# AI Industry DA (Neg)

### Notes

This is the AI industry da. It argues that the plan would harm innovation in artificial intelligence. To be able to explain this da well, you’ll need to know what each of the four parts of the DA say. If you are affirmative, you can find affirmative answers to every part of this da in the aff answers section at the bottom of the file.

**Uniqueness**: The negative wants to make uniqueness argument (arguments about why the status quo is doing something that is good) is that the AI industry is growing rapidly in the status quo. We are currently experiencing an AI boom where new innovations occur frequently.

**Link:** Depending on what affirmative you are debating against, you will need to make a different link argument (argument about what the plan does that starts a negative chain of events)

Against **patents**, your link argument is about **patent thickets** (legal hurdles to innovation caused by an abundance of patent claims, many of which that are generally weak). The easier it is to get a patent, the harder it is to innovation things if you are the one without the patent. Patent owners can be very litigious and might want to make money by suing AI companies. That means AI companies will be a little more cautious and not try to innovate in ways that could overlap with the patent environment.

Against **copyright**, your link argument is that requiring AI companies to pay for licenses would bankrupt AI companies. Because generative AI needs to be trained on very very large quantities of data, it would be very cost-prohibitive for them to pay for all of those articles, pictures, blog posts, etc that they use to train AI.

Against **trademark**, your link argument is that creating contributory liability for trademark will serve as a new model to create contributory liability for copyright. If there is contributory liability for copyright, AI companies would be liable for any mis-use of their product that people do, which would be extremely legally risky for them and likely bankrupt them.

**Internal link and impact:** The negative’s impact scenario is that AI innovation is necessary to prevent extinction because it can accelerate decision making and help us systematically make better decisions. In particular, this impact relies on the idea that humans are not particularly effective decision makers.

## 1nc

### 1nc ai da vs patents

#### The next offcase position is the AI industry da

#### AI innovation is booming under the Alice-Mayo framework. The plan overturns it, causing unpredictability and floods of weak patents that stifle AI innovation

Nikola L. Datzov, 23 – Assistant Professor of Law, University of North Dakota School of Law. “THE ROLE OF PATENT (IN)ELIGIBILITY IN PROMOTING ARTIFICIAL INTELLIGENCE INNOVATION” 92 UMKC L. Rev. 1 \*, Nexis Uni, accessed via University of Michigan //DH

In the debate whether the current patent eligibility framework promotes or hinders innovation, often, the answer has been to support each side's position with familiar theoretical arguments regarding the impact, generally, of narrowing the pathway to granting patents. While this paper falls short of offering a fix-all solution, after evaluating the existing data on the state of AI innovation via the four key metrics above, it argues that modifications to the patent eligibility framework in the name of promoting AI innovation should be incremental and made only after demonstrated evidence (rather than anecdotal or theoretical commentary) of a negative impact in each of the distinct layers of AI inventions. Such a measured approach would have the benefit of addressing areas of need while limiting disruption to areas that are working smoothly. Whatever the impact of the current eligibility framework, the impact of a drastic change in § 101 could be even more negative. One needs to look no further than the state of patent eligibility prior to Bilski as a reminder of the havoc that a weak subject matter eligibility framework can wreak.

[\*59] A. Modifying § 101 and Related Exceptions

To be clear, this article does not take the position that the Alice framework could not benefit from additional clarity or that it is easy to apply in all instances. There is certainly room for additional clarification that can help bring further clarity to the analysis, though appeals from district court and USPTO decisions on § 101 have shown remarkable consistency in predictability over the past decade.361 Moreover, it is worth acknowledging and accepting that application of the law is not (and should not) always be simple. Flexible (and thus sometimes difficult to apply) standards for determining "what is obvious" or the correct scope/meaning of a claim term have played a critical role in patent law for decades. The same is true for threshold questions in other core areas of IP such as the "levels of abstraction" issues of the idea/expression dichotomy in analyzing what is copyrightable.362 Thus, in balancing the benefits of clarity and predictability from an easy-to-apply bright-line rule, we must consider the drawbacks of less flexibility in reaching a "just" outcome. The flexibility inherent in the Alice framework serves an important purpose of allowing courts and the USPTO to look at the specific claims at issue and adapt to the evolving nature of AI development (as well as other areas impacted by Alice), especially given the early stage of the AI Revolution we currently find ourselves in.363 It may be better to give away less now than find out later to have given away too much. If there were a bright-line test that could accomplish the heavy lifting required for appropriately balancing the patent eligibility concerns, it would be welcomed with open arms. However, the Supreme Court has repeatedly rejected attempts to draw a bright-line rule on subject matter eligibility and no such viable bright-line test has emerged. It may be that, as with copyright law, the threshold for patent eligibility simply is not a bright-line test.

Is Alice's flexible standard holding back AI innovation? Could the statistics on AI innovation be even stronger? Perhaps. However, in looking to make changes to § 101 in the name of clarity and predictability, we would be better off utilizing a scalpel rather than machete. In aiming to raise the AI innovation charts even further, we should remember that a drastic change in the law (such as the elimination of the § 101 exceptions proposed in the current legislation) would certainly upset predictability at least in the short term and could just as easily lower the innovation metrics we hoped to improve. Without empirical research to guide us, we might not only be using the wrong cutting tool, we might also be cutting blindly. As Professor Taylor explained in his study of patent eligibility and investment generally, "the questions ought to be asked and more importantly answered by reference to hard data rather than gut feeling or prognostication."364 Professor Taylor's empirical study was a significant contribution to answering the questions regarding patent eligibility generally. A similar data-driven analysis [\*60] should be performed with regard to AI investment and patent eligibility. Moreover, because what decision makers "say they will do often differs from what they will actually do,"365 the empirical analysis should include not only surveys of how decision makers anticipate or plan to make decisions but also what decisions they (or their companies) actually made regarding investment.

There are already several examples that illustrate how a scalpel approach can make impactful results in improving clarity and predictability for the Alice framework. The precedent interpreting Alice that has developed through Federal Circuit and district court decisions has made it easier for practitioners to more predictably apply the analysis (to the extent unpredictability existed).366 Additionally, the Federal Circuit's exceptionally high affirmance rate of patent eligibility decisions possibly the highest of any area of patent law historically and lower tribunals' incredibly low error rate in applying the analysis, indicates that district courts and the USPTO are overwhelmingly applying the correct analysis and reaching the correct legal outcomes. Some evidence indicates that the USPTO's guidance has demonstrably helped patent examiners apply Alice more consistently in a way that led to more allowances and fewer rejections, presumably because the guidance also helped practitioners submit higher quality patent applications.367 Other evidence analyzing the pre-guidance timeframe has found that there has been a minimal shift at best in § 101 applications, rejections, and outcomes at the Patent Office.368 Furthermore, the congressional nudge to the USPTO to implement a pilot program to defer § 101 decisions until after the § 102 and § 103 analysis may also prove to be a helpful approach in promoting clarity and predictability when considering patent eligibility.

In that regard, we must still make progress to clarify the law that emerged through the Mayo/Alice framework set forth by the U.S. Supreme Court nearly a decade ago. Unproven drastic measures, such as abolishing the judicially created exceptions, however, could do more harm than good by opening the floodgates to weaker patents by lowering the threshold for patent eligibility. As others have written, the impact of the legislation could have "potentially serious" negative consequences in other industries, such as public health.369 Substantial research through several key metrics indicates that AI innovation continues to flourish in significant ways under the current framework. Whether it is because of or despite Alice is difficult to confidently answer at this time. Or perhaps Alice makes no appreciable difference. But the empirical data shows that AI innovation is booming nonetheless. In pursuing a better understanding on this topic, or considering making significant changes to existing law, we must rely on data-focused analysis and avoid temptations to overstate Alice's impact. As one example, the data layer [\*61] of AI was likely most impacted by the narrower scope of eligibility through Alice; yet, those AI inventions saw more growth in patent applications and publications than any other category of AI inventions in that same timeframe.370 Data management and processing startups also saw the most amount of private investment in 2021 and second most the past five years.371 Thus, the inventions that Alice supposedly jeopardized the most appear to be the ones thriving the most since Alice.

When we consider ways in which to modify existing subject matter eligibility laws, we should consider whether they are truly necessary, what helpful impact they may create, and what harm they may bring. Furthermore, we should do so in careful consideration of the impact to each individual layer of the AI taxonomy proposed above. We should not assume that the impact of Alice to each layer is the same. Substantial evidence already indicates that Alice impacted different technology areas in different ways during prosecution and litigation.372 Indeed, the vast majority of Federal Circuit decisions on § 101 since Mayo involved the abstract idea exception.373 The exceptions for laws of nature and natural phenomena those most closely pertaining to biotechnology rather than software were the subject of only a small handful of decisions in 10 years.374 This could indicate that this particular area of the law for § 101 is still underdeveloped and could benefit from further examination at the courts before legislative intervention is deemed necessary.

Sometimes the best course of action is to do nothing. In light of improvements and increased stability in the application of the Alice test, as well as surging AI metrics in every important category for measuring innovation, the more prudent course of action seems to be to exercise restraint. Perhaps this is why Congress previously retreated from what initially seemed like an aggressive push to revise or entirely abrogate § 101 even if that effort recently resumed (twice).375 It may also be why the U.S. Supreme Court continues to refuse to take up § 101, despite pleas from the Federal Circuit and the U.S. Solicitor General.

The executive branch has recognized the importance of a measured approach in this area. In its memo to the heads of executive agencies, it explained that "when deciding whether and how to regulate in an area that may affect AI applications, agencies should assess the effect of the potential regulation on AI innovation and growth."376 More specifically, "[a]gencies should consider new regulation only after they have... [decided] ... that Federal regulation is necessary."377 Because less is sometimes more, "[f]ostering [AI] innovation and [\*62] growth through forbearing from new regulation[] may be appropriate" in some cases.378

Congress should heed the same principles espoused by the executive branch. The overwhelming evidence and metrics indicate that AI innovation is thriving. Under such a fruitful ecosystem, it would be inappropriate to upend more than 170 years of precedent or erase even older statutory language. The result of such blunt action could be devastating not only in the unpredictability it would introduce but also in the lack of meaningful governing standard it would impose. To the extent that modifications are necessary in the laws regarding patent eligibility, such changes should be narrowly tailored to address specific problems shown to be correctable through such measured action, while also being critically mindful of the impact from such changes to other impacted areas. In other words, in "fixing" § 101 problems, Congress must use a scalpel not a machete. The Supreme Court has already cautioned that it is hesitant to depart "from established general legal rules lest a new protective rule that seems to suit the needs of one field produce unforeseen results in another."379 To the extent that "finely tailored rules" become necessary, after other efforts have proven unsuccessful, it is "the role of Congress" to do so.380 Before such action is taken, there should be further research and empirical evaluation not just public commentary whether the current law on § 101, in combination with the USPTO's interpretation of the governing law, can continue to maintain the substantial ongoing AI innovation we have seen thus far in the early stages of the AI Revolution.

#### AI innovation solves extinction—it’s a better decision-maker than humans

Cerf and Waytz 23 (Moran Cerf is a professor of neuroscience and business. ​ He holds a PhD in neuroscience from Caltech. Adam Waytz is the Morris and Alice Kaplan Chair in Ethics and Decision Management and professor of Management and Organizations at Northwestern University’s Kellogg School of Management. “If you worry about humanity, you should be more scared of humans than of AI” *Bulletin of the Atomic Scientists* 79:5, 289-292, 2023. Accessed 5/30/2024. <https://doi.org/10.1080/00963402.2023.2245242> via University of Michigan online library) wtk

A threat even more dire than misinformation is the “risk of extinction from AI” that the Center for AI Safety highlights in its open statement. Yet, in terms of whether machines or humans are more likely to initiate extinction-level events such as nuclear war, humans still seem to have the upper hand. In recent empirical work that analyzes the decision processes employed by senior leaders in war-game scenarios involving weapons of mass destruction, humans showed an alarming tendency to err on the side of initiating catastrophic attacks.Footnote5 These simulations, if implemented in reality, would pose much graver risks to humanity than machine-driven ones. Our exploration of the use of AI in critical decision-making has shown AI’s superiority to human decisions in nearly all scenarios. In most cases, the AI makes the choice that humans do not make at first—but then, upon more careful consideration and deliberation, change their minds and do make, realizing it was the correct decision all along.

Other, more quotidian concerns raised about AI apply far more to human beings than to machines. Consider algorithmic bias, the phenomenon whereby algorithms involved in hiring decisions, medical diagnoses, or image detection produce outcomes that unfairly disadvantage a particular social group. For example, when Amazon implemented an algorithmic recruiting tool to score new applicants’ resumes, the algorithm systematically rated female applicants worse than men, in large part because the algorithm was trained on resumes submitted over the previous 10 years that were disproportionately male.Footnote6 In other words, an algorithm trained on human bias will reproduce this bias.

Unlike humans, however, algorithmic bias can be readily deprogrammed, or as economist Sendhil Mullainathan puts it, “Biased algorithms are easier to fix than biased people.”Footnote7 Mullainathan and colleagues’ research showed that an algorithm used by UnitedHealth to score patients’ health risks systematically underscored black patients relative to white patients because it measured illness in terms of health-care costs (which are systematically lower for black versus white individuals, given that society spends less on black patients) (Obermeyer et al. Citation2019). However, once identified, the researchers could easily modify this feature of the algorithm to produce risk scores that were relatively unbiased. Other work has shown that algorithms can produce less racially biased outcomes (and more effective public safety outcomes) than human judges in terms of decisions about whether or not to grant bail to defendants awaiting trial (Kleinberg et al. Citation2018). As biased as algorithms can be, their biases appear less ingrained and more pliable than those of humans. Compounded by recent work showing that, in hiring and lending contexts, managers reject biased algorithms in favor of more biased humans, the suggestion that humans should remain at the helm of those functions is, at best, questionable (Cowgill, Dell’acqua, and Matz Citation2020).

Finally, consider the threat to cybersecurity. Although commentators have warnedFootnote8,Footnote9,Footnote10 that large language models add tools to the arsenals of hackers by democratizing cybercrime, most high-profile information leaks and hacks to date are ushered in by human beings with no reliance on AI (i.e. a disgruntled employee who knows the system's flaws and perpetrates an attack by remembering key passwords, or bad programmers who effectively enable future attacks by making wrong assumptions on their software use-cases—such as “no one would create a password that is 1,000,000 characters long” leading to a classical buffer overflow hack). In fact, AI is often the last bastion of defense against those hacks, identifying complex human coding mistakes early-on and correcting them.

Recently, national guardsman Jack Teixeira, who exposed highly classified material in an online chat group, did not require sophisticated technology to access sensitive documents—he was granted top secret clearance from the Pentagon. Further, a recent study conducted by IBM indicates that 95 percent of security breaches were caused by human errors such as biting on phishing scams or downloading malware.Footnote11 If anything, the most concerning cybersecurity risk currently posed by AI results from its increased reliance on human trained code, which is flawed. AI takes hackable human codes and uses them to generate new codes, spreading these human-generated errors further. The only concerning current cybersecurity attacks by AI involve AI that simulates human communication to dupe humans into revealing key information. Cybersecurity may represent a case in which technology is more likely to be the solution rather than the problem, with research indicating, for example, that humans working with AI outperform humans alone in detecting machine-manipulated media such as deepfakes (Groh et al. Citation2021).

Even when technology contributes to unwanted outcomes, humans are often the ones pressing the buttons. Consider the effect of AI on unemployment. The Future of Life Institute letter raises concerns that AI will eliminate jobs, yet whether or not to eliminate jobs is a choice that humans ultimately make. Just because AI can perform the jobs of, say, customer service representatives does not mean that companies should outsource these jobs to bots. In fact, research indicates that many customers would prefer to talk to a human than to a bot, even if it means waiting in a queue.Footnote12 Along similar lines, increasingly common statements that AI-based systems—like “the Internet,” “social media,” or the set of interconnected online functions referred to as “The Algorithm”—are destroying mental health,Footnote13 causing political polarization,Footnote14 or threatening democracyFootnote15 neglect an obvious fact: These systems are populated and run by human beings. Blaming technology lets people off the hook.

Although expressions of concern toward AI are invaluable in matching the excitement around new technology with caution, outsized news cycles around the threats of technology can distract from the threats of human beings. Recent research indicates that humans have a “finite pool of attention” such that “when we pay more attention to one threat, our attention to other threats decreases” (Sisco et al. Citation2023). So, as we contend with the rise of AI and its concomitant harms to privacy, human survival, and our relationship with truth itself, we must equally pay attention to the humans who are already well equipped to perpetrate these harms without the assistance of machines. Specifically, it has not escaped our notice that when engaging in a conversation about the risks of AI, the benchmark is often “is AI perfect in handling this task” (making critical decisions or guiding a self-driving car), rather than “is it better than humans.” The answer to the latter question in many cases, is that yes, AI can mitigate the risks to humanity.

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### 1nc ai da vs copyright

#### The next offcase position is the AI industry da

#### AI innovation is developing rapidly now

MaRS 24 (Staff of MaRs, North America’s largest urban innovation hub, “The rapid growth of responsible AI” 1/29/2024. Accessed 5/30/2024. https://www.marsdd.com/research-and-insights/the-rapid-growth-of-responsible-ai/) wtk

Artificial intelligence has become big business — and the pace of innovation is only picking up. According to Deutsche Bank, 175,072 AI patents were filed between 2012 and 2022, with more than half of them coming in those final three years. The bank anticipates a dramatic spike this year and next in companies adopting AI applications, especially in such fields as product development, sales, marketing and human resources. Legal firms now use AI to generate contracts; travel companies rely on chatbots to provide help during the booking process. Already, the global AI market is worth roughly U.S.$136.6 billion, and it’s on track to reach U.S.$1.3 trillion by 2032. Patents for AI innovations, as seen in the figure below, are being filed in many different sectors. From 2022 to 2030, AI use by organizations around the world is expected to expand at a compound annual growth rate of more than 38 percent.

