



PROFESSIONAL NEGLIGENCE IN THE AGE OF **GENERATIVE** SYSTEMS

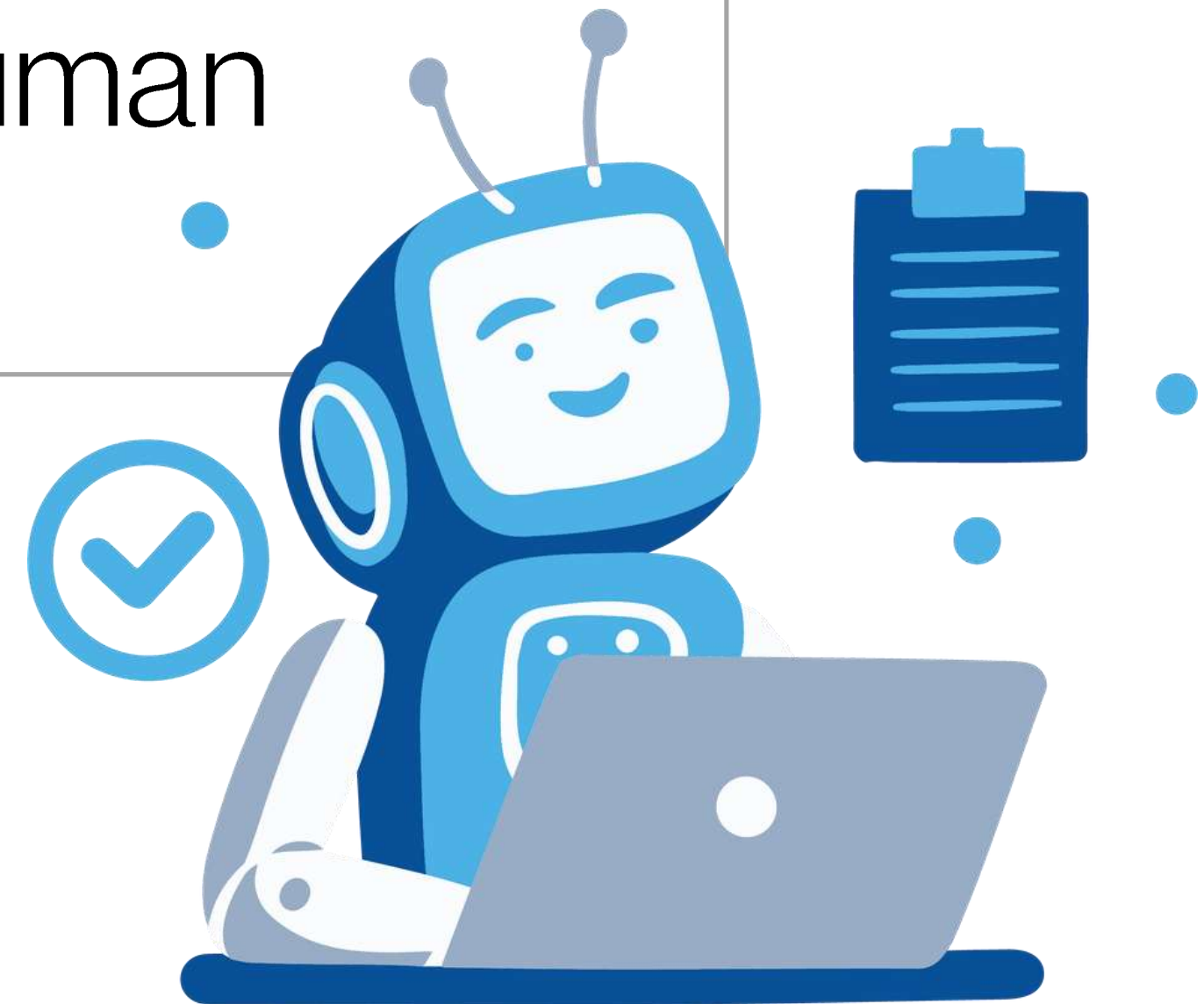
RAYMOND AMUMPAIRE

ADVOCATE | AI GOVERNANCE & DIGITAL RIGHTS



Artificial intelligence (AI), n.

A name for a grab bag of technologies that are supposed to mimic human capabilities.



