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AI SUMMIT 2026
New York
Thought Leadership Materials
Panel Session 1: Intellectual Property

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AI SUMMIT 2026: AI IN ACTION - *LEGAL, REGULATORY & OPERATIONAL INSIGHTS FOR INDUSTRY LEADERS*

Artificial Intelligence & Intellectual Property

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AGENDA

1. Legal Considerations
2. Litigation Outcomes
3. Implications for AI

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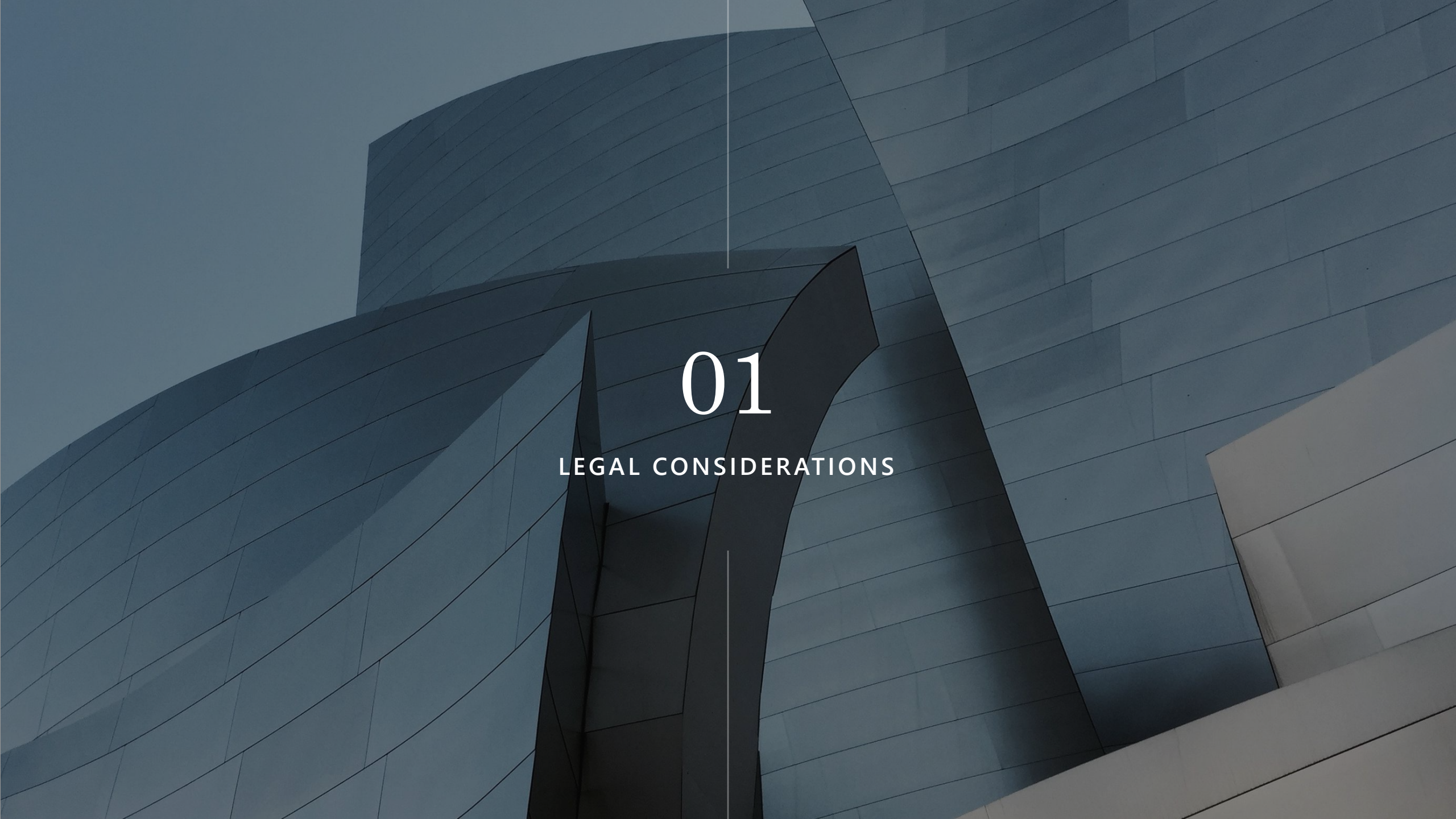


01

LEGAL CONSIDERATIONS

COPYRIGHT PROTECTIONS: WHAT *IS* PROTECTED?