It’s clear that AI adoption is climbing at a breakneck rate. Experts predict that as computational power grows exponentially, the capabilities of these AI applications — in reasoning, in accuracy, in specialization and in personalization — will skyrocket. At the same time, regulations and policy can take much longer to develop. The European Union spent three years drafting its 125-page law to regulate artificial intelligence, introduced in April 2021. But none of those 125 pages mentioned generative AI, the breakthrough that powers applications like ChatGPT and that blindsided lawmakers. While regulators work to catch up, business leaders need to take their own steps to ensure that the technology being developed and used today doesn’t have harmful consequences. Policy-makers are having to play catch up. For instance, a bipartisan group of U.S. House representatives proposed new legislation in January to regulate the use of AI to create clones or likenesses of artists. As the technology develops, it’s important for business leaders and policy-makers to ensure AI is used in the service of society.

#### The plan decks AI innovation—it increases costs, complexity, and barriers to entry

Brough and Nazeri 23 (Wayne T. Brough, Policy Director of Technology and Innovation at the The R Street Institute. Ahmad Nazeri, the R Street Institute, “Artificial Intelligence and Copyright: Notice and Request for Public Comment” public comments before the U.S. Copyright Office. 10/30/2023. Accessed 5/25/2024 from https://www.regulations.gov/comment/COLC-2023-0006-8302) wtk

Introducing a licensing requirement for the development and adoption of generative AI systems would have profound economic implications.

•Barrier to Entry: Given the vast number of works an AI training dataset might need to use—and the fact that thousands or millions of individuals might own those works—obtaining licenses for all underlying content becomes a significant challenge. This could act as a barrier to entry for smaller companies or startups that lack the resources to negotiate and secure such licenses.

•Increased Costs: The process of identifying, negotiating and securing licenses for every individual piece of content in a dataset would be resource-intensive. These increased costs could be passed on to consumers or could deter companies from pursuing certain AI-driven projects altogether.

•Stifling Innovation: The sheer complexity and cost associated with obtaining licenses might discourage innovation. Companies might opt for safer, less ambitious projects to avoid potential copyright pitfalls, thereby limiting the advancement of AI technologies.

•Monopoly Concerns: Only large entities, like tech giants, that have the resources to navigate the licensing landscape or have already amassed vast amounts of data might be able to compete effectively in the AI space. This could lead to a monopolistic environment where only a few players dominate, thereby reducing competition and potentially stifling innovation.

•Economic Incentives for Litigation: Given the structure of copyright remedies, even small-value infringements can lead to lawsuits due to the potential for statutory damages. This could encourage opportunistic lawsuits, further increasing costs for AI developers.

•Potential Negative Outcomes: While broader access to data can help mitigate some of the negative outcomes associated with AI (e.g., biases), restricting access through licensing could exacerbate these issues. For instance, limited data access might hinder the ability of AI systems to be trained on diverse datasets and lead to biased outcomes.

•Impact on Broader Economy: The ripple effects of these challenges could extend beyond the AI industry. Reduced innovation in AI could slow advancements in sectors across the economy that rely on AI, such as health care, finance and transportation.

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#### AI innovation is developing rapidly now

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It’s clear that AI adoption is climbing at a breakneck rate. Experts predict that as computational power grows exponentially, the capabilities of these AI applications — in reasoning, in accuracy, in specialization and in personalization — will skyrocket. At the same time, regulations and policy can take much longer to develop. The European Union spent three years drafting its 125-page law to regulate artificial intelligence, introduced in April 2021. But none of those 125 pages mentioned generative AI, the breakthrough that powers applications like ChatGPT and that blindsided lawmakers. While regulators work to catch up, business leaders need to take their own steps to ensure that the technology being developed and used today doesn’t have harmful consequences. Policy-makers are having to play catch up. For instance, a bipartisan group of U.S. House representatives proposed new legislation in January to regulate the use of AI to create clones or likenesses of artists. As the technology develops, it’s important for business leaders and policy-makers to ensure AI is used in the service of society.

#### SHOP SAFE will be used to strengthen contributory liability in copyright

Mike Masnick, 2022 – founder and CEO of Floor64 and editor of the Techdirt blog. “How To Destroy Innovation And Competition: Putting SHOP SAFE Act Into Innovation And Competition Act” Techdirt, 1/10, <https://www.techdirt.com/2022/01/10/how-to-destroy-innovation-competition-putting-shop-safe-act-into-innovation-competition-act/> //DH

So that brings us back around to the problems of SHOP SAFE. It flat out overturns the Tiffany/eBay decision, and says that unlike that precedent, online marketplaces should be considered de facto liable. There is a long, extremely onerous, and nearly impossible list of things that you need to do to get out of that default state of being liable for any infringing product on your site. Basically, the default state for all online marketplaces (and this is defined so broadly that it will sweep up tons of sites you wouldn’t think of as “marketplaces”), will be that they are “contributory” infringers.

This will wreak all sorts of havoc. First off, it will massively limit where people can buy and sell things online. Over the pandemic, I’ve become active in buying and selling used books via a couple of Facebook groups and independent forums and news groups, that focus on the buying and selling of a niche category of books. It’s been great for me, because most of the books bought and sold through these groups are unfindable anywhere else. Under this bill, it seems like those groups would all need to shut down — or face absolutely crippling liability and risk.

Basically, the only “marketplaces” that could possibly survive would be the very biggest — the eBays and Amazons of the world. And, even then, in order to avoid liability, eBay and Amazon would both significantly change how those forums operate, and they’d still face crippling liability because of the structure of the bill. I’ll quote Eric Goldman’s summary here because it’s so important:

First, it creates a new statutory contributory trademark infringement claim for selling the regulated items. Second, the bill says that the new contributory claim doesn?t preempt other plaintiff claims, so trademark owners will still bring the standard statutory direct trademark infringement claim and common law contributory trademark claims (and dilution, false designation of origin, etc.). Third, online marketplaces nominally can try to ?earn? a safe harbor from the new statutory contributory liability claim (but not from the other legal claims) by jumping through an onerous gauntlet of responsibilities. Those requirements will impose huge compliance costs, but those investments won?t prevent online marketplaces from being dragged into extraordinarily expensive and high-stakes litigation over eligibility for this defense. Fourth, the law imposes a proactive screening obligation, something that Tiffany v. eBay rejected. Fifth, unlike Tiffany v. eBay, generalized knowledge can create liability, and takedown notices aren?t required as a prerequisite to liability. Sixth, in litigation over direct trademark infringement and common law contributory trademark infringement claims, trademark owners can cite compliance/non-compliance with the defense factors against the online marketplace, putting the online marketplace in a worse legal position than they currently are in.

Every single one of those things is problematic — and will massively diminish the ability of anyone to buy and sell things online, vastly cut back on the availability of online marketplaces, and just change the very nature of what can and can’t be sold online. And that’s not even getting into how much time, money and attention will be wasted on nonsense litigation enabled by this law.

The wider impact this law has on the internet will be massive.

Remember Bruce Lehman who was mentioned above? After pulling his little trick to “route around” a Congress that wouldn’t pass his law, he later became disillusioned with his own creation. It wasn’t that he recognized the myriad problems and censorship he enabled with the DMCA. He just felt that it didn’t go far enough. Over the last decade, Hollywood has been pushing for a new DMCA that will put significantly more liability on websites — including pretty much all of the stuff that we listed above about SHOP SAFE and liability around trademark: default contributory liability, expensive litigation to see if you’re even liable, no notice requirements, pro-active filtering requirements, etc.

So it’s no surprise at all that the whisper we’re hearing is that some in Congress see SHOP SAFE not just as a tool for dealing with trademark and online marketplaces, but as a model for a new DMCA. That is, once this kind of “assume liability and litigate your way out of it” setup is “proven” under SHOP SAFE, the idea is to then rewrite the DMCA under the same basic terms.

None of this will result in any more “innovation and competition.” None of this will help the internet, or help the US keep up with tech advances around the globe — which is supposedly the point of this Endless Frontiers / USICA in the first place. It will do the opposite. It will be attempting to “deal with” a problem that is barely an actual problem by effectively re-architecting how liability works. And SHOP SAFE will be a simple kind of trial balloon for an even bigger attack on the open internet.

#### Strengthening copyright contributory liability would end the copyright safe harbor and destroy AI

Google, 2023 – Comment submitted by Google to the US Copyright Office. “Artificial Intelligence and Copyright” 88 Fed. Reg. 59942 Docket No. COLC-2023, <https://downloads.regulations.gov/COLC-2023-0006-9003/attachment_1.pdf> //DH

The possibility that a generative AI system can, through “prompt engineering,” be made to replicate content from its training data does raise questions around the proper boundary between direct and secondary infringement. When an AI system is prompted by a user to produce an infringing output, any resulting liability should attach to the user as the party whose volitional conduct proximately caused the infringement.54 The AI developer can be liable (or not) under settled doctrines of secondary copyright liability applicable to device manufacturers and online service providers.55 A rule that would hold AI developers directly (and strictly) liable for any infringing outputs users create would impose crushing liability on AI developers, even if they have undertaken reasonable measures to prevent infringing activity by users. Had that standard applied in the past, we would not have legal access to photocopiers, personal audio and video recording devices, or personal computers — all of which are capable of being used for infringement as well as for substantial beneficial purposes.

Generative AI is a technology engineered to create new works, not to copy or facilitate the copying of existing works. It is capable of substantial noninfringing uses, and the law has long been wary of permitting rightsholders to hold up such technologies merely because they could potentially be used for infringing purposes. In Sony Corp. of Am. v. Universal City Studios, Inc.,56 the Supreme Court held that the sale of a product that may be used to infringe “does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes. Indeed, it need merely be capable of substantial noninfringing uses.”57 This rule exists to limit the copyright monopoly to its proper scope so that new technologies and the markets for them are allowed to develop.58 Excluding developers of generative AI systems from the Sony safe harbor would put all innovation in the field of machine learning at risk.

#### AI solves extinction—it’s a better decision-maker than humans

Cerf and Waytz 23 (Moran Cerf is a professor of neuroscience and business. ​ He holds a PhD in neuroscience from Caltech. Adam Waytz is the Morris and Alice Kaplan Chair in Ethics and Decision Management and professor of Management and Organizations at Northwestern University’s Kellogg School of Management. “If you worry about humanity, you should be more scared of humans than of AI” *Bulletin of the Atomic Scientists* 79:5, 289-292, 2023. Accessed 5/30/2024. <https://doi.org/10.1080/00963402.2023.2245242> via University of Michigan online library) wtk

A threat even more dire than misinformation is the “risk of extinction from AI” that the Center for AI Safety highlights in its open statement. Yet, in terms of whether machines or humans are more likely to initiate extinction-level events such as nuclear war, humans still seem to have the upper hand. In recent empirical work that analyzes the decision processes employed by senior leaders in war-game scenarios involving weapons of mass destruction, humans showed an alarming tendency to err on the side of initiating catastrophic attacks.Footnote5 These simulations, if implemented in reality, would pose much graver risks to humanity than machine-driven ones. Our exploration of the use of AI in critical decision-making has shown AI’s superiority to human decisions in nearly all scenarios. In most cases, the AI makes the choice that humans do not make at first—but then, upon more careful consideration and deliberation, change their minds and do make, realizing it was the correct decision all along.

Other, more quotidian concerns raised about AI apply far more to human beings than to machines. Consider algorithmic bias, the phenomenon whereby algorithms involved in hiring decisions, medical diagnoses, or image detection produce outcomes that unfairly disadvantage a particular social group. For example, when Amazon implemented an algorithmic recruiting tool to score new applicants’ resumes, the algorithm systematically rated female applicants worse than men, in large part because the algorithm was trained on resumes submitted over the previous 10 years that were disproportionately male.Footnote6 In other words, an algorithm trained on human bias will reproduce this bias.

Unlike humans, however, algorithmic bias can be readily deprogrammed, or as economist Sendhil Mullainathan puts it, “Biased algorithms are easier to fix than biased people.”Footnote7 Mullainathan and colleagues’ research showed that an algorithm used by UnitedHealth to score patients’ health risks systematically underscored black patients relative to white patients because it measured illness in terms of health-care costs (which are systematically lower for black versus white individuals, given that society spends less on black patients) (Obermeyer et al. Citation2019). However, once identified, the researchers could easily modify this feature of the algorithm to produce risk scores that were relatively unbiased. Other work has shown that algorithms can produce less racially biased outcomes (and more effective public safety outcomes) than human judges in terms of decisions about whether or not to grant bail to defendants awaiting trial (Kleinberg et al. Citation2018). As biased as algorithms can be, their biases appear less ingrained and more pliable than those of humans. Compounded by recent work showing that, in hiring and lending contexts, managers reject biased algorithms in favor of more biased humans, the suggestion that humans should remain at the helm of those functions is, at best, questionable (Cowgill, Dell’acqua, and Matz Citation2020).

Finally, consider the threat to cybersecurity. Although commentators have warnedFootnote8,Footnote9,Footnote10 that large language models add tools to the arsenals of hackers by democratizing cybercrime, most high-profile information leaks and hacks to date are ushered in by human beings with no reliance on AI (i.e. a disgruntled employee who knows the system's flaws and perpetrates an attack by remembering key passwords, or bad programmers who effectively enable future attacks by making wrong assumptions on their software use-cases—such as “no one would create a password that is 1,000,000 characters long” leading to a classical buffer overflow hack). In fact, AI is often the last bastion of defense against those hacks, identifying complex human coding mistakes early-on and correcting them.

Recently, national guardsman Jack Teixeira, who exposed highly classified material in an online chat group, did not require sophisticated technology to access sensitive documents—he was granted top secret clearance from the Pentagon. Further, a recent study conducted by IBM indicates that 95 percent of security breaches were caused by human errors such as biting on phishing scams or downloading malware.Footnote11 If anything, the most concerning cybersecurity risk currently posed by AI results from its increased reliance on human trained code, which is flawed. AI takes hackable human codes and uses them to generate new codes, spreading these human-generated errors further. The only concerning current cybersecurity attacks by AI involve AI that simulates human communication to dupe humans into revealing key information. Cybersecurity may represent a case in which technology is more likely to be the solution rather than the problem, with research indicating, for example, that humans working with AI outperform humans alone in detecting machine-manipulated media such as deepfakes (Groh et al. Citation2021).

Even when technology contributes to unwanted outcomes, humans are often the ones pressing the buttons. Consider the effect of AI on unemployment. The Future of Life Institute letter raises concerns that AI will eliminate jobs, yet whether or not to eliminate jobs is a choice that humans ultimately make. Just because AI can perform the jobs of, say, customer service representatives does not mean that companies should outsource these jobs to bots. In fact, research indicates that many customers would prefer to talk to a human than to a bot, even if it means waiting in a queue.Footnote12 Along similar lines, increasingly common statements that AI-based systems—like “the Internet,” “social media,” or the set of interconnected online functions referred to as “The Algorithm”—are destroying mental health,Footnote13 causing political polarization,Footnote14 or threatening democracyFootnote15 neglect an obvious fact: These systems are populated and run by human beings. Blaming technology lets people off the hook.

Although expressions of concern toward AI are invaluable in matching the excitement around new technology with caution, outsized news cycles around the threats of technology can distract from the threats of human beings. Recent research indicates that humans have a “finite pool of attention” such that “when we pay more attention to one threat, our attention to other threats decreases” (Sisco et al. Citation2023). So, as we contend with the rise of AI and its concomitant harms to privacy, human survival, and our relationship with truth itself, we must equally pay attention to the humans who are already well equipped to perpetrate these harms without the assistance of machines. Specifically, it has not escaped our notice that when engaging in a conversation about the risks of AI, the benchmark is often “is AI perfect in handling this task” (making critical decisions or guiding a self-driving car), rather than “is it better than humans.” The answer to the latter question in many cases, is that yes, AI can mitigate the risks to humanity.

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## 2nc/1nr

### \*\*\*uniqueness\*\*\*

### they say: “ai collapses now”

#### AI development is booming now

Jones 24 (Nicola Jones, contributing editor and writer for *Knowable* Magazine. “AI Report Shows ‘Startlingly Rapid’ Progress—And Ballooning Costs” 4/18/2024. Accessed 5/30/2024. https://www.scientificamerican.com/article/stanford-ai-index-rapid-progress/) wtk

The current AI boom — built on neural networks and machine-learning algorithms — dates back to the early 2010s. The field has since rapidly expanded. For example, the number of AI coding projects on GitHub, a common platform for sharing code, increased from about 800 in 2011 to 1.8 million last year. And journal publications about AI roughly tripled over this period, the report says.

Much of the cutting-edge work on AI is being done in industry: that sector produced 51 notable machine-learning systems last year, whereas academic researchers contributed 15. “Academic work is shifting to analysing the models coming out of companies — doing a deeper dive into their weaknesses,” says Raymond Mooney, director of the AI Lab at the University of Texas at Austin, who wasn’t involved in the report.

That includes developing tougher tests to assess the visual, mathematical and even moral-reasoning capabilities of large language models (LLMs), which power chatbots. One of the latest tests is the Graduate-Level Google-Proof Q&A Benchmark (GPQA), developed last year by a team including machine-learning researcher David Rein at New York University.

The GPQA, consisting of more than 400 multiple-choice questions, is tough: PhD-level scholars could correctly answer questions in their field 65% of the time. The same scholars, when attempting to answer questions outside their field, scored only 34%, despite having access to the Internet during the test (randomly selecting answers would yield a score of 25%). As of last year, AI systems scored about 30–40%. This year, Rein says, Claude 3 — the latest chatbot released by AI company Anthropic, based in San Francisco, California — scored about 60%. “The rate of progress is pretty shocking to a lot of people, me included,” Rein adds. “It’s quite difficult to make a benchmark that survives for more than a few years.”

