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AI CONTROVERSY

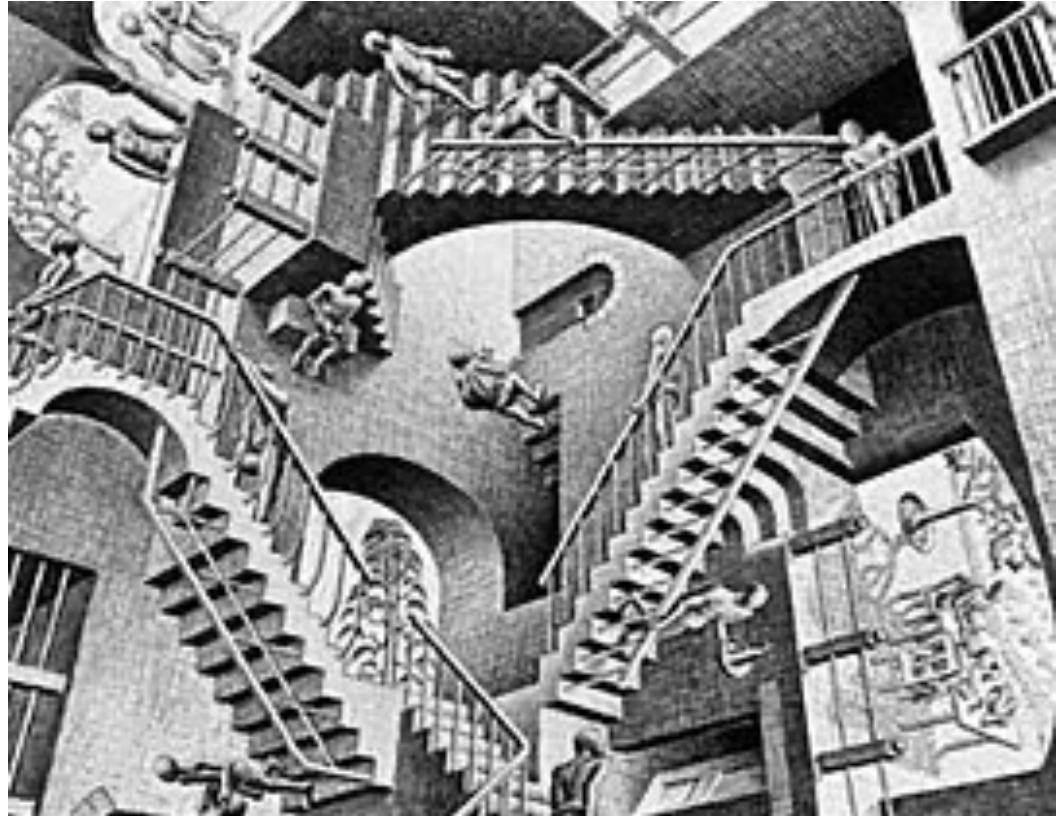
Wm. Bruce Wray

Owner & Managing Partner, Wray Law TCP

Co-Director, Innovation & Entrepreneurship Legal Clinic
at Creighton School of Law

WHAT AI CONTROVERSY?

- Ethics, Ethics, Ethics
- Environmental Impacts
- Societal Impacts
- Bias & Prejudice
- Data Collection & Scope
- Content Misappropriation & Abuse
- Privacy
- False Positives & Hallucinations

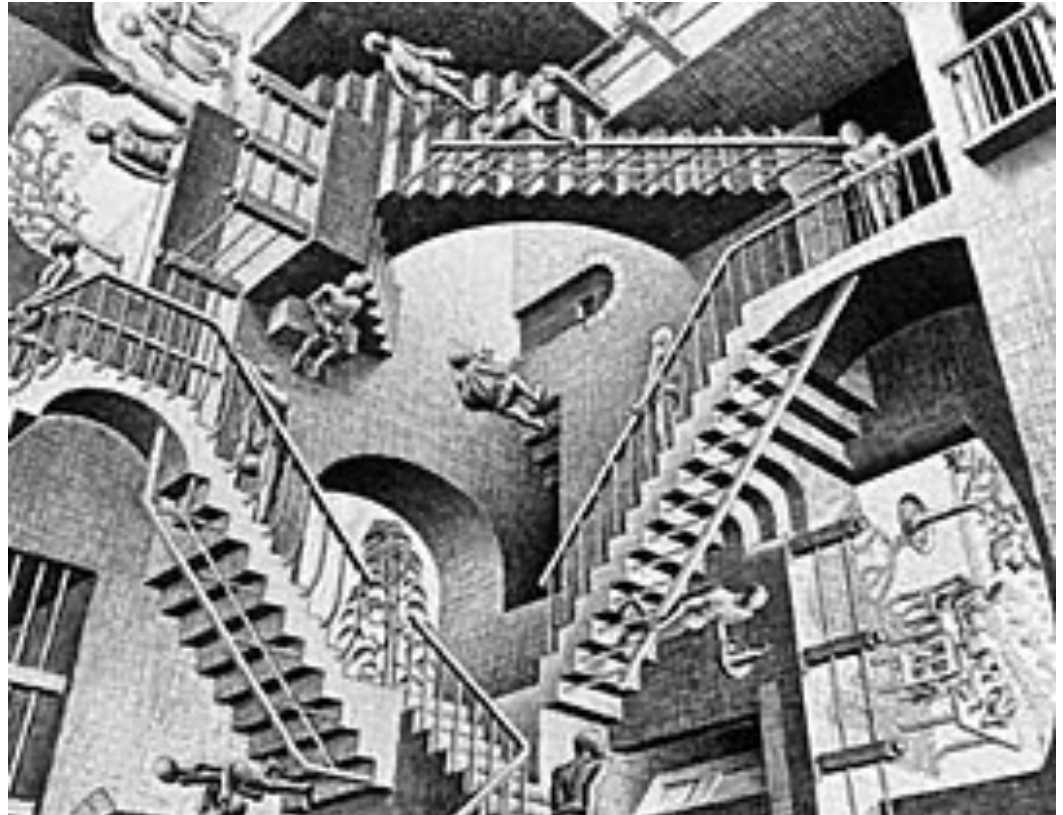


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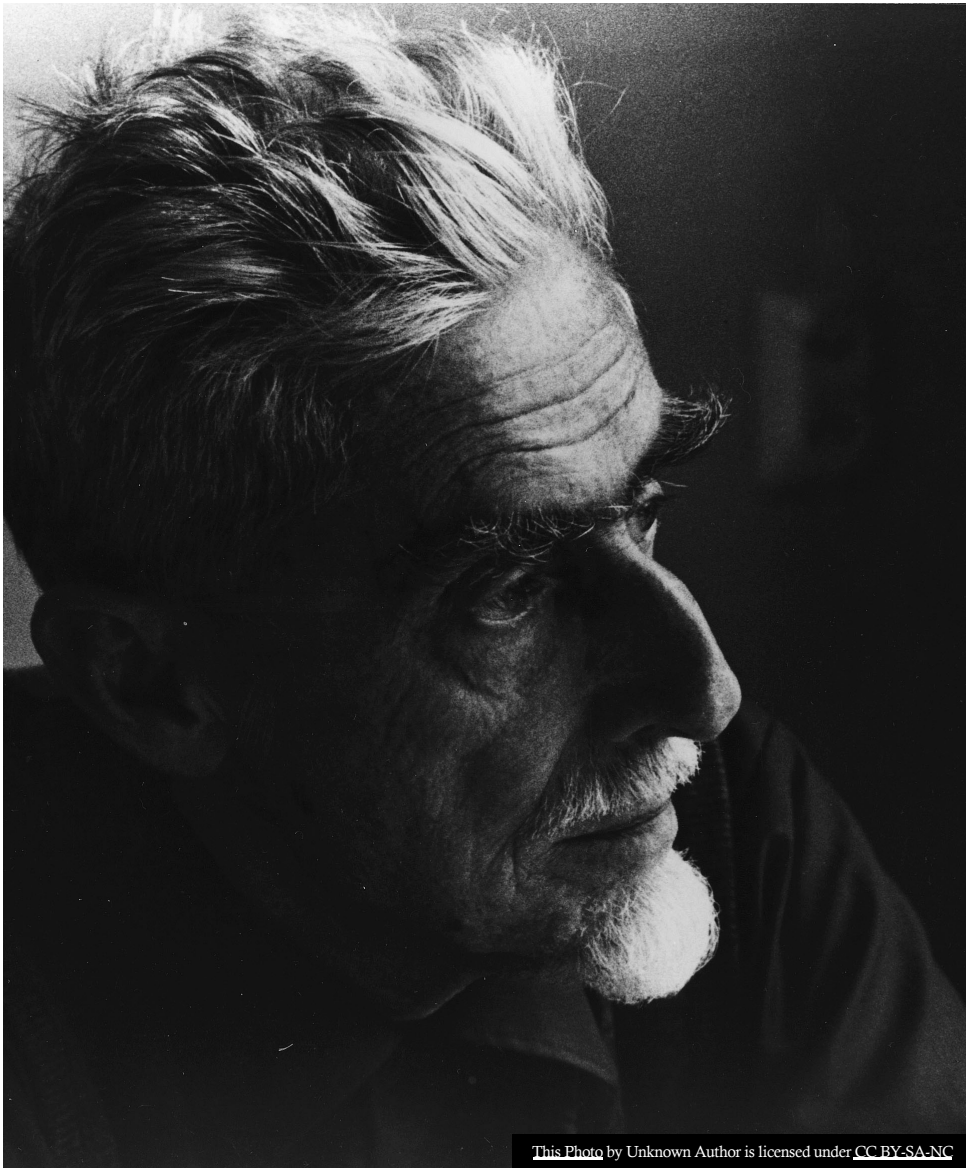
WHAT AI CONTROVERSY?

- ~~Ethics, Ethics, Ethics~~
- ~~Environmental Impacts~~
- ~~Societal Impacts~~
- ~~Bias & Prejudice~~
- ~~Data Collection & Scope~~
- ~~Content Misappropriation & Abuse~~
- ~~Privacy~~
- ~~False Positives & Hallucinations~~

. . . None of these . . . at least directly . . .

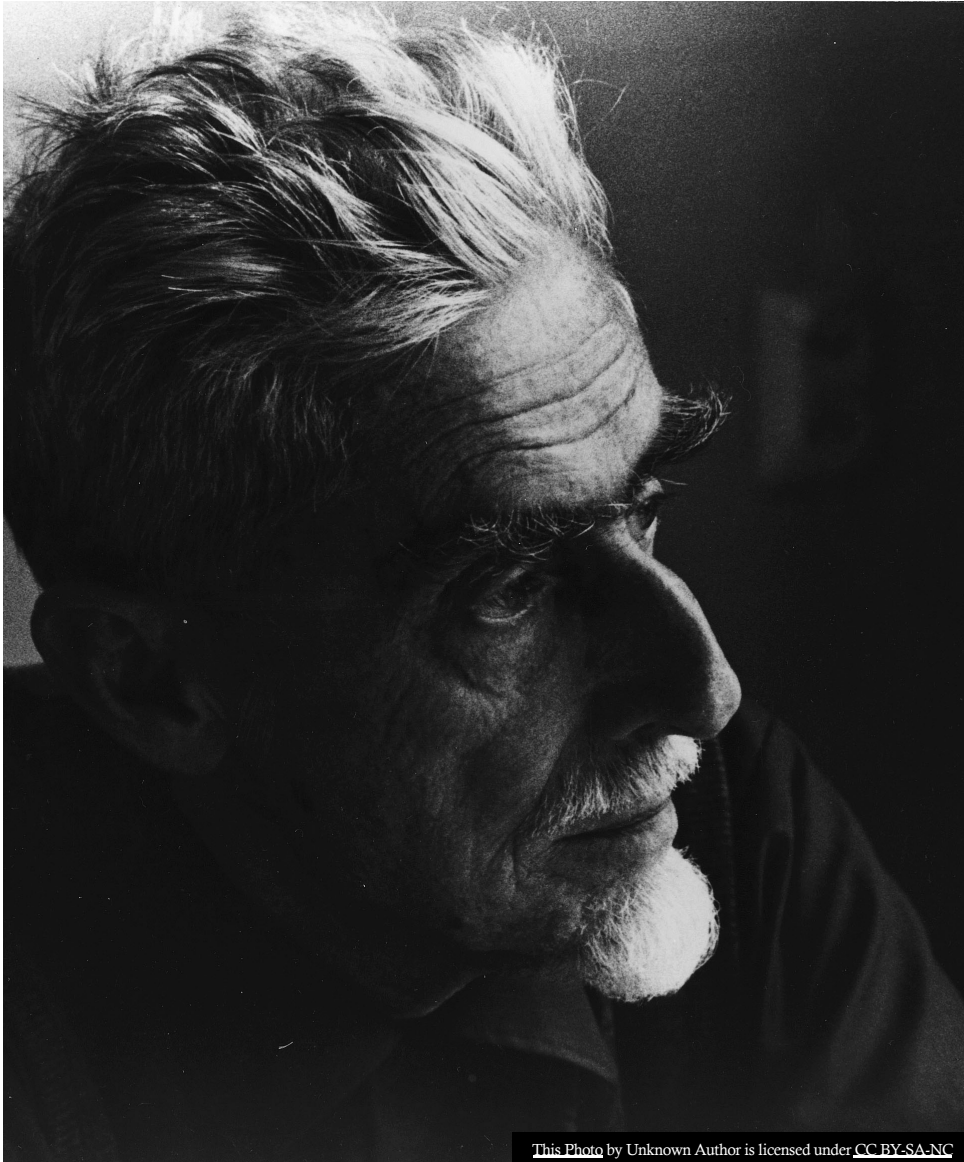


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WHAT AI CONTROVERSY?



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WHAT AI CONTROVERSY?

AI Impacts on SMB,
Global Conglomerates,
and Everything in
Between

WHAT AI CONTROVERSY?

