

# Artificial Intelligence and the Law: Balancing the Risks and Rewards of New Technology

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1. What is Generative AI and how is it changing the world?

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2. What are the potential risks of this technology?

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3. What are best practices around using these tools?





# What is Generative AI?





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How can generative AI be useful to attorneys working in state government agencies?





Generative AI can be highly useful to attorneys working in state government agencies in various ways, helping them streamline operations, improve decision-making, and enhance the delivery of legal services. Here are some specific applications:

1. **Legal Document Automation:** Generative AI can be used to automate the creation of legal documents, such as contracts, forms, and regulatory documents. This can save attorneys time and ensure consistency in document production.
2. **Research and Analysis:** AI-powered tools can assist attorneys in conducting legal research by quickly identifying relevant case law, statutes, and regulations. These tools can also provide summaries of legal documents, making it easier for attorneys to grasp key points.
3. **E-Discovery:** For state government agencies involved in legal disputes or investigations, AI can help with electronic discovery. It can efficiently sift through vast volumes of electronic documents to identify evidence, thereby reducing the time and cost associated with e-discovery.
4. **Compliance Monitoring:** Generative AI can monitor regulatory changes and ensure that state government agencies remain compliant with evolving laws and regulations. It can provide alerts when changes occur that affect agency operations.
5. **Predictive Analytics:** Machine learning models can be used to predict legal outcomes and assess risks. This can help attorneys make informed decisions about legal strategies, settlements, or litigation.
6. **Contract Management:** AI can assist in the management of contracts by tracking key dates, obligations, and compliance requirements. This is particularly valuable for agencies that handle a large number of contracts.
7. **Legal Chatbots:** State government agencies can deploy AI-powered chatbots to answer common legal inquiries from the public or agency staff. These chatbots can offer information about legal processes, rights, and regulations.
8. **Language Translation:** Generative AI can aid in translating legal documents or information into different languages, facilitating communication with non-English-speaking populations or international partners.
9. **Public Records Request Automation:** AI can assist with handling public records requests by categorizing and retrieving relevant documents, helping state agencies efficiently respond to public inquiries.
10. **Efficiency and Cost Reduction:** By automating routine legal tasks, generative AI can help state government agencies reduce operational costs and allocate attorney resources more effectively.
11. **Policy Analysis:** AI can analyze and assess the potential legal implications of proposed policies, helping state agencies understand the legal ramifications of new initiatives.
12. **Decision Support:** AI can provide data-driven insights and recommendations to attorneys and decision-makers within state government agencies, assisting in developing legal strategies and making informed policy decisions.

When implementing generative AI in state government agencies, it's important to ensure data security and privacy, as legal data can be sensitive and confidential. Additionally, human oversight and legal expertise remain essential to interpret and act on AI-generated insights effectively.

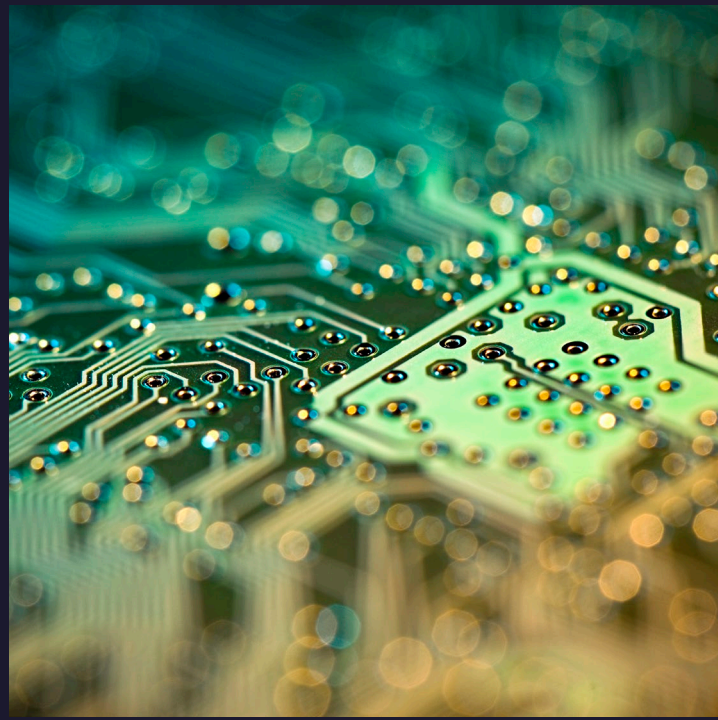


## GPT-4 has:

- Passed the Bar Exam
- Scored a 163 on the LSAT
- Scored 1410 out of 1600 on the SAT
- Scored in the 99th percentile on the verbal section of the GRE and 80th percentile of the quantitative section of the exam.
- Received the highest possible score on AP Exams for Art History, Biology, Environmental Science, Macroeconomics, Microeconomics, Psychology, Statistics, US Government, and US History.



# What do these terms mean?



## **Artificial Intelligence:**

Computer systems that can perform tasks that usually require human intelligence, such as visual perception, speech recognition, decision-making, problem-solving, and language translation.