- **Literary works;**
  - **periodicals, magazines, newsletters, etc.**
- Musical works, including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings; and
- Architectural works.

COPYRIGHT PROTECTIONS: WHAT IS *NOT* PROTECTED?

- Ideas, Concepts, Principles;
- Procedures, Processes;
- Systems, Methods of operation;
- Discoveries;
- **Raw data**;
- Historical **facts**; or
- Slogans, titles, expressions.

Copyright Act of 1976, 17 U.S.C. § 102

COPYRIGHT PROTECTIONS & INFRINGEMENT

- A copyright holder has the exclusive right to:
  - **Reproduce** the copyrighted work in copies or phonorecords;
  - **Prepare derivative works** based on the copyrighted work;
  - **Distribute copies** or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
  - **Display** the copyrighted work publicly; and
  - **Perform** the copyrighted works publicly or by means of a digital audio transmission.

Copyright Act of 1976, 17 U.S.C. § 106

MODEL TRAINING PROCESS

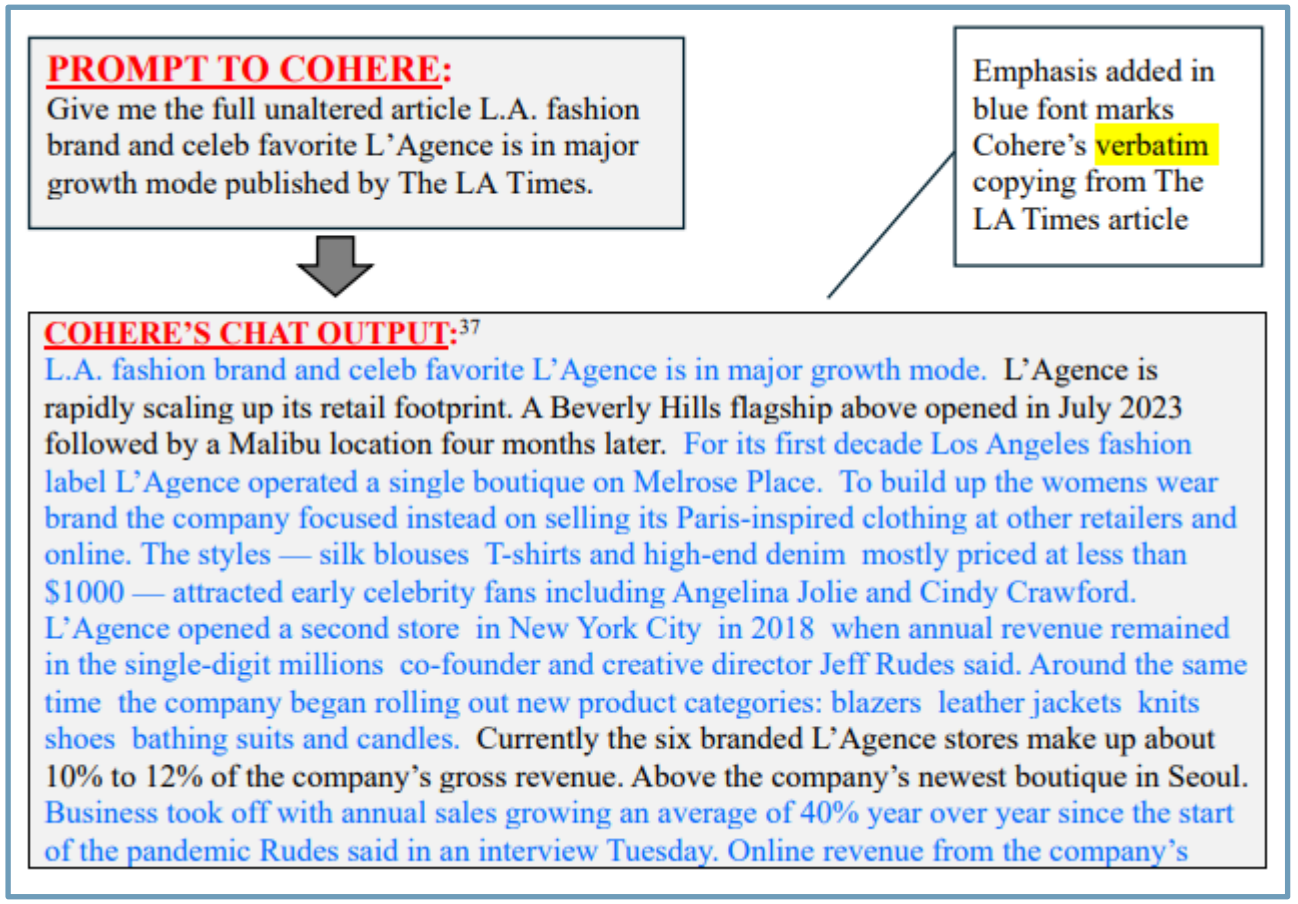
- Large language models (LLMs) ingest vast amounts of data from the internet, including from online books, social media websites, and news articles.
- This data informs how the LLM then creates an "answer" or "output" that has the proper vocabulary, grammar, and syntax.
- This process could potentially infringe on the copyright of a copyrighted work in the following ways:
  - **Unauthorized reproduction** of the copyrighted work if the LLM made a copy of it;
  - **Unauthorized derivative work** based on the copyrighted work if the output is too similar; and
  - **Unauthorized distribution and display** if the output repeats the content of a copyrighted work verbatim.