Agenda

- Safe & Deliberate Use
 - How AI Works
 - How To Make AI Work
 - Warning Labels
- Risk & Ethical Issues
 - Competent Use
 - Data Confidentiality, Use, & Privacy
 - Trust, False Positives, & Hallucinations
- Resources



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SAFE & DELIBERATE USE



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SAFE & DELIBERATE USE

- AI can enable SMB teams to compete with larger organizations by automating routine, time-consuming tasks
 - Those task might include document categorization and review, data analysis and processing, and automated threat detection
 - AI tools can reduce overhead costs, improve efficiency, and deliver faster results without needing to expand staff
-



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SAFE & DELIBERATE USE

How to Implement AI in a SMB

- Start Small –Focus on one or two use cases, such as AI-powered research or document automation, rather than a full technological overhaul
 - Use Professional-Grade Tools – Prioritize secure, specialized AI tools over general-purpose AI to ensure confidentiality and data security
 - Evaluate ROI – Track time, effort, and cost savings on specific tasks to evaluate and justify the investment
 - Train Staff –Invest in training to ensure the team can effectively use and manage new tools
-

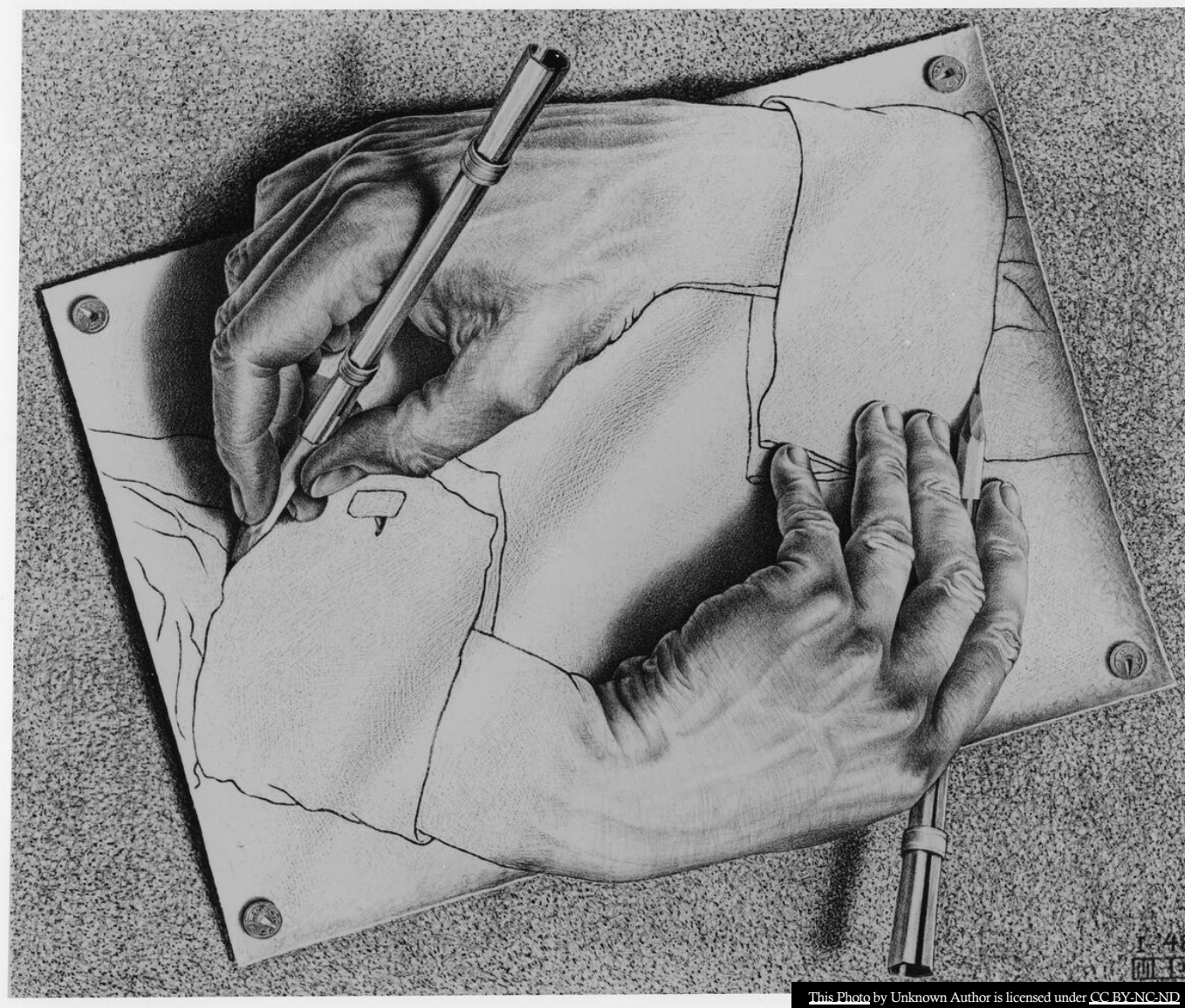


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SAFE & DELIBERATE USE

Additional Considerations

- Business Usage – Formal and informal use, reported and unreported use, official and unofficial use
 - Legal and Compliance Usage – Seek efficiency and repeatability, leverage more with less
 - Privacy and Compliance – Data is always the tail wagging the dog
 - Operational Impacts – AI is a tool that will disrupt many established patterns – prepare for operational collateral impacts
-



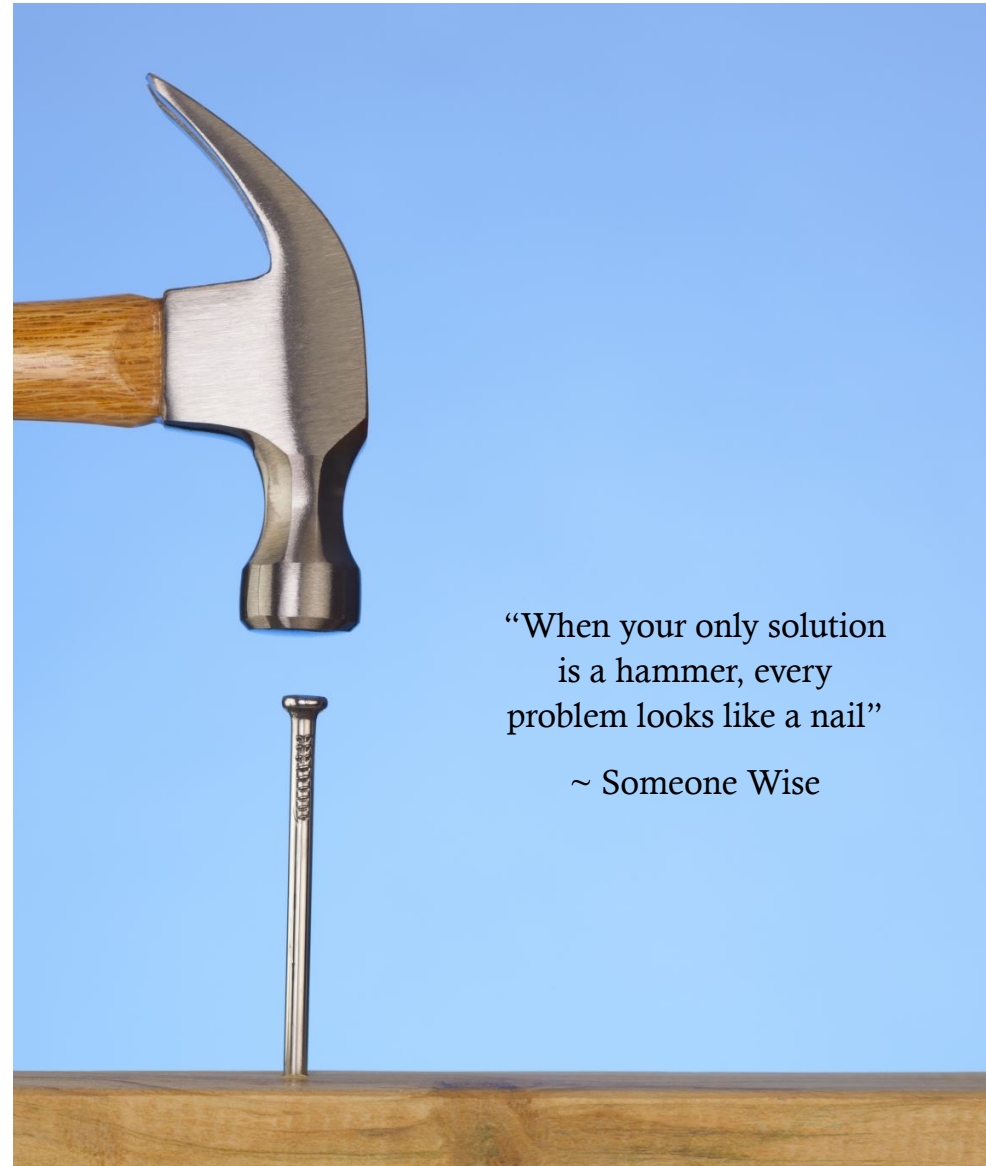
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SAFE & DELIBERATE USE

AI is a Tool:

- Tools have specialized uses
- Tools have intended uses
- Tools are not universal
- Tools can be misused

SAFE & DELIBERATE USE



“When your only solution
is a hammer, every
problem looks like a nail”

~ Someone Wise

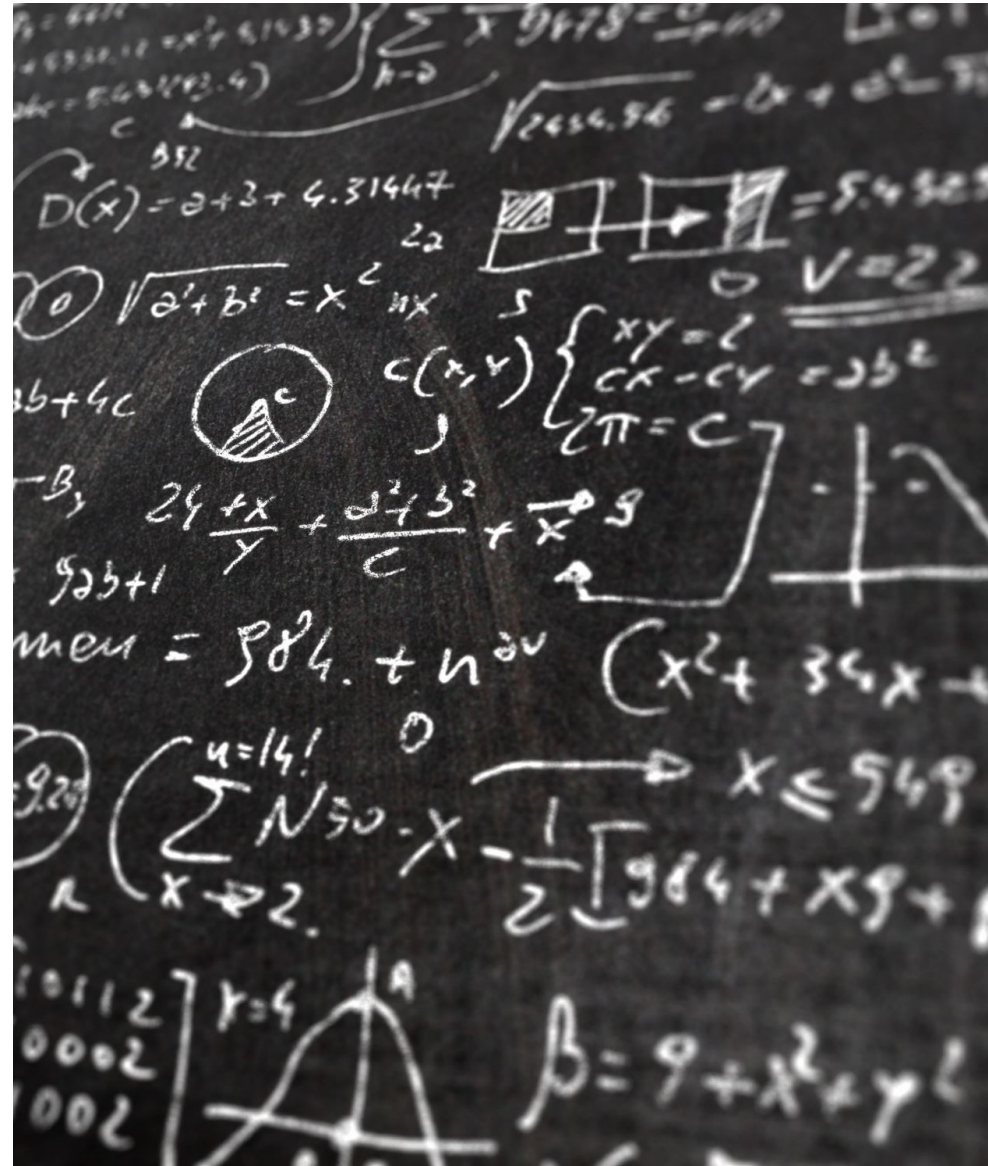
HOW AI WORKS

HOW AI WORKS

Fancy Math

- Weighted Relational Vectors
- “If this, likely that”
- Probabilistic Prediction
- Finding the next most likely data point