**MASS INTERNET
SCRAPES OF DATA**

DATA + COMPUTE = AI

**COMPUTATIONAL
RESOURCES**

**ARTIFICIAL
INTELLIGENCE**

**MACHINE
LEARNING**

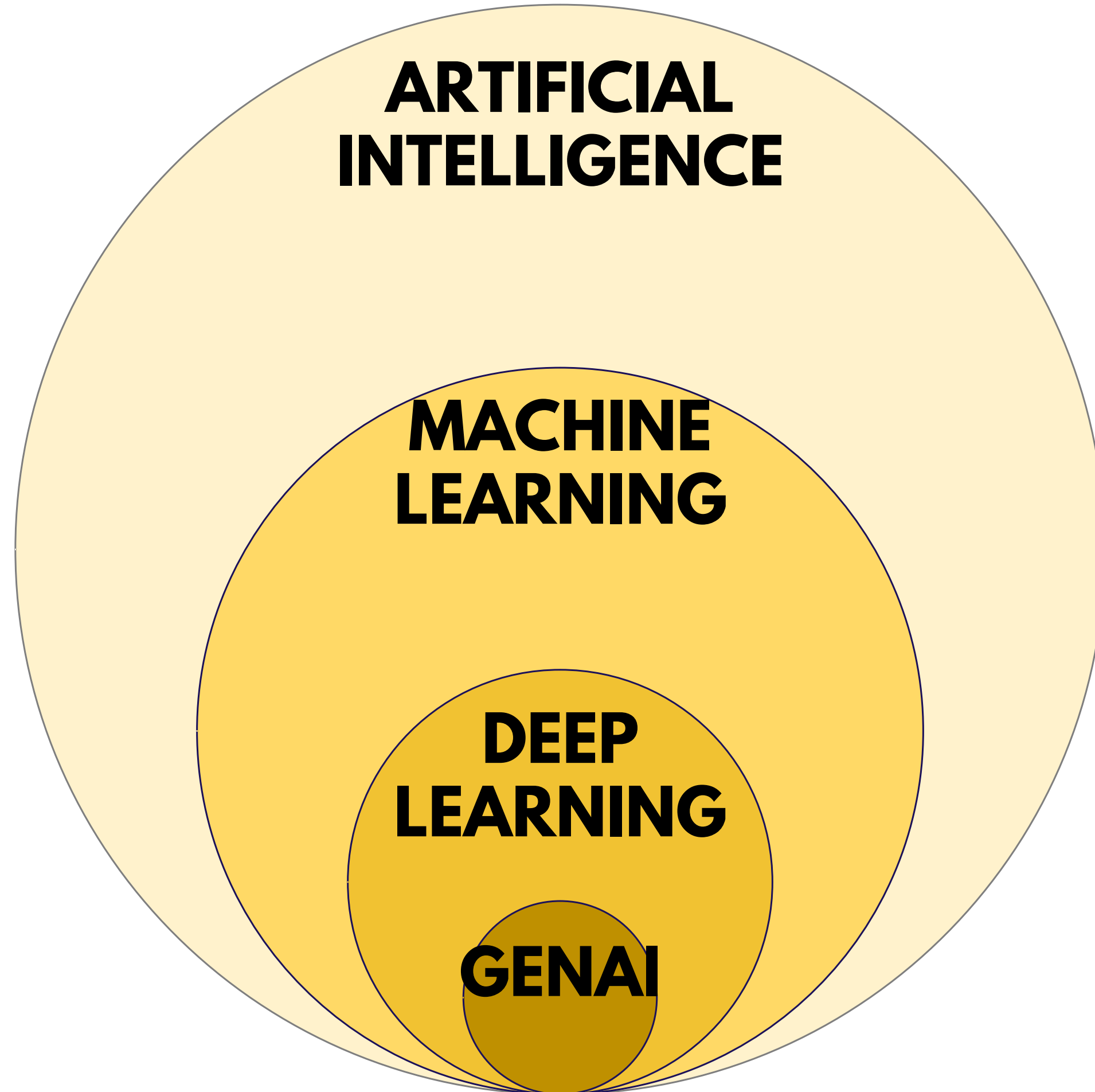
**DEEP
LEARNING**

GENAI

(DATA)

