted aggressive rhetoric from members of local law enforcement. Disturbing messages were nothing new to her.

The morning of Feb. 5, 2021, though, she noticed an unusual one. "Hi, just wanted to let you know that somebody is sharing pictures of you online and discussing you in quite a grotesque manner," it began. "He claims that he's one of your 'guy friends.'"

Javellana froze. Who could have sent this message? She asked for evidence, and the sender responded with pixelated screenshots o a forum thread that included photos of her. There were comments that mentioned her political career. Had her work drawn these people's ire? Eventually, with a friend's help, she found a set of archived pages from the notorious forum site 4chan. Most of the images were pulled from her social media and annotated with obscene, misogynistic remarks: "not thicc enough"; "I would breed her"; "no sane person would date such a stupid creature." But one image further down the thread stopped her short. She was standing in front of a full-length mirror with her head tilted to the side, smiling playfully. She had posted an almost identical selfie, ir which she wore a brown crew-neck top and matching skirt, to her Instagram account back in 2015. "It was the exact same picture," Javellana said of the doctored image. "But I wasn't wearing any clothes."

There were several more. These were deepfakes: A.I.-generated images that manipulate a person's likeness, fusing it with others to create a false picture or video, sometimes pornographic, in a way that looks authentic. Although fake explicit material has existed for decades thanks to image-editing software, deepfakes stand out for their striking believability. Even Javellana was shaken by their apparent authenticity.

"I didn't know that this was something that happened to everyday people," Javellana told me when I visited her earlier this year in Florida. She wondered if anyone else had seen the photos or the abusive comments online. Several of the threads even implied that people on the forum *knew* her. "I live in Broward County," one comment read. "She just graduated from FIU." Other users threatenec sexual violence. In the days that followed, Javellana became increasingly fearful and paranoid. She stopped walking alone at night and started triple-checking that her doors and windows were locked before she slept. In an effort to protect her personal life, she made her Instagram private and removed photographs of herself in a bathing suit.

Discovering the images changed how Javellana operated professionally. Attending press events was part of her job, but now she felt anxious every time someone lifted their camera. She worried that public images of her would be turned into pornography, so she covered as much of her body as she could, favoring high-cut blouses and blazers. She knew she wasn't acting rationally — people could create new deepfakes regardless of how much skin she showed in the real world — but changing her style made her feel a sense of control. If the deepfakes went viral, no one could look at how she dressed and think that she had invited this harassment.

Although she confided in a few friends in the days and weeks after discovering the images, she mostly kept the experience to herself. She lived with her mother and brother, but she couldn't bring herself to tell them. They were a Filipino Catholic family who rarely talked about sex. Could she raise the images with them? Would they — or anyone — believe that they weren't real? Besides, Javellana, who saw herself as her family's protector and provider, did not want to burden them. When she came home after work, she would escape to her balcony to smoke weed and listen to music. When she cried, she muffled her sobs so no one would hear.