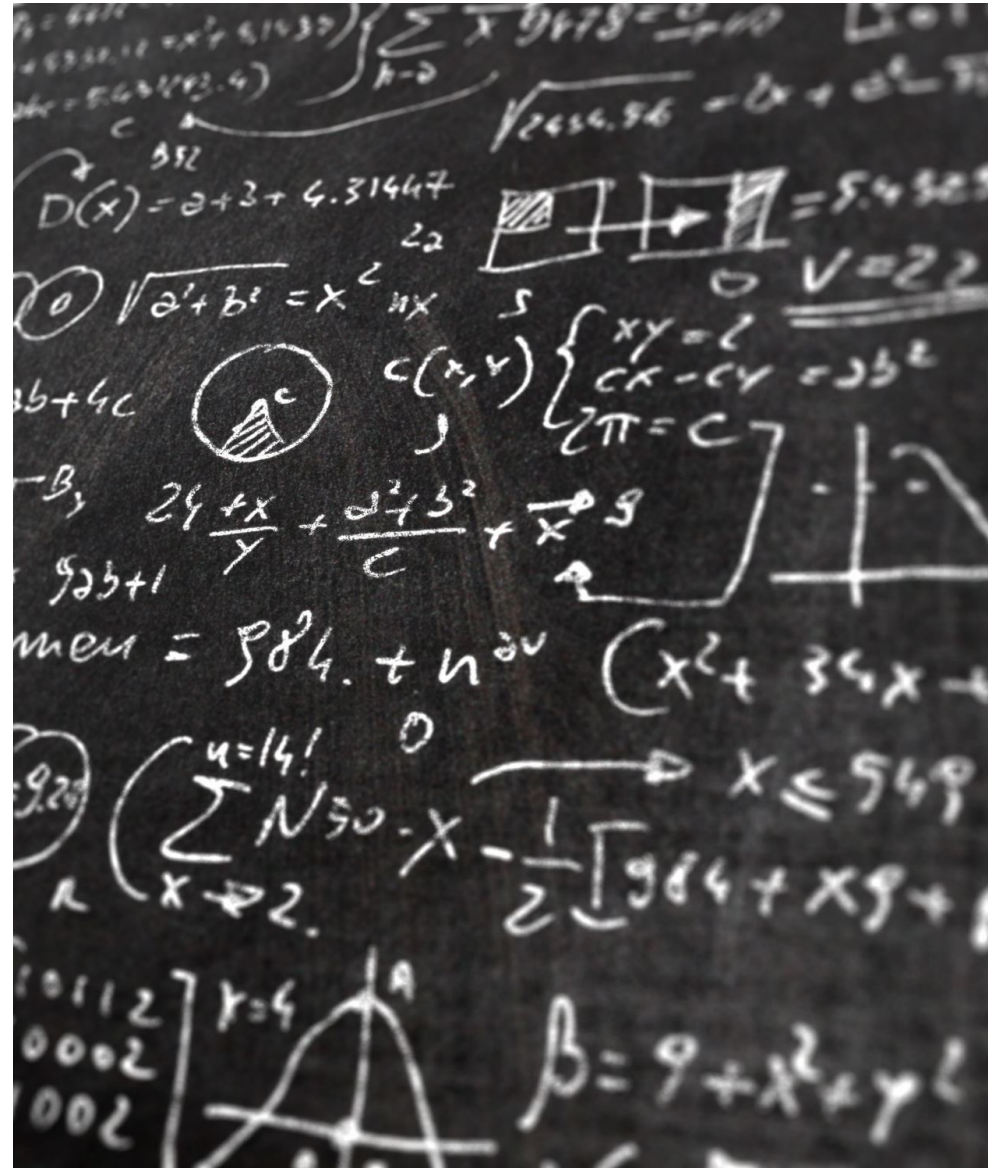
Think – “Suggested Text”



HOW AI WORKS

What is Generative AI (GenAI)?

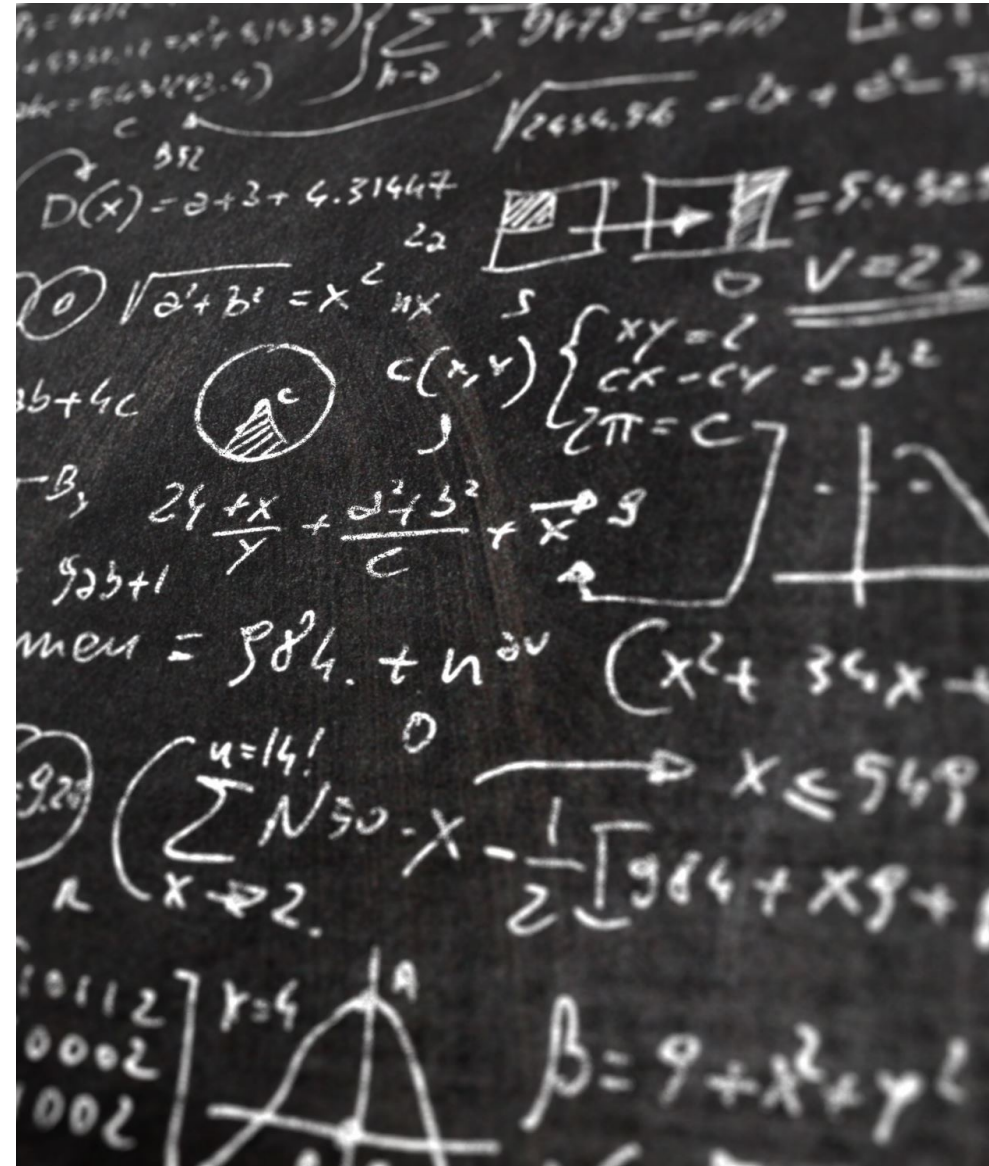
- A type of AI that creates “new, original” content — including text, images, code, music, and videos — based on patterns learned from large, existing datasets
- These may be built on a type of technology called a Large Language Model (LLM) — a specialized subset of GenAI



HOW AI WORKS

What is an LLM?

- A type of AI designed to understand, generate, and process human language by analyzing massive datasets using deep learning, specifically transformer models
- A statistical model wherein an AI system predicts words or phrases based on underlying patterns in their dataset



HOW AI WORKS

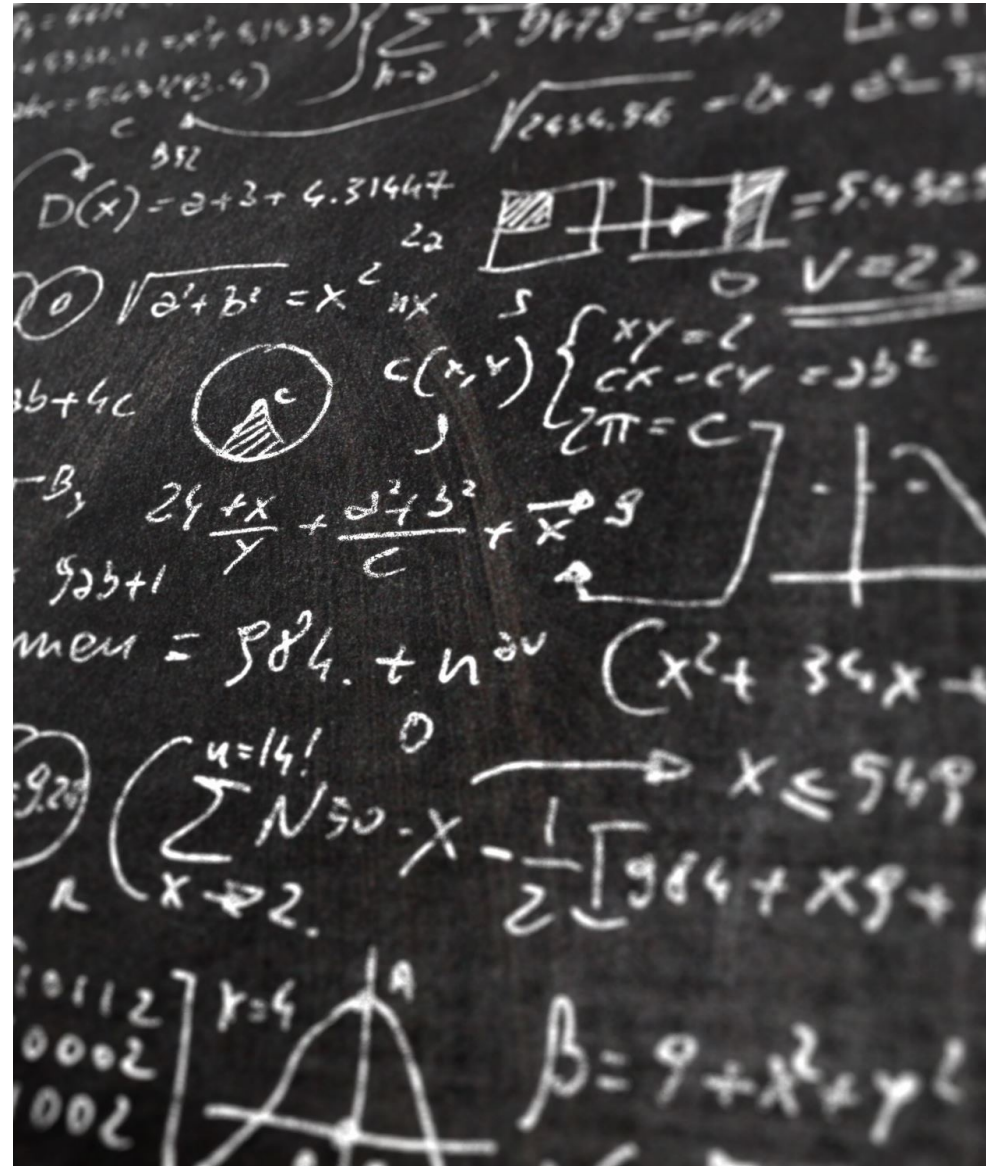
How does GenAI learn?

1. Training

- New datasets are loaded into the GenAI system in a process called “training”
- For natural language, the GenAI system is often an LLM

2. Analysis

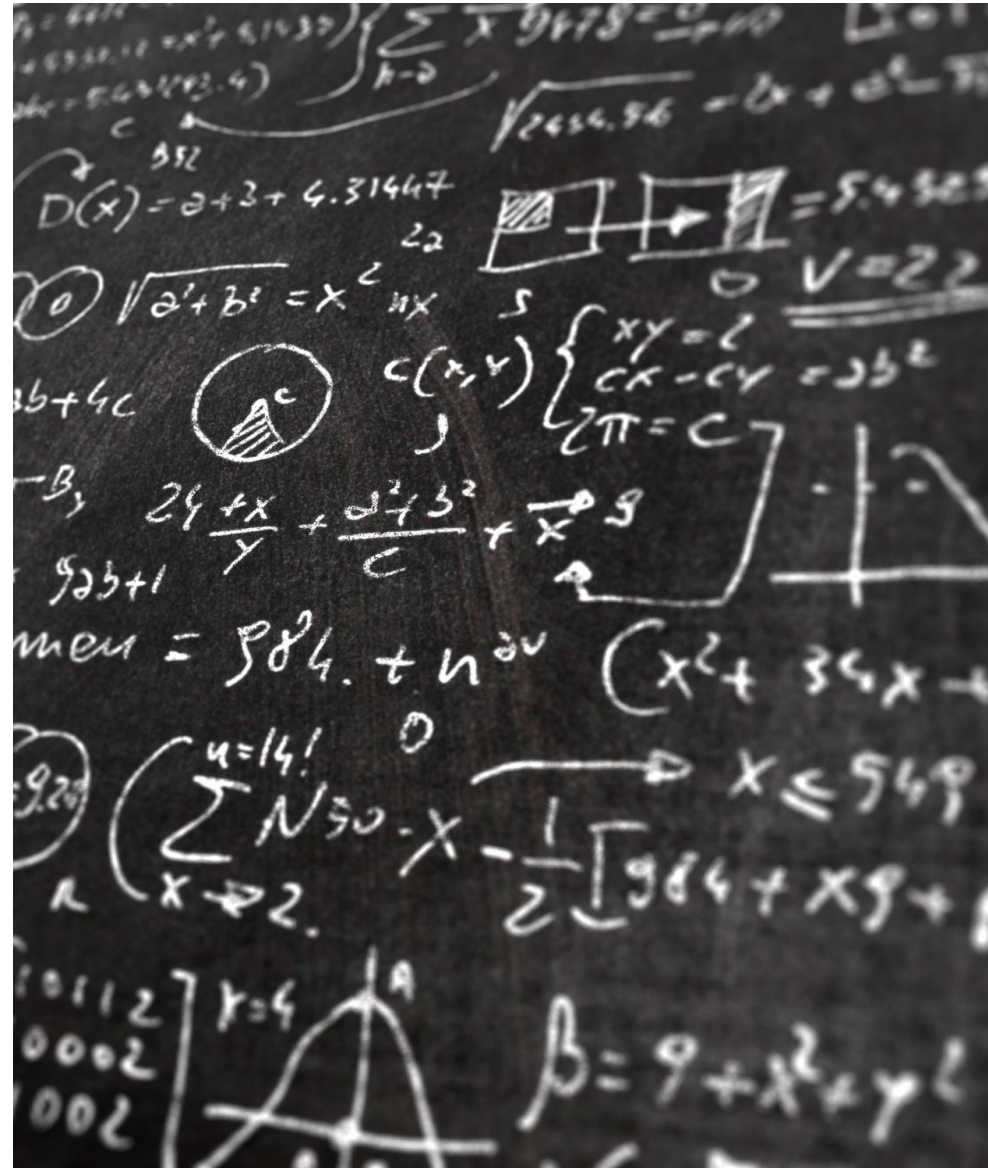
- During “training,” the GenAI systems analyze these massive datasets using neural networks to learn patterns, structures, and statistical relationships (i.e. probability analysis)



HOW AI WORKS

How does GenAI work?