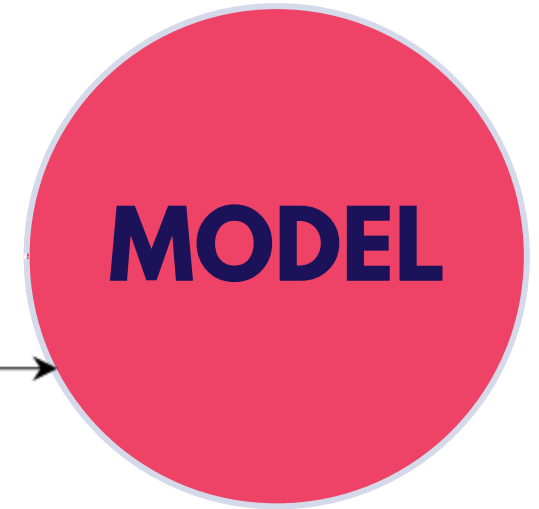
(BIG DATA)

**(MASSIVE
DATA, BIG
COMPUTE)**



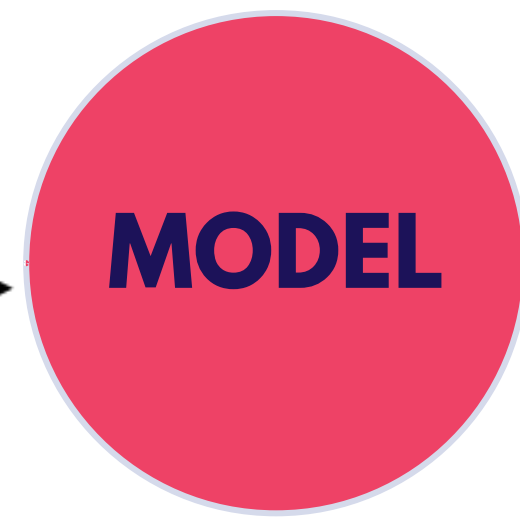
TRAIN

DATA



INFERENCE

**NEW
DATA**



ANSWER

EVOLUTION OF AI

VISION
RULE- BASED
SYSTEMS

VISION
BIG DATA, BIG
COMPUTE
SYSTEMS

WHO
ACADEMIC +