**Generative AI:** A class of artificial intelligence techniques that focus on generating new content or data that resembles human-created content. Instead of being explicitly programmed to perform specific tasks, generative AI models are trained on large datasets to learn patterns and structures within the data.







**ElevenLabs**



Harvey.

 Spellbook

 **LAWYAW**  
part of  Clio

 Josef

**DILIGEN**

Lexis+  <sup>TM</sup>

Meet CoCounsel—the world's  
first AI legal assistant

**Thomson Reuters Completes Acquisition of Casetext**





Get Started ×

Social Media Pub... ×



McCarthy... ×

Cases ×

Statutes ×

Second... ×



What does this document say regarding what is sufficient direct evidence of recognition of a mark? Provide summaries of relevant cases referenced that found direct evidence to show a mark is famous.



The 2006 Trademark Dilution Revision Act (TRDS) lists four factors to determine if a mark is famous:

1. The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
2. The amount, volume, and geographic extent of sales of goods or services offered under the mark.
3. The extent of actual recognition of the mark.
4. Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

Direct evidence of recognition of a mark can be found in factor (iii), which focuses on the extent of actual recognition of the mark.

Surveys can provide direct evidence of the perceptions of the consuming public. To be relevant, a survey should measure the extent of recognition of the designation as a mark identifying a single source by the "general consuming public of the United States."

I have added (4) additional Supporting cases to your Cases Tab and opened it for review.

Ask a question or make a request

## WORKSPACE

## Cases

1. *7-Eleven Inc. v. Lawrence I. Wechsler*, 83 U.S.P.Q.2d 1715, 2007 WL 1431084 (T.T.A.B. 2007). [↗](#)

Big gulp for a large-sized drink was found to be "famous" under the TDRA based in part on evidence of an unaided awareness by 73% of all consumers.

2. *The Nasdaq Stock Market, Inc. v. Antartica, S.R.L.*, 69 U.S.P.Q.2d 1718, 2003 WL 22021943 (T.T.A.B. 2003). [↗](#)

The court found that the 35,000 "Likes" on Clearly Canadian's social media page and a four-minute discussion on an Internet comedy show were insufficient to show that the brand was a "household name" in early 2011.

3.  *Apple Inc. v. Samsung Electronics Co., Ltd.*, 2014 WL 4145499 (N.D. Cal. 2014). [↗](#)

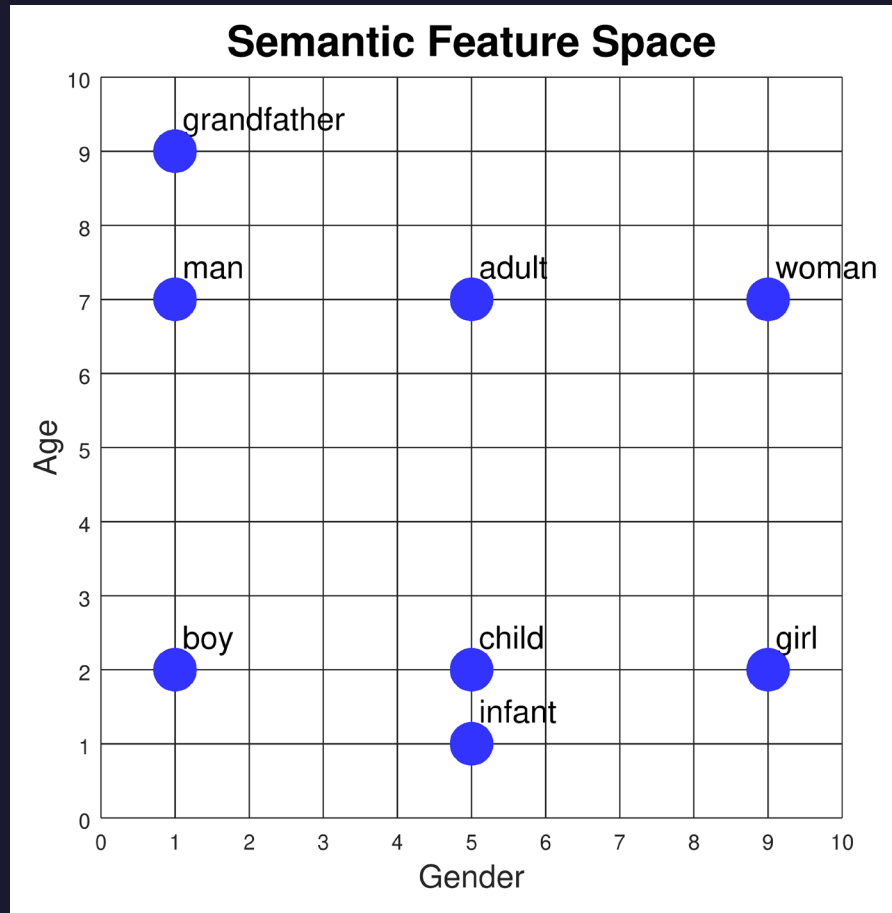
A survey showing recognition by 64% of likely cell phone users was used to establish the fame of the Apple iPhone trade dress. Jury found both fame and dilution. The decision was later reversed upon a finding the trade dress was functional and unprotectable.