#### AI innovation is expanding across every industry and region

Nikola L. Datzov, 23 – Assistant Professor of Law, University of North Dakota School of Law. “THE ROLE OF PATENT (IN)ELIGIBILITY IN PROMOTING ARTIFICIAL INTELLIGENCE INNOVATION” 92 UMKC L. Rev. 1 \*, Nexis Uni, accessed via University of Michigan //DH

Artificial intelligence is not just impacting our world, it is forever changing it. It is revolutionizing our way of life in a way that nobody alive has ever experienced. It not only aids humans in making decisions and completing tasks, AI can do so on its own with a high level of sophistication. The growth of AI [\*5] development will have "pervasive, far-reaching and global implications that are transforming societies...."14 "The broad scope of new products and services that build on AI technologies suggests that AI has the potential to fundamentally change how people perceive the world around them and live their daily lives."15 The USPTO expects AI to "revolutionize the world on the scale [equal to that] of [ . . . ] electricity."16

The rise of AI has been well documented in virtually every kind of publication, and for anyone not living under a proverbial rock, has become a wellknown even if poorly understood phenomenon. Indeed, iterations of market analysis reports substantiate the claims regarding the breadth and pace at which AI is infiltrating our society. The takeaway is that AI fever is catching on across the entire business world and impacting every industry, segment, and region. Although figures regarding the market size of AI vary wildly in different research findings, in part because of the definitional problem outlined in Parts IV.A and IV.B, one research finding remains consistent: AI demand and utilization is expected to undergo tremendous growth. So, the key realization from all of it is "how big a game changer AI is likely to be...."17 But the range of options appears to be clearly at one end of the sliding scale. It may be huge or may be ginormous, but it will be big.

One AI market analysis report found that the market size for worldwide AI is estimated to expand by more than 1,900% from $93.5 billion in 2021 to $1,811.8 billion by 2030 a compound annual growth rate (CAGR) of 38.1% with the U.S. being a dominating force in revenue share.18 Another research company found the global AI market to be $328.34 billion in 2021 with expected growth to $1,394.3 billion in 2029 (a CAGR of 20.1%), and, again, the U.S. to be a major contributor.19 Perhaps not surprisingly, an overwhelming number of the key companies leading AI development are based in the U.S.20 It is also worth noting that the AI tidal wave is just in its infancy.21 Thus, as advances in AI capabilities continue, and more businesses and people begin to understand what AI is and how powerful it can be, its adoption will only expand.

#### AI is not a bubble—investment patterns are totally different than previous tech bubbles

Sloan 24 (Allan Sloan, award-winning journalist and contributor to Yahoo Finance. “I was there for the dot-com bust. Here's why the AI boom isn't the same.” 3/24/2024. Accessed 6/15/2024. [https://finance.yahoo.com/news/i-was-there-for-the-dot-com-bust-heres-why-the-ai-boom-isnt-the-same-175944680.html) wtk](https://finance.yahoo.com/news/i-was-there-for-the-dot-com-bust-heres-why-the-ai-boom-isnt-the-same-175944680.html%29wtk)

But as someone for whom the dot-com bubble was current events rather than history, I can tell you that today’s market isn’t remotely like the dot-com bubble market was.

How can I say such a thing?

It’s because the investing world has changed fundamentally from what it was in the dot-com bubble days.

Back then, besotted people (I wouldn’t call them investors) paid whatever the market was asking for ridiculously priced stocks like Pets.com, Boo.com, and Webvan, which ultimately croaked and left shareholders with nothing.

Why were people loading up with individual stocks? The fear of missing out on the internet wave certainly kept people piling money onto the table as they looked to quintuple their money. But the main reason was that back in 2000, people simply didn’t invest like they do now, as broad-based index funds were pretty much nonexistent compared to today.

So people who had bought into the dot-com hype — and there were plenty of them — mostly bought individual stocks.

These days, people talk — mistakenly, in my opinion — about the S&P 500 (^GSPC) being in a bubble, given the concentration of a handful of stocks powering the index. Back then, the Nasdaq market was the hot thing. And boy, did that bubble burst.

One of the most bubbly events took place on Jan. 10, 2000. That’s when Gerald Levin had Time Warner, the media and entertainment company that he was running, do the dumbest deal in history: selling itself to America Online in return for AOL stock, which was a dot-com megabubble.

(You may have read about this deal lately because Levin died last week and many obituaries mentioned his AOL debacle.)

Two months after the Time Warner-AOL deal was announced — on Mar. 10, 2000 — the Nasdaq, which had more than doubled from a year earlier, hit its closing peak of 5,048.62.

Then the slide began. And kept on going. And going. And going.

Ultimately, the Nasdaq bottomed out at 1,114.11 on Oct. 9, 2002. That was 78% below its high. It didn’t score another new high until April 23, 2015 — more than 15 years after the previous peak.

Even one of the high-quality companies that survived the bubble — Cisco Systems — hasn’t been a great investment. It was recently trading for about 30% less than it fetched on Peak Bubble Day.

Barring a totally unforeseen catastrophe, can you see the S&P losing 78% of its value in a little over two and a half years from now? I sure can’t see that happening. Especially given the trillions of dollars currently sloshing around in S&P index funds, with more money flowing in on a regular basis from employers and employees participating in benefit plans and from institutional investors such as pension funds for whom the S&P is a benchmark.

### they say: “ai patents rejected”

#### Subject matter eligibility exclusions reduce the cost of defending against patent trolls

Maxwell H. Terry, 2023 – Managing Editor, Minnesota Law Review, Vol. 108 J.D. Candidate 2024, University of Minnesota Law School. “Hello, World? Domestic Software Patent Protection Stands Alone Due to Uncertain Subject Matter Eligibility Jurisprudence” 108 Minn. L. Rev. 403, Nexis Uni, Accessed via University of Michigan //DH

But perhaps the federal courts' subject matter eligibility constructions are not all bad. One common benefit cited by Alice/Mayo supporters is that stricter subject matter eligibility standards better help defendants protect themselves from frivolous lawsuits brought by "patent trolls."123 As opposed to other challenges to a patent's validity, such as novelty or nonobviousness challenges,124 subject matter eligibility issues under §101 are often resolved at the motion to dismiss stage of litigation.125 Parties who often find themselves as defendants in court are thus more likely to favor the current jurisprudence to potentially save litigation costs.126

#### The Alice framework substantially reduced patent trolls – the plan reverses it

Joe Mullin, 24 - is a senior policy analyst at the Electronic Frontier Foundation, where he works on patents, encryption, platform liability, and free expression online. “Congress Must Stop Pushing Bills That Will Benefit Patent Trolls” 3/12, <https://www.eff.org/deeplinks/2024/03/congress-must-stop-pushing-bills-will-benefit-patent-trolls?scrlybrkr=241c98ff> //DH

The U.S. Senate is moving forward with two bills that would enrich patent trolls, patent system insiders, and a few large companies that rely on flimsy patents, at the expense of everyone else.

One bill, the Patent Eligibility Restoration Act (PERA) would bring back some of the worst software patents we’ve seen, and even re-introduce types of patents on human genes that were banned years ago. Meanwhile, a similar group of senators is trying to push forward the PREVAIL Act (S. 2220), which would shut out most of the public from even petitioning the government to reconsider wrongly granted patents.

Patent trolls are companies that don’t focus on making products or selling services. Instead, they collect patents, then use them to threaten or sue other companies and individuals. They’re not a niche problem; patent trolls filed the majority of patent lawsuits last year and for all the years in which we have good data. In the tech sector, they file more than 80% of the lawsuits. These do-nothing companies continue to be vigorous users of the patent system, and they’ll be the big winners under the two bills the U.S. Senate is considering pushing forward.

Don’t Bring Back “Do It On A Computer” Patents

The Patent Eligibility Restoration Act, or PERA, would overturn key legal precedents that we all rely on to kick the worst-of-the-worst patents out of the system. PERA would throw out a landmark Supreme Court ruling called the Alice v. CLS Bank case, which made it clear that patents can’t just claim basic business or cultural processes by adding generic computer language.

The Alice rules are what—finally—allowed courts to throw out the most ridiculous “do it on a computer” software patents at an early stage. Under the Alice test, courts threw out patents on “matchmaking”, online picture menus, scavenger hunts, and online photo contests.

The rules under Alice are clear, fair, and they work. It hasn’t stopped patent trolling, because there are so many patent owners willing to ask for nuisance-value settlements that are far below the cost of legal defense. It’s not perfect, and it hasn’t ended patent trolling. But Alice has done a good job of saving everyday internet users from some of the worst patent claims.

PERA would allow patents like the outrageous one brought forward in the Alice v. CLS Bank case, which claimed the idea of having a third party clear financial transactions—but on a computer. A patent on ordering restaurant food through a mobile phone, which was used to sue more than 100 restaurants, hotels, and fast-food chains before it was finally thrown out under the Alice rules, could survive if PERA becomes law.

### \*\*\*patents links\*\*\*

### they say: “patents don’t undermine innovation”

#### Increasing patent eligibility collapses AI innovation

Nikola L. Datzov, 23 – Assistant Professor of Law, University of North Dakota School of Law. “THE ROLE OF PATENT (IN)ELIGIBILITY IN PROMOTING ARTIFICIAL INTELLIGENCE INNOVATION” 92 UMKC L. Rev. 1 \*, Nexis Uni, accessed via University of Michigan //DH

The article concludes by emphasizing that, particularly in the types of inventions at issue in AI, a meaningful subject matter eligibility threshold is critical to allow for further innovation because allowing broader patents or functional claiming could harm rather than promote innovation in the emerging field of AI. Although narrower patent eligibility may reduce some investment in this space (impacting smaller companies and startups, primarily), the existing restrictions to patent eligibility relating to AI still offer meaningful opportunities for open innovation by reducing the risks that broad exclusive monopolies will impede efforts to advance the "basic building blocks" of AI innovation. A change in the balance of the current framework should be accomplished via scalpel rather than machete. Indeed, a sudden, significant change to AI patent eligibility could have the exact opposite effect of its intent and serve to throw current positive AI innovation trends into a tailspin. Moreover, there are areas beyond § 101 that require attention, which could prove to be a better driver of innovation in the field of AI.

#### Strengthening AI patents increases patent trolls that block innovation

Clark Asay, 20 - Professor of Law, BYU Law School “ARTIFICIAL STUPIDITY”, 61 Wm. & Mary L. Rev. 1187, nexis uni //DH

One possibility for addressing some of the issues discussed above is to strengthen AI patent rights. Strengthening AI-related patent rights could theoretically incentivize parties to undertake more far-reaching AI innovation, 377as well as enable greater economic specialization by helping reduce market-based transaction costs. 378That greater economic specialization, in turn, could help the AI industry disaggregate, thereby increasing competitive forces therein and thus improving overall levels of AI innovation. 379

The most obvious route to strengthening patents in the AI space lies in reforming the patentable subject matter requirement. In fact, Congress is currently investigating such a solution. 380 Furthermore, the current USPTO director has also recently attempted to provide clearer patentable subject matter guidance so that parties seeking patents may face fewer patentable subject matter hurdles. 381

The main thrust of such changes seems to center on making patentable subject matter more expansive, perhaps even returning the state of the law back to what it was before the Supreme Court most recently intervened. 382 Yet while such a change may make AI [\*1248] patenting more feasible and the resulting patents more valuable, that change may reintroduce many of the problems the Supreme Court sought to address in joining the patentable subject matter discussion in the first place.

For instance, as previously mentioned, prior to the Supreme Court's decisions, software patent owners often drafted their patent claims so as to cover broad functions rather than specific technological improvements. 383 This meant that the software marketplace was burdened with many overbroad patents that implicated technologies already in use for some time. 384 The Supreme Court's decisions were meant at least in part to push back against this trend by strengthening the exceptions to the patentable subject matter requirement. 385 And while the Court may have expanded those exceptions too far, as some claim, 386 it remains dubious that returning back to the state of things prior to the Court's decisions is a better way forward.

Indeed, the state of software patenting prior to the Supreme Court's patentable subject matter decisions had significantly contributed to the rise of so-called patent trolls, or parties that do not practice their patents, instead suing others that do. 387While there is certainly debate about whether such parties provide any [\*1249] social value, 388 there is a good amount of evidence suggesting that in the net they impose an overall tax on innovating parties. 389

Since the Court's patentable subject matter decisions, the uproar over patent trolls has died down some. 390 Patent trolling has become less pronounced, and whatever ills it entails seem to have lessened. 391 While a number of legal changes account for this state of affairs, 392 the Supreme Court's patentable subject matter decisions, by making broad software patents more difficult to obtain and enforce, almost certainly had something to do with it. 393

Hence, returning the state of patentable subject matter law to how it was prior to the Supreme Court's decisions would run the risk of reinvigorating the patent troll market, particularly in the AI space. Indeed, as AI continues to envelop every sector of society, the number of possible patent troll targets would increase exponentially. 394 And by raising the overall costs of carrying out AI research and development without providing a clear, offsetting benefit, such a development would arguably impede AI innovation, not promote it.

### they say: “other requirements prevent patent surge”

#### The plan is easily manipulated—“clever claiming” will cause an increase in weak patent claims

David Jones, 2024 – executive director of the High Tech Inventors Alliance. Statement Before the Subcommittee on Intellectual Property U.S. Senate Committee on the Judiciary, Hearing on “The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System” 1/24, <https://www.judiciary.senate.gov/imo/media/doc/2024-01-23_-_testimony_-_jones.pdf> //DH

b. Eligibility under PERA would be easily manipulated by means of “clever claiming.”

Unfortunately, patent eligibility under PERA would be easily manipulated through clever claiming, which substantially exacerbates these concerns. As described above, the bill’s test would make eligible “any process” that cannot practically be performed without the use of a machine or manufacture. In practice, the “process” at issue in any particular case would be the process that is claimed in the application or patent in question. Because applicants are free to draft their claims using whatever language they see fit, a literal reading of PERA would allow an applicant to transform virtually any nontechnical process into a patent eligible invention merely by including an express requirement in the claim that a particular machine or manufacture be used to perform one or more of the steps of the claimed process. For example, a process for proposing marriage would be eligible under PERA as long as the process, as claimed, requires the presentation of an engagement ring (which is a manufacture).

In modern life, there are very few human activities that do not involve a machine or manufacture. The consequence is that almost any activity could be claimed in a manner that makes it patent eligible under a reading of PERA that interprets its words and phrases according to their customary meaning— which is how the courts, and particularly the Supreme Court, would generally construe a new statute.20

#### Specifically, PERA’s limitations on mathematical formulas and mental processes are too vague – they won’t stop overpatenting

David Jones, 2024 – executive director of the High Tech Inventors Alliance. Statement Before the Subcommittee on Intellectual Property U.S. Senate Committee on the Judiciary, Hearing on “The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System” 1/24, <https://www.judiciary.senate.gov/imo/media/doc/2024-01-23_-_testimony_-_jones.pdf> //DH

c. PERA’s other limitations on patent eligibility would be equally ineffective.

The only other limitations contained in PERA that would typically be relevant to the types of patents usually encountered outside of the life sciences are the exclusions relating to “mathematical formula[s]” and “mental process[es].”

However, PERA would exclude a mathematic formula only if it were “claimed as such” and not as a “part” of a “useful process, machine, manufacture, or composition of matter, or any useful improvement thereof.” Read literally, this would appear to exclude a mathematical formula only if it were claimed “as such” (i.e., as a “mathematical formula,” which is generally understood to mean a mathematical relationship or rule expressed using mathematical symbols) and, even then, only if claimed completely on its own rather than as applied in a process or by a machine.

Similarly, a “mental process” would be excluded only if it is “performed solely in the human mind” and only if “claimed as such.” Therefore, PERA would exclude only those mental processes that are claimed as being performed solely in the mind. Thus, any mental process would be rendered eligible simply by, for example, appending a requirement that the result be recorded outside the mind. In conjunction with the “claimed as such” phrase, this language could be read to make purely mental processes patent eligible so long as they were not explicitly claimed as being performed solely in the human mind. In other words, the mere silence of a claim as to whether a process was to be performed solely in the mind or on a computer would be sufficient to establish the patent eligibility of a purely mental process.

#### The ‘practically performed’ requirement of PERA is expansive and makes ANY non-technological activity patentable

David Jones, 2024 – executive director of the High Tech Inventors Alliance. Statement Before the Subcommittee on Intellectual Property U.S. Senate Committee on the Judiciary, Hearing on “The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System” 1/24, <https://www.judiciary.senate.gov/imo/media/doc/2024-01-23_-_testimony_-_jones.pdf> //DH

PERA would, for the first time in our nation’s history, amend the Patent Act to broadly allow the patenting of nontechnological innovation. The literal text of PERA would expand patenting and patent infringement liability to any area of human activity that uses or relies on any type of machine or manufacture—from computers and routers to pencils and paper—or to any subject matter that the patentee has simply chosen to claim in conjunction with using technology. The hard experience of the pre-Alice era shows that this would not only lead to absurd patents but would do real damage to the U.S. economy.

a. The proposed “practically performed” test is fundamentally flawed.

PERA would add a subsection (b)(1)(B) to § 101 that would provide that a process that is “substantially economic, financial, business, social, cultural, or artistic” in nature can nevertheless be patented if “the process cannot practically be performed without the use of a machine or manufacture.”

To my knowledge, this type of “practically performed” test has no basis in the over two centuries of American patent law. As a result, there is no caselaw or doctrinal guideposts that tell us what “practically be performed” means. That means that neither patent examiners nor the courts possess any significant expertise in assessing whether a claimed process can be “practically performed” without the aid of a machine or manufacture.

In addition, whether something can be done “practically” is an inherently subjective—and, therefore, uncertain—test. It is difficult to imagine how this proposed test would not lead to greater inconsistency and less predictability in the application of section 101 relative to current law.

Equally important, it is not at all clear why patent eligibility should turn on whether something could be done “practically” without the aid of some artifact of human technology (i.e., without a machine or manufacture). This does not resemble any traditional theory of patent eligibility of which I am aware and seems certain to produce outcomes that are completely detached from the patent system’s purpose of incentivizing advances in technology.

While there is significant uncertainty about how the “practically performed” test would be applied, what does seem certain is that PERA would expand patent eligibility to potentially include any nontechnological process. Statements made by some of the advocates of PERA, including a former appellate judge, appear to indicate that they believe—as do I—that the “practically performed” test would result in a nontechnological process’s being eligible for patenting if, in practice, it would be expected to be performed at a speed, accuracy, or scale that would normally require the use of a machine.19

This would mean that, if a process was of a type that would normally be considered in the real world to—as a practical matter—require the use of a telephone, a computer, or the internet—or even a pen to record or communicate information—it would be patent eligible. Given the volume of human activity that is normally conducted with the use of such devices, this would result in an enormous expansion that would result in the scope of patent eligibility being far broader than it ever has been at any time in the history of the United States or—to my knowledge—of any other country.