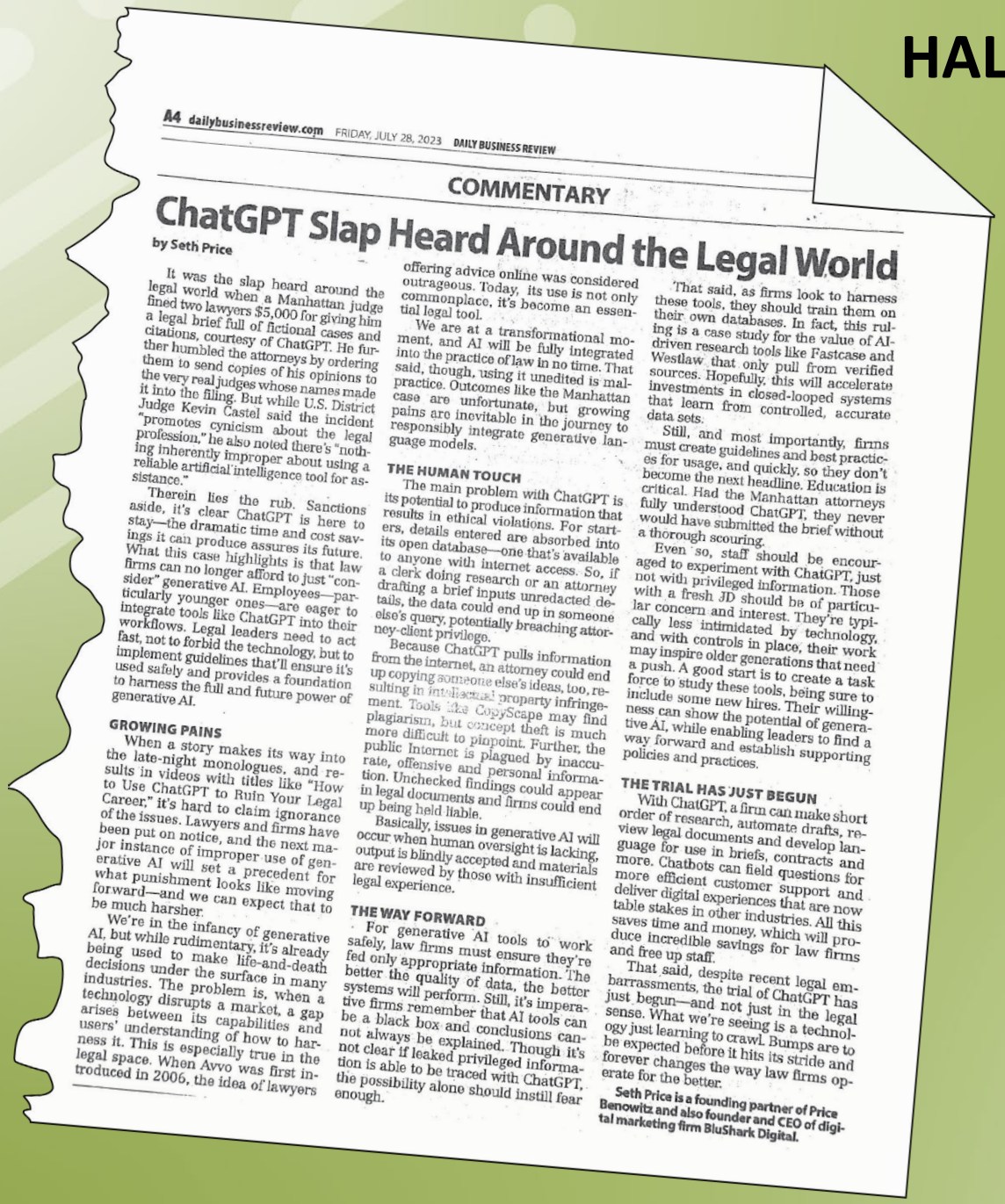
https://www.nytimes.com/2024/07/31/magazine/sabrina-javellana-florida-politics-ai-porn.html?smid=nytcore-ios-share&referringSource=articleShare&sgrp=c-cb&ng...

Bryant Miller Olive

What Could Possibly Go Wrong?

Credit: Coralie Kraft, *Trolls Used Her Face to Make Fake Porn. There Was Nothing She Could Do.*, N.Y. Times, July 31, 2024

HALLUCINATIONS



A4 dailybusinessreview.com FRIDAY, JULY 28, 2023 DAILY BUSINESS REVIEW

COMMENTARY

ChatGPT Slap Heard Around the Legal World

by Seth Price

It was the slap heard around the legal world when a Manhattan judge fined two lawyers $5,000 for giving him a legal brief full of fictional cases and citations, courtesy of ChatGPT. He further humbled the attorneys by ordering them to send copies of his opinions to the very real judges whose names made it into the filing. But while U.S. District Judge Kevin Castel said the incident "promotes cynicism about the legal profession," he also noted there's "nothing inherently improper about using a reliable artificial intelligence tool for assistance."

Therein lies the rub. Sanctions aside, it's clear ChatGPT is here to stay—the dramatic time and cost savings it can produce assures its future. What this case highlights is that law firms can no longer afford to just "consider" generative AI. Employees—particularly younger ones—are eager to integrate tools like ChatGPT into their workflows. Legal leaders need to act fast, not to forbid the technology, but to implement guidelines that'll ensure it's used safely and provides a foundation to harness the full and future power of generative AI.

GROWING PAINS

When a story makes its way into the late-night monologues, and results in videos with titles like "How to Use ChatGPT to Ruin Your Legal Career," it's hard to claim ignorance of the issues. Lawyers and firms have been put on notice, and the next major instance of improper use of generative AI will set a precedent for what punishment looks like moving forward—and we can expect that to be much harsher.