4.  *Deere & Company v. FIMCO Inc.*, 302 F. Supp. 3d 837 (W.D. Ky. 2017). [↗](#)

74% of respondents to survey identified a green and yellow tractor as a product of plaintiff, establishing that the color combination was a famous trade dress, and the court found both infringement and dilution of Deere's green and yellow color combination.

[Related materials](#)[More authority](#)

# How does this work?

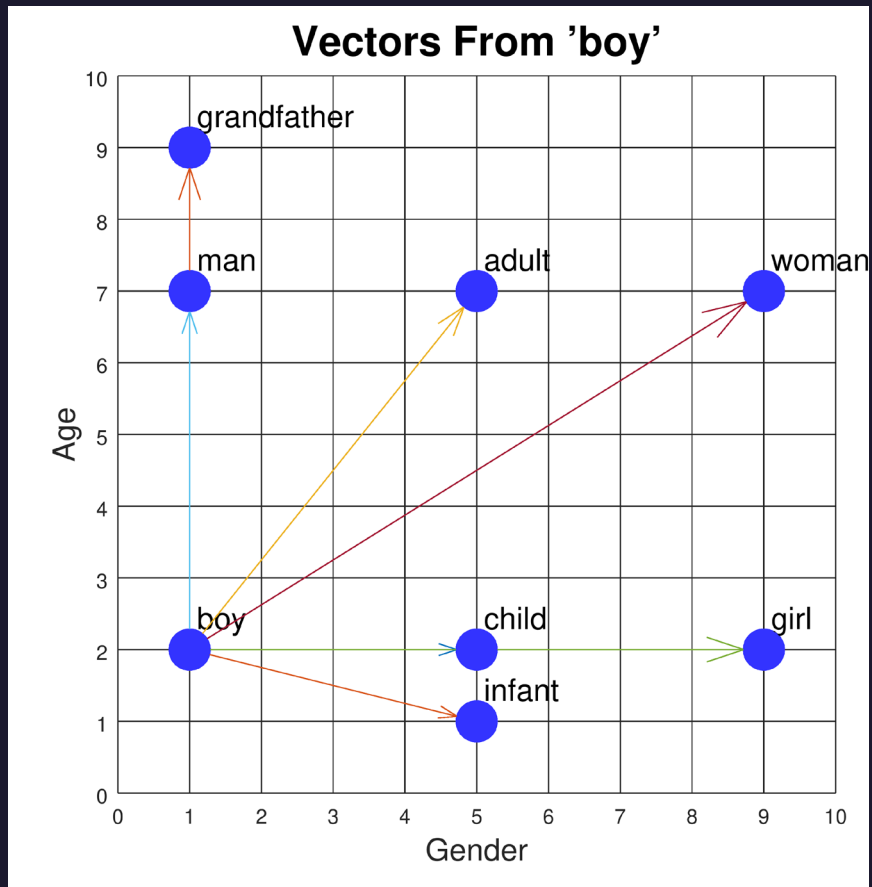


Word Coordinates		
	Gender	Age
grandfather	[ 1,	9 ]
man	[ 1,	7 ]
adult	[ 5,	7 ]
woman	[ 9,	7 ]
boy	[ 1,	2 ]
child	[ 5,	2 ]
girl	[ 9,	2 ]
infant	[ 5,	1 ]