However, even this description understates the scope of patent eligibility under PERA because it focuses only on the subset of machines used for processing and communicating information. PERA is not so limited; it would extend eligibility to any process that requires any type of machine or any type of “manufacture” (i.e., essentially anything that was made by a human being, as opposed to being found in nature). Although this may not have been the drafters’ intent, the literal text of PERA would appear to extend eligibility to almost any type of modern process imaginable, especially if the process in question was of a type that would be performed at an industrial or commercial scale.

Take, for example, the process of running a particular offensive play in the context of a football game. Would a jury conclude that it would be practical, in the real world, to perform an offensive football play without using a football (which is a manufacture)? Or would a USPTO examiner conclude that it would be practical, in the real world, to conduct the type of marriage ceremony that is customary in this country without the use of a wedding ring (which is also a manufacture)? If not, then things like football plays and traditional wedding ceremonies—along with a host of other human activities—would be eligible for patenting under PERA.

### \*\*\*copyright links\*\*\*

### they say: “deep pockets”

#### The plan stops the vast majority of AI development

Lindberg 23 (Van Lindberg, intellectual property attorney at Taylor English Duma LLP, “Artificial Intelligence and Copyright” comments by Van Lindberg before the U.S. Copyright Office, 10/30/2023. Accessed 5/25/2024. https://www.regulations.gov/comment/COLC-2023-0006-9168) wtk

A licensing requirement for AI systems would stop most AI research and development in the United States. The vast number of training inputs would make licensing infeasible for anyone but the largest entities. In particular, a large portion of all AI system development has taken place in the open source community. Essentially all AI tooling is open source, and open source developers are the cause of many fundamental advances in AI development and deployment.

But these open source developers do not usually have institutions supporting them or rights clearance offices. They are individuals that develop and contribute source code for personal reasons. If open source developers needed to engage in rights clearances for every AI training project, all AI development would abruptly become too expensive and difficult for this large and essential development population.

#### The plan is an existential threat to generative AI

Jahner 24 (Kyle Jahner, IP Reporter for Bloomberg Law, “AI Copyright Bill Thrills Artists. Developers Call It Unworkable” 4/25/2024. Accessed 6/15/2024. [https://news.bloomberglaw.com/ip-law/ai-copyright-bill-thrills-artists-developers-call-it-unworkable) wtk](https://news.bloomberglaw.com/ip-law/ai-copyright-bill-thrills-artists-developers-call-it-unworkable%29wtk)

Whether using millions of works to train large language models infringes copyrights, regardless of the AI’s output, is also the subject of ongoing litigation. If it does, the practicality of even identifying, collecting, and cataloging all the works ingested by an AI model—much less tracking down and paying rightsholders—presents daunting logistical challenges that, along with the threat of royalties, could pose an existential threat to the emerging technologies.

“I don’t even really understand what he’s trying to do,” intellectual property and technology law professor Eric Goldman of the University of Santa Clara said of Schiff and the bill. “Trying to disclose your sources when building an AI generative index—it’s not possible.”

The more material AI trains on, the more powerful and useful it becomes, Goldman said. He wondered how it would be possible to find anything on a disclosed list of billions of URLs, and what the possible benefit could be—other than an unimaginably vast “roadmap for litigation.”

ChatGPT maker OpenAI Inc.'s attorneys have described licensing all training data as “impossible.” But AI designers are using copyright-protected work without permission, said Jamie Simpson, chief policy officer and counsel for the Council for Innovation Promotion, a group that advocates for strong IP protections.

### they say: “plan increases ai value”

#### The plan kills innovation and monopolizes AI which makes it worse

Sternburg et al. 23 (Ali Sternburg, Vice President, Information Policy; Josh Landau, Senior Counsel, Innovation Policy; Erin Sakalis, Law Clerk; all for the Computer & Communications Industry Association (CCIA). “Artificial Intelligence and Copyright: Comments of the Computer & Communications Industry Association (CCIA), 10/30/2023. Accessed 5/25/2023. Downloaded from https://www.regulations.gov/comment/COLC-2023-0006-8740) wtk

Licensing requirements would be economically inefficient and difficult to enforce. The advancement of AI systems is consistent with the goals of intellectual property protection under the Constitution — to promote progress, creativity, and innovation. AI system developers are incentivized to advance their technologies by the widespread adoption and interest in these technologies. If they are limited to a certain set of licensed materials, they will have fewer capabilities and compel fewer users. Furthermore, with the sheer volume of content produced each day, it would be nearly impossible for AI systems to remain current, which is an important advantage to using open-source AI tools.

This could also result in anti-competitive behavior from entities with more resources to license more materials than their competitors. Even if such licensing is non-exclusive, it will create a network effect, compelling more users to gravitate towards the AI system with access to the most training materials, and consequently the most capabilities. This would both discourage new entrants and potentially create a new monopoly on creative output, which could be harmful to innovation and progress as a whole. Mandating licensing agreements for generative AI would lead to inferior technologies, fewer competitors in the marketplace and hindered innovation generally.

#### Double bind—either the aff decimates the AI industry or they don’t solve the case

Damle 23 (Sy Damle, Partner at Latham & Watkins LLP; former General Counsel of the U.S. Copyright Office. “Artificial intelligence and intellectual property: Part 1 – Interoperability of AI and copyright law” Witness testimony before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet. 5/17/2023. Accessed 5/14/2024. Transcript downloaded from <https://judiciary.house.gov/committee-activity/hearings/artificial-intelligence-and-intellectual-property-part-i>) wtk \*edited for ableist language

A second, related challenge is that any statutory or collective licensing scheme—no matter how carefully designed—would find itself caught between two difficult-to-reconcile policy objectives: (1) to provide meaningful compensation to individual artists and rightsholders, and (2) to ensure that AI companies can continue to thrive in the United States. A statutory or collective licensing scheme would presumably require any AI developer to pay some fixed or floating rate to compensate the copyright owners for the use of each piece of training data. And because the goal of the proposed collective licensing scheme would be to protect individual “human creators and artists,”65 the rate paid for the use of any individual works would have to be financially significant. A licensing scheme that led to individual creators receiving monthly royalty checks of a few cents from the AI developers who used their works for training purposes would do nothing to protect “human creators” or the “[f]uture of journalism, literature, and the arts.”66

But AI models require many billions of pieces of training data to be effective. As a result, it will be extremely challenging to set a royalty rate that provides meaningful compensation to individual copyright owners without imposing a ~~crippling[~~devastating~~]~~ financial burden on AI developers, who would have to make many billions of rate payments for the works they use. If the royalty rate were set too high, it would either bankrupt the United States AI industry—eliminating our ability to compete on the international stage—or push all but the largest companies out of the market (or out of the country). It would, in other words, be extraordinarily challenging to set a royalty rate that would both compensate individual creators and encourage the growth and development of a domestic AI industry. Developers who are unable to afford the cost of AI development in the United States would surely move their efforts to other countries with more permissible copyright frameworks.67

#### Restrictions on Gen AI spill over to other AI applications

Mantegna 24 (Micaela Mantegna, Affiliate at the Berkman Klein Center at Harvard University (United States) and the Center for Technology and Society at San Andres University (Argentina). “ARTificial: Why Copyright Is Not the Right Policy Tool to Deal with Generative AI” *Yale Law Journal* Volume 133, 4/22/2024. Accessed 5/27/2024. https://www.yalelawjournal.org/forum/artificial-why-copyright-is-not-the-right-policy-tool-to-deal-with-generative-ai) wtk

5. GAI Copyright Legislation Could Impact the AI Ecosystem as a Whole

Related to the prior point, the implications of establishing copyright rules specifically tailored to GAI could have ripple effects far beyond that purpose and influence the entire AI-innovation ecosystem. Without disregarding the fact that a creative work is different from personal or medical data, strict copyright constraints on data collection and training might collaterally impact other fields of AI research if a general rule could be considered applicable to both. This, in turn, could hinder the development of beneficial AI applications. For example, educational AI tools that extract inferences to learn how to design personalized Ed-assistants or provide tools for neurodivergent children could help level the playing field in terms of access to knowledge and equitable classrooms. But copyright constraints could easily stifle their development. Restrictive copyright laws, initially intended to regulate GAI, could overreach and unintentionally end up limiting the scope and efficacy of beneficial AI in other fields, hindering advancements in personalized learning, diagnosis, and assistance, among others.

### they say: “model collapse hurts ai”

#### If having access to high quality data is important, then the aff makes that worse by limiting companies access to information by requiring licenses

Rao 23 (Dana Rao, Executive Vice President, General Counsel and Chief Trust Officer Adobe Inc. “Artificial Intelligence and Intellectual Property – Part II: Copyright” Testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on Intellectual Property. 7/12/2023. Accessed 5/17/2023. https://www.judiciary.senate.gov/download/2023-07-12-pm-testimony-rao) wtk

AI is only as good as the data on which it is trained, which is why the question of data access is important to companies and organizations building foundation models. Like the human brain, AI learns from the experiences or information you give it. And like the human brain, the more information you give it, the better it will perform. An AI system trained on a small dataset is more at risk of producing wrong or unsatisfactory results, or reproducing harmful biases that exist within the dataset.

Again, think of it like the human brain. If you’d never been taught what a car is, it would be hard to accurately depict one or answer a question about what it is or what it does. To produce accurate results, AI needs a large dataset representing the universe of possible answers to learn from. Additionally, a narrow dataset can lead to unfair bias. If you’ve only ever been taught that lawyers are men, you are likely to conjure up an image in your head of a man when someone is talking about a lawyer, even though over half of the graduates of law schools are women. AI works the same way. Training on a larger dataset can help ensure you capture a broader set of perspectives in the data itself, so that when you type in “lawyer,” you will see a result set that reflects the society in which you live. Given those technical realities, governments need to support access to data to ensure that AI innovation can flourish both accurately and responsibly.

### \*\*\*trademark links\*\*\*

### they say: “safe harbor turn”

#### SHOP SAFE is a proxy war for copyright protections – that will expand liability for copyright infringement

Eric Goldman, 2021 – professor of law at Santa Clara Law. “The SHOP SAFE Act Is a Terrible Bill That Will Eliminate Online Marketplaces” Technology and Marketing Law Blog, 9/28, https://blog.ericgoldman.org/archives/2021/09/the-shop-safe-act-is-a-terrible-bill-that-will-eliminate-online-marketplaces.htm //DH

**“this bill” refers to the SHOP SAFE Act**

Repudiation of the 512 Deal. The DMCA online safe harbor struck a grand bargain: online copyright enforcement responsibility would be a shared responsibility. Copyright owners would identify infringing items; service providers would then remove those items. There has never been a trademark equivalent of the DMCA, but the Tiffany v. eBay case has de facto created a similar balance. Unsurprisingly, copyright owners hate the DMCA shared responsibility, and they have tried to undermine that deal through lawfare in courts. Trademark owners similarly want a different deal.

This bill, as Congress’ first trademark complement to the DMCA, emphatically repudiates the DMCA deal. It gives trademark owners everything they could possibly want: turning online marketplaces into their trademark enforcement deputies, getting them to proactively screen for infringing items, making them wipe out listings without having to send listing-by-listing notices, upfront disclosure of the information needed to sue the sellers (rather than going through the 512(h) subpoena process), and permanent staydown of allegedly recidivist sellers.

Not only does this represent terrible trademark policy, but it’s a preview of how copyright owners will force DMCA safe harbor reform. They will want all of the same things: proactive monitoring of infringement, no need to send item-specific notices, authentication of users before they can upload, and staydown requirements. The SHOP SAFE Act isn’t just about counterfeits; it’s a proxy war for the next round of online copyright reform, and the open Internet doesn’t have a chance of surviving either reform.

#### The Tiffany case is based upon the Sony precedent for copyright – the two decisions are linked. Our 1nc Google evidence says weakening the Sony precedent destroys AI

Andrew Lehrer, 2012 – J.D., Boston University School of Law “TIFFANY V. EBAY: ITS IMPACT AND IMPLICATIONS ON THE DOCTRINES OF SECONDARY TRADEMARK AND COPYRIGHT INFRINGEMENT” B.U. J. SCI. & TECH. L. [Vol. 18, <https://www.bu.edu/jostl/files/2015/02/Lehrer_web.pdf> //DH

Tiffany, on appeal, argued that the district court misinterpreted the Inwood standard of “knows or has reason to know.”136 Tiffany believed that under the Inwood standard, eBay was liable for contributory trademark infringement if”all of the knowledge, when taken together, puts [eBay] on notice that there is a substantial problem of trademark infringement.”137 Using this standard, eBay would likely be liable, given the results of Tiffany’s “buying program” in 2004 and 2005, the hundreds of thousands of NOCIs that Tiffany filed with eBay, and the numerous complaints from buyers to eBay about receiving counterfeit Tiffany items.138 After all, Tiffany argued, these pieces of evidence “established eBay’s knowledge of the widespread sale of counterfeit Tiffany products on its website” and “despite that knowledge, [eBay] continued to make its services available to infringing sellers.”139

The Second Circuit disagreed and sided firmly with the district court, holding that “[f]or contributory trademark infringement liability to lie, a service provider must have more than a general knowledge or reason to know that its service is being used to sell counterfeit goods. Some contemporary knowledge of which particular listings are infringing or will infringe in the future is necessary.”140 In support of this conclusion, the Second Circuit looked to the Supreme Court’s discussion of Inwood in Sony Corp. of America v. Universal City Studios, Inc. Sony a well-known Supreme Court copyright ca se, was the only Supreme Court case to interpret the knowledge prong of the Inwood test at issue in Tiffany.141 In Sony the Court refused to hold Sony contributorily liable under the Inwood test when some consumers used Sony’s video tape recorders to infringe certain copyrighted television programs, stating that “Sony certainly does not ‘intentionally induce[e]’ its customers to make infringing uses of . . . copyrights, nor does it supply its products to identified individuals known by it to be engaging in continuing infringement of . . . copyrights.”142

### link extension—contributory liability hurts ai

#### Expanding contributory liability in copyright will end AI innovation

Jess Miers and Zoe Philadelphia-Kossak, 2023 - Jess Miers is Legal Advocacy Counsel for Chamber of Progress and Adjunct Lecturer at Santa Clara University School of Law. Zoe Philadelphia-Kossak is a Google Public Policy Fellow for Chamber of Progress and a second year law student at Santa Clara University School of Law. “PROVIDER LIABILITY FOR GENERATIVE AI COMPANIES” <https://www.pymnts.com/wp-content/uploads/2023/12/2-PROVIDER-LIABILITY-FOR-GENERATIVE-AI-COMPANIES-Jess-Miers-Zoe-Philadelphia-Kossak.pdf> //DH

Contributory liability is another concern for providers of Generative AI. Plaintiffs must demonstrate that the defendant company was aware of the infringing activity and played a substantial role in the infringement. For claims against online services with substantial non-infringing uses, courts typically require a showing of actual knowledge of specific acts of infringement.55

Courts may also evaluate whether the service sufficiently addressed infringing content upon receiving actual knowledge of the infringement, especially if the identified outputs can be consistently recreated across multiple uses, sessions, and users. 56 It’s unclear though how Generative AI companies can effectively mitigate infringement aside from expanding their models’ training data. Rights holders might also issue numerous takedown requests for works identified in training sets, but such mass removals would undermine the AI’s effectiveness.

#### Exapnding copyright contributory liability undermines startup investment in AI

Kate Tummarello, 2023 - on behalf of Engine, a non-profit technology policy, research, and advocacy organization “Re: Comments of Engine to the U.S. Copyright Office’s Notice of Inquiry on Artificial Intelligence and Copyright, Docket No. 2023-6” 10/30, <https://downloads.regulations.gov/COLC-2023-0006-9000/attachment_1.pdf> //DH

In instances where a user is directing an AI model to generate content that infringes existing copyrighted material and then uses that generated content in some way that’s not protected by fair use, the developer of the AI tool should not face contributory liability. Like the copying equipment at the heart of Sony, generative AI “is widely used for legitimate, unobjectionable purposes,” and, under that precedent, “need merely be capable of substantial noninfringing uses.”42 Even generative AI models that have a specific purpose—such as a customer service AI chatbot—do not set out to generate infringing content, and the overwhelming majority of uses will not involve generating content that infringes copyrighted material. But if a developer faced any kind of liability and the risk of hefty legal fees and statutory damages if its AI generated copyright infringing content even once, AI developers would face unreasonable risk and expense, significantly chilling startup participation in the ecosystem.

### \*\*\*Impact\*\*\*

### they say: “ai can’t solve social problems”

#### AI solves every existential risk—larger capacity for problem-solving

Salmon et al. 21 (Paul M. Salmon is a Professor in Human Factors and is the creator of the Human Factors and Sociotechnical Systems at the University of the Sunshine Coast. Tony Carden, Centre for Human Factors and Sociotechnical Systems, University of the Sunshine Coast, Maroochydore DC, Queensland, Australia. Peter A. Hancock, Department of Psychology and Institute for Simulation and Training, University of Central Florida, Orlando, Florida, USA. “Putting the humanity into inhuman systems: How human factors and ergonomics can be used to manage the risks associated with artificial general intelligence” *Human Factors and Ergonomics in Manufacturing & Service Industries* Volume 31, Issue 2, March 2021, pp. 223-236. Accessed 5/30/2024 via UMich online library. https://doi.org/10.1002/hfm.20883) wtk

It is suggested that AGI systems could revolutionize humanity. Projected benefits include curing disease, revolutionizing the nature of work, and solving complex environmental issues such as food security, oceanic degradation, and even global warming. In prospect, the effect on humankind promises to be even greater than both the industrial and digital revolutions combined. However, it is widely acknowledged that failure to implement appropriate controls and constraints could lead to catastrophic consequences (Amodei et al., 2016; Bostrom, 2014; 2017; Brundage et al., 2018; Omohundro, 2014; Steinhardt, 2015). It has been argued, for example, that untrammeled and uncontrolled AGI could even pose an existential threat to humanity (Bostrom, 2014; Hancock, 2017).