A sophisticated “mimic,” creating new, human-like content—such as text, images, or code—by predicting the most probable next elements in a sequence based on its training

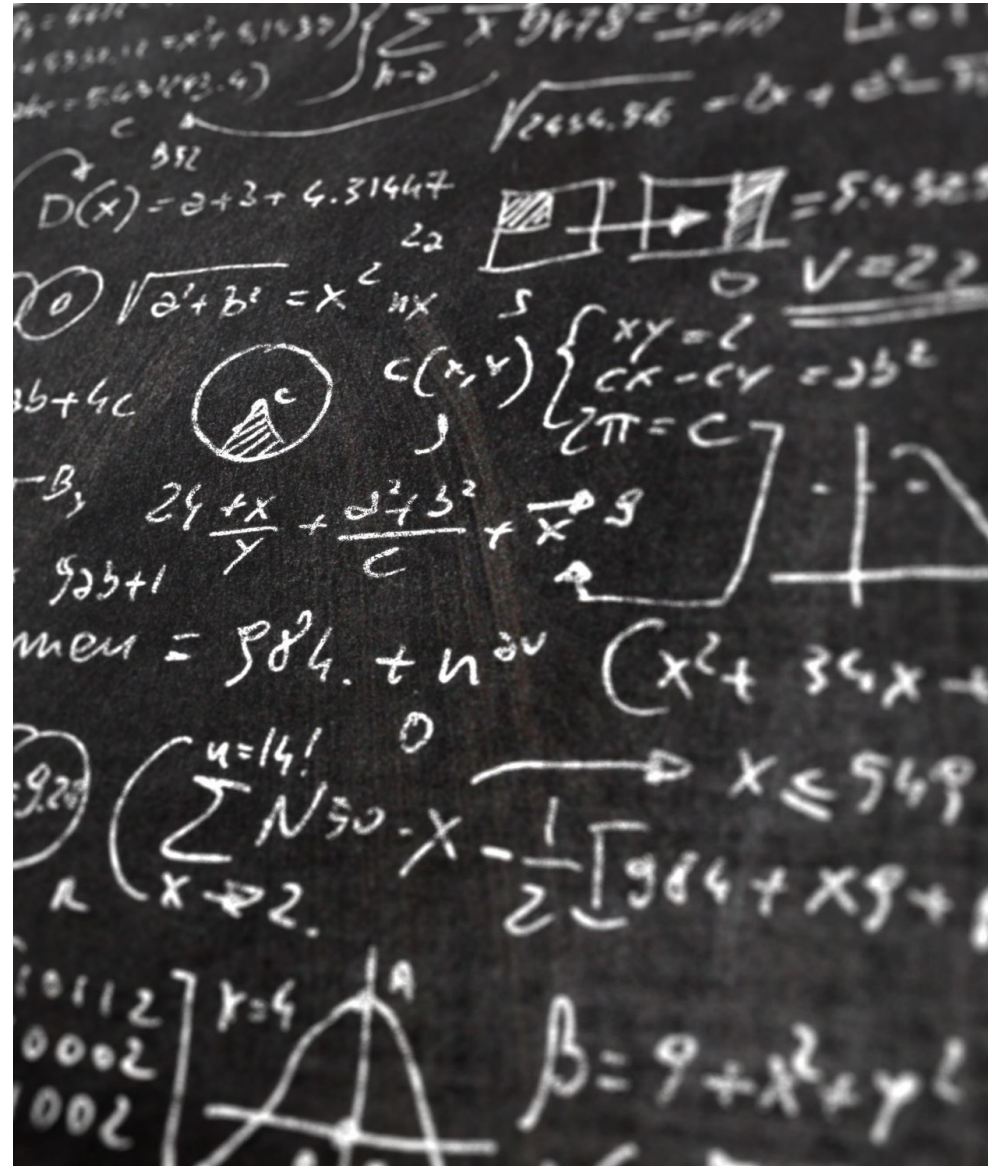


HOW AI WORKS

How does GenAI work?

1. Prompts

- The GenAI system takes “prompts” as user inputs to the LLM
- Prompts can be simple or complicated
- **Prompt Engineering** is a developing specialized field, skill, or practice that involves designing and refining inputs /prompts for GenAI models
- Effective prompt engineering provides the GenAI with specific components to reduce ambiguity



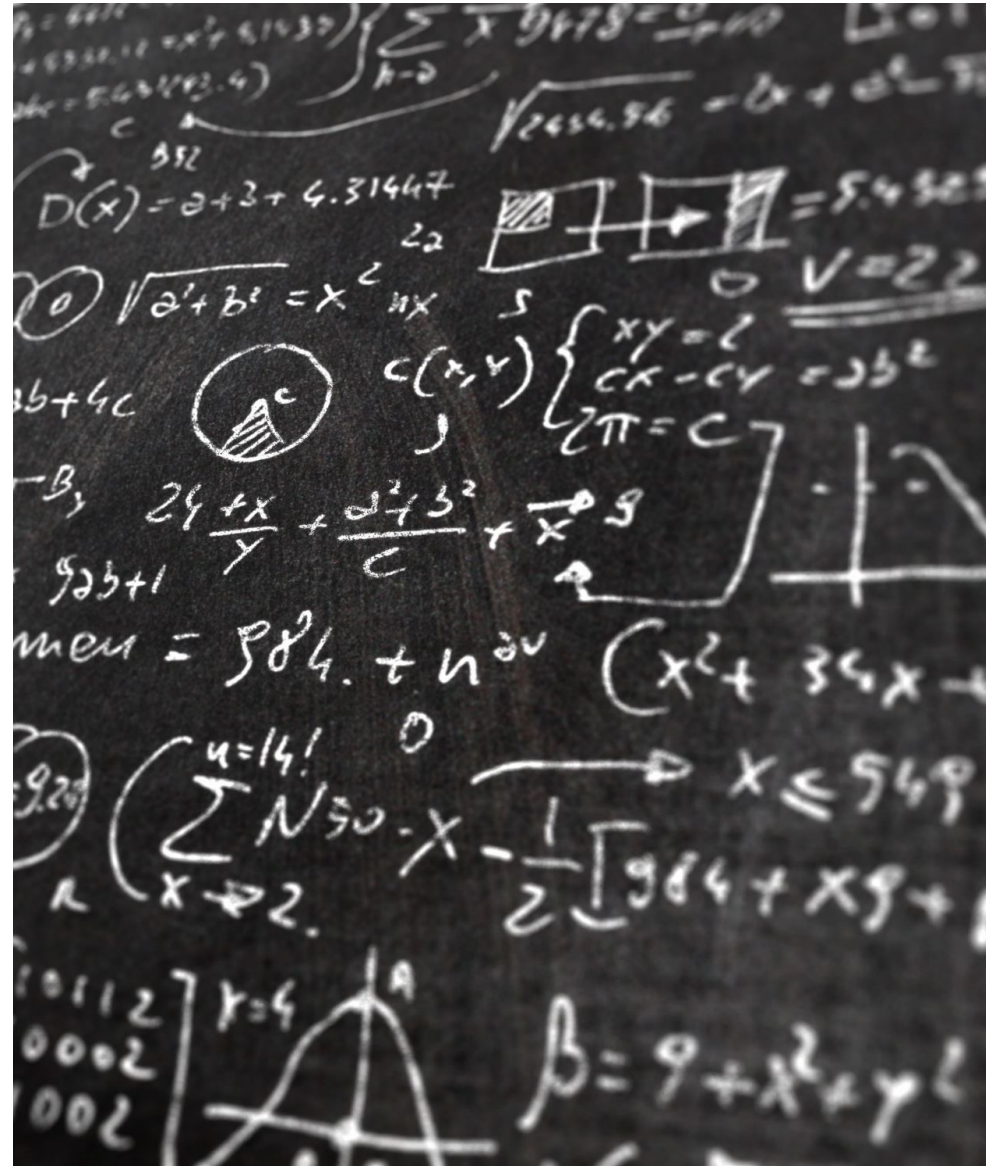
HOW AI WORKS

How does GenAI work?

1. Prompts - Core Elements of a Good Prompt

- Instruction: A clear, active command, such as “Summarize,” “Translate,” or “Write”
- Context: Background information or specific scenarios to ground the AI's response
- Input Data: The specific content or question the AI needs to process
- Output Indicators: Instructions on format (e.g., “in a table,” “in 100 words”) or tone (e.g., “professional,” “funny”).

Think - Instructions For a Child



HOW AI WORKS

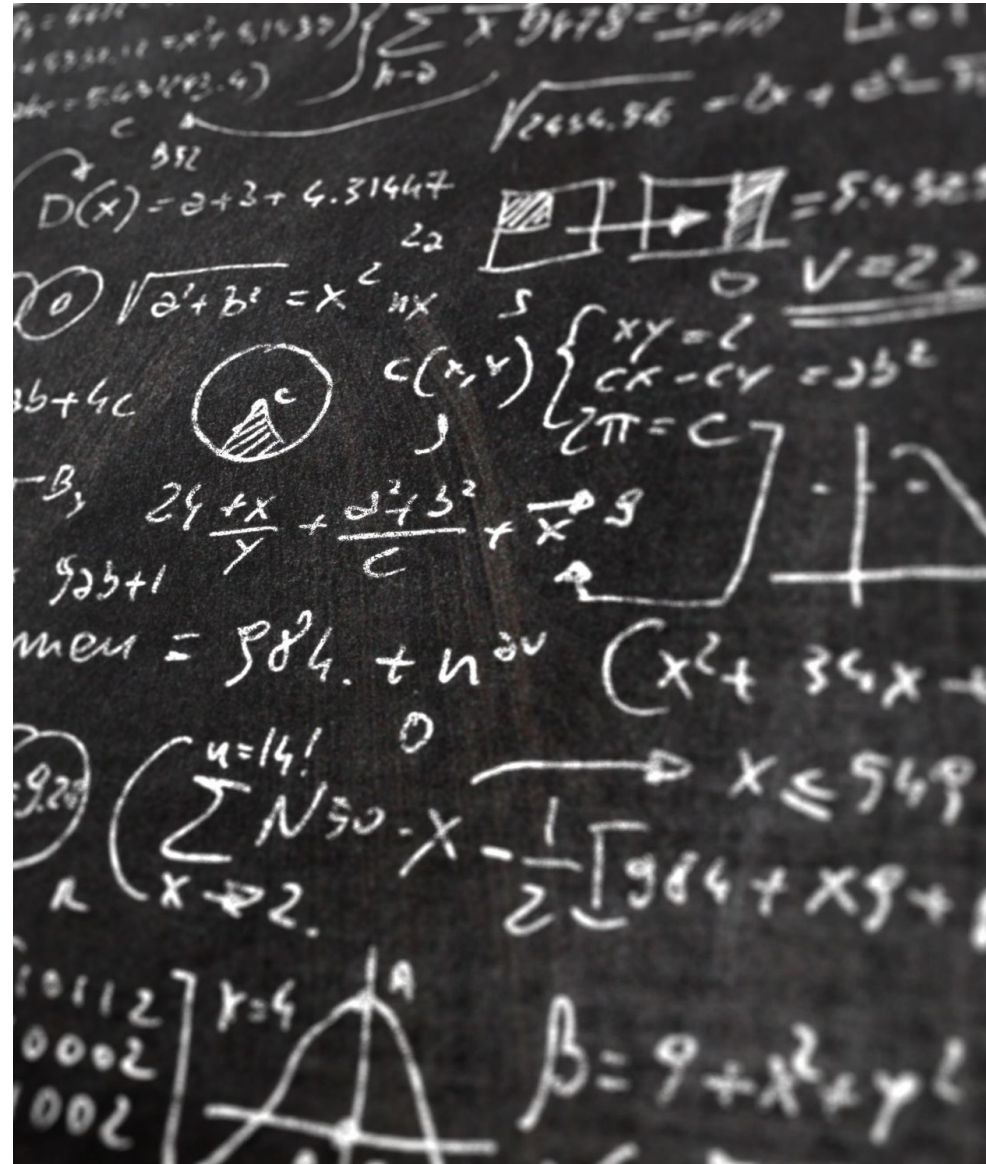
How does GenAI work?