*Image Credit:* Carnegie Mellon University Computer Science Academy



# How does this work?

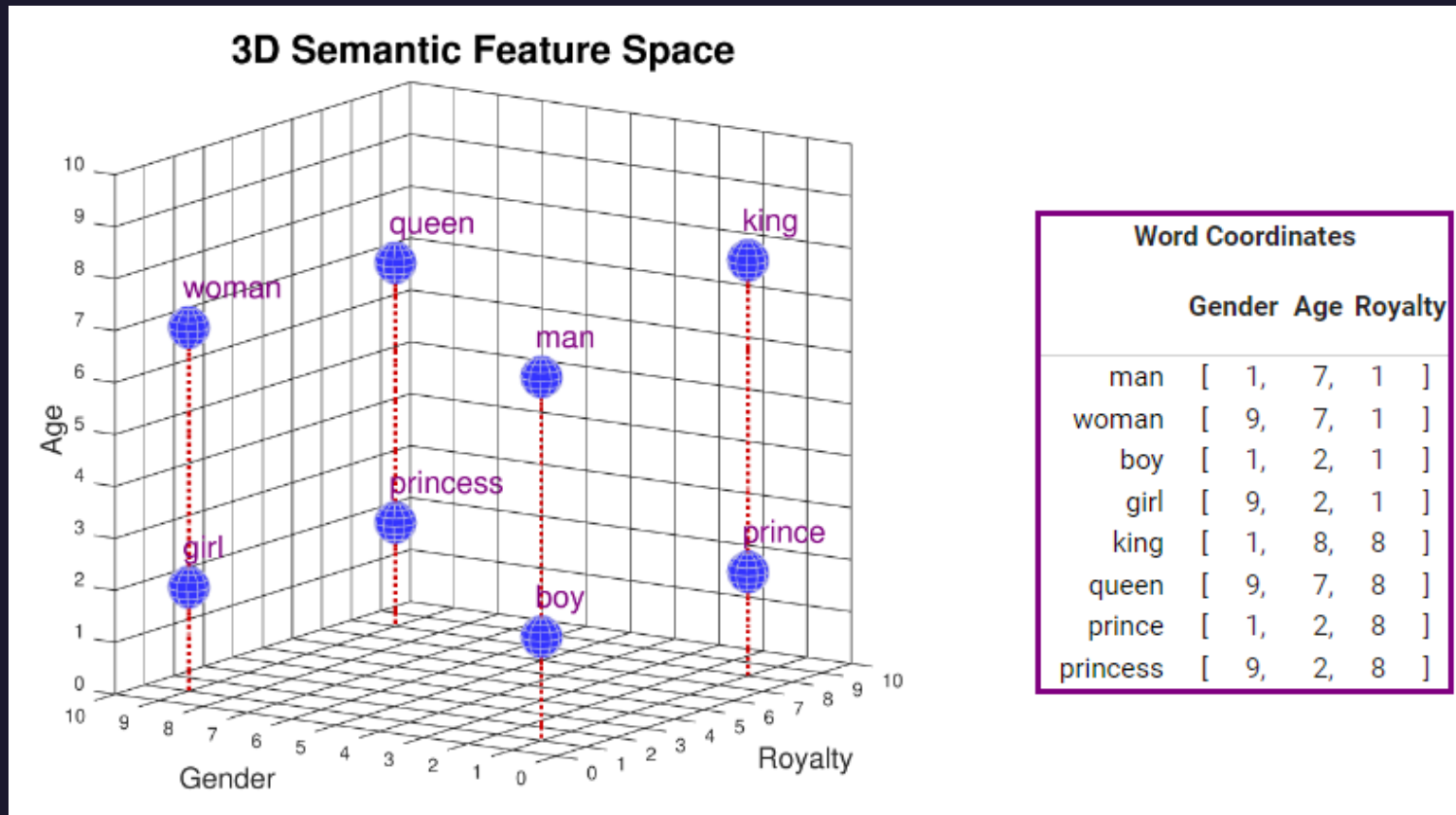


Distance from "boy"	
grandfather	7
man	5
adult	6.4031
woman	9.4340
boy	0
child	4
girl	8
infant	4.1231

*Image Credit:* Carnegie Mellon University Computer Science Academy



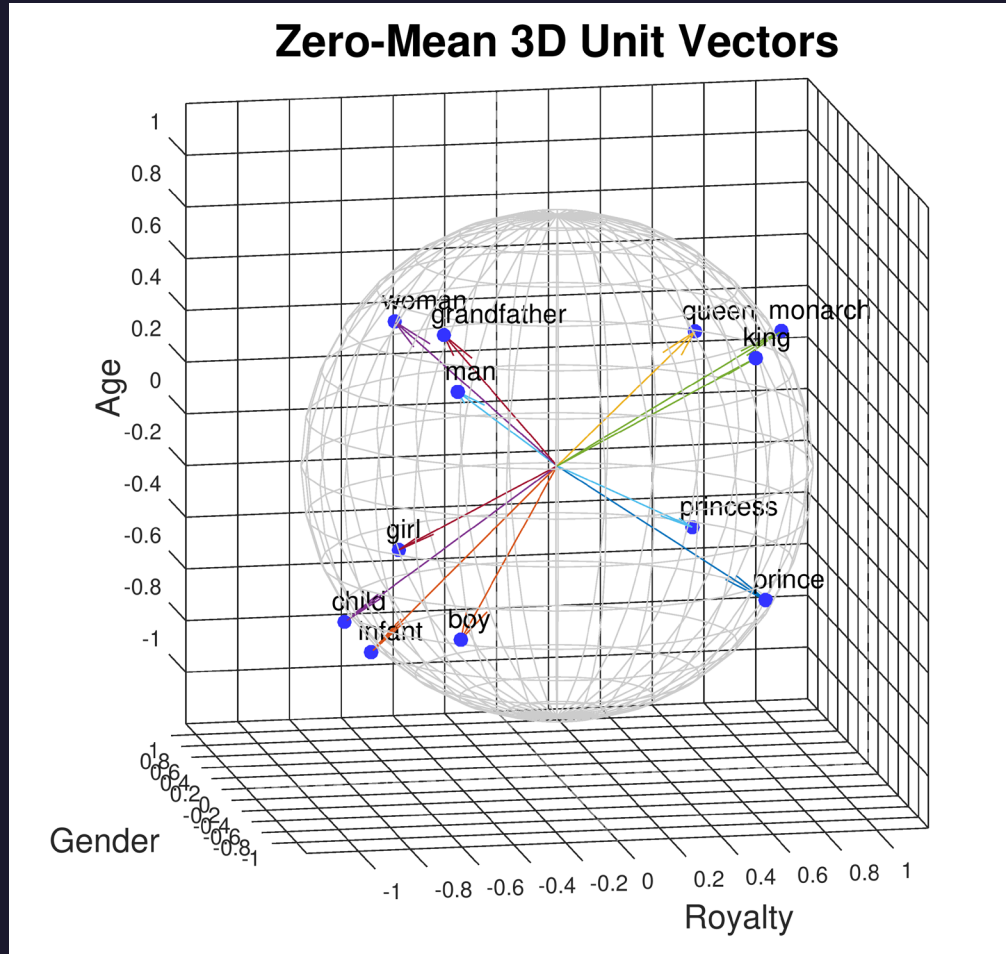
# How does this work?