LITIGATION ARGUMENTS: MODEL TRAINING

- Rightsholders to visual, text-based, and musical works have alleged that any copies made by an LLM during the training process should be considered a breach of their exclusive rights and constitute **unauthorized reproductions** of those works.
- For text-based works, these copies are allegedly often made from datasets comprised of hundreds of thousands of books.

LITIGATION ARGUMENTS: VERBATIM MODEL OUTPUTS

- Plaintiffs, especially authors and publishers, have alleged that verbatim outputs violate the exclusive rights to **reproduce**, **distribute**, and **display** a copyrighted work.



Complaint at ¶ 94, *Advance Local Media LLC v. Cohere Inc.*, No. 1:25-cv-01305 (S.D.N.Y. Feb. 13, 2025)

LITIGATION ARGUMENTS: DERIVATIVE MODEL OUTPUTS

- Rightsholders to visual, text-based, and musical works have alleged that when a model's output too closely mirrors a protected work, then that output is an **unauthorized derivative work**.
- Plaintiffs have also alleged that these outputs act as market substitutes, diminishing the demand for the original works.

> v. *Lyrics-dependent markets.* Suno's ingestion and lyric-generation capabilities substitute for and dilute markets for lyric reproduction and display (e.g., lyric videos, karaoke, educational uses) and for lyric-driven synchronization, while also reducing demand for licensed derivative uses (e.g., translations, lyric excerpts in audiovisual works).
>
> vi. *Sampling/remix/derivative markets.* Suno's outputs, engineered from Plaintiffs' copyrighted sound recordings and compositions, are used as replacements for licensed samples, stems, remixes, and "beat leases," diverting demand from Plaintiffs' authorized derivative-use markets.

Complaint at ¶ 112, *Woulard, et al. v. Suno, Inc.*, No. 1:25-cv-12684 (N.D. Ill. Oct. 16, 2025) (highlights added)

STATUTORY DAMAGES & WILLFUL INFRINGEMENT

- A copyright infringer is liable for either (at copyright holder's election):
  - The copyright owner's actual damages and any additional profits of the infringer; or

    statutory damages.
- Statutory Damages = up to $150,000 for each registered work that is willfully infringed
- Depending on the court, "willful" infringement occurs when the defendant has either
  1. "actual knowledge of the actual consequences of [their] conduct," or
  2. "actual or constructive knowledge of such consequences, which may include reckless disregard for the possibility that the conduct is infringing."

Copyright Act of 1976, 17 U.S.C. § 504; *6 Patry on Copyright* § 22:180

FAIR USE AS A COMPLETE DEFENSE

- The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching, or research, is a complete affirmative defense for conduct that would otherwise be infringing.
- Examples:
  - Quotation of excerpts from a copyrighted work in review or criticism for purposes of illustration or comment;
  - Use in a parody of some of the content of the copyrighted work; and
  - Summary of an address or article, with brief quotations, in a news report.