GOVERNMENTS

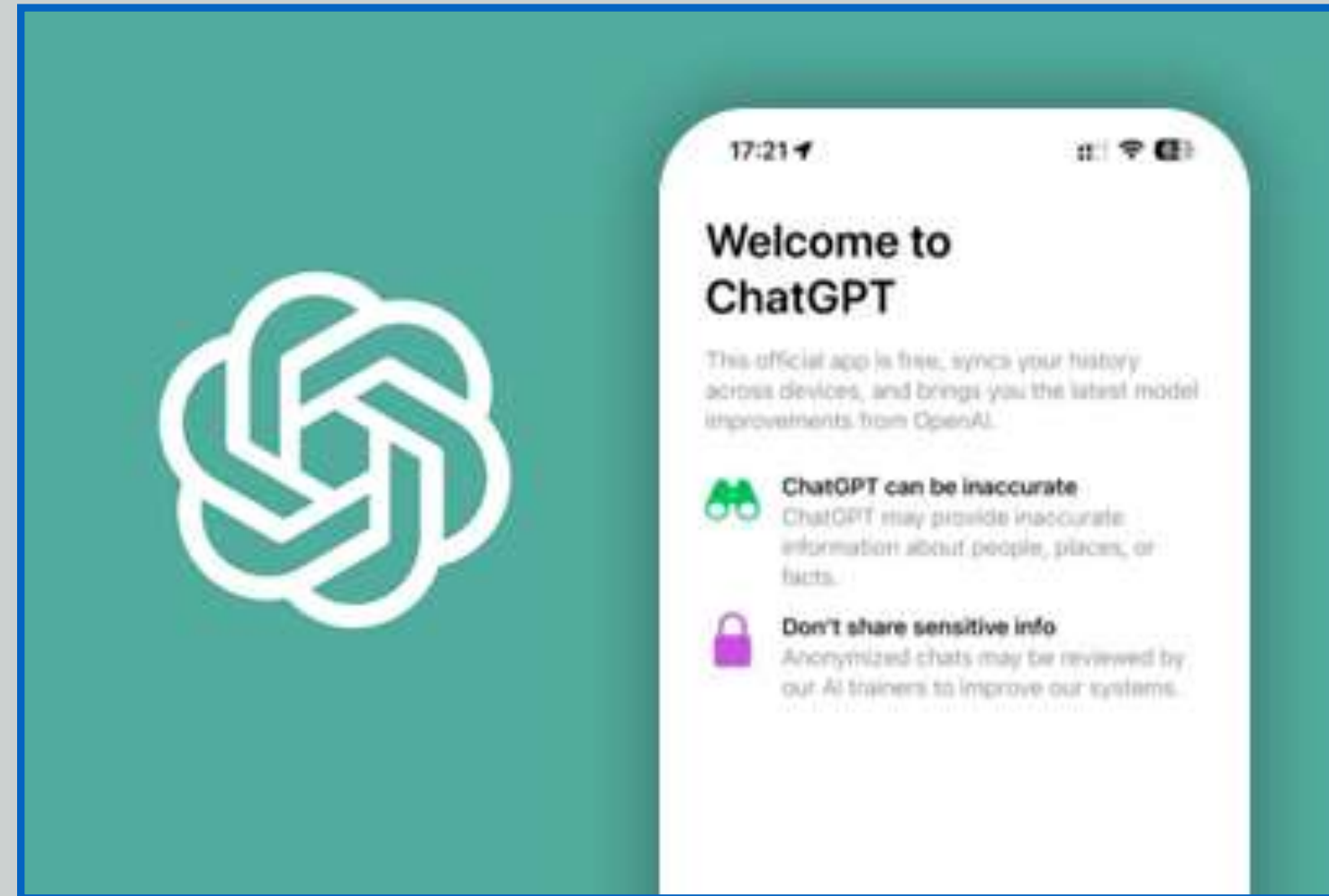
WHO
BIG TECH

“ARTIFICIAL
INTELLIGENCE”

“ARTIFICIAL
GENERAL
INTELLIGENCE”

ELIZA

CHATGPT



1960

1970

1980

1990

2000

2010

2020

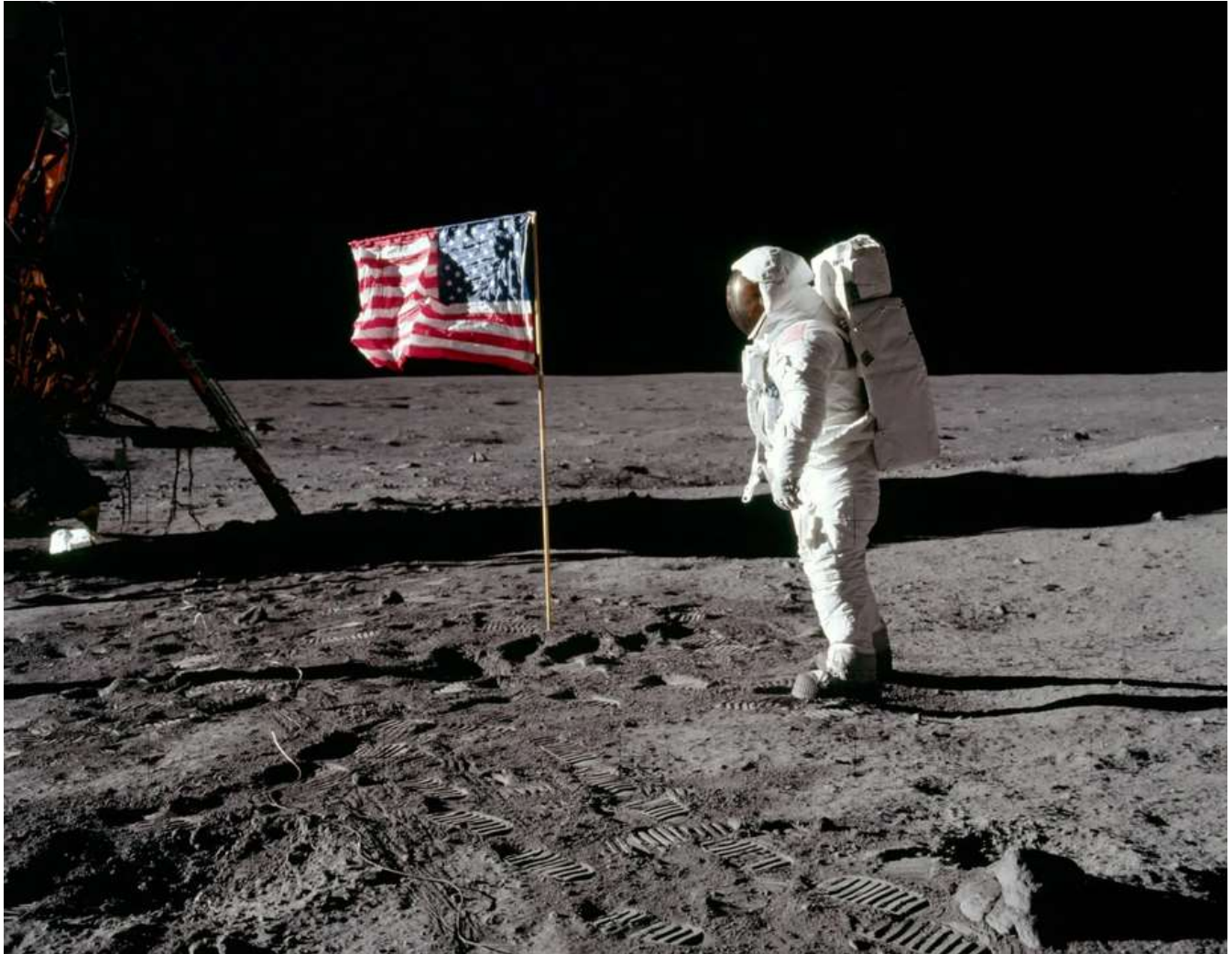
atest Local News Live Shows ... CBS NEWS