*Image Credit:* Carnegie Mellon University Computer Science Academy

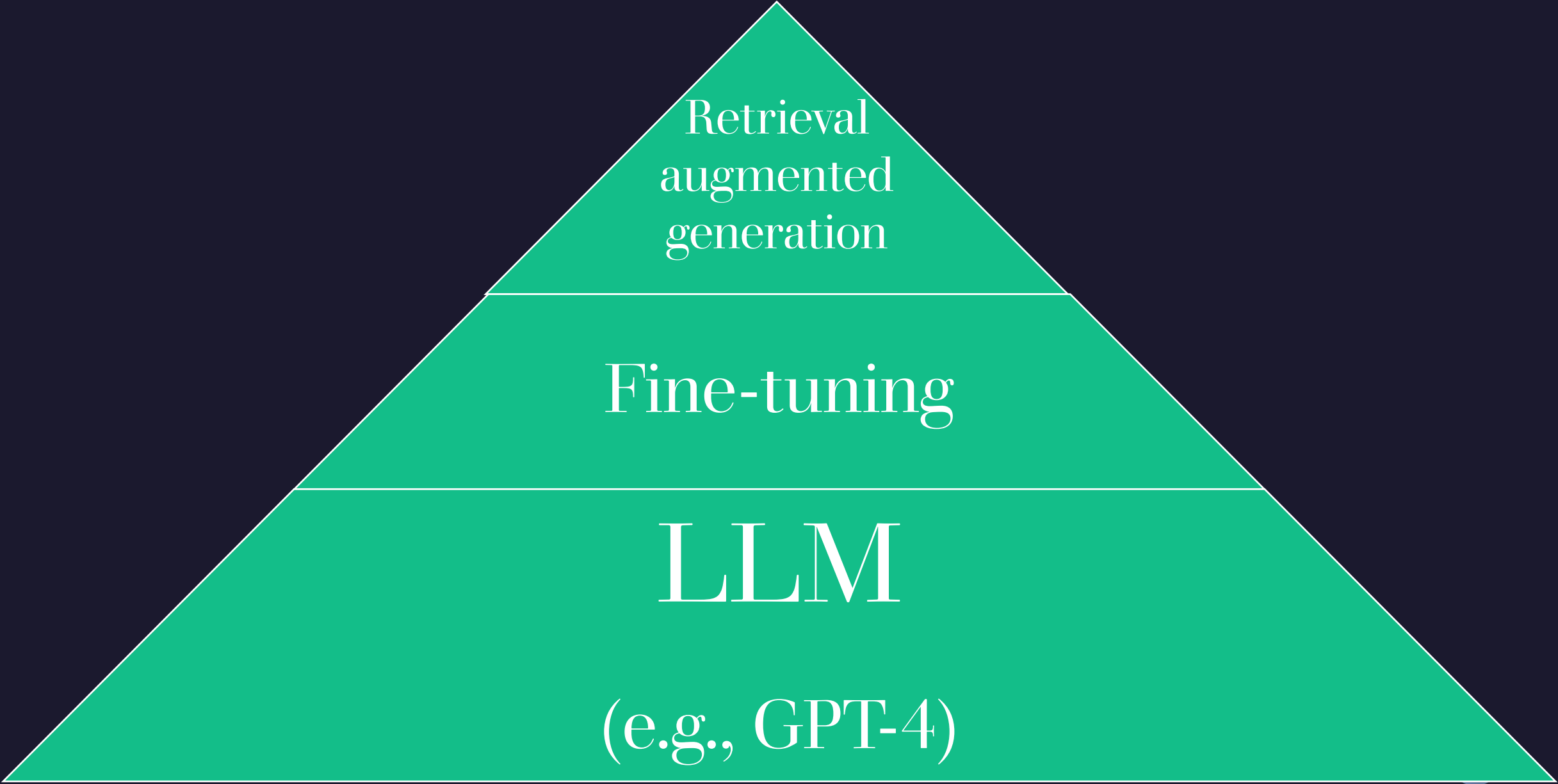


# How does this work?



Zero-Mean 3D Unit Vectors			
	Gender	Age	Royalty
grandfather	[ -0.5426,	0.6412,	-0.5426 ]
man	[ -0.7191,	0.4576,	-0.5230 ]
woman	[ 0.7741,	0.4168,	-0.4764 ]
boy	[ -0.6971,	-0.5070,	-0.5070 ]
girl	[ 0.7543,	-0.4642,	-0.4642 ]
king	[ -0.5570,	0.5064,	0.6583 ]
monarch	[ 0.0676,	0.4730,	0.8785 ]
queen	[ 0.6608,	0.3558,	0.6608 ]
prince	[ -0.5846,	-0.4252,	0.6909 ]
princess	[ 0.6484,	-0.3990,	0.6484 ]
child	[ 0.0733,	-0.5866,	-0.8066 ]
infant	[ 0.0642,	-0.7057,	-0.7057 ]