2. Processing

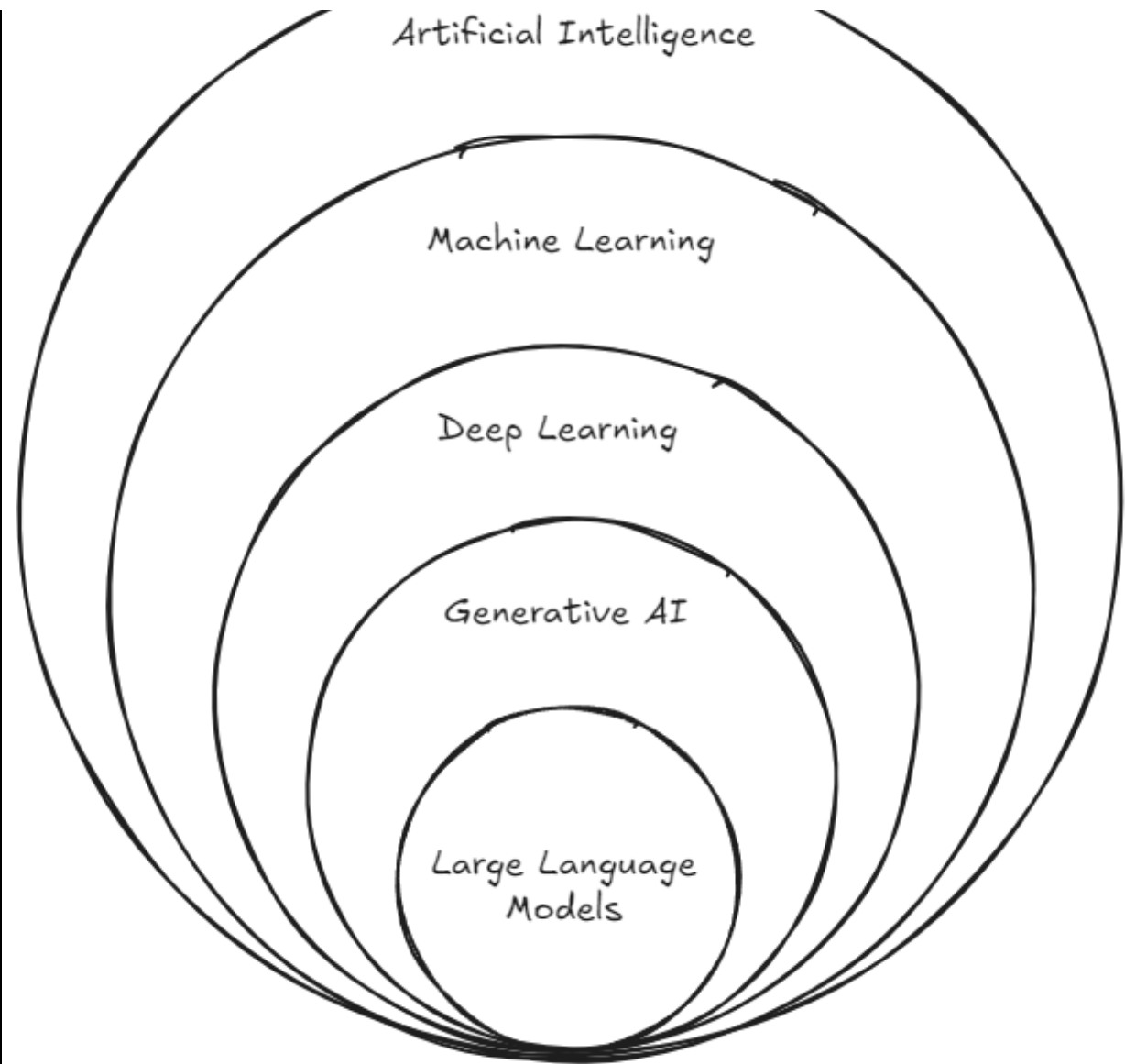
- The prompts are new information for the GenAI system to Process, using and potentially extending the statistical modeling built from the training of the GenAI system

3. Output

- The GenAI system then returns the results of its processing
- In an LLM, this is human-readable
- Fingers-crossed that the Output matches the expectations included in the Prompt



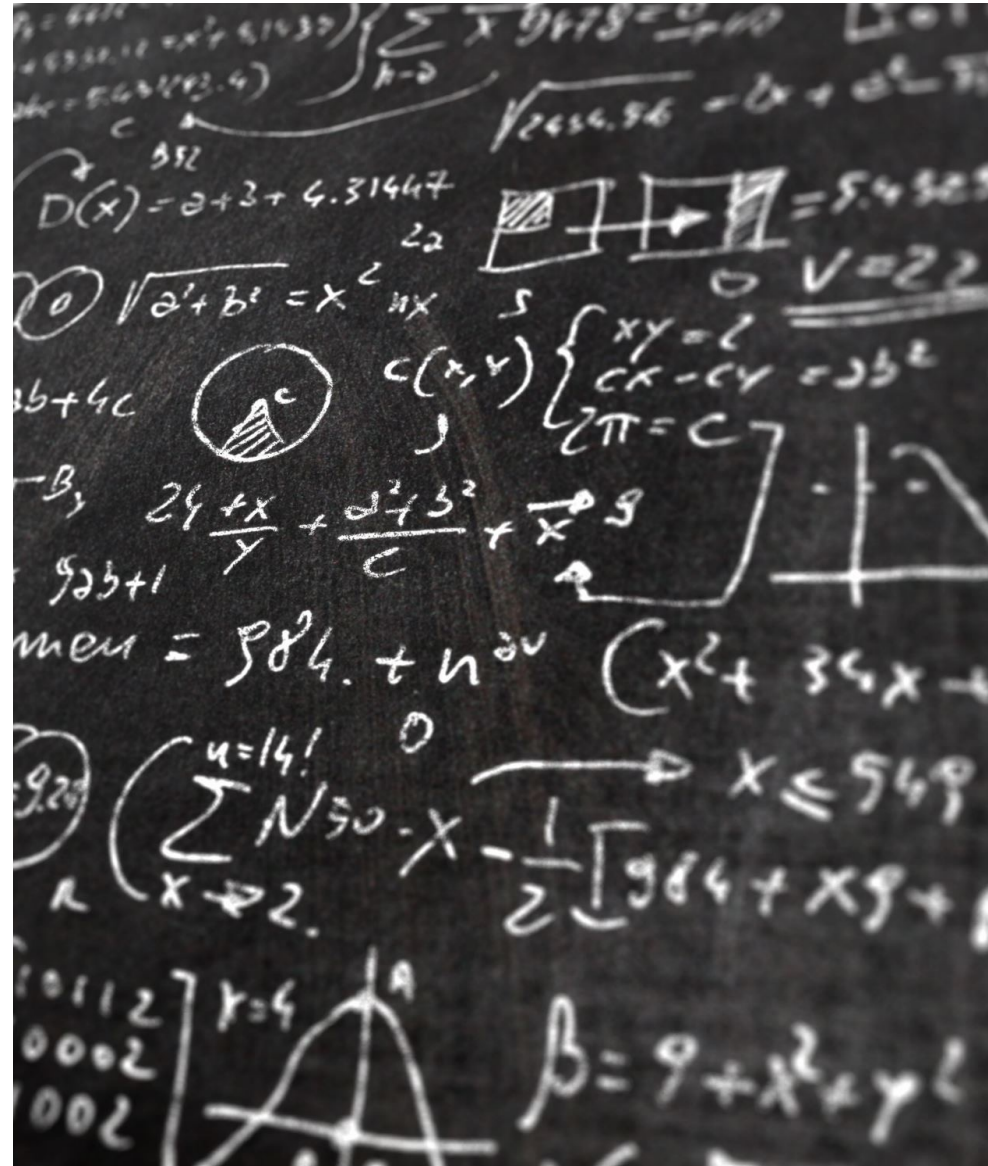
HOW AI WORKS



HOW AI WORKS

Our Next Scheduled Disruption – What is Agentic AI?

- “Agentic” comes from agency—the capacity to act independently, take initiative, and make choices to achieve a specific outcome
- Agentic AI incorporates autonomy and proactive actions, rather than waiting for prompts, to actively pursues goals and divide workflows into manageable tasks
- Four Steps: Perceive (data ingestion), Reason (LLM-driven planning), Act (tool interaction), and Learn (feedback and improvement)
- Agentic AI can be layered, so that multiple agents are working collaborative together to accomplish larger and more complicated outcomes



HOW AI WORKS

Spoiler Alerts

GenAI is an extremely fast, highly sophisticated, and somewhat accurate statistical guesser

If GenAI or LLMs are the “brain,” Agentic AI is the “body” or the “doer”

However

- AI is not really “intelligence” ...
- AI does not understand the meaning behind the words it says to us ...
- AI does not know when it does not know ...

HOW TO MAKE AI WORK

HOW TO MAKE AI WORK

AI is a Tool

- Understanding what GenAI can and cannot do
- Understand what Agentic AI can and cannot do

We cannot ask the elephant
or the fish to climb the tree



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HOW TO MAKE AI WORK

GenAI CAN:

- Create Text – Language is fundamental for LLMs, which can write anything from titles to summaries to whole articles
- Create Images and Multimedia – GenAI can generate images, videos, and audio from prompts, frequently used for design, advertising, and entertainment purposes.
- Create Software and Code – Certain specialized GenAI systems can program code, generate software, or use built-in features to enhance or debug code



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HOW TO MAKE AI WORK

GenAI CANNOT:

- Solve specifics – The statistical probabilities that underpin AI struggle mightily with specifics
- Solve math equations – Math equations are specific and determinative, not probabilistic; additionally, LLMs are geared towards language, not numbers

I.e. 2 is a word, not a quantity



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HOW TO MAKE AI WORK

GenAI CANNOT:

- Generate original content – GenAI systems lack independent creativity and can only produce based on the data it has been trained or provided with
- Reproduce consistent results – AI is based on statistical probability and the individual “paths” through the vector models will vary with each run; beyond the statistical challenges, AI systems are constantly evolving and changing, and each Prompt may alter the underlying model



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HOW TO MAKE AI WORK

Agentic AI CAN:

- Maintain long-term goals, manage multistep problem-solving tasks and track progress over time
- Handle tasks such as expense reporting, compliance checks, fraud detection, and financial forecasting with high accuracy and efficiency
- Excell at task automation

Maybe launch Skynet?



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HOW TO MAKE AI WORK

Agentic AI CANNOT:

- Reliably perform tasks requiring high-level human judgment, ethical nuance, or deep contextual understanding
- Safely make unsupervised, high-stakes decisions
- Manage ambiguous instructions, long-horizon planning, irreversible actions, and understanding the "why" behind processes

Example – “clean my desktop” resulted in 15 years of family photographs being deleted



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HOW TO MAKE AI WORK

Agentic AI Predictions:

- Disrupt more businesses, careers, and processes
- Automate automate automate
- Focus on “Human In The Loop” decisioning



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HOW TO MAKE AI WORK

AI Prediction:

- AI systems, however flavored, will not have a CISSP, a Bar License, a Medical License, a Barbering & Cosmetology Licensure, or any other qualifications dependent upon skill, risk management, and human decisioning



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WARNING LABELS



WARNING LABELS

AI is a Tool

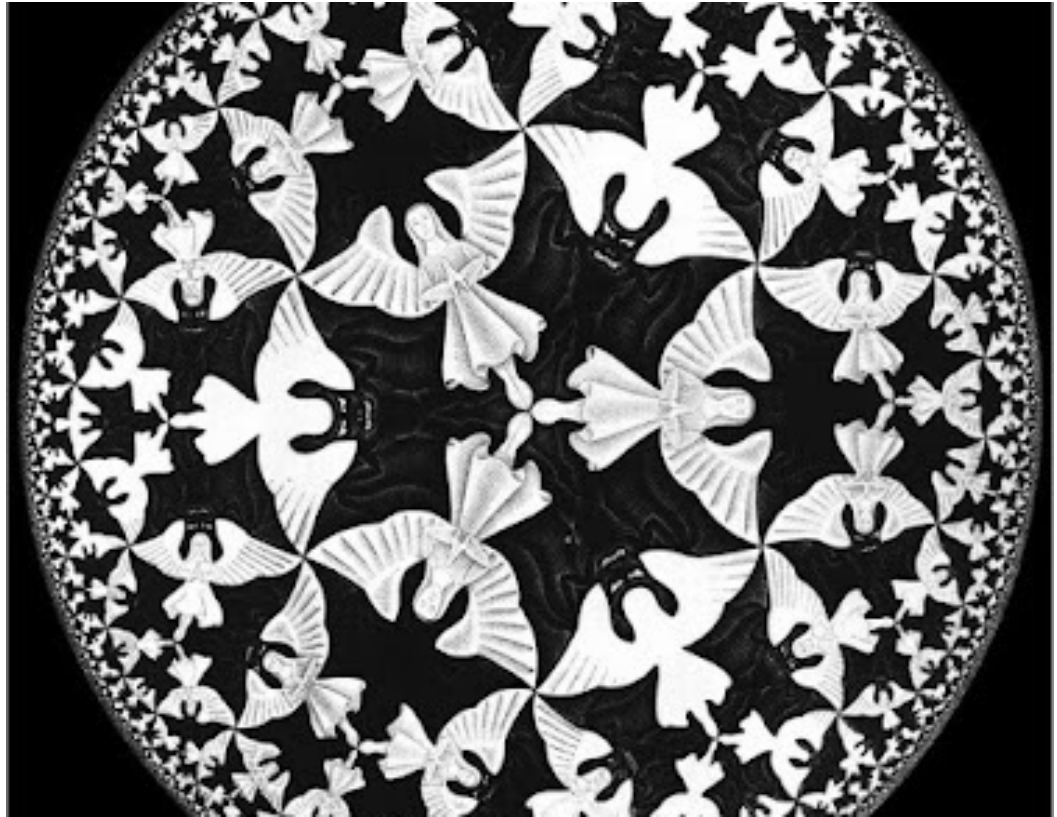
- Tools have intended uses
- Tools come with Warning Labels
- **Each Warning Label has a Story**

We are living the Stories in real time that will direct the writing of the Warning Labels for AI

RISK & ETHICAL REVIEW

RISK & ETHICAL REVIEW

- Competent Use
- Data Confidentiality, Use, & Privacy
- Trust, False Positives, & Hallucinations



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COMPETENT USE ... THE SWORD & SHIELD

Competence Defined

“The ability to do something
successfully or efficiently.”