POLITICS

Trump announces up to \$500 billion in private sector AI infrastructure investment

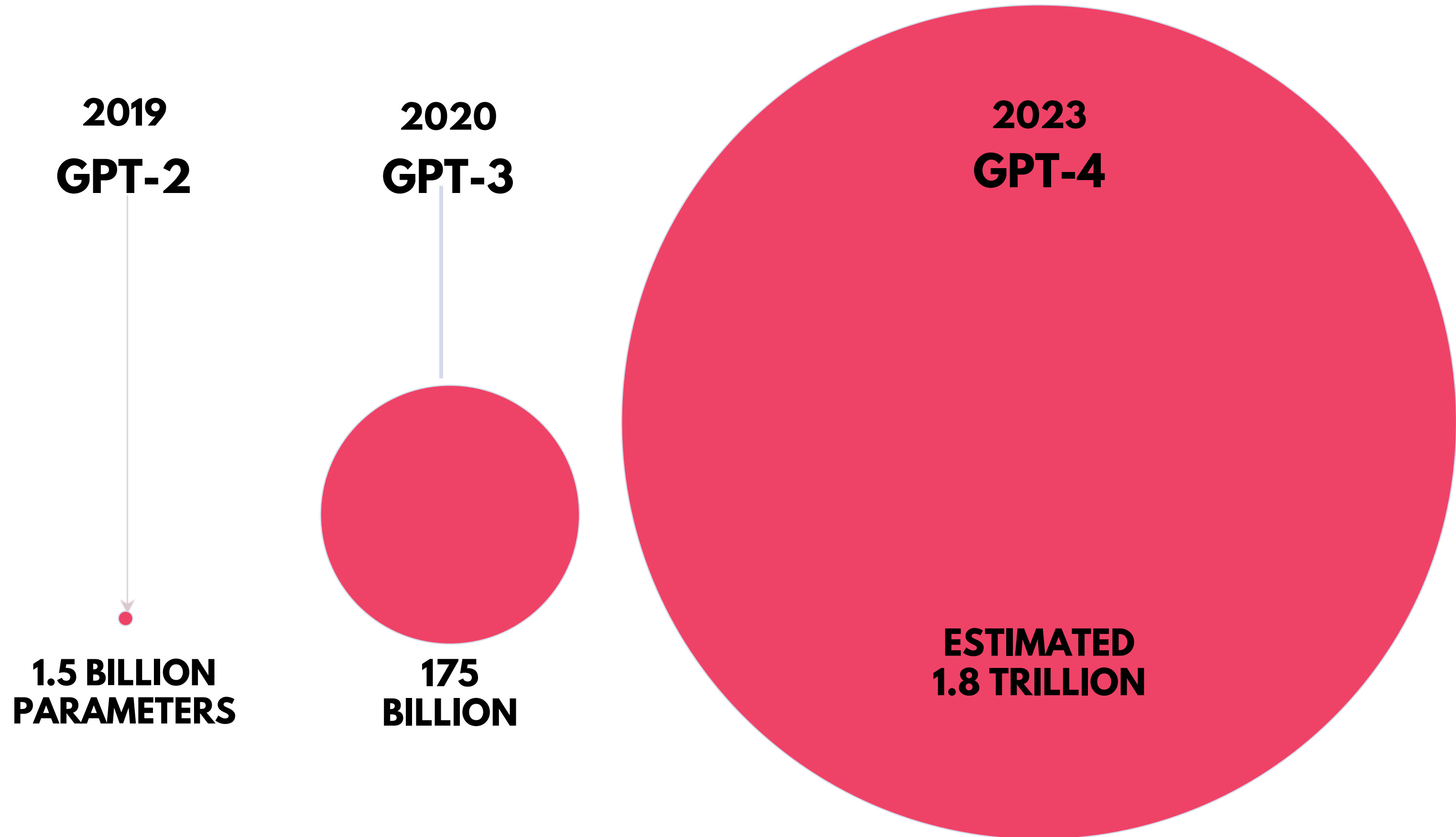
By Jennifer Jacobs
Updated on: January 22, 2025 / 4:00 PM EST / CBS News