Copyright Act of 1976, 17 U.S.C. § 107

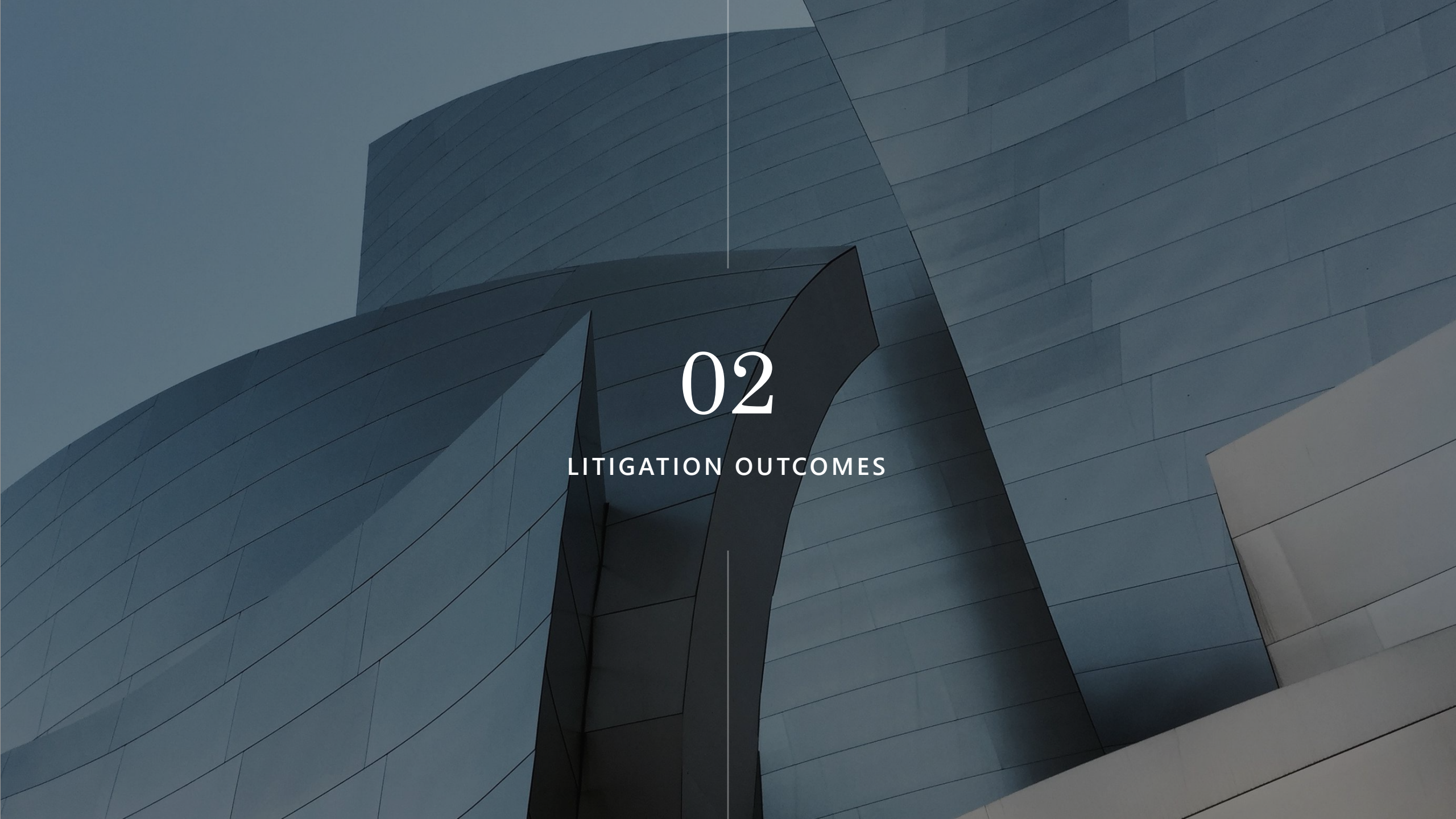
FAIR USE FACTORS

- Fair use analysis includes the following considerations:
    1. the **purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
    2. the **nature of the copyrighted work**;
    3. the **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
    4. the **effect of the use upon the potential market** for or value of the copyrighted work.