We're in the infancy of generative AI, but while rudimentary, it's already being used to make life-and-death decisions under the surface in many industries. The problem is, when a technology disrupts a market, a gap arises between its capabilities and users' understanding of how to harness it. This is especially true in the legal space. When Avvo was first introduced in 2006, the idea of lawyers offering advice online was considered outrageous. Today, its use is not only commonplace, it's become an essential legal tool.

We are at a transformational moment, and AI will be fully integrated into the practice of law in no time. That said, though, using it unedited is malpractice. Outcomes like the Manhattan case are unfortunate, but growing pains are inevitable in the journey to responsibly integrate generative language models.

THE HUMAN TOUCH

The main problem with ChatGPT is its potential to produce information that results in ethical violations. For starters, details entered are absorbed into its open database—one that's available to anyone with internet access. So, if a clerk doing research or an attorney drafting a brief inputs unredacted details, the data could end up in someone else's query, potentially breaching attorney-client privilege.

Because ChatGPT pulls information from the internet, an attorney could end up copying someone else's ideas, too, resulting in intellectual property infringement. Tools like CopyScape may find plagiarism, but concept theft is much more difficult to pinpoint. Further, the public Internet is plagued by inaccurate, offensive and personal information. Unchecked findings could appear in legal documents and firms could end up being held liable.

Basically, issues in generative AI will occur when human oversight is lacking, output is blindly accepted and materials are reviewed by those with insufficient legal experience.

THE WAY FORWARD

For generative AI tools to work safely, law firms must ensure they're fed only appropriate information. The better the quality of data, the better systems will perform. Still, it's imperative firms remember that AI tools can be a black box and conclusions cannot always be explained. Though it's not clear if leaked privileged information is able to be traced with ChatGPT, the possibility alone should instill fear enough.

That said, as firms look to harness these tools, they should train them on their own databases. In fact, this ruling is a case study for the value of AI-driven research tools like Fastcase and Westlaw that only pull from verified sources. Hopefully, this will accelerate investments in closed-looped systems that learn from controlled, accurate data sets.

Still, and most importantly, firms must create guidelines and best practices for usage, and quickly, so they don't become the next headline. Education is critical. Had the Manhattan attorneys fully understood ChatGPT, they never would have submitted the brief without a thorough scouring.

Even so, staff should be encouraged to experiment with ChatGPT, just not with privileged information. Those with a fresh JD should be of particular concern and interest. They're typically less intimidated by technology, and with controls in place, their work may inspire older generations that need a push. A good start is to create a task force to study these tools, being sure to include some new hires. Their willingness can show the potential of generative AI, while enabling leaders to find a way forward and establish supporting policies and practices.

THE TRIAL HAS JUST BEGUN

With ChatGPT, a firm can make short order of research, automate drafts, review legal documents and develop language for use in briefs, contracts and more. Chatbots can field questions for more efficient customer support and deliver digital experiences that are now table stakes in other industries. All this saves time and money, which will produce incredible savings for law firms and free up staff.

That said, despite recent legal embarrassments, the trial of ChatGPT has just begun—and not just in the legal sense. What we're seeing is a technology just learning to crawl. Bumps are to be expected before it hits its stride and forever changes the way law firms operate for the better.

Seth Price is a founding partner of Price Benowitz and also founder and CEO of digital marketing firm BluShark Digital.

Bryant Miller Olive

What Could Possibly Go Wrong?

Credit: Seth Price, *ChatGPT Slap Heard Around the Legal World*, Daily Bus. Rev., July 28, 2023

Ethical Considerations

Ethics Opinion 24-1 (Jan. 19, 2024)

“ Lawyers may use generative artificial intelligence in the practice of law but must…

Protect the confidentiality of client information

Provide accurate and competent services

Avoid improper billing practices, and

Comply with applicable restrictions on lawyer advertising.”

The Florida Bar Rules Of Professional Conduct

4-1.6. Confidentiality of Information.

(a) Consent Required to Reveal Information. A lawyer must not reveal information relating to a client's representation …

(e) Inadvertent Disclosure of Information. A lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the client's representation.

- ✓ Obtain client's informed consent prior to utilizing third-party generative AI program if it would require disclosure of client confidential information
- ✓ Research AI program's policies on data retention, data sharing, and machine learning

Bryant Miller Olive

The Florida Bar Rules Of Professional Conduct, cont'd

4-1.1. Competence.