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\$25.8 BILLION (1973)
~\$190 BILLION (2026)

AI SYSTEMS ARE USING... ...MORE AND MORE DATA



Core Concepts Every Lawyer Should Understand

How are we interacting with AI?

- Retrieval-Augmented Generation
- Agentic AI
- Prompt Engineering
- Fine-Tuning and Domain-Specific Models
- Tokens and Context Windows.

Recently we have seen ...

Across jurisdictions, courts have:

- Sanctioned lawyers for citing fabricated cases
- Required personal verification of AI output
- Reaffirmed counsel's personal responsibility
- Warned against blind reliance on generative AI

From cautions to fines, we see that responsibility does not migrate to the machine.



Professional Negligence

- Traditional position (duty of care, breach of professional standard, damage and measured against the “reasonably competent advocate”)
- Bolam v. Friern Hospital Management Committee [1957] 1 WLR 583
- Hedley Byrne & Co Ltd v. Heller & Partners Ltd (1964) AC 465 (HL)
- Caparo Industries PLC v. Dickman [1990] UKHL 2
- But has that standard evolved?
- Philosophically speaking, lawyering is a moral craft

Enter, the new risk landscape

A number of risk zones exist but key amongst them are;

- Fabricated authorities
- Confidentiality breaches
- Biased outputs
- Over-delegation of legal reasoning
- Failure to disclose AI assistance

Each carries professional liability



Case Study 1: Mata v. Avianca, Inc.,

- Case: A personal injury lawsuit against an airline where the plaintiff's attorneys used ChatGPT to draft a legal brief.
- Issues: The brief included six entirely fabricated judicial precedents with fake quotes; the attorneys failed to verify the sources and initially misled the court about using AI.
- Outcome: The court imposed a \$5,000 fine and sanctions on the law firm. The judge noted that "technological advances are commonplace but there is nothing inherent in them that relieves a lawyer of their duty of accuracy."
- Why it matters: It established the global "gold standard" for AI negligence that a lawyer's duty of competence includes the duty to verify any AI-generated content before submission.

Source: <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv01461/575368/54/>

Case Study 2: Zhang v. Chen 2024 BCSC 285

- Case: A high-conflict family law matter where the father's lawyer used ChatGPT to find cases regarding international travel with children.
- Issues: The lawyer submitted two non-existent precedents; opposing counsel discovered the error after spending significant time and resources trying to locate the "phantom" cases.
- Outcome: The BC Supreme Court ordered the lawyer to personally pay the opposing party's legal costs for the extra work caused by the fake citations. The court emphasized that AI is "no substitute for the expertise of lawyers."
- Why it matters: It highlights the financial liability lawyers face when their use of AI causes unnecessary work or delay for the other side, regardless of whether the error was intentional.