*Image Credit:* Carnegie Mellon University Computer Science Academy



Retrieval  
augmented  
generation

Fine-tuning

LLM

(e.g., GPT-4)



## AI 'could be as transformative as Industrial Revolution'

UK's outgoing chief scientist urges ministers to 'get ahead' of profound social and economic changes

## Two-Thirds of Jobs Are at Risk: Goldman Sachs A.I. Study

## Maine Bans Artificial Intelligence Use by State Agencies for 6 Months Due to 'Cybersecurity Risks'

IBM to pause hiring in plan to replace 7,800 jobs with AI, Bloomberg reports

## Advances in artificial intelligence raise new ethics concerns

## *'The Godfather of A.I.' Leaves Google and Warns of Danger Ahead*

For half a century, Geoffrey Hinton nurtured the technology at the heart of chatbots like ChatGPT. Now he worries it will cause serious harm.

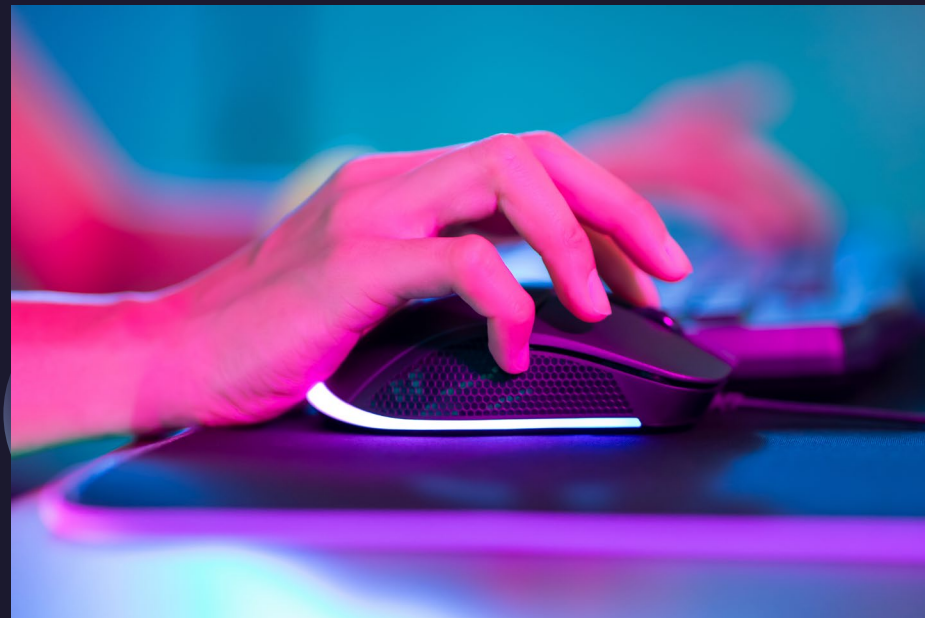
*The Atlantic*

## DOES SAM ALTMAN KNOW WHAT HE'S CREATING?

“We could have gone off and just built this in our building here for five more years,” he said, “and we would have had something jaw-dropping.” But the public wouldn’t have been able to prepare for the shock waves that followed, an outcome that he finds “deeply unpleasant to imagine.” Altman believes that people need time to reckon with the idea that we may soon share Earth with a powerful new intelligence, before it remakes everything from work to human relationships. ChatGPT was a way of serving notice.



What does  
this mean for  
state and local  
governments?







# Potential Risks

# Rule 1.1: Competence

*Comment 8:* To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice...

# Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

*Comment 2:* A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.



# The Florida Bar's Board Review Committee on Professional Ethics is considering adopting a proposed advisory opinion addressing:

- 1) Whether a lawyer is required to obtain a client's informed consent to use generative AI in the client's representation;
- 2) Whether a lawyer is required to supervise generative AI and other similar large language model-based technology pursuant to the standard applicable to non-lawyer assistants;
- 3) The ethical limitations and conditions that apply to a lawyer's fees and costs when a lawyer uses generative AI or other similar large language model-based technology in providing legal services, including whether a lawyer must revise their fees to reflect an increase in efficiency due to the use of AI technology and whether a lawyer may charge clients for the time spent learning to use AI technology more effectively;
- 4) Whether a law firm may advertise that its private and/or inhouse generative AI technology is objectively superior or unique when compared to those used by other lawyers or providers; and
- 5) Whether a lawyer may instruct or encourage clients to create and rely upon due diligence reports generated solely by AI technology.



# Accuracy problems

*When A.I. Chatbots Hallucinate*

OpenAI Hit With First Defamation Suit Over ChatGPT Hallucination

High Rates of Fabricated and Inaccurate References  
in ChatGPT-Generated Medical Content

# *Mata v. Avianca,* No. 22-CV-1461 (PKC) (S.D.N.Y.)

Mr. Schwartz testified at the sanctions hearing that...he was “operating under the false perception that this website [i.e., ChatGPT] could not possibly be fabricating cases on its own.”