As the discipline that is focussed on enhancing human wellbeing, HFE clearly has an important and even determining role in the design, implementation, and operation of AGI systems. Despite this, there has been little discussion as to how HFE can and should contribute. This is reflected in a disturbing lacuna of HFE work in this area. Also, given the fact that questions are being raised regarding the suitability of HFE methods for today's complex systems (e.g., Salmon et al., 2017; Walker et al., 2017), it is important to question whether HFE is sufficiently equipped to contribute effectively to the design of systems that are first-of-their-kind, and necessarily nonhuman in nature. Context specific and context relevant theoretical and methodological development may be required for the HFE toolkit to be suitable for such applications.

In this article, we offer an agenda for HFE and its purposed-directed impacts on AGI. We discuss the role that HFE must adopt to ensure that the far-reaching benefits of AGI are realized without problematic threat to society. We seek to achieve this by examining current state-of-the-art HFE methods, and distinguishing their potential in the design, implementation, and operation of a prospective AGI system, as recently described by Tegmark (2017). This “ethnographic science fiction” approach is required as AGI systems do not yet exist, but the potential benefits and risks are so significant that work is required immediately. Further, such an approach is an acknowledged avenue for discussing future global issues where uncertainty exists (e.g., Raven, 2017). This study therefore acts to set a HFE agenda framed within in an “envisioned world” perspective. In doing so, we identify key areas where developments and extensions to HFE methods are required. We articulate a research agenda which describes the work required to situate HFE within wider multi-disciplinary efforts aimed at creating safe, efficient, effective, and controllable AGI systems.

2 UNDERSTANDING AGI

The term “Artificial Intelligence” was first coined in the middle of the 1950s by John McCarthy, an American scientist working at Dartmouth College. The formal field of AI was established soon after. Hard upon the intervening decades of research and development, ANI systems are now well established. Such systems possess intelligence in relation to specific tasks and remain constrained to their particular domain of operation. Widely known examples include Facebook's facial recognition system, Apple's personal assistant “Siri,” and Tesla's self-driving vehicles (Kaplan & Haenlein, 2018). In contrast, AGI systems will almost certainly be more broadly focussed and will equal or exceed human intelligence in wide swathes of cognitive capacities (Everitt et al., 2018; Gurkaynak et al., 2016). AGIs are expected to be able to plan, reason, make decisions and solve problems autonomously; even for tasks that they were not initially designed to address (Kaplan & Haenlein, 2018). A summary of the key differences between ANI and AGI systems is presented in Table 1.

[table 1 omitted]

2.1 The benefits and risks associated with AGI

AGI is a dual use technology in that it will be used both for good and bad. First and foremost, if AGI realizes its potential and surpasses human intelligence, there is no doubt that it could bring significant benefits to humanity (Bostrom, 2014; Yudkowsky, 2008; 2012). Postulated benefits relate mainly to systems which exceed human intelligence and develop a capacity to respond to the panoply of issues that threaten either human health and wellbeing, the earth, or our future existence globally. These include climate change and environmental degradation, overpopulation, pandemics, food and water security, misuse of the internet and social media, terrorism, cybercrime, nuclear warfare, inequality, antimicrobial resistance, and instability in the world's economy. In addition, it has also been suggested that AGI will help with the onslaught of forthcoming new and emergent issues such as automation replacing human work, the genetic modification of humans, an ageing population, and otherworld settling (FLI, 2018).

#### AI is key to unlock all beneficial innovation and decision-making

Andreessen 23 (Marc Andreessen is a cofounder and general partner at the venture capital firm Andreessen Horowitz. “Why AI Will Save the World” 6/6/2023. Accessed 5/30/2024. https://a16z.com/ai-will-save-the-world/) wtk

What AI offers us is the opportunity to profoundly augment human intelligence to make all of these outcomes of intelligence – and many others, from the creation of new medicines to ways to solve climate change to technologies to reach the stars – much, much better from here.

AI augmentation of human intelligence has already started – AI is already around us in the form of computer control systems of many kinds, is now rapidly escalating with AI Large Language Models like ChatGPT, and will accelerate very quickly from here – if we let it.

In our new era of AI:

Every child will have an AI tutor that is infinitely patient, infinitely compassionate, infinitely knowledgeable, infinitely helpful. The AI tutor will be by each child’s side every step of their development, helping them maximize their potential with the machine version of infinite love.

Every person will have an AI assistant/coach/mentor/trainer/advisor/therapist that is infinitely patient, infinitely compassionate, infinitely knowledgeable, and infinitely helpful. The AI assistant will be present through all of life’s opportunities and challenges, maximizing every person’s outcomes.

Every scientist will have an AI assistant/collaborator/partner that will greatly expand their scope of scientific research and achievement. Every artist, every engineer, every businessperson, every doctor, every caregiver will have the same in their worlds.

Every leader of people – CEO, government official, nonprofit president, athletic coach, teacher – will have the same. The magnification effects of better decisions by leaders across the people they lead are enormous, so this intelligence augmentation may be the most important of all.

Productivity growth throughout the economy will accelerate dramatically, driving economic growth, creation of new industries, creation of new jobs, and wage growth, and resulting in a new era of heightened material prosperity across the planet.

Scientific breakthroughs and new technologies and medicines will dramatically expand, as AI helps us further decode the laws of nature and harvest them for our benefit.

The creative arts will enter a golden age, as AI-augmented artists, musicians, writers, and filmmakers gain the ability to realize their visions far faster and at greater scale than ever before.

I even think AI is going to improve warfare, when it has to happen, by reducing wartime death rates dramatically. Every war is characterized by terrible decisions made under intense pressure and with sharply limited information by very limited human leaders. Now, military commanders and political leaders will have AI advisors that will help them make much better strategic and tactical decisions, minimizing risk, error, and unnecessary bloodshed.

In short, anything that people do with their natural intelligence today can be done much better with AI, and we will be able to take on new challenges that have been impossible to tackle without AI, from curing all diseases to achieving interstellar travel.

And this isn’t just about intelligence! Perhaps the most underestimated quality of AI is how humanizing it can be. AI art gives people who otherwise lack technical skills the freedom to create and share their artistic ideas. Talking to an empathetic AI friend really does improve their ability to handle adversity. And AI medical chatbots are already more empathetic than their human counterparts. Rather than making the world harsher and more mechanistic, infinitely patient and sympathetic AI will make the world warmer and nicer.

The stakes here are high. The opportunities are profound. AI is quite possibly the most important – and best – thing our civilization has ever created, certainly on par with electricity and microchips, and probably beyond those.

The development and proliferation of AI – far from a risk that we should fear – is a moral obligation that we have to ourselves, to our children, and to our future.

### they say: “model collapse makes AI ineffective”

\*\*\*NOTE\*\*\* if you are debating the copyright affirmative, these cards are already being read on the model collapse advantage. You should only read these on the da if the aff is patents or trademark

#### No model collapse—the original training set will anchor new models even if they are trained with synthetic data

Claburn 24 (Thomas Claburn is a senior reporter at The Register. “Big brains divided over training AI with more AI: Is model collapse inevitable?” 5/9/2024. Accessed 6/10/2024. https://www.theregister.com/2024/05/09/ai\_model\_collapse/?td=keepreading) wtk

AI model collapse – the degradation of quality expected from machine learning models that recursively train on their own output – is not inevitable, at least according to 14 academics.

The risk that ongoing generative AI output, known as synthetic data, will dilute human-created organic data and impair the performance of models trained on this increasingly fabricated corpus was highlighted by a separate group last year, in a paper titled: "The Curse of Recursion: Training on Generated Data Makes Models Forget."

Ilia Shumailov, lead author of that paper, spoke to The Register earlier this year about this phenomenon, which has been documented in other studies.

Now another set of boffins – Matthias Gerstgrasser, Rylan Schaeffer, Apratim Dey, Rafael Rafailov, Henry Sleight, John Hughes, Tomasz Korbak, Rajashree Agrawal, Dhruv Pai, Andrey Gromov, Daniel Roberts, Diyi Yang, David Donoho, and Sanmi Koyejo – contend that the problem of training AI on AI-made data isn't significant, given the way that model training is actually done.

This latest baker's dozen plus one – from Stanford, AI safety group Constellation, the University of Maryland at College Park, MIT, and Sequoia Capital – make the case for not worrying in a paper titled: "Is Model Collapse Inevitable? Breaking the Curse of Recursion by Accumulating Real and Synthetic Data."

It's worth noting that some of these boffins acknowledge support through grants from commercial entities including OpenAI and Google, although the authors insist their research results do not necessarily reflect the positions or policies of their funders.

Gerstgrasser, a postdoctoral research associate at Harvard SEAS and visiting postdoctoral scholar at Stanford, outlined on social media the argument he and his colleagues want to make.

"As AI-generated content becomes more prevalent on the internet, there's a growing concern that future AI models will be trained on this 'tainted' data," he asserted. "It's like a virus that could infect the entire AI ecosystem!

"Many experts have warned that this could lead to a doomsday scenario for AI. If models keep getting worse and worse with each generation, we could face an 'AI apocalypse'! But don't panic just yet …"

Gerstgrasser argued that while previous studies have warned about this "doomsday scenario," all that research relies on the assumption that each succeeding generation of AI would train exclusively on the synthetic data produced by the previous generation model.

He argues that legacy data won't just be discarded. Instead of being replaced every generation, it's more likely to accumulate – the synthetic data will just get mixed with the organic data, and the resulting model will continue to perform.

"Our findings extend these prior works to show that if data accumulates and models train on a mixture of 'real' and synthetic data, model collapse no longer occurs," Gerstgrasser et al declare in their "Is Model Collapse Inevitable?" paper.

"[T]hese results strongly suggest that the 'curse of recursion' may not be as dire as had been portrayed – provided we accumulate synthetic data alongside real data, rather than replacing real data by synthetic data only."

#### Reject aff studies—they assume AI generated text replaces data, not that it supplements it

Gerstgrasser et al. 24 (Matthias Gerstgrasser, postdoc jointly at Stanford Computer Science and at Harvard University’s School of Engineering and Applied Sciences. Co-authors: Rylan Schaeffer, Apratim Dey, Rafael Rafailov, Henry Sleight, John Hughes, Tomasz Korbak, Rajashree Agrawal, Dhruv Pai, Andrey Gromov, Daniel A. Roberts, Diyi Yang, David L. Donoho, Sanmi Koyejo. “Is Model Collapse Inevitable? Breaking the Curse of Recursion by Accumulating Real and Synthetic Data” 4/29/2024. Accessed 6/15/2024 from [https://arxiv.org/abs/2404.01413) wtk](https://arxiv.org/abs/2404.01413%29wtk)

The proliferation of generative models, combined with pretraining on webscale data, raises a timely question: what happens when these models are trained on their own generated outputs? Recent investigations into model data feedback loops proposed that such loops would lead to a phenomenon termed *model collapse*, under which performance progressively degrades with each model-data feedback iteration until fitted models become useless. However, those studies largely assumed that new data *replace* old data over time, where an arguably more realistic assumption is that data *accumulate* over time. In this paper, we ask: what effect does accumulating data have on model collapse? We empirically study this question by pretraining sequences of language models on text corpora. We confirm that replacing the original real data by each generation’s synthetic data does indeed tend towards model collapse, then demonstrate that accumulating the successive generations of synthetic data alongside the original real data avoids model collapse; these results hold across a range of model sizes, architectures, and hyperparameters. We obtain similar results for deep generative models on other types of real data: diffusion models for molecule conformation generation and variational autoencoders for image generation. To understand why accumulating data can avoid model collapse, we use an analytically tractable framework introduced by prior work in which a sequence of linear models are fit to the previous models’ outputs. Previous work used this framework to show that if data are replaced, the test error increases with the number of model-fitting iterations; we extend this argument to prove that if data instead accumulate, the test error has a finite upper bound independent of the number of iterations, meaning model collapse no longer occurs. Our work provides consistent empirical and theoretical evidence that data accumulation avoids model collapse.

# Answers to AI Industry DA (Aff)

## 2ac materials

### 2ac vs ai da—patents

#### 1. Non-unique—AI will collapse now—it’s a speculative bubble

Tangermann 24 (Victor Tangermann is a Toronto-based staff writer and photo editor for Futurism.com. “Experts Concerned by Signs of AI Bubble” 3/30/2024. Accessed 6/6/2024. [https://futurism.com/experts-signs-ai-bubble) wtk](https://futurism.com/experts-signs-ai-bubble%29wtk)

As investors pour billions of dollars into the AI frenzy, analysts are starting to become wary of an "AI bubble" that could leave investors out to dry.

In a research note spotted by CNBC, tech stock analyst Richard Windsor used a colorful metaphor to describe what would happen if such a bubble were to burst.

"Capital continues to pour into the AI sector with very little attention being paid to company fundamentals," he wrote, "in a sure sign that when the music stops there will not be many chairs available."

It's been a turbulent week for AI companies, highlighting what sometimes seems like unending investor appetite for new AI ventures.

Case in point is Cohere, one of the many startups focusing on generative AI, which is reportedly in late-stage discussions that would value the venture at a whopping $5 billion.

Then there's Microsoft, which has already made a $13 billion bet on OpenAI, as well as hiring most of the staff from AI startup Inflection AI earlier this month. The highly unusual deal — or "non-acquisition" — raised red flags among investors, leading to questions as to why Microsoft didn't simply buy the company.

According to Windsor, companies "are rushing into anything that can be remotely associated with AI." Ominously, the analyst wasn't afraid to draw direct lines between the ongoing AI hype and previous failed hype cycles.

"This is precisely what happened with the Internet in 1999, autonomous driving in 2017 and now generative AI in 2024," he wrote.

Windsor is far from the first to draw such a comparison. Despite the lack of a clear way to turn a profit, investors are still pouring massive amounts of cash into AI firms.

"There's a huge boom in AI — some people are scrambling to get exposure at any cost, while others are sounding the alarm that this will end in tears," Kai Wu, founder and chief investment officer of Sparkline Capital, told the Wall Street Journal last year.

There are even doubters inside the industry. In July, recently ousted CEO of AI company Stability AI Emad Mostaque told banking analysts that "I think this will be the biggest bubble of all time."

"I call it the 'dot AI’ bubble, and it hasn’t even started yet," he added at the time.

Just last week, Jeffrey Gundlach, billionaire CEO of DoubleLine Capital, also compared the AI craze to the dot com bubble.

"This feels a lot like 1999," he said during an X Spaces broadcast last week, as quoted by Business Insider.

"My impression is that investors are presently enjoying the double-top of the most extreme speculative bubble in US financial history," Hussman Investment Trust president John Hussman wrote in a research note.

In short, with so many people ringing the alarm bells, there could well be cause for concern. And the consequences of an AI bubble bursting could be devastating.

In his research note, Windsor warned that chipmaker Nvidia was "the only company that is making tangible profits from the current boom in interest in investment in generative AI" — something we've noted as well — which could have disastrous consequences during a correction.

While Nvidia would survive such a debacle, the "ones that are likely to bear the brunt of the correction are the providers of generative AI services who are raising money on the promise of selling their services for $20/user/month," he argued.

#### 2. No link—patents won’t undermine innovation and there won’t be a proliferation of bad patent claims

Randall Rader, 2024 – Former Chief Judge (ret.) U.S. Court of Appeals for the Federal Circuit, and as Professor, Chief Judge Rader has taught courses on patent law and other advanced intellectual property courses at George Washington University Law School, University of Virginia School of Law, Georgetown University Law Center, the Munich Intellectual Property Law Center “Rader’s Ruminations – Patent Eligibility III: Seven Times the Federal Circuit Has Struck Out” IP Watchdog, 3/31, [https://ipwatchdog.com/2024/03/31/raders-ruminations-patent-eligibility-iii-seven-times-federal-circuit-struck/id=174751/](https://ipwatchdog.com/2024/03/31/raders-ruminations-patent-eligibility-iii-seven-times-federal-circuit-struck/id%3D174751/) //DH

The main point for this softball pitch is the justification that follows: “[M]onopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it.” Mayo, 132 S.Ct. at 1923. This theory (and the Court senses the weakness of its sole justification by using the words “might tend to”) is akin to a theory known in academic circles as the “tragedy of the anti-commons.” The “tragedy” in a few words is that “too many” patents give too many owners the right to inhibit all future research and progress. This hypothesis sprang from the 1998 writings of Professors Heller and Eisenberg. Heller; Eisenberg; Can Patents Deter Innovation? The Anti-commons in Biomedical Research; SCIENCE Mag. (May 1998). In truth, this so-called tragedy has been fully rejected by academic and empirical studies. See, e.g., Teece, David; The “Tragedy of the Anticommons” Fallacy: A Law and Economics Analysis of Patent Thickets and FRAND Licensing; Berkeley Tech.L.J. Vol 32:1489 (2017) (“The systematic problem identified here is undercompensation, and possibly overuse, not underuse.”). Upon reflection, the Supreme Court’s “tragedy” reasoning becomes a floating softball pitch that the Federal Circuit should hit to knock the entire eligibility doctrine back to statutory sanity.

Now, the Supreme Court often advises the use of “common sense” in patent law settings. See, e.g., KSR v. Teleflex, 550 U.S. 398 (2007). Let’s apply “common sense” to the Court’s “too many” patents justification. If the United States has “too many” patents endangering technological progress, where is the empirical evidence to prove that hypothesis? See, e.g., John P. Walsh, Ashish Arora & Wesley M. Cohen; “Effects of Research Tool Patents and Licensing on Biomedical Innovation”; PATENTS IN THE KNOWLEDGE-BASED ECONOMY 285, 285 (2003) (“[Despite] an increase in patents on . . . ‘research tools,’ . . . we find that drug discovery has not been substantially impeded.”). Where have fields of research been shut down by “too many” patents? Where have prices soared in technologies captured by overbearing exclusive rights? Where have groups of companies abandoned technology because it is too expensive or already locked up? Where is the evidence? The empirical evidence suggests that technology availability has soared and prices have declined as innovation creates intense cycles of research competition. Indeed, the semiconductor chips that run most high-tech phones cost less than a cup of designer coffee.