COMPETENT USE ... THE SWORD & SHIELD

In my world, Competence is governed by
the Rules of Professional Responsibility
Rule 32:1.1





COMPETENT USE ... THE SWORD & SHIELD

In my world, Competence is governed by
the Rules of Professional Responsibility
Rule 32:1.1

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



COMPETENT USE ... THE SWORD & SHIELD

In our world, Competence is governed by Professionalism

- A **lawyer professional** shall provide competent **representation services** to a **client company**. Competent **representation services** requires the **legal** knowledge, skill, thoroughness, and preparation reasonably necessary for the **representation services**.
-



COMPETENT USE ... THE SWORD & SHIELD

But what does it mean to
“Be Competent?”



COMPETENT USE ... THE SWORD & SHIELD

In my world, to “Be Competent” is

- “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.
-

COMPETENT USE ... THE SWORD & SHIELD

In our world, to “Be Competent” is

- “To maintain the requisite knowledge and skill, a **lawyer professional** should keep abreast of changes in the **law technology** and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education, and comply with all continuing **legal** education requirements to which the **lawyer professional** is subject.
-



COMPETENT USE ... THE SWORD & SHIELD

The Sword:

- Offensively, use of technology may become required in practice when and if not using this technology would mean a lack of competence in the market
- At some point, it may no longer be feasible to maintain work that could and should be improved with the use of new technology
- This same principle applied to the advent of word processors, FAX machines, email, online research, cloud services, . . .

. . . and *now likewise applies GenAI*



COMPETENT USE ... THE SWORD & SHIELD

The Shield:

- Defensively, new technology should only be used when and to the extent you are sufficiently competent in its use
- If in doubt, work to learn more about the technology
- This same principle applied to the advent of word processors, FAX machines, email, online research, cloud services, . . .

. . . and *now likewise applies GenAI*





COMPETENT USE
... THE SWORD & SHIELD

GenAI is a Tool,
like all Tools before

DATA CONFIDENTIALITY, USE, & PRIVACY

DATA CONFIDENTIALITY, USE, & PRIVACY

Data is:

- Money
- The tail wagging the dogs of IT, Security, Compliance, and Legal Teams



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DATA CONFIDENTIALITY, USE, & PRIVACY

All of us are:

- Under confidentiality obligations somewhere, somehow, with someone
- Are required to use reasonable efforts to prevent the inadvertent or unauthorized disclosure of Data



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DATA CONFIDENTIALITY, USE, & PRIVACY

To CI or Not To CI?

- Before using an AI platform, **ALWAYS** know the answer to “**Confidential Information or no Confidential Information?**”



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DATA CONFIDENTIALITY, USE, & PRIVACY

To CI or Not To CI?

- In practice, there are many nuances around whether an AI platform is:
 - “Inside the Company” (i.e. CI can be shared) or
 - “Outside the Company” (i.e. CI cannot be shared)



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DATA CONFIDENTIALITY, USE, & PRIVACY

To CI or Not To CI?

- This answer will depend on:
 - What contracts are in place and the specific terms of those contracts
 - Where the data resides and where the data flows



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DATA CONFIDENTIALITY, USE, & PRIVACY

To CI or Not To CI?

➤ **In general, if you are not paying for it,
ABSOLUTELY NO CI**



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DATA CONFIDENTIALITY, USE, & PRIVACY

Use and Privacy Concerns

- GenAI providers often include usage terms that allow them to continuously train their AI models on all exposed data, which includes Prompts (including documents uploaded as part of a Prompt) and Output



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DATA CONFIDENTIALITY, USE, & PRIVACY

Use and Privacy Concerns

- **CI should not be exposed to AI systems that include these usage rights**



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DATA CONFIDENTIALITY, USE, & PRIVACY

Use and Privacy Concerns

- GenAI providers vary in their sophistication and treatment of personally identifiable information covered by data privacy laws



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DATA CONFIDENTIALITY, USE, & PRIVACY

Use and Privacy Concerns

- **PII should not be exposed to AI systems that are not setup to process this category of data**



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DATA CONFIDENTIALITY, USE, & PRIVACY

Use and Privacy Concerns

- **This same holds true for all other categorically covered types of data, from ePHI to PCI and everything in between**



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TRUST, FALSE POSITIVES, & HALLUCINATIONS

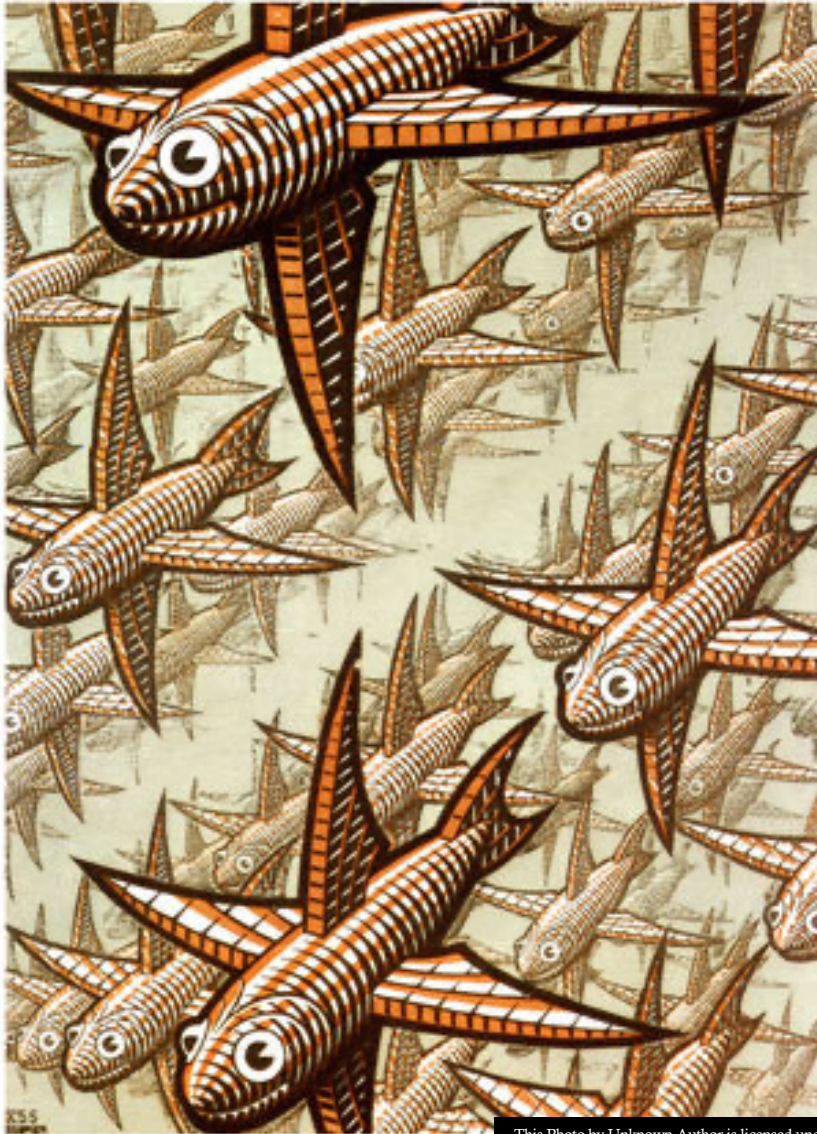


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

AI is a Con Game

- AI systems exude confidence
 - AI confidence is absolutely unwarranted
 - Even knowing the Output is a Guess, the AI system asserted the Output as a Truth
 - There is no “confidence metric” on the Output
-

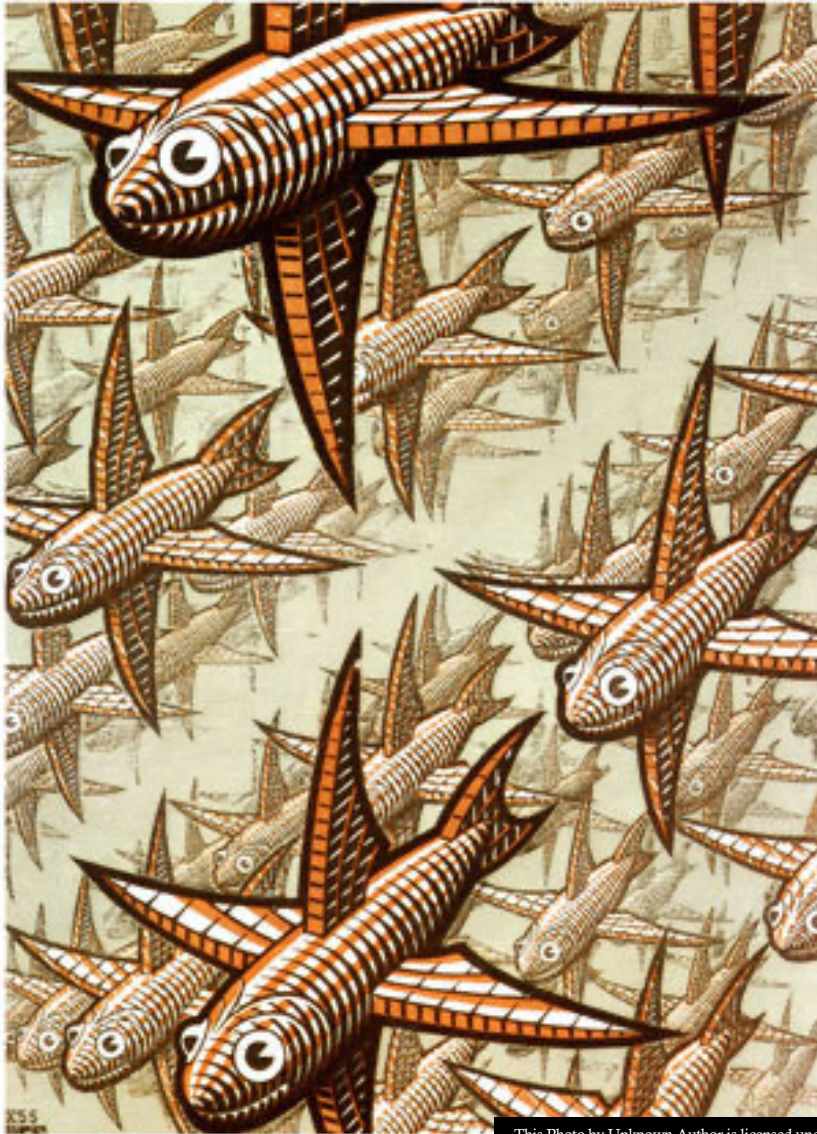


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Trust But Verify

- But do not actually trust...
 - Always gut-check AI Output
 - Always confirm specifics
 - Specifics include case citations, quotes, etc.
-

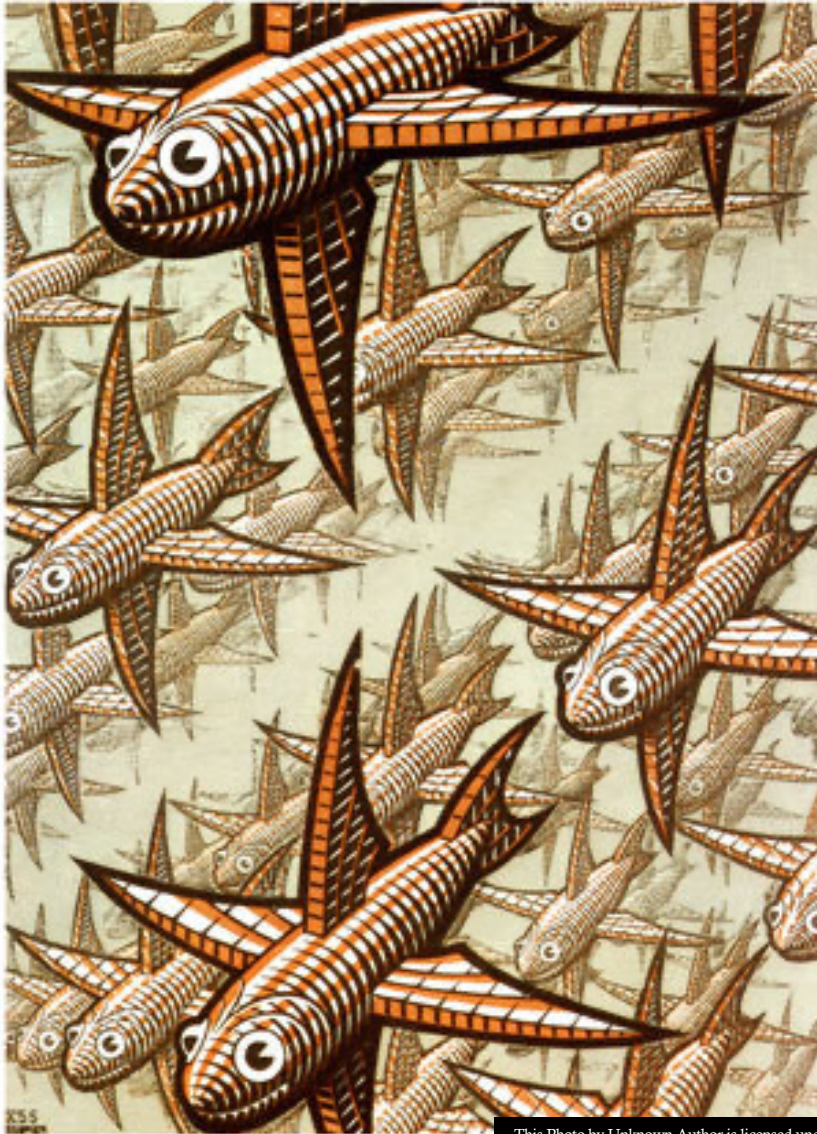


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

False Positives

- A false positive in AI is an error where the system incorrectly identifies a pattern, flagging human-written text as AI-generated, a benign scan as malicious, a healthy patient as sick, etc.