He stated, “I just was not thinking that the case could be fabricated, so I was not looking at it from that point of view. My reaction was, ChatGPT is finding that case somewhere. Maybe it’s unpublished. Maybe it was appealed. Maybe access is difficult to get. I just never thought it could be made up.”



*U.S. v. Michel et al*, No. 1:19-cr-00148 (D.C. Cir. 2023)

**Fugees' Pras Michél says lawyer bungled his case by using AI to write arguments**

Motion for a new trial after defense attorney used an AI program to write closing arguments





# Risks to personal data and confidential information





Conversations may be reviewed by our AI trainers to improve our systems.



Please don't share any sensitive information in your conversations.



## RULE 1.6 Confidentiality of Information

A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent [or] the disclosure is impliedly authorized in order to carry out the representation...

A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

## RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

*Comment 3:* When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.



# NC State Bar Formal Ethics Opinions

## **2011 FEO 6:**

A lawyer may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information.

## **2011 FEO 14:**

A lawyer must obtain client consent, confirmed in writing, before outsourcing its transcription and typing needs to a company located in a foreign jurisdiction.

**Note to 2011 FEO 14:** “Client consent is not required in 2011 FEO 6 although the opinion allows confidential client information to be transmitted over the internet and stored using servers that may be located in another country. *The instant opinion can be distinguished because outsourcing requires disclosure of client information to third parties.*”



# Authors Sue OpenAI Claiming Mass Copyright Infringement of Hundreds of Thousands of Novels

Courts are wrestling with the legality of using copyrighted works to train AI systems.

Artists file class-action lawsuit saying AI artwork violates copyright laws

**'Game of Thrones' creator and other authors sue ChatGPT-maker OpenAI for copyright infringement**

Sarah Silverman sues OpenAI and Meta claiming AI training infringed copyright

There are unknown intellectual property risks to using outputs from generative AI tools



# 2008 FEO 14

## ATTRIBUTION WHEN USING THE WRITTEN WORK OF ANOTHER

*Adopted: October 23, 2009*

*Opinion rules that it is not an ethical violation when a lawyer fails to attribute or obtain consent when incorporating into his own brief, contract, or pleading excerpts from a legal brief, contract, or pleading written by another lawyer. .*

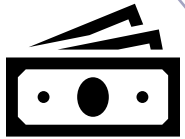


# AI-generated outputs have potential for bias





In a 2019 report, researchers who studied 189 facial recognition algorithms found that they falsely identified Black and Asian faces 10 to 100 times more often than white faces.



Mortgage approval algorithms are more likely to deny home loans to people of color, even when controlling for multiple other factors.



Amazon abandoned an experimental AI recruiting tool after finding that it showed substantial bias against women.



*Science* published research showing that a commercial algorithm used by health care systems falsely concluded that Black patients were healthier than equally sick White patients, and thus predicted that Black patients needed less care.

**Dutch scandal serves as a warning for Europe over risks of using algorithms**

**Child welfare algorithm faces Justice Department scrutiny**



**Flaws plague a tool meant to help low-risk federal prisoners win early release**





## JOINT STATEMENT ON ENFORCEMENT EFFORTS AGAINST DISCRIMINATION AND BIAS IN AUTOMATED SYSTEMS

- CFPB published a circular confirming that federal consumer financial protection laws apply regardless of the technology being used.
- DOJ's Civil Rights Division recently filed a statement of interest in federal court explaining that the Fair Housing Act applies to algorithm-based tenant screening services.
- EEOC issued a technical assistance document explaining how the ADA applies to the use of software, algorithms, and AI to make employment-related decisions.
- FTC has warned that it may violate the FTC Act to use automated tools that have discriminatory impacts or to deploy AI before taking steps to assess and mitigate risks.

Generative  
AI is making  
scams more  
effective



# Increased risks from deepfakes

**AI content is meddling in Turkey's election. Experts warn it's just the beginning**

Deepfake video of Zelenskyy could be 'tip of the iceberg' in info war, experts warn

**Deepfakes in Slovakia Preview How AI Will Change the Face of Elections**

**FEC to consider new rules for AI in campaigns**



# Biden signs AI executive order, the most expansive regulatory attempt yet

OCTOBER 30, 2023

## Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

# Is more regulation coming?

## BLUEPRINT FOR AN AI BILL OF RIGHTS

MAKING AUTOMATED  
SYSTEMS WORK FOR  
THE AMERICAN PEOPLE

OCTOBER 2022

EU 'in touching distance' of world's first laws regulating artificial intelligence

**Tech execs warn lawmakers to keep AI 'under the control of people'**

**Senate hearing highlights AI harms and need for tougher regulation**



# Best Practices



Use AI to help  
you think, not  
think for you



Don't use  
confidential or  
sensitive  
information to  
prompt these  
tools





Be alert for  
potential bias  
in *AI* outputs.