Actually, the reason patents do not deter, but spur scientific development, is embedded in the disclosure doctrines of the Patent Act. By statutory design, each patent on a new, non-obvious invention opens more doors to future research than it could ever close. Yet, where has the Federal Circuit undertaken to explain that the “too many patents” theory has no empirical or theoretical foundation?

The Supreme Court has served up a pitch that begs to be hit: After all, the Court’s justification for its new “exceptions” claim-by-claim validity doctrine does not pass the “common sense” test. No empirical data shows declining patent filing rates; no empirical data shows patents closing down technology markets; no empirical data shows patents causing research to dry up or grind to a halt. This softball pitch begs the Federal Circuit to show that the Court’s reasoning has no basis. Instead, the Circuit has yet to swing its bat at this softball pitch, instead swinging only its sledgehammer. Strike four!

#### 3. No link - other requirements for patentability prevent a surge in weak patents

Maxwell H. Terry, 2023 – Managing Editor, Minnesota Law Review, Vol. 108 J.D. Candidate 2024, University of Minnesota Law School. “Hello, World? Domestic Software Patent Protection Stands Alone Due to Uncertain Subject Matter Eligibility Jurisprudence” 108 Minn. L. Rev. 403, Nexis Uni, Accessed via University of Michigan //DH

1. Legislative Proposals Prevent Amalgamating Patentability Requirements

Many of the proposals' discretionary limitations are focused on isolating patentable subject matter considerations from other patentability issues. For example, PERA, the AIPLA-IPO Proposal, and the ABA Proposal all explicitly prevent a court from considering any requirement which stems from another section of the Patent Act.207 Thus, proposals for a reformed §101 all focus on reestablishing §101 as a distinct requirement apart from novelty, nonobviousness, or other patentability requirements. This would allow inventions embodying practical applications of "abstract ideas" under the Alice/Mayo framework to proceed to the merits of other patentability considerations, rather than amalgamate all patentability requirements under §101 at the motion to dismiss stage.208

Note that restricting judicial discretion to make eligibility determinations would not open the floodgates to patent trolls and frivolous patents, as the Patent Act holds many other protective backstops.209 Rather, such a change would merely require a judge or patent examiner to make an eligibility decision based solely on §101 grounds before weeding out frivolous patents by applying the Patent Act's other statutory bars. Should a court's discretion be limited to require consideration of §101 subject matter eligibility in isolation, the immediate impact would be a heightened difficulty for alleged infringers in litigation proceedings to dismiss cases involving software or computer-implemented inventions on the pleadings.

**[goes to footnote 209]**

Just because a patent recites eligible subject matter does not necessarily mean the patent is valid. Other requirements of patentability must also be met. See, e.g., 35 U.S.C. §§102, 103, 112 (establishing patentability requirements outside of subject matter eligibility).

**[returns to article]**

In addition to expressly preventing courts from considering patentability requirements outside of §101 itself, each proposal abrogates the Alice/Mayo framework in part or in full by limiting a court's ability to make eligibility determinations.210 More specifically, each proposal contains clauses which would prevent a court from proceeding to Alice/Mayo step two, wherein a court considers the elements of the patent claim to determine whether it recites an "inventive concept" sufficient to transform the nature of the claim into a patent-eligible application.211 Each proposal largely does so because, as discussed above, Alice/Mayo step two amalgamates patentable subject matter, novelty, and nonobviousness considerations into a single uncertain test.212 By preventing the search for an "inventive concept,"213 disregarding the manner in which a claimed invention was made,214 or preventing a court from considering whether a patent claim element is "known, conventional, routine, or naturally occurring,"215 each proposal further solidifies patentable subject matter as a distinct requirement. Under this rationale, a computer-implemented invention would only be directed to unpatentable subject matter if the inventor is attempting to patent an idea itself absent a discrete implementation, or the inventor merely says, "apply it with a computer."216 Such frivolous patents would be weeded out by the USPTO or handled decisively in federal court, while other patents could proceed to other patentability questions.

#### 4. Non-unique—AI patents are routinely rejected now under the Alice framework

Mark Liang et al, 2024 – partner in O’Melveny’s San Francisco office and a member of the firm’s Intellectual Property & Technology Group “Can Artificial Intelligence Patents Survive 'Alice'?” 1/16, <https://www.law.com/2024/01/16/can-artificial-intelligence-patents-survive-alice/?slreturn=20240521110319> //DH

Since Alice, there has been a dramatic increase in the number of §101 decisions and motions. A search on Docket Navigator shows that in 2013, U.S. district courts held 20 patents ineligible under §101. In 2015, that number rose to 171. The increase is especially targeted at computer software and hardware patents. For example, 137 of the 171 ineligibility determinations in 2015 were related to such patents. The surge has continued with an average of 217 invalidity determinations per year between 2015 and 2022, compared with an annual average of 19 between 2008 and 2014.

At the same time, there has been a rise in applications for AI patents. See generally, Nicholas A. Pairolero, “Artificial Intelligence (AI) trends in US Patents,” USPTO, Jun. 29, 2022; Ahmed Elmallah, “Exponential Increases in Artificial Intelligence Patent Filings,” Bennett Jones; “Patents signal: AI dominates patent filings in Q2 2023,” Medical Device Network. The USPTO has published a graph showing the increase in AI-related patent applications from 1976 to 2020, and the surge has continued since 2020. See generally, Kathi Vidal, “Director’s Blog: the latest from USPTO Leadership,” USPTO (Sept. 29, 2023); Nicholas A. Pairolero, “Artificial Intelligence (AI) trends in US Patents,” supra; Ahmed Elmallah, “Exponential Increases in Artificial Intelligence Patent Filings,” supra; “Patents signal: AI dominates patent filings in Q2 2023,” supra.

In light of these parallel trends, this article considers how courts have treated AI patents under §101 since Alice. The most important observation: AI patents are treated with skepticism and are regularly invalidated under Alice as abstract ideas. They tend to be invalidated for one or more of the following reasons: 1) including too little detail in their claim language, using phrases like “neural networks,” “machine learning,” or even “AI” itself instead of describing how the claimed AI feature works; 2) describing AI as emulating human behavior; or 3) performing math on general purpose computers. This article discusses how AI patents are analyzed under each step of the Alice framework and apply the caselaw to a hypothetical set of claims.

Alice Step One: Categories of Abstract AI Claims

Courts frequently strike down AI patent claims under Alice step 1, partly because AI patents often seek to have computers mimic activities humans could perform and partly because AI patents are often directed to intangible software. See, “What is artificial intelligence (AI)?,” IBM.com; Kristen Osenga, “Changing the Story: Artificial Intelligence and Patent Eligibility,” JustSecurity.org. AI patent claims are typically found abstract at Alice step 1 if they fall into one of three categories.

#### 5. No impact—AI can’t solve social problems

McCutcheon et al. 20 (Griffin McCutcheon is a Ph.D. candidate in the Center for Molecular Design and Biomimetics at Arizona State University researching genetic systems design and nanotechnology. John Malloy is a Ph.D. candidate in the School of Earth and Space Exploration at Arizona State University studying the origin and evolution of intelligence, particularly within artificial and chemical systems. Caitlyn Hall is a Ph.D. candidate at Arizona State University focusing on environmental risk and natural hazards who is interested in the applications of artificial intelligence in geoscience. Nivedita Mahesh is an Astrophysics Ph.D. candidate at the School of Earth and Space Exploration at Arizona State University specializing in early astrophysics with an interest in the applications of AI to cosmology. “AI Isn’t a Solution to All Our Problems” 1/24/2020. Accessed 6/9/2024. [https://www.scientificamerican.com/blog/observations/ai-isnt-a-solution-to-all-our-problems/) wtk](https://www.scientificamerican.com/blog/observations/ai-isnt-a-solution-to-all-our-problems/%29wtk)

With any new technological development, it is easy to wax poetic about the ways it can solve society’s ills—or hit every nail with your new hammer. Such optimism for AI’s potential is admirable, but it tends to ignore biases in AI. These biases range from frustrating, like Snapchat’s AI failing to recognize African American faces, to life endangering. Amazon’s Rekognition AI falsely identified 28 sitting members of Congress as having been previously arrested, with people of color matched at twice the proportional rate of their representation. This threatens to further reinforce biases against people of color, even though AI is thought to be impartial. The Congressional Black Caucus wrote to Jeff Bezos: “It is quite clear that communities of color are more heavily and aggressively policed than white communities.”

The caucus continued: “This status quo results in an oversampling of data which, once used as inputs to an analytical framework leveraging artificial intelligence, could negatively impact outcomes in those oversampled communities”. In using AI we need to recognize that it is not an impartial arbiter of justice, capable of distilling moral truth from data alone. These conceptions of right and wrong come from us and from the data we choose to provide. Without careful input and monitoring, an AI will simply reinforce the societal biases and structures used in its training.

Now, one could argue that these are not problems with AI, but problems with the data, and that a properly made AI shouldn’t have bias. We could theoretically make an AI with data sets not filled with moral judgments. But, even in creating such data sets we would be applying judgment over what constitutes “moral.” We can’t separate AI tools and data from the society that shapes them. Moreover, by applying AI to a value-laden problem, we make the mistake of assuming that social and ethical problems have technical solutions. With AI so entrenched in our everyday lives, we are seeing such events play out now.

Connecterra is trying to use TensorFlow to address global hunger through AI-enabled efficient farming and sustainable food development. The company uses AI-equipped sensors to track cattle health, helping farmers look for signs of illness early on. But, this only benefits one type of farmer: those rearing cattle who are able to afford a device to outfit their entire herd. Applied this way, AI can only improve the productivity of specific resource-intensive dairy farms and is unlikely to meet Connecterra’s goal of ending world hunger.

This solution, and others like it, ignores the wider social context of AI’s application. The belief that AI is a cure-all tool that will magically deliver solutions if only you can collect enough data is misleading and ultimately dangerous as it prevents other effective solutions from being implemented earlier or even explored. Instead, we need to both build AI responsibly and understand where it can be reasonably applied.

### 2ac vs ai da—copyright

#### 1. Non-unique—AI will collapse now—it’s a speculative bubble

Tangermann 24 (Victor Tangermann is a Toronto-based staff writer and photo editor for Futurism.com. “Experts Concerned by Signs of AI Bubble” 3/30/2024. Accessed 6/6/2024. [https://futurism.com/experts-signs-ai-bubble) wtk](https://futurism.com/experts-signs-ai-bubble%29wtk)

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#### 2. No link—AI has deep pockets and other countries will also regulate AI

Coffey and Smith 23 (Danielle Coffey, President and CEO of News/Media Alliance. Regan Smith, Senior Vice President and General Counsel for News/Media Alliance. “Artificial Intelligence and Copyright” Reply Comments of the News/Media Alliance before the U.S. Copyright Office. Docket No. 2023–6. 12/6/2023. Accessed 5/21/2024. http://www.newsmediaalliance.org/wp-content/uploads/2023/12/NMA-Reply-to-USCO-AI-Notice-December-2023.pdf) wtk

Copyright law does not accommodate a structure where generative AI companies get all the benefits of using creative content without carrying any of the burdens—no licensing or compensation of intellectual property without which these systems could not exist, no transparency, no standards and practices review for defamatory or otherwise harmful content, no liability for infringing outputs. No other industry works like this, and the nascent generative AI industry should not be encouraged or enabled to develop in this manner. When balancing policy goals, the Office should consider the critical role that journalism and media publishing play in our democratic society and processes—and has played since the founding of our country—and work to minimize outcomes that deviate from core copyright principles.

The countervailing risk, articulated by commenters like Andreessen Horowitz, appears to be that if companies turn out to have bet wrong on how courts will interpret fair use, it would “significantly disrupt” an “enormous investment of private capital.”119 We believe these deep pocketed actors120 can withstand any potential disruption, and that AI innovation will be safer, more reliable, and more sustainable, if developed in accordance with copyright law.

There is also no reason to believe that enabling rightsholders to enforce their copyrights would lead to a competitive disadvantage vis-à-vis companies based in other countries and regions with explicit laws allowing for text and data mining in certain circumstances. Many of these laws are untested in the AI context and regions such as the EU are considering transparency measures to enable copyright owners to identify the use of their content in training datasets.

#### 3. Turn—the plan increases AI value and sustainability—quality, human-made content is key

AAP 23 (Association of American Publishers. “Artificial Intelligence and Copyright” comments before the US Copyright Office by the Association of American Publishers 10/30/2023. Accessed 6/4/2024. https://www.regulations.gov/comment/COLC-2023-0006-9070) wtk

A licensing requirement — i.e., the default rule under the copyright framework of exclusive rights — would have a positive economic impact on the development and adoption of Gen AI systems, as well as the continued creation and distribution of high-quality works by the creative sector. The ability of copyright owners to decide when, where, to whom, and for how much they will authorize the use of their works is fundamental to their ability to achieve copyright’s purpose.

Licensing fees are an important source of income for U.S. creators and rightsholders and support the continued investment in new human-created works. The importance of sustaining the U.S. publishing industry cannot be understated. AAP members publish high-quality literary works, including works that present novel ideas and new facts unearthed by authors; hold governments, businesses, and citizens accountable; contribute to a vibrant culture; educate, and inspire Americans of all ages; and report on scientific progress. Trustworthy Gen AI systems require high-quality new publications to remain state-of-the-art, and a flourishing publishing industry is best positioned to increase the value of Gen AI systems. A flourishing publishing industry will also help protect against some of the potential ills of Gen AI systems, including misinformation and bias.

In addition, AI systems developed or trained on works derived or created from authorized sources are more likely to yield reliable outputs than works obtained from illegal or pirate sources. It is essential to trustworthy and reliable AI that developers utilize high quality, curated content to create training corpora for their models. For example, in the case of AI training based on professional and scholarly communications, we note the importance of AI developers using the Version of Record (VoR), under appropriate licenses. The VoR is the final, publisher-maintained article, updated and archived continually in consultation with the author. Accepted manuscripts, pre-prints, or illegally uploaded text versions of the article may be subject to post publication modification or retraction, which if used as training material in their uncorrected state, could create serious and cascading scientific or medical errors in AI generated outputs.

Beyond industry economic impacts, given that AI technologies will be (and are being) integrated into applications that will impact the lives and well-being of individuals, whether financially, physically, mentally, or professionally, it is critically important that licensing requirements be implemented to ensure that high quality, peer reviewed, vetted material is used to create the training corpora of AI systems and to refresh that training corpora going forward.

#### 4. Case turns the DA—model collapse hurts the AI industry

Myers 24 (James Myers, publisher of The Quantum Record, “Celebrating Human Creativity Means Guarding Against Stereotyping by AI” 3/31/2024. Accessed 6/10/2024. https://thequantumrecord.com/blog/celebrating-human-creativity-guarding-against-stereotyping/) wtk

Valuing the Future: What’s Good for Human Creativity is Also Good for Financial Investments in AI

Telling our own stories is not only good for preserving human creative unpredictability, it’s also ultimately good for AI companies like OpenAI, Google, and Microsoft that use our data to generate predictions for what we will do or say next. To be sure, there is tremendous profit to be made from generative AI as it currently exists, but if it causes us to become too predictable then the AI’s future value will decrease – potentially very rapidly.

What value would remain for a generative AI whose outputs we human users follow line by line with little or no variability from the present to the future? It would be as if the AI was programming us instead of the reverse.

If the value of money didn’t increase over time, there would be little motivation to invest, and AI companies are now investing heavily in the hope of significant future payoffs from the money they put at risk today. For example, Microsoft has invested $10 billion in OpenAI’s generative AI technology, with the potential for a 100-fold increase in its future value (or maybe less, since OpenAI hasn’t disclosed what return Microsoft has been promised). What future value will there be for Microsoft if OpenAI’s technology fails to generate anything new in the future, and its outputs are predictable repeats of the past?

The term “model collapse” has been coined for the outcome of machine learning from data produced by other AI data models. Model collapse is described as “a degenerative process whereby, over time, models forget the true underlying data distribution, even in the absence of a shift in the distribution over time.”

The questions surrounding model collapse are gaining attention and highlight the importance of developing guidelines for the responsible use and consumption of machine learning and its outputs. The concern is amplified by a recent mathematical proof that machine learning algorithms can’t be programmed to maintain a stable output with future certainty in the absence of human intervention to correct the AI’s measurements of probabilities.

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This solution, and others like it, ignores the wider social context of AI’s application. The belief that AI is a cure-all tool that will magically deliver solutions if only you can collect enough data is misleading and ultimately dangerous as it prevents other effective solutions from being implemented earlier or even explored. Instead, we need to both build AI responsibly and understand where it can be reasonably applied.

### 2ac vs ai da—trademark

#### 1. Non-unique—AI will collapse now—it’s a speculative bubble

Tangermann 24 (Victor Tangermann is a Toronto-based staff writer and photo editor for Futurism.com. “Experts Concerned by Signs of AI Bubble” 3/30/2024. Accessed 6/6/2024. [https://futurism.com/experts-signs-ai-bubble) wtk](https://futurism.com/experts-signs-ai-bubble%29wtk)

As investors pour billions of dollars into the AI frenzy, analysts are starting to become wary of an "AI bubble" that could leave investors out to dry.

In a research note spotted by CNBC, tech stock analyst Richard Windsor used a colorful metaphor to describe what would happen if such a bubble were to burst.

"Capital continues to pour into the AI sector with very little attention being paid to company fundamentals," he wrote, "in a sure sign that when the music stops there will not be many chairs available."

It's been a turbulent week for AI companies, highlighting what sometimes seems like unending investor appetite for new AI ventures.

Case in point is Cohere, one of the many startups focusing on generative AI, which is reportedly in late-stage discussions that would value the venture at a whopping $5 billion.

Then there's Microsoft, which has already made a $13 billion bet on OpenAI, as well as hiring most of the staff from AI startup Inflection AI earlier this month. The highly unusual deal — or "non-acquisition" — raised red flags among investors, leading to questions as to why Microsoft didn't simply buy the company.

According to Windsor, companies "are rushing into anything that can be remotely associated with AI." Ominously, the analyst wasn't afraid to draw direct lines between the ongoing AI hype and previous failed hype cycles.