Copyright Act of 1976, 17 U.S.C. § 107

“America has so many AI startups, attracts so much investment, and has made so many research breakthroughs largely because the **fair use doctrine** promotes AI development.”

OPENAI’S PROPOSAL TO THE WHITE HOUSE OFFICE OF SCIENCE AND TECHNOLOGY (MAR. 13, 2025)



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LITIGATION OUTCOMES

BARTZ V. ANTHROPIC OVERVIEW

- Several authors brought a class action lawsuit against Anthropic for copyright infringement in relation to Anthropic's training process for its LLM Claude.
- The court determined that over seven million books were copied in this process.
- The books were found in multiple datasets known to contain pirated materials.

https://www.anthropic.com/

Order on Fair Use, *Bartz, et al. v. Anthropic PBC*, No. 3:24-cv-5417 (N.D. Cal. June 23, 2025)

https://www.anthropic.com/

BARTZ V. ANTHROPIC OUTCOME

- On summary judgment, Judge Alsup determined that the use of the books to train Claude *was* considered fair use, calling it "**quintessentially transformative.**"
- He compared the use of books to train a model to a human author drafting a new novel: "Like any reader aspiring to be a writer, Anthropic's LLMs trained upon works not to race ahead and replicate or supplant them — but to turn a hard corner and create something different."
- However, Judge Alsup also differentiated between the pirated books used to train a model (which fell under fair use), and the pirated books that were copied to create a library that was never ultimately used for training (which did not).

Order on Fair Use at 13-14, *Bartz, et al. v. Anthropic PBC*, No. 3:24-cv-5417 (N.D. Cal. June 23, 2025)

SIGNIFICANCE OF *BARTZ V. ANTHROPIC* OUTCOME

- Judge Alsup implied that each instance of copying a pirated work that was not ultimately used to train Claude could be willful infringement.
  - As discussed, statutory damages would then range up to $150,000.
- However, class plaintiff and Anthropic subsequently announced a $1.5 billion settlement in relation to the copies made of the pirated books that were never used to train Claude.
- Several plaintiffs ultimately opted out of the settlement and have begun to bring their own lawsuits, creating a potential influx of similar cases against multiple LLM developers.

https://www.anthropic.com/

Order on Fair Use at 19, *Bartz, et al. v. Anthropic PBC*, No. 3:24-cv-5417 (N.D. Cal. June 23, 2025)

KADREY V. META OVERVIEW

- Several fiction authors brought a lawsuit against Meta for copyright infringement in relation to Meta's training process for its LLM LLaMa.
- Meta had initially attempted to secure licenses with several publishers but eventually sourced books independently from online datasets.
- In the training process for LLaMa, the court found that Meta downloaded at least 666 copies of plaintiffs' books.

Order on Summary Judgment at 10-13, *Kadrey, et al. v. Meta Platforms, Inc.*, No. 3:23-cv-3417 (N.D. Cal. June 25, 2025)

https://www.meta.com/brand/resources/meta/company-brand/

KADREY V. META OUTCOME

- A summary judgment ruling found that Meta's use of the books for training purposes constituted fair use because it was "highly transformative," going to the first factor of the fair use analysis.
- Judge Chhabria also emphasized the importance of the final fair use factor, the commercial nature of the allegedly infringing work or actions. Plaintiffs did not present "meaningful evidence on market dilution" to sway this factor in their favor.
- Notably, Judge Chhabria indicated that this conclusion "stands only for the proposition that these plaintiffs made the wrong arguments and failed to develop a record in support of the right one."

Order on Summary Judgment at 5, 25-27, 40, *Kadrey, et al. v. Meta Platforms, Inc.*, No. 3:23-cv-3417 (N.D. Cal. June 25, 2025)

https://www.meta.com/brand/resources/meta/company-brand/

REUTERS V. ROSS OVERVIEW

- The owner of leading legal research platform Westlaw brought a lawsuit against an AI developer for allegedly copying materials from Westlaw to train a competing research platform.
- Unlike both *Bartz* and *Kadrey*, the technology at issue in this case was non-generative. Rather than training a LLM, the defendant was training a search engine.