Source: https://www.ensafrika.com/uploads/newsarticles/0_zhang%20v.%20chen.pdf

Further Case Studies

- Handa & Mallick [2024] FedCFamC2F 957 – illustrates the consequences legal practitioners may face from overreliance on artificial intelligence products, including disciplinary action and personal costs orders. <https://www.qlsproctor.com.au/2024/10/warning-about-relying-on-ai/>
- Minhye PARK, Plaintiff-Appellant, v. David Dennis KIM, Defendant-Appellee, No. 22-2057 <https://caselaw.findlaw.com/court/us-2nd-circuit/115760381.html>
- Parker v Forsyth NNO and Others (1585/20) [2023] ZAGPRD 1 (29 June 2023) <https://lawlibrary.org.za/akn/za-gp/judgment/zagprd/2023/1/eng@2023-06-29>
- Kruse v. Karlen, Cause No.: ED11172 (Mo. App. E.D. Feb. 13, 2024) <https://gotlawstl.com/missouri-courts-tackle-artificial-intelligence/>

+ Reflection

Consider:

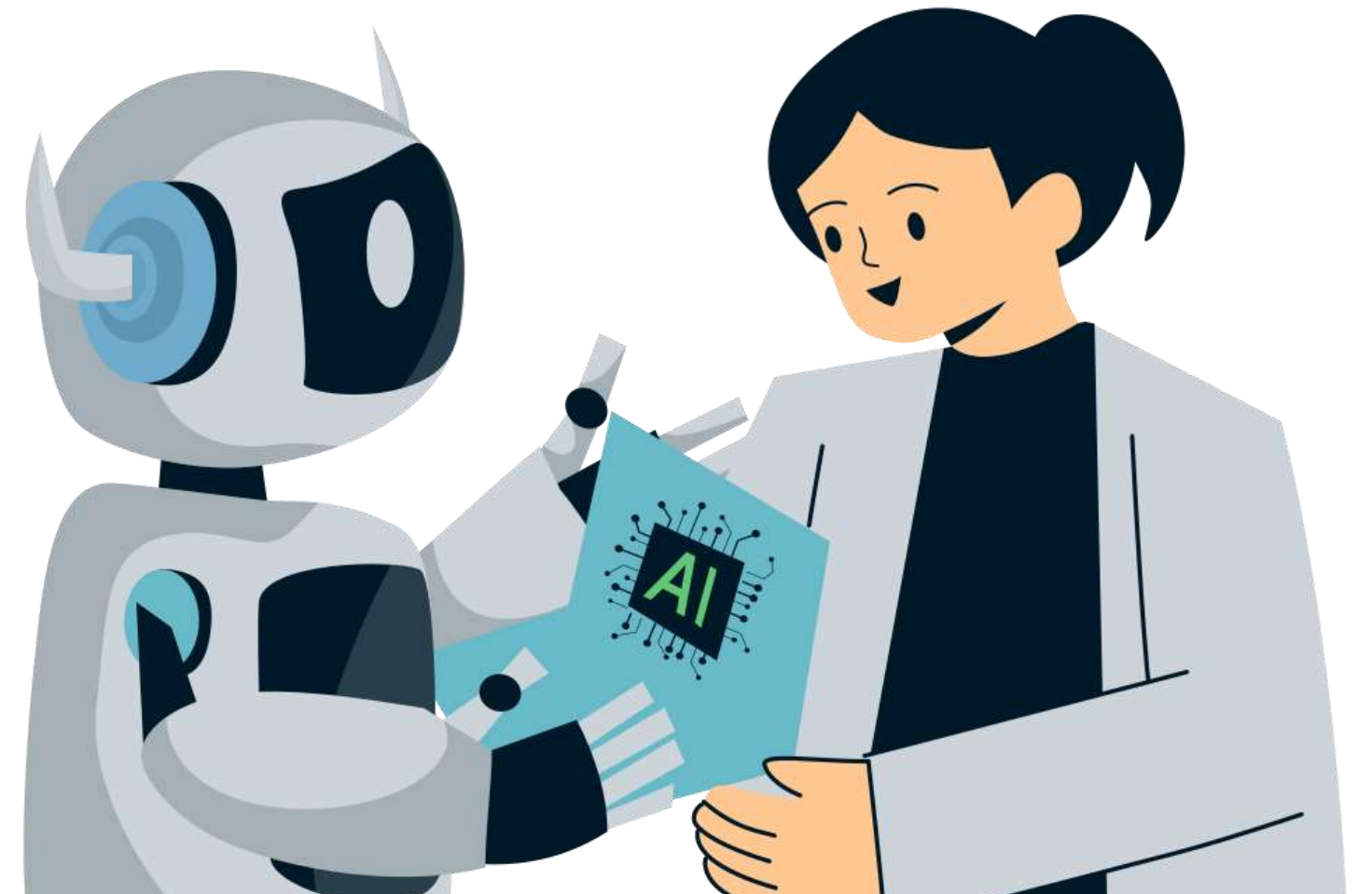
- Have you used AI in drafting?
- Did you manually verify every authority?
- Does your firm have an AI policy?