"This is precisely what happened with the Internet in 1999, autonomous driving in 2017 and now generative AI in 2024," he wrote.

Windsor is far from the first to draw such a comparison. Despite the lack of a clear way to turn a profit, investors are still pouring massive amounts of cash into AI firms.

"There's a huge boom in AI — some people are scrambling to get exposure at any cost, while others are sounding the alarm that this will end in tears," Kai Wu, founder and chief investment officer of Sparkline Capital, told the Wall Street Journal last year.

There are even doubters inside the industry. In July, recently ousted CEO of AI company Stability AI Emad Mostaque told banking analysts that "I think this will be the biggest bubble of all time."

"I call it the 'dot AI’ bubble, and it hasn’t even started yet," he added at the time.

Just last week, Jeffrey Gundlach, billionaire CEO of DoubleLine Capital, also compared the AI craze to the dot com bubble.

"This feels a lot like 1999," he said during an X Spaces broadcast last week, as quoted by Business Insider.

"My impression is that investors are presently enjoying the double-top of the most extreme speculative bubble in US financial history," Hussman Investment Trust president John Hussman wrote in a research note.

In short, with so many people ringing the alarm bells, there could well be cause for concern. And the consequences of an AI bubble bursting could be devastating.

In his research note, Windsor warned that chipmaker Nvidia was "the only company that is making tangible profits from the current boom in interest in investment in generative AI" — something we've noted as well — which could have disastrous consequences during a correction.

While Nvidia would survive such a debacle, the "ones that are likely to bear the brunt of the correction are the providers of generative AI services who are raising money on the promise of selling their services for $20/user/month," he argued.

#### 2. Turn – the absence of trademark safe harbors creates a loophole to expand copyright liability

Sonia K Katyal & Leah Chan Grinvald, 2018 - \*Chancellor's Professor of Law; Co-Director, Berkeley Center for Law and Technology, University of California, Berkeley AND \*\*Associate Dean for Academic Affairs and Professor of Law, Suffolk University Law School. “PLATFORM LAW AND THE BRAND ENTERPRISE” BERKELEY TECHNOLOGY LAW JOURNAL [Vol. 32:1135, <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?params=/context/facpub/article/2394/&path_info=Platform_Law_and_the_Brand_Enterprise.pdf> //DH

Further, because of the absence of trademark-related safe harbors, many platforms have reported situations where a rightsholder conflates both copyright and trademark-related requests in the same notice, knowing that the absence of a safe harbor in trademark requests will make it much more likely that an ISP will respond by taking down the content.172 For example, a rightsholder might object to content that includes a character (protected by copyright) and its name (that is protected by trademark).173 The 3D printing company, Shapeways, for example, has found that in 2015, 76% of the copyright takedowns include trademark-related claims.174 A year later, Shapeways noted that although the number of overlap claims had significantly reduced overall, it still found that the majority of its most defective takedown claims were trademark-related.1 75

Yet consider the result of this overlap. Since Shapeways does not generally accept counter notices for non-copyright claims, this means that the majority of its users targeted by takedown requests are unable to respond to these allegations. 176 As a result, this loophole essentially enables a rightsholder to evade the counter-notice requirements under the DMCA, since trademark law does not allow for the same process, thereby risking overenforcement and abuse.177 "Even if a user intends to challenge the copyright portion of the request, the trademark portion often remains

unchallengeable, resulting in the targeted content staying down."178 Since the vast majority of such cases are resolved privately, "OSPs are largely left to create their own patchwork of policies, hoping that their decisions strike a reasonable balance between enforcement and expression. This results in an uneven, largely undocumented shadow dispute resolution process that breeds an under appreciation for the scope of the problem and a lack of uniform rules to help guide their resolution," commentators observe. 179

#### 3. No impact—AI can’t solve social problems

McCutcheon et al. 20 (Griffin McCutcheon is a Ph.D. candidate in the Center for Molecular Design and Biomimetics at Arizona State University researching genetic systems design and nanotechnology. John Malloy is a Ph.D. candidate in the School of Earth and Space Exploration at Arizona State University studying the origin and evolution of intelligence, particularly within artificial and chemical systems. Caitlyn Hall is a Ph.D. candidate at Arizona State University focusing on environmental risk and natural hazards who is interested in the applications of artificial intelligence in geoscience. Nivedita Mahesh is an Astrophysics Ph.D. candidate at the School of Earth and Space Exploration at Arizona State University specializing in early astrophysics with an interest in the applications of AI to cosmology. “AI Isn’t a Solution to All Our Problems” 1/24/2020. Accessed 6/9/2024. [https://www.scientificamerican.com/blog/observations/ai-isnt-a-solution-to-all-our-problems/) wtk](https://www.scientificamerican.com/blog/observations/ai-isnt-a-solution-to-all-our-problems/%29wtk)

With any new technological development, it is easy to wax poetic about the ways it can solve society’s ills—or hit every nail with your new hammer. Such optimism for AI’s potential is admirable, but it tends to ignore biases in AI. These biases range from frustrating, like Snapchat’s AI failing to recognize African American faces, to life endangering. Amazon’s Rekognition AI falsely identified 28 sitting members of Congress as having been previously arrested, with people of color matched at twice the proportional rate of their representation. This threatens to further reinforce biases against people of color, even though AI is thought to be impartial. The Congressional Black Caucus wrote to Jeff Bezos: “It is quite clear that communities of color are more heavily and aggressively policed than white communities.”

The caucus continued: “This status quo results in an oversampling of data which, once used as inputs to an analytical framework leveraging artificial intelligence, could negatively impact outcomes in those oversampled communities”. In using AI we need to recognize that it is not an impartial arbiter of justice, capable of distilling moral truth from data alone. These conceptions of right and wrong come from us and from the data we choose to provide. Without careful input and monitoring, an AI will simply reinforce the societal biases and structures used in its training.

Now, one could argue that these are not problems with AI, but problems with the data, and that a properly made AI shouldn’t have bias. We could theoretically make an AI with data sets not filled with moral judgments. But, even in creating such data sets we would be applying judgment over what constitutes “moral.” We can’t separate AI tools and data from the society that shapes them. Moreover, by applying AI to a value-laden problem, we make the mistake of assuming that social and ethical problems have technical solutions. With AI so entrenched in our everyday lives, we are seeing such events play out now.

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#### 4. Model collapse means AI will be ineffective

Marr 24 (Bernard Marr, Contributor for Forbes, “Generative AI And The Risk Of Inbreeding” 3/28/2024. Accessed 6/10/2024. https://www.forbes.com/sites/bernardmarr/2024/03/28/generative-ai-and-the-risk-of-inbreeding/) wtk

What Is Inbreeding In Relation To Generative AI?

The term refers to the way in which generative AI systems are trained. The earliest large language models (LLMs), were trained on massive quantities of text, visual and audio content, typically scraped from the internet. We’re talking about books, articles, artworks, and other content available online – content that was, by and large, created by humans.

Now, however, we have a plethora of generative AI tools flooding the internet with AI-generated content – from blog posts and news articles, to AI artwork. This means that future AI tools will be trained on datasets that contain more and more AI-generated content. Content that isn’t created by humans, but simulates human output. And as new systems learn from this simulated content, and create their own content based on it, the risk is that content will become progressively worse. Like taking a photocopy of a photocopy of a photocopy.

It’s not dissimilar to human or livestock inbreeding, then. The “gene pool” – in this case, the content used to train generative AI systems – becomes less diverse. Less interesting. More distorted. Less representative of actual human content.

What Would This Mean For Generative AI Systems?

Inbreeding could pose a significant problem for future generative AI systems, rendering them less and less able to accurately simulate human language and creativity. One study has confirmed how inbreeding leads to generative AIs becoming less effective, finding that “without enough fresh real data in each generation … future generative models are doomed to have their quality (precision) or diversity (recall) progressively decrease.”

In other words, AIs need fresh (human-generated) data to get better and better over time. If the data they’re trained on is increasingly generated by other AIs, you end up with what’s called “model collapse.” Which is a fancy way of saying the AIs get dumber. This can happen with any sort of generative AI output – not just text but also images. This video shows what happens when two generative AI models bounce back and forth between each other, with one AI describing an image and then the other creating an image based on the description, and so on and so on in a loop. The starting point was the Mona Lisa, one of the world’s great masterpieces. The end result is just a freaky picture of squiggly lines.

## 1ar materials

### \*\*\*uniqueness answers\*\*\*

### 1ar ai will collapse now

#### AI is a bubble that will pop

Naughton 24 (John Naughton is professor of the public understanding of technology at the Open University. “From boom to burst, the AI bubble is only heading in one direction” 4/13/2024. Accessed 6/7/2024. [https://www.theguardian.com/commentisfree/2024/apr/13/from-boom-to-burst-the-ai-bubble-is-only-heading-in-one-direction) wtk](https://www.theguardian.com/commentisfree/2024/apr/13/from-boom-to-burst-the-ai-bubble-is-only-heading-in-one-direction%29wtk)

“Are we really in an AI bubble,” asked a reader of last month’s column about the apparently unstoppable rise of Nvidia, “and how would we know?” Good question, so I asked an AI about it and was pointed to Investopedia, which is written by humans who know about this stuff. It told me that a bubble goes through five stages – rather as Elisabeth Kübler-Ross said people do with grief. For investment bubbles, the five stages are displacement, boom, euphoria, profit-taking and panic. So let’s see how this maps on to our experience so far with AI.

First, displacement. That’s easy: it was ChatGPT wot dunnit. When it appeared on 30 November 2022, the world went, well, apeshit. So, everybody realised, this was what all the muttering surrounding AI was about! And people were bewitched by the discovery that you could converse with a machine and it would talk (well, write) back to you in coherent sentences. It was like the moment in the spring of 1993 when people saw Mosaic, the first proper web browser, and suddenly the penny dropped: so this was what that “internet” thingy was for. And then Netscape had its initial public offering in August 1995, when the stock went stratospheric and the first internet bubble started to inflate.

Second stage: boom. The launch of ChatGPT revealed that all the big tech companies had actually been playing with this AI stuff for years but had been too scared to tell the world because of the technology’s intrinsic flakiness. Once OpenAI, ChatGPT’s maker, had let the cat out of the bag, though, fomo (fear of missing out) ruled. And there was alarm because the other companies realised that Microsoft had stolen a march on them by quietly investing in OpenAI and in so doing had gained privileged access to the powerful GPT-4 large multimodal model. Satya Nadella, the Microsoft boss, incautiously let slip that his intention had been to make Google “dance”. If that indeed was his plan, it worked: Google, which had thought of itself as a leader in machine learning, released its Bard chatbot before it was ready and retreated amid hoots of derision.

But the excitement also triggered stirrings in the tech undergrowth and suddenly we saw a mushrooming of startups founded by entrepreneurs who saw the tech companies’ big “foundation” models as platforms on which new things could be built – much as entrepreneurs once saw the web as such a foundational base. These seedlings were funded by venture capitalists in time-honoured fashion, but some of them received large investments from both tech companies and corporations such as Nvidia that were making the hardware on which an AI future can supposedly be built.

The third stage of the cycle – euphoria – is the one we’re now in. Caution has been thrown to the winds and ostensibly rational companies are gambling colossal amounts of money on AI. Sam Altman, the boss of OpenAI, started talking about raising $7tn from Middle Eastern petrostates for a big push that would create AGI (artificial general intelligence). He’s also hedging his bets by teaming up with Microsoft to spend $100bn on building the Stargate supercomputer. All this seems to be based on an article of faith; namely, that all that is needed to create superintelligent machines is (a) infinitely more data and (b) infinitely more computing power. And the strange thing is that at the moment the world seems to be taking these fantasies at face value.

Which brings us to stage four of the cycle: profit-taking. This is where canny operators spot that the process is becoming unhinged and start to get out before the bubble bursts. Since nobody is making real money yet from AI except those that build the hardware, there are precious few profits to take, save perhaps for those who own shares in Nvidia or Apple, Amazon, Meta, Microsoft and Alphabet (nee Google). This generative AI turns out to be great at spending money, but not at producing returns on investment.

Stage five – panic – lies ahead. At some stage a bubble gets punctured and a rapid downward curve begins as people frantically try to get out while they can. It’s not clear what will trigger this process in the AI case. It could be that governments eventually tire of having uncontrollable corporate behemoths running loose with investors’ money. Or that shareholders come to the same conclusion. Or that it finally dawns on us that AI technology is an environmental disaster in the making; the planet cannot be paved with datacentres.

But it will burst: nothing grows exponentially for ever. So, going back to that original question: are we caught in an AI bubble? Is the pope a Catholic?

#### Regulatory, legal, and cost challenges mean AI will collapse now

De Vynck 24 (Gerrit De Vynck is a tech reporter for The Washington Post. “The AI hype bubble is deflating. Now comes the hard part.” 4/25/2024. Accessed 6/6/2024. https://www.washingtonpost.com/technology/2024/04/18/ai-bubble-hype-dying-money/) wtk

It’s not the only case of AI hype coming back down to earth. After 11 months of public testing, Google’s AI search tool still constantly makes mistakes and hasn’t been released to most people. New scientific papers are undermining some of the flashier claims about the tech’s capabilities. The AI industry is also facing a growing wave of regulatory and legal challenges.

A year and a half into the AI boom, there is growing evidence that the hype machine is slowing down. Drastic warnings about AI posing an existential threat to humanity or taking everyone’s jobs have mostly disappeared, replaced by technical conversations about how to cajole chatbots into helping summarize insurance policies or handle customer service calls. Some once-promising start-ups have cratered, and the suite of flashy products launched by the biggest players in the AI race — OpenAI, Microsoft, Google and Meta — have yet to upend the way people work and communicate with one another. While money keeps pouring into AI, very few companies are turning a profit on the tech, which remains hugely expensive to build and run.

### \*\*\*patent link answers\*\*\*

### 1ar patent—patents don’t undermine innovation

#### Low quality patent risk is low – patent remedies, fee shifting, and obviousness requirements blunt the impact

Manny Schecter, 2019 - chief patent counsel for IBM. Senate Judiciary Subcommittee Hearing State of Patent Eligibility in America, 6/11, Proquest Congressional, accessed via University of Michigan //DH

F. Patent Quality is Best Addressed by Improvements to the Disclosure Requirements

 Some have supported the current judicially imposed limits on patent eligibility as a remedy for concerns they have about attempts to enforce poor quality patents. We understand and share those concerns. The risk from poor quality patents has been greatly reduced by judicial decisions on obviousness, patent remedies, and fee shifting. Even more helpful have been the USPTO post-issuance validity review processes provided for in the America Invents Act, which IBM strongly supported.

 Sections 102, 103 and 112 can be used to weed out attempts to patent inventions that are too broad. The broader the claim is to an invention, the more likely that claim will not be new or will be obvious. The scope of the prior art is wide, and modern information technology has made it easier and cheaper to find identical or close prior art. The obviousness requirement is robust, particularly with the availability of the pre-issuance and post-issuance procedures of the America Invents Act. And the section 112 requirements are a significant tool for limiting overbreadth. The draft bill text further addresses poor quality patents through improvements to section 112.

#### Data disproves patent thickets – existing innovation is because of patents

Adam Mossoff, 24 - Professor of Law, Antonin Scalia Law School George Mason University. Answers from Adam Mossoff to Questions for the Record from Senator Alex Padilla Senate Committee on the Judiciary, Subcommittee on Intellectual Property, United States Senate “The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System” 1/24,https://www.judiciary.senate.gov/imo/media/doc/2024-01-23\_-\_qfr\_responses\_-\_mossoff.pdf //DH

Although conventional wisdom and classical economics define patents as monopolies by which the incentive to invent is balanced against restraints on access and higher short-term prices, this is a fundamental misunderstanding of the nature and function of patents. Patents and other intellectual property rights, such as copyright and trademark, are not merely incentives to create, but also incentives to commercialize innovation. They are property rights. Thus, they represent an equal opportunity for any person who creates a new invention to secure the fruits of their labors, just like any person who works as a farmer or worker should have secured to them the fruits of their productive labors. Thus, patents, like all property rights, are the basis for commercialization activities, such as obtaining venture capital financing, entering into license deals, and creating new commercial structures for efficiently placing new products and services into the hands of consumers, such as the franchise business model invented by U.S. patent owners in the nineteenth century.

In the healthcare market, for example, this has meant an ever-increasing supply of cuttingedge medical treatments and increasing availability of older medical treatments that are now “off patent.” Patents not only function for companies to recoup billions in investments and thousands of labor hours in creating new drugs and other healthcare innovations, they facilitate extensive licensing and information-sharing agreements that efficiently distribute these healthcare innovations to patients. These extensive manufacturing, commercial distribution, and information-sharing agreements were the launch pad for the unprecedented response by the biopharmaceutical sector in inventing, producing, and distributing billions of doses of the COVID-19 vaccines during the pandemic—an achievement never before accomplished by the biopharmaceutical sector since the invention and patent for Aspirin in 1900 and the invention of vaccines in the 18th century.1 Although drug prices are a subject of policy debate, it is important to recognize that 95% of the essential medicines identified by the World Health Organization are in the public domain; thus, these drugs are available for production by any generic company wishing to sell them in the healthcare market in any country in the world, subject to regulatory approval by health officials.2

In the high-tech sector, the patent system has driven an explosion in new products and services at a rate never before seen in any sector of the global innovation economy. “Several empirical studies demonstrate that the observed pattern in high-tech industries, especially in the smartphone industry, is one of constant lower quality-adjusted prices, increased entry and competition, and higher performance standards.”3 This has occurred in one of the most patent-intensive sectors of the economy.4 This empirical evidence contracted the predictions of academics and economists almost twenty years ago that “patent holdup” and “patent thickets” on smartphones and other high-tech devices would raise prices for consumers and stifle innovation.5

All of this economic and historical evidence creates a strong presumption that reforming patent eligibility doctrine by returning it back to its longstanding function within the U.S. patent system would benefit consumers. Consumers will benefit from the continued creation of new products and services and more jobs. Overall, the U.S. will continue to experience economic growth and a rising standard of living for all consumers.