A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

AI apps may, but do not necessarily disclose the source of information used to create its result. As such, the lawyer may not be able to judge its validity or completeness. Thorough – and time-consuming – checking and vetting are musts.

Bryant Miller Olive

The Florida Bar Rules Of Professional Conduct, cont'd

4-1.4. Communication.

(a) Informing Client of Status of Representation. A lawyer shall: …

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; …

Is a lawyer required to tell and get permission from the client to use AI? Does it depend on the nature and extent of the use? If so, where is that line drawn? Is it dishonest or deceitful to withhold such information? A lawyer owes fiduciary duties to the client that prohibit deception, but does this constitute dishonesty?

Bryant Miller Olive

The Florida Bar Rules Of Professional Conduct, cont'd

- Buy-in from top management
- Study/task group
- Interim use policy
- Identify organization-specific uses, available platforms
- Sandbox/experiment – with robust precautions
- Identify proposed initial uses, draft final policy
- Propose to management
- Roll out, starting with user training

Bryant Miller Olive

How Do I Get A Handle On This?



- Consult risk management and insurers (if applicable)
- No PII in or out
- No client data (initially)
- 100% human verification of results
- Create a culture of getting permission first, not forgiveness later on use of AI
- Disclose, disclose, disclose
- User training – initial and ongoing

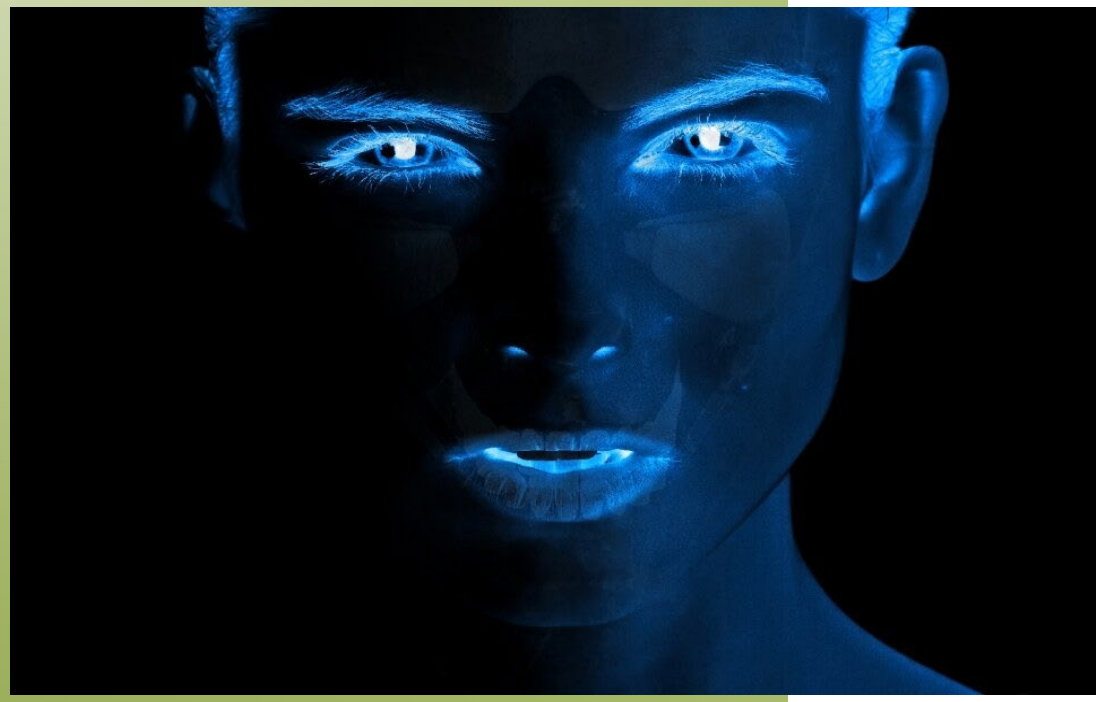
Bryant Miller Olive

How Do I Get A Handle On This, cont'd



Don’t Let The Intelligence Become Entirely Artificial

Bryant Miller Olive



At least with the current state of development, “Terminator” and “The Matrix” are still just nightmare fantasies. The machines can’t take over unless we abdicate human judgment, human creativity, and human agency. AI is here and it’s not going away. The steam engine, the assembly line, the computer, and the Internet replaced some jobs and created others, but they didn’t replace humans. We need to embrace AI and design it to make work and life better.