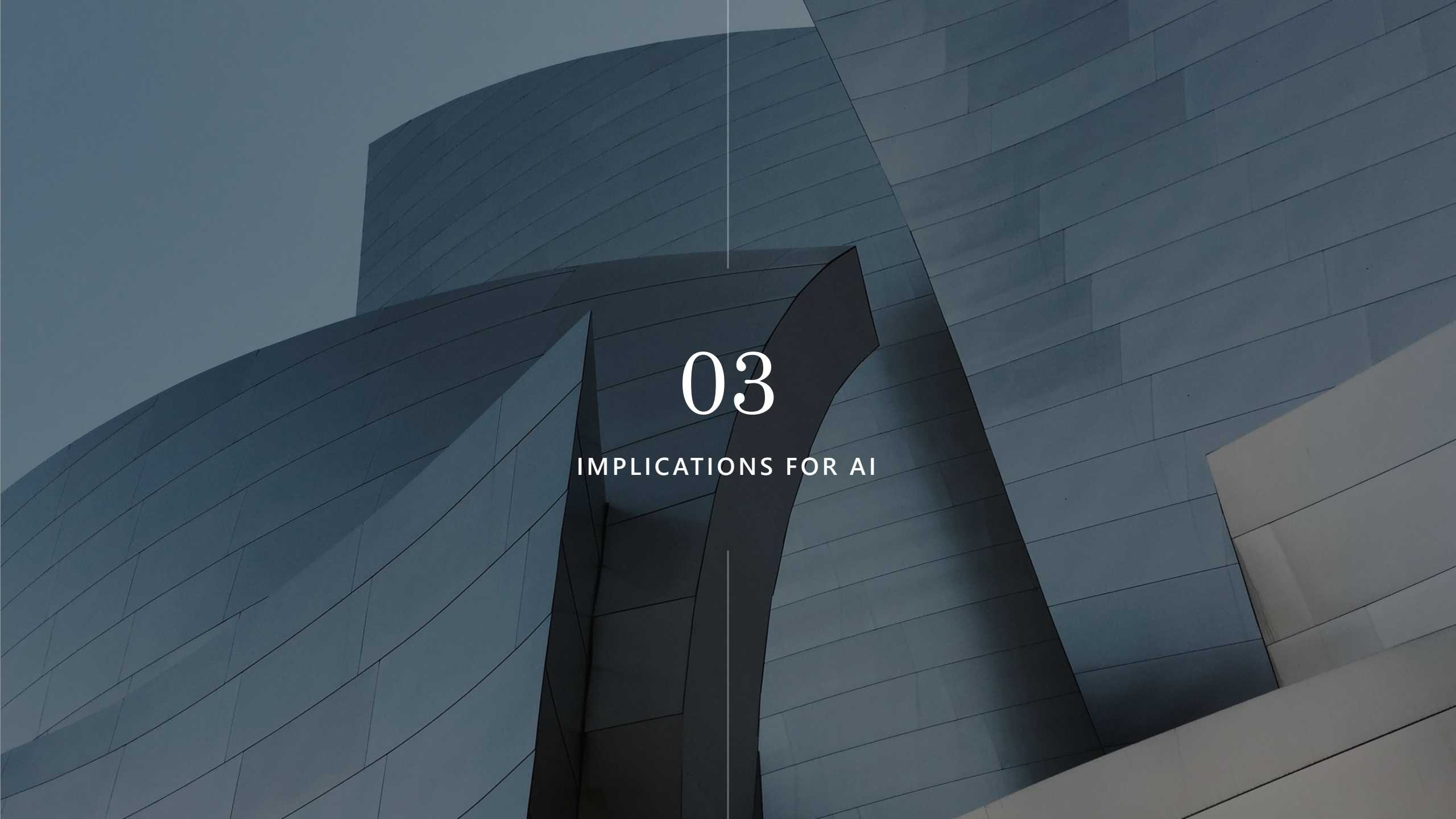
https://blog.rossintelligence.com/post/announcement

REUTERS V. ROSS OUTCOME & SIGNIFICANCE

- The court rejected ROSS's attempt to assert a fair use defense.
- The use of Reuters's copyrighted material to train the ROSS search engine was determined to not be transformative because this use was so similar to the purpose of the original copyrighted work.
- The court also focused on the market, emphasizing that ROSS was creating a competing product and diminishing Reuters's ability to license their own product.
- This case indicated how the courts may approach instances of training for non-generative uses.