If your answer is no, or silence then it is high time



What the future of the standard of care looks like

- Failure to verify AI output = negligence.
- But in future, failure to competently use available tools may also be negligence.



Governance Gaps

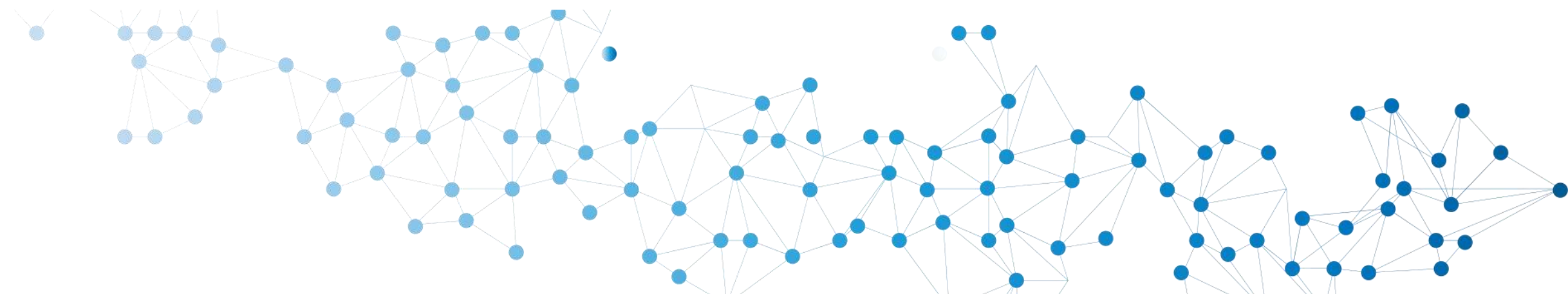
Most chambers and firms lack:

- AI usage policies (Permitted vs prohibited uses, Human responsibility clause, Disclosure, Approved tools list)
- Verification protocols (Citation verification, Factual accuracy, Judgment independence)
- Data protection safeguards
- AI competence training (prompt engineering,

This is not a technology problem but a governance one.

Recommendations

- Develop firm-level AI use policies.
- Establish mandatory human verification norms.
- Prohibit upload of privileged material into unsecured systems.
- Introduce AI competence training.
- Encourage judicial guidance on AI disclosure standards.



A COMPUTER

CAN NEVER BE HELD ACCOUNTABLE

THEREFORE A COMPUTER MUST NEVER
MAKE A MANAGEMENT DECISION

Further readings

- AI on Trial: Legal Models Hallucinate in 1 out of 6 (or More) Benchmarking Queries <https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-6-or-more-benchmarking-queries>
- AI in the courtroom: the dangers of using ChatGTP in legal practice in South Africa <https://theconversation.com/ai-in-the-courtroom-the-dangers-of-using-chatgtp-in-legal-practice-in-south-africa-267691>
- When AI hallucinations hit the courtroom: Why content quality determines AI <https://legal.thomsonreuters.com/blog/when-ai-hallucinations-hit-the-courtroom-why-content-quality-determines-ai-reliability-in-legal-practice/>
- Rethinking the judicial duty to state reasons in the age of automation? <https://www.cambridge.org/core/journals/cambridge-forum-on-ai-law-and-governance/article/rethinking-the-judicial-duty-to-state-reasons-in-the-age-of-automation/0984E85BC2519D5E5E448FAFCCBD98F6>