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TRUST, FALSE POSITIVES, & HALLUCINATIONS

False Positives

- Essentially, it is a “false alarm” where the model claims a positive result (e.g., “this is AI”) when the true state is negative (e.g., “this is human”)

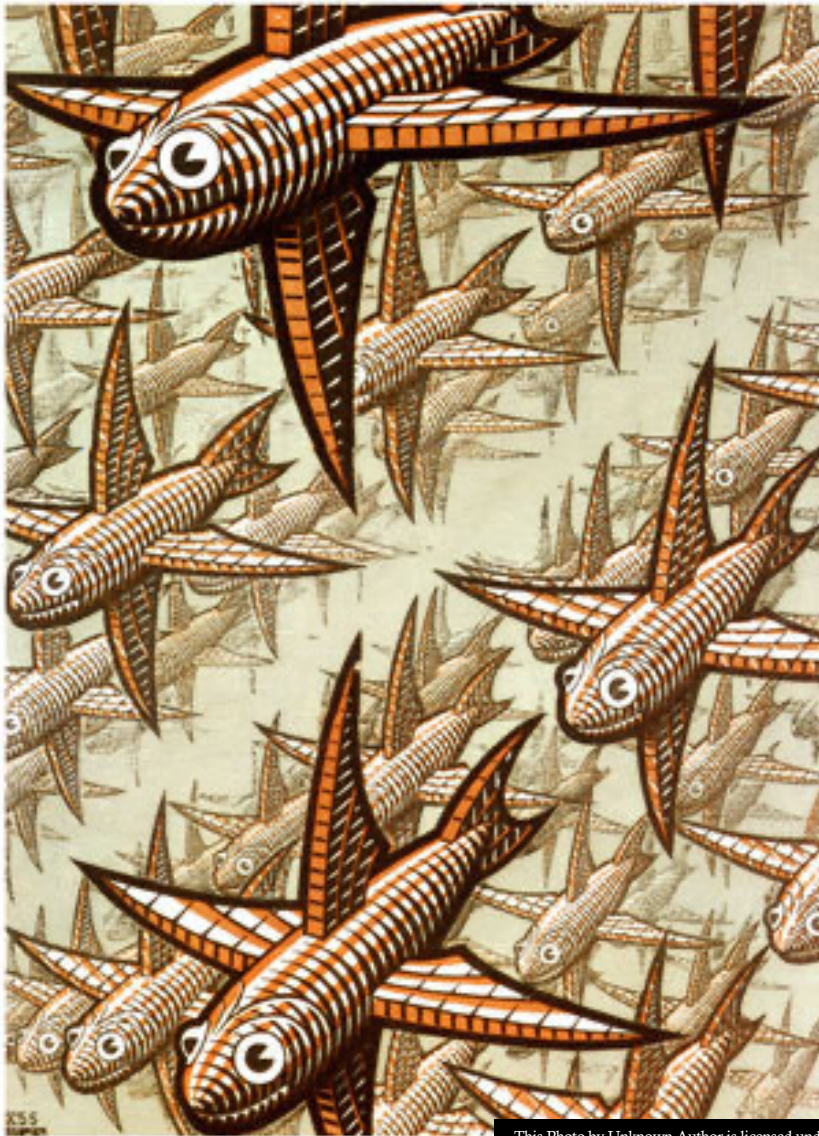


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations

- “...fictitious information that is presented as factual or accurate. This can include citations, publications, biographical information, etc.” (USC Libraries, 2025).

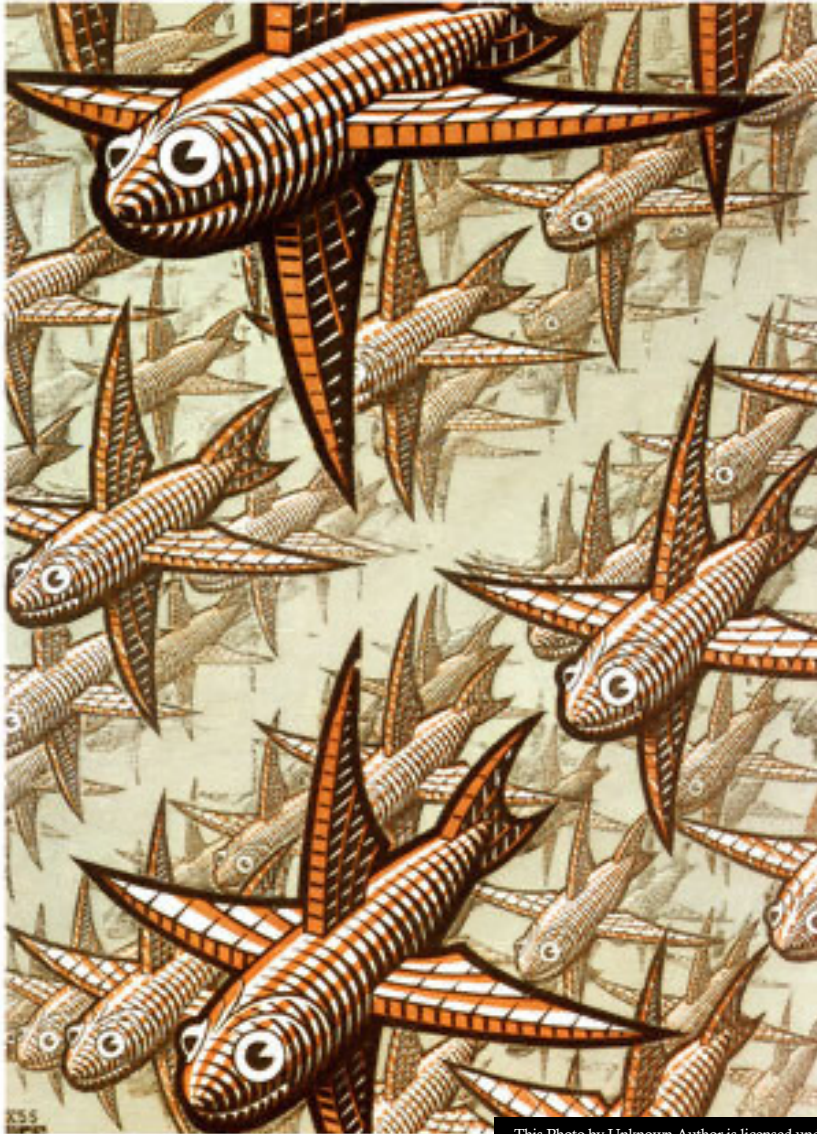


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations

- ‘Hallucination’ is a controversial term for ethical reasons and a more accurate way to describe this phenomenon is as a ‘probabilistic discrepancy’

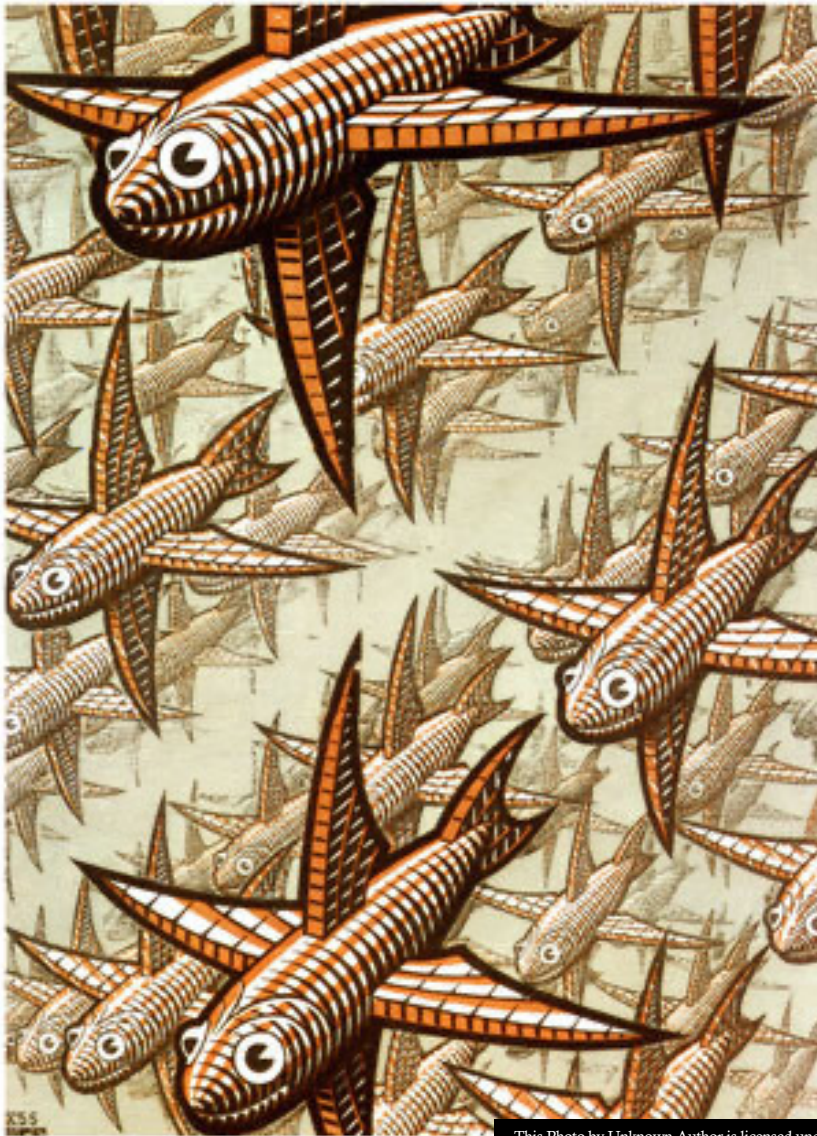


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – How They Happen

- In some cases, errors in the training data
 - Garbage in, Garbage out.
- AI cannot accurately answer specific questions, which means it is incapable of answering “I do not know” to a Prompt

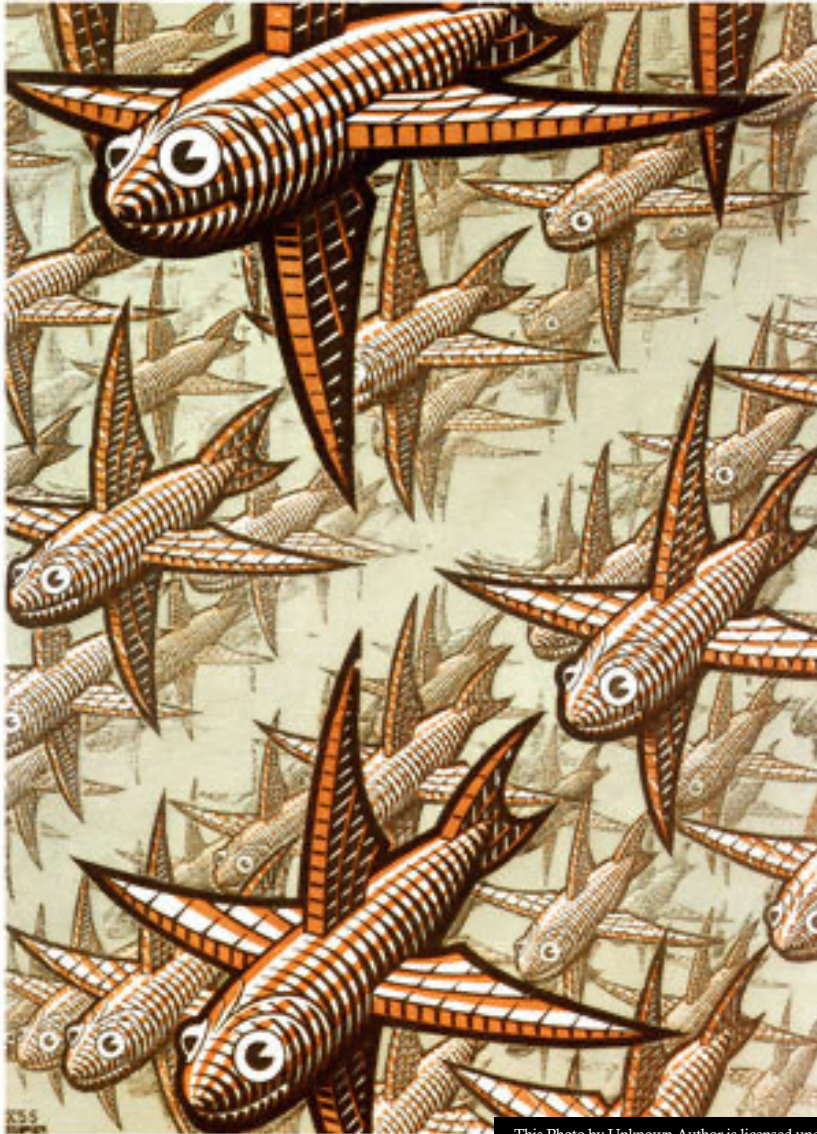


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – How They Happen

- This means that AI is “unaware” that it cannot answer a question and will instead make probabilistic guesses at the next most likely data point
- **This looks like AI made up the answer**