NC's Public  
Records Law  
will apply to  
some AI  
prompts and  
outputs

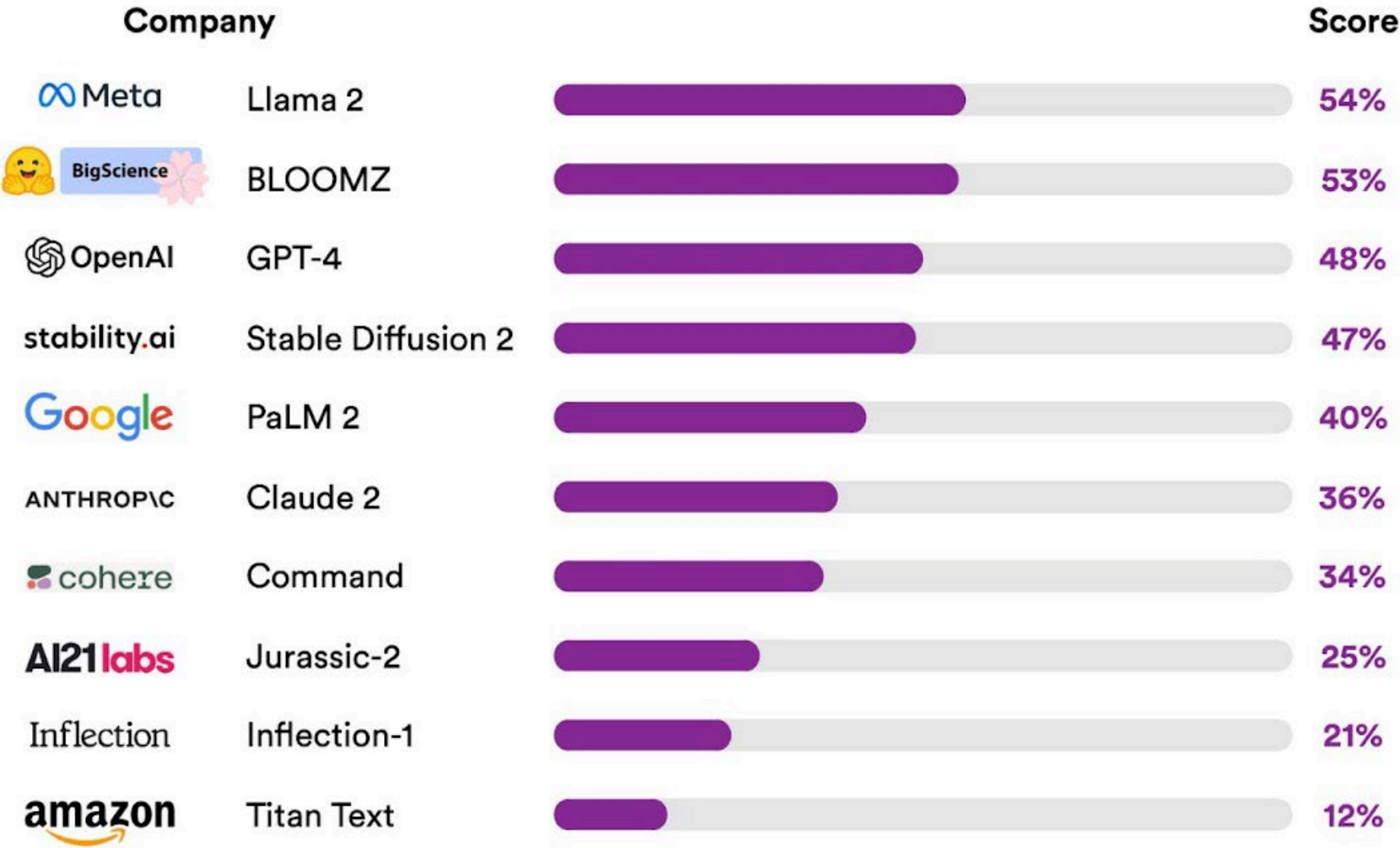


# Transparency?



# Foundation Model Transparency Index Total Scores, 2023

Source: 2023 Foundation Model Transparency Index



Source: Stanford University Institute for Human-Centered Artificial Intelligence



# Guidance or policy?

## City of Boston Interim Guidelines for Using Generative AI

Version 1.1

Prepared by Santiago Garces, Chief Information Officer, City of Boston

Published: 5/18/2023

Applies to: *all City agencies and departments with the exception of Boston Public Schools*

### Purpose

Generative AI is a set of relatively new technologies that leverages large (very large) volumes of data along with some machine learning (ML) techniques to produce content based on inputs from the users known as prompts. The new content can be written (e.g. ChatGPT or Bard), or visual (e.g. Dall-E). These tools are evolving rapidly, and are still the subject of active research: improving our understanding of how they actually work, and the impacts of their use in society. These tools are not actual intelligence in the human sense, rather, they are very sophisticated models that predict what the language, text, or video that satisfies the prompt should be. **Because of their impact and potential usefulness, as well as the risks and dangers, these guidelines serve as an interim resource for employees of the City of Boston.**



What's on  
the horizon?







# Expect change



# Questions?

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