### \*\*\*copyright link answers\*\*\*

### 1ar copyright—plan doesn’t hurt ai

#### Empirics prove licensing won’t destroy the industry

Coffey and Smith 23 (Danielle Coffey, President and CEO of News/Media Alliance. Regan Smith, Senior Vice President and General Counsel for News/Media Alliance. “Artificial Intelligence and Copyright” Comments of the News/Media Alliance before the U.S. Copyright Office. Docket No. 2023–6. 10/30/2023. Accessed 5/21/2024. <http://www.newsmediaalliance.org/wp-content/uploads/2023/10/Final-NMA-USCO-AI-NOI-Response-Submitted-10.30.23.pdf>) wtk

In any event, foundational model developers are operating licensing companies themselves, offering access to LLM models in commercial arrangements with a panoply of downstream entities.185 Some creators of datasets are also licensing the datasets (including on a royalty-free basis). The potential for a robust LLM licensing has fueled significant investments and increased valuation for these developers.186 The better question for the Office to ask is whether it is sound intellectual property and industrial policy to begin a licensing supply chain at the foundational model provider, rather than further up towards the source, with the authors and publishers who create the content that is a key input for those providers. The economic impacts on publishers should not be considered mere externalities to the hopes for AI innovation.

For these reasons, we do not believe that fair licensing will hinder generative AI development— to the contrary, it is likely to improve the quality and accuracy of generative AI. Indeed, one copyright veteran observed that similar fears were raised in connection with the growth of photocopying in the 1960s.187 At that time, some entities argued it would be impossible to secure all needed permissions to facilitate scientific progress, and regulation would put the U.S. at a competitive disadvantage. However, judicial recognition that not all photocopying was fair use did not impede innovation but led to a regime of voluntary collective licensing that has facilitated copying, enhanced access, and supported creative incentives by providing compensation to authors and rightsholders.188

#### It's a normal cost of business

Kupferschmid 23 (Keith Kupferscmid, CEO of the Copyright Alliance, “Artificial Intelligence and Copyright: Comments of the Copyright Alliance” comment before the U.S. Copyright Office. 10/30/2023. Accessed 5/25/2024 from https://www.regulations.gov/comment/COLC-2023-0006-8935) wtk

To answer the question as it is presented, requiring a license for the ingestion of copyrighted works by generative AI systems would not adversely impact development and adoption of AI technologies. Licensing copyrighted works is a normal cost of doing business, and licenses are entered into across the spectrum of copyright industries. Whether compulsory, collective, or direct, licenses dictate the use and distribution of every type of copyrighted work from software to music to literary works and more. While the type and terms of licenses may differ from industry to industry, they are an established part of the greater creative ecosystem, and their application to generative AI should be no different.

It is the choice of any AI developer as to what and how many copyrighted works it ingests into a model for training purposes, and any argument to the contrary that an AI system must ingest as many works as possible (and that licensing is impossible) is a red herring used to justify massive infringement that has already occurred. (See our responses to questions 8.1, 9.3, and 10.1.) The choice that AI developers have was illustrated wonderfully by Adobe’s Dana Rao in his testimony before the Senate Judiciary Committee, Subcommittee on Intellectual Property’s hearing on Artificial Intelligence and Intellectual Property—Part II: Copyright.176 Rao explained that Adobe “chose a path that supports creators and customers by training on a dataset that is designed to be commercially safe.”177 That meant training its Firefly model only on licensed images from its own Adobe Stock photography collection, and if needed, to expand its dataset to include openly licensed content and public domain images where copyright has expired.178 As we note in response to question 8.1, Adobe’s Firefly suite of generative AI tools have seen broad consumer adoption and represent how AI technology can successfully augment human artistic expression when trained on proprietary or licensed copyrighted works.

#### Profit margins and separate funding solve the da

Penny 23 (Brian Penny, Journalist, “Artificial Intelligence and Copyright” comments by Brian Penny before the United States Copyright Office. 9/15/2023. Accessed 5/25/2024 from https://www.regulations.gov/comment/COLC-2023-0006-2387) wtk

13. What would be the economic impacts of a licensing requirement on the development and adoption of generative AI systems?

Proper licensing would provide a huge boon to the economy, as we have a lot of content available. It would provide revenue for copyright holders and resolve the legal uncertainty surrounding these models. Companies like OpenAI and Midjourney earn huge profits. OpenAI is a subsidiary of Microsoft and has the money to pay for licensing. Midjourney earns $200 million a year and grew without VC funding. They can all afford to license, and if they can’t—that’s life. I can’t afford to license Disney movies, but that hasn’t stopped Netflix, Amazon, Hulu, Max, Peacock, Roku, and so many others from existing. If anything, we have too many streaming services, despite the costs associated. It’s impossible that AI companies can’t scale without stealing work. If they need money to pay for licenses, then Congress can enforce existing copyright laws and then pass another law subsidizing generative AI so that you can compete with China or whatever. I think it’s unnecessary, but it would resolve the problem AI companies convinced you exists.

### 1ar copyright—they say: “doublebind”

#### The double-bind is wrong—licensing generates revenue over time

Coffey and Smith 23 (Danielle Coffey, President and CEO of News/Media Alliance. Regan Smith, Senior Vice President and General Counsel for News/Media Alliance. “Artificial Intelligence and Copyright” Reply Comments of the News/Media Alliance before the U.S. Copyright Office. Docket No. 2023–6. 12/6/2023. Accessed 5/21/2024. http://www.newsmediaalliance.org/wp-content/uploads/2023/12/NMA-Reply-to-USCO-AI-Notice-December-2023.pdf) wtk

Meta objected on the grounds that monetary benefits to publishers and other content creators would be negligible.110 This frankly specious position misleadingly measures a single snapshot of time rather than the long-term value of using copyrighted content. Aggregating smaller amounts of revenue over time is a standard and typical foundation for internet, media, and other digital business models (e.g., subscription, advertising, or as-a-service models). The power of these business models is demonstrated throughout the economy, including in media publishing, which depends on subscription and advertising revenue over time, cloud computing,111 and music and video streaming.112 Indeed, venture capital values generative AI companies based on projections that revenue will accrue over time: Bloomberg Intelligence recently predicted that generative AI will become a $1.4 trillion market by 2032, mainly due to incremental revenue projections.113 Mark Zuckerberg himself noted that revenue from Meta’s LLaMA2 will not be a large amount in the near term, but will grow over time.114 Meta’s position is also undermined by a16z’s warning that paying for content could cost developers "tens or hundreds of billions of dollars a year in royalty payments."115 And, perhaps presuming that the best path is that which is most efficient for Meta, Meta’s statement overlooks that licensing valuations do not need to be the same for all types of content, nor would all permissive uses be expected to be royalty bearing.

### 1ar copyright—plan helps ai

#### Without the plan, authors will hide their works—turns AI development

Osfield 23 (Conal Osfield, Bachelors degree from the Australian Film Television and Radio School. “Artificial Intelligence and Copyright: Comments of the Copyright Alliance” comment from Conal Osfield before the U.S. Copyright Office. 12/7/2023. Accessed 6/12/2024. <https://www.regulations.gov/comment/COLC-2023-0006-10304>) wtk

Google begins by positing an inherent competition between the “interests of authors … in the control and exploitation of their writings”, and “society’s … interest in the free flow of ideas, information and commerce”. An ideal copyright system is able to balance the interests of both parties in order to for the public to best benefit from the labours of authors. This is undoubtedly true. But the appropriate balance is not self-evident – it may be argued a determination that the ingestion of creative works is not automatically fair use is in the genuine interest of the public. An overly permissive regime with respect to the ingestion of creative works would profoundly disincentivise the open sharing not only of works completely authored by a human, but also works partially crafted by machine. If anyone’s labour can be instantly snatched up and iterated upon without compensation or credit in enormous volumes at inhuman speed, you would need to closely guard it, lest it be rendered worthless. I have even begun to witness people using AI guard their prompts, fearing someone else may come along and appropriate their effort for their own ends. The production speed and volume of rip offs produced from an original work has historically been limited by the human factor. An author sharing their work openly for the world to enjoy would invariably make the determination that having their work out in the world outweighed the risk of it being ripped off. It used to take genuine time, effort and often skill to create derivatives. In a world where this is no longer the case, where it really is as easy as pressing a button to receive a half-dozen variations on an original work, or works in the style of someone’s oeuvre, authors of all stripes, users and non-users of AI alike, will increasingly retreat into walled gardens to protect what little value their works may accrue.

In this regard, careful guardrails around the ingestion of works for training generative AI are, contrary to what Google claims, an exemplar of copyright’s intended purpose. Authors would be free to share their work as they please, safe in the knowledge that it cannot be exploited non-consensually in ways that would undermine the value it holds. Guardrails would not only promote the continued sharing of creative works by authors of all kinds, they would also encourage the growth of licensing markets that see these revolutionary AI tools developed quickly and ethically with consideration for all stakeholders. It would genuinely be a win-win scenario.

#### Only ethically-trained AI can sustain the industry

Nunwick 24 (Alice Nunwick, Technology Reporter for GlobalData Media. “Analysis: Can licensing deals save OpenAI from future copyright lawsuits?” 5/3/2024. Accessed 5/14/2024. <https://www.verdict.co.uk/analysis-can-licensing-deals-save-openai-from-future-copyright-lawsuits/>) wtk

Licensing deals could help OpenAI create transparency in its mass of training data, helping it easily trace the sources of information that have been used to create ChatGPT.

Sara Saab, VP of product at data platform Prolific, stated that OpenAI’s existing licensing deals marked a pivot in data provenance for AI chatbots and large language models.

“Data provenance is becoming increasingly vital in AI, highlighting the importance of transparently indicating where an AI model’s data originates in a reliable and trustworthy way,” said Saab.

Saab predicts that ethically sourced and well-compensated data will become a necessity for future AI tools.

“Facilitating the easier tracing of AI training data back to representative and diverse human groups is crucial, ensuring a broad spectrum of human experiences are captured in our AI systems,” Saab concluded.

### \*\*\*trademark link answers\*\*\*

### 1ar trademark—plan prevents copyright liability

#### Lack of a trademark safe harbor means rightsholders can circumvent DMCA copyright safe harbors

Sally Feingold et al, 2015 - counsel for Etsy, Inc “IN THE MATTER OF DEVELOPMENT OF THE JOINT STRATEGIC PLAN FOR INTELLECTUAL PROPERTY ENFORCEMENT. COMMENTS OF ETSY, FOURSQUARE, KICKSTARTER, MEETUP, AND SHAPEWAYS” 10/16, <https://extfiles.etsy.com/advocacy/Etsy_IPEC_Comment.pdf> //DH

It Is Time to Explore Expanding Safe Harbors

While the benefits of statutory safe harbors are important, they are currently limited to disputes over copyright and claims covered by section 230 of the CDA. No such protection exists for similarly problematic behavior with regard to trademark. As online content grows and brings about more disputes, it is necessary to consider expanding existing safe harbors or create new ones for trademarks.

Indeed, some rightsholders take advantage of the absence of trademark safe harbors by combining trademark and copyright complaints in the same takedown request. For example, a rightsholder may request the removal of user content consisting of a copyright-protected character and its trademark- protected name. In practice, this allows the rightsholder to sidestep the DMCA counter notice process - designed to be a key check against abusive takedown requests. Even if a user intends to challenge the copyright portion of the request, the trademark portion often remains unchallengeable, resulting in the targeted content staying down.

### \*\*\*impact answers\*\*\*

### 1ar ai can’t solve social problems

#### AI isn’t a better decision-maker for complicated problems

McKendrick and Thurai 22 (Joe McKendrick is an author, independent researcher and speaker exploring innovation, information technology trends and markets. Andy Thurai is a VP and principal analyst with Constellation Research. He is a former chief strategist for IBM cloud Platform. “AI Isn’t Ready to Make Unsupervised Decisions” 9/15/2022. https://hbr.org/2022/09/ai-isnt-ready-to-make-unsupervised-decisions) wtk

AI’s Mixed Record as Ultimate Decision-Maker

AI has progressed to compete with the best of the human brain in many areas, often with stunning accuracy, quality, and speed. But can AI introduce the more subjective experiences, feelings, and empathy that makes our world a better place to live and work, without cold, calculating judgment? Hopefully, but that remains to be seen. The bottom line is, AI is based on algorithms that responds to models and data, and often misses the big picture and most times can’t analyze the decision with reasoning behind it. It isn’t ready to assume human qualities that emphasize empathy, ethics, and morality.

AI may not be as advanced as many would like when it comes to looking at the total context of other real-world situations it encounters, and its decisions may be consequential. Consider these relatively recent incidents cited in news reports:

#### AI fails—it makes mistakes and will run out of data

De Vynck 24 (Gerrit De Vynck is a tech reporter for The Washington Post. “The AI hype bubble is deflating. Now comes the hard part.” 4/25/2024. Accessed 6/6/2024. https://www.washingtonpost.com/technology/2024/04/18/ai-bubble-hype-dying-money/) wtk

Though the tech continues to improve, there are still glaring problems with generative AI. Figuring out how to ensure models that are supposed to be reliable don’t generate false information has vexed researchers. At Google’s big cloud computing conference earlier this month, the company offered a new solution to the problem: Customers using its tech to train AI models could let their bots fact-check themselves by simply looking things up on Google Search.

Some claims about AI’s near-magic ability to do human-level tasks also have been called into question. A new paper from researchers at the University of Massachusetts at Amherst, Adobe, the Allen Institute for AI and Princeton showed that AI models routinely made factual mistakes and errors of omission when asked to summarize long documents. Another recent paper suggested that a claim that AI was better than the vast majority of humans at writing bar exams was exaggerated.

The big improvement in AI tech showcased by ChatGPT that kicked off the boom came from OpenAI feeding trillions of sentences from the open internet into an AI algorithm. Subsequent AIs from Google, OpenAI and Anthropic have added even more data from the web, increasing capabilities further. Seeing those improvements, some famous AI researchers moved up their predictions for when they think AI would surpass human-level intelligence. But AI companies are running out of data on which to train their models, raising the question of whether the steady improvement in AI capability will plateau.

Training bigger and better AI models has another crucial ingredient — electricity to power the warehouses of computer chips crunching all that data. The AI boom has kicked off a wave of data center construction, but it’s unclear whether the United States will be able to generate enough electricity to run them. AI, coupled with a surge in new manufacturing facilities, is pushing up predictions for how much electricity will be needed over the next five years, said Mike Hall, CEO of renewable energy management software company Anza and a 20-year veteran of the solar power industry.

### 1ar model collapse = AI ineffective

#### Model collapse is a likely certainty with synthetic training

Feremenga 24 (Last Feremenga, Director of Data Science at Saijfr. “Could AI-generated data lead to model collapse? How to prevent it.” 2/13/2024. Accessed 6/10/2024. https://saifr.ai/blog/could-ai-generated-data-lead-to-model-collapse-how-to-prevent-it) wtk

One significant concern is 'model collapse', where the quality of future generations of models can deteriorate. In this scenario, not only can the model start to misinterpret reality from a human perspective, but it can also believe this misinterpretation to be real. A research team from the Universities of Oxford and Cambridge identified this phenomenon through controlled experiments. They discovered that if future generative models are trained with outputs from their predecessors, they will inevitably and irreversibly collapse, regardless of the model architecture.

To comprehend the causes of model collapse, consider data as a distribution, or a snapshot of (in the case of text) all word arrangements and their likelihood of occurring. For instance, the word Obama is more likely to occur next to the words President, Michelle, or USA than it is to occur next to Peter or John. Internet data, whether text or images, similarly follows specific distributions, albeit unknown. The objective of generative models is to learn these distributions such that their outputs reflect the world-view from a human perspective.

There are two salient causes of future model collapse. First, the 1st-generation model might learn an incorrect data distribution, focusing on areas where humans lack expertise or overlooking areas that warrant more attention. If Grok had expertise in creating malware, it would be surprising, as one would hope that X’s training data distribution did not include techniques on how to create malware. For future models whose training data recursively came from outputs from a 1st-generation model with an incorrect data distribution, model collapse is likely certain.

Still likely certain, albeit with delay, is the model collapse for future models whose 1st-generation model learned the data distributions from humans accurately. A typical progression across generations might look like this: The second-generation model learns from a mix of human data and outputs from the first-generation model. Likewise, the third generation model will learn from a mix of human data and outputs from the second-generation model. Eventually, a future model will learn from a significant amount of data generated by its predecessor. As each successive model learns only from a fraction of the original human data, it is likely inevitable that this fraction will miss parts of the original data’s distribution. When repeated over multiple generations, the errors from this distortion of the human data distribution can lead to model collapse.

#### Each generation gets worse

Claburn 24 (Thomas Claburn is a senior reporter at The Register. “Big brains divided over training AI with more AI: Is model collapse inevitable?” 5/9/2024. Accessed 6/10/2024. https://www.theregister.com/2024/05/09/ai\_model\_collapse/?td=keepreading) wtk

"Usually, when you train a model on lots of data, it gets better and better the more data you train on," Kempe explained. "This relation is called a 'scaling law' and has been shown to hold both empirically in many settings, and theoretically in several models.

"In our paper we show that when a model is trained on synthetic data that comes from a previous model that itself was generated on data from a previous model and so on, for a number of times (let us call the number of times n), then its performance does not obey the usual scaling laws; rather, it behaves effectively as if it had only been trained on an n-fraction of original data.

"For example, if we iteratively train and synthesize ten times, and then use the data from the last model to train, then we only get the performance we would get had we trained on 1/10th of the original data, so much worse!"

Yunzhen Feng, a doctoral student in data science at New York University and one of Kempe's co-authors, also disagreed with the "Is Model Collapse Inevitable?" paper and its suggestion that model collapse can be discounted.

"If the objective is to maintain a good performance, it might be preferable to consistently use the original dataset, which is already stored and selected prior to introducing synthetic data," Feng explained.

"Our aim is to keep the scaling benefits," Feng continued. "In the scaling regime, using clean data to increase the dataset size tenfold results in better scaling. Conversely, using synthetic data not only forfeits these benefits but also introduces a performance degradation. Therefore, we disagree with them."