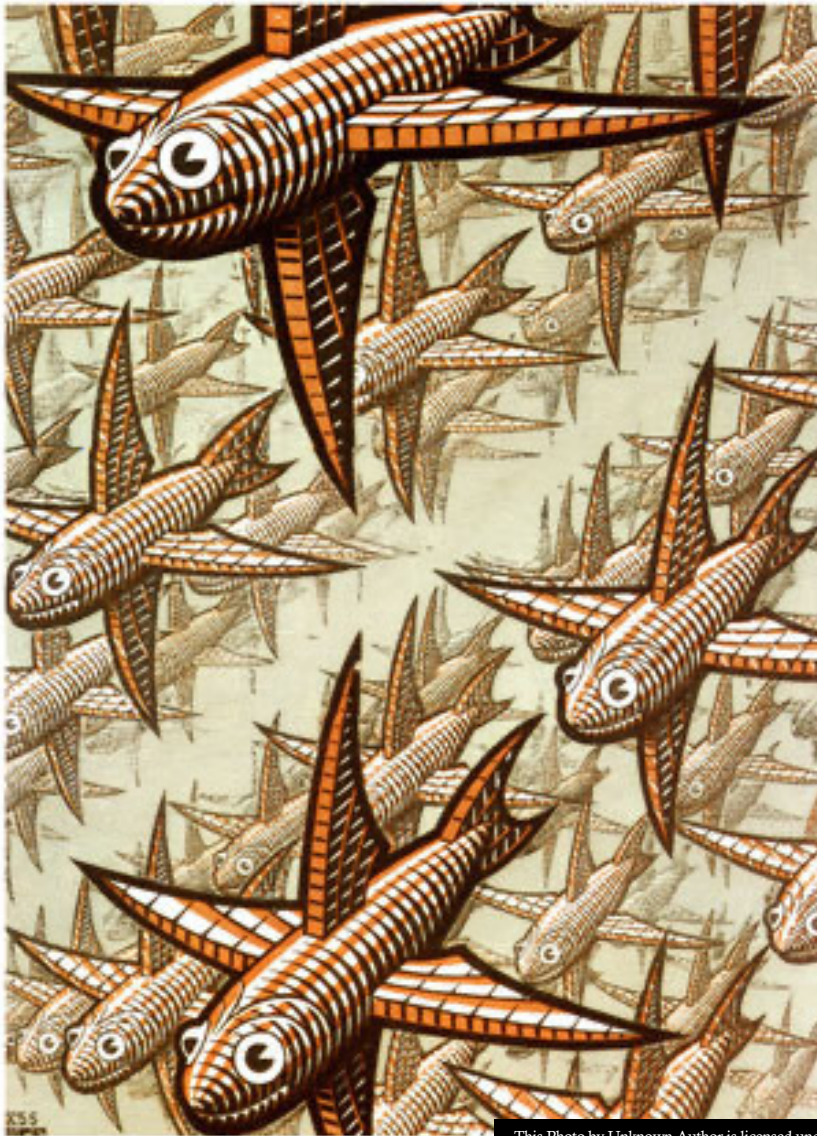


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – 3 Common Errors

1. In my world, citation discrepancies
 - “Generative AI citations to authority typically look extremely convincing, following the citation conventions fairly well, and sometimes even including papers from known authors.” (Fordon, 2023)

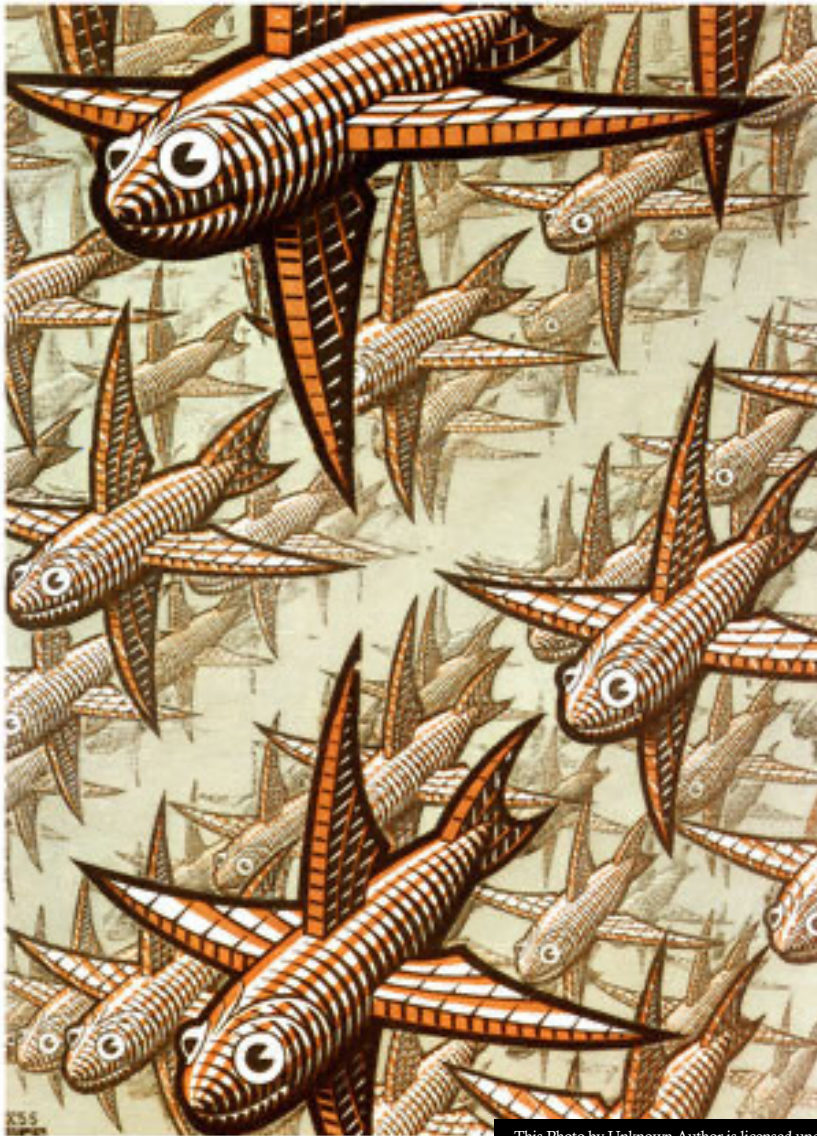


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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – 3 Common Errors

1. In my world, citation discrepancies
 - Just because it appears legit, doesn't mean it is
- **Recall, AI is a Con Game**



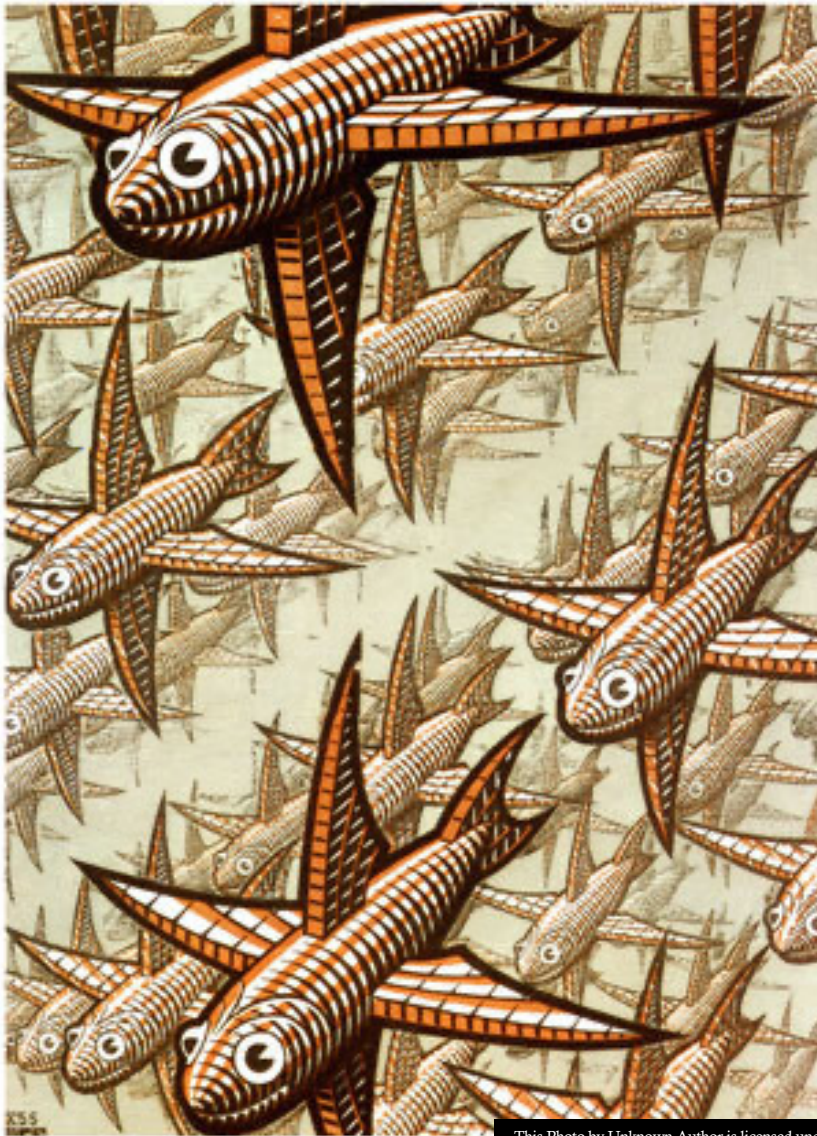
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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – 3 Common Errors

2. Erroneous “facts”

- GenAI “may present a plausible but incorrect summar[ies].” (Fordon, 2023)
- This applies to conceptual principles too



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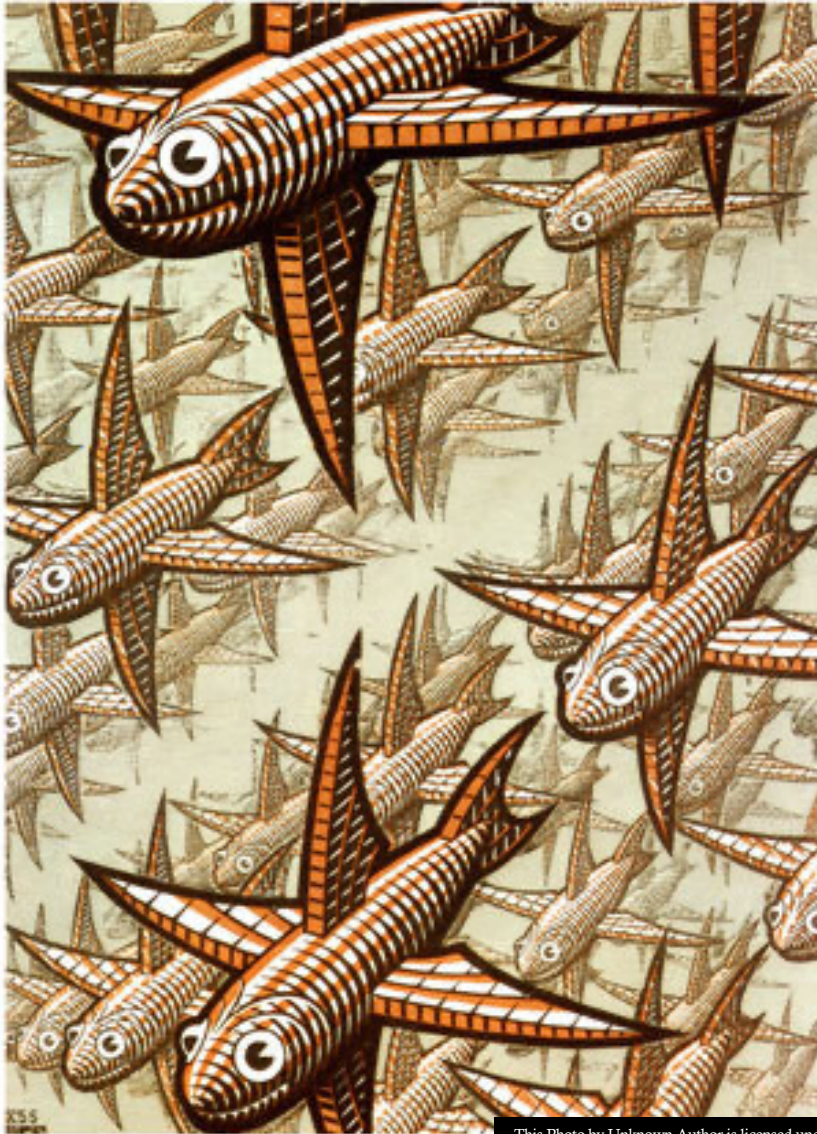
TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – 3 Common Errors

2. Erroneous “facts”

- Even if the references are correct and real, the proposition being listed may still be erroneous

➤ **Recall, AI is a Con Game**



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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – 3 Common Errors

3. Inaccurate doctrines

- In some cases, the LLM “may generate inaccurate or outdated . . . doctrines or principles.” (Fordon, 2023)
- Could be the result of outdated training data



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TRUST, FALSE POSITIVES, & HALLUCINATIONS

Hallucinations – 3 Common Errors

3. Inaccurate doctrine

- Could be the result of predominance of references to outdated doctrine

➤ **Recall, AI is a Con Game**

IP CONTROVERSY AND CASE LAW

Litigation

- Continuation of high-stakes copyright battles
- Emerging privacy claims and rulings
- New rulings on AI in legal ethics

Core Issues

- IP Input Issues
- Data Issues
- IP Output Issues

<https://www.uspto.gov/subscription-center/2025/revised-inventorship-guidance-ai-assisted-inventions>

<https://www.copyright.gov/ai/>

Very, Very Much Unsettled



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WHAT DOES THE FUTURE HOLD?

Near Term (1-2 Years)

- Focus on Chat and GenAI will crest
- Less Chat, More Do, enabled through increased access to Agentic AI
- Increase in work brought “back in-house”
- Continued dampening on head-counts – the proverbial more with less
- Hopefully, better warning labels



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WHAT DOES THE FUTURE HOLD?

Longer Term (5+ Years)

- Expect shifts to hiring needs, as focus pivots from manual, document-intensive tasks to strategic, tech-enabled roles
- Expect an increase in “AI technologist” hiring, with increased requirements for AI prompt engineering and data management skills
- Expect further reductions in junior staff hiring that used to be used for routine and repetitive tasks, including drafting and review
- Expect the Spanish Inquisition



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QUESTIONS



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WHO AM I?

Owner & Managing Partner

- **Wray Law TCP**
- A diversity focused boutique firm providing business support with a global perspective, for organizations of any size, specializing in technology, cybersecurity, and privacy legal support



WHO AM I?



Co-Director & Clinical Assistant Professor of Law

- **Innovation & Entrepreneurship Legal Clinic** at Creighton School of Law
 - A practicum opportunity to educate, train, and inspire law students to understand the needs of and be advocates for entrepreneurs, innovators and start-up businesses
 - Provides legal counsel to Omaha-area entrepreneurs and nonprofit organizations in connection with entity formation, contracts, legal compliance, and other transactional business law matters
-

WHO AM I?

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Thanks

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RESOURCES

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