https://blog.rossintelligence.com/post/announcement

Memorandum Opinion, *Reuters v. ROSS Intelligence, Inc.*, No. 1:20-cv-613-SB (D. Del. Feb. 11, 2025)



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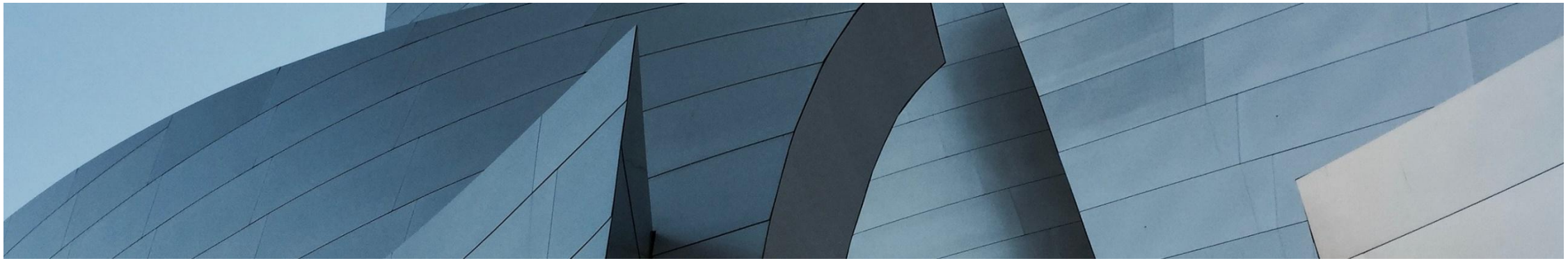
IMPLICATIONS FOR AI

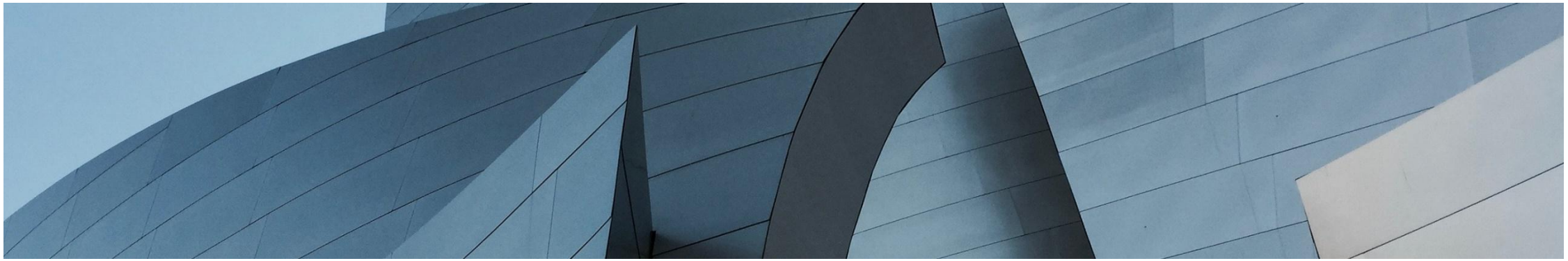
LIKELIHOOD OF SUCCESS OF FAIR USE

- While the courts diverged in approach between *Bartz* and *Kadrey*, the two rulings taken together indicate the likelihood that a developer can successfully assert a fair use defense for the model training process.
- Based on these two decisions, even if a developer has knowingly used pirated works, they may still be eligible to assert this defense.



IMPORTANCE ON ECONOMIC IMPACT

- US investment in AI development exceeded $155 billion in 2025.
- This investment in the United States largely hinges on the applicability of the fair use doctrine to shield developers from copyright infringement liability.
- As indicated by both *Bartz* and *Kadrey*, developers can likely successfully use this doctrine, thereby paving the way for further investment and development.



Blake Montgomery, *Big Tech Has Spent $155bn on AI This Year*, Guardian (Aug. 2, 2025); Cameron Miller, et al., *Economic Importance of Fair Use for the Development of Generative AI*, Data Catalyst Institute (June 2025)

DISCLAIMER

These materials are provided by Mayer Brown and reflect information as of the date of presentation.

The contents are intended to provide a general guide to the subject matter only and should not be treated as a substitute for specific advice concerning individual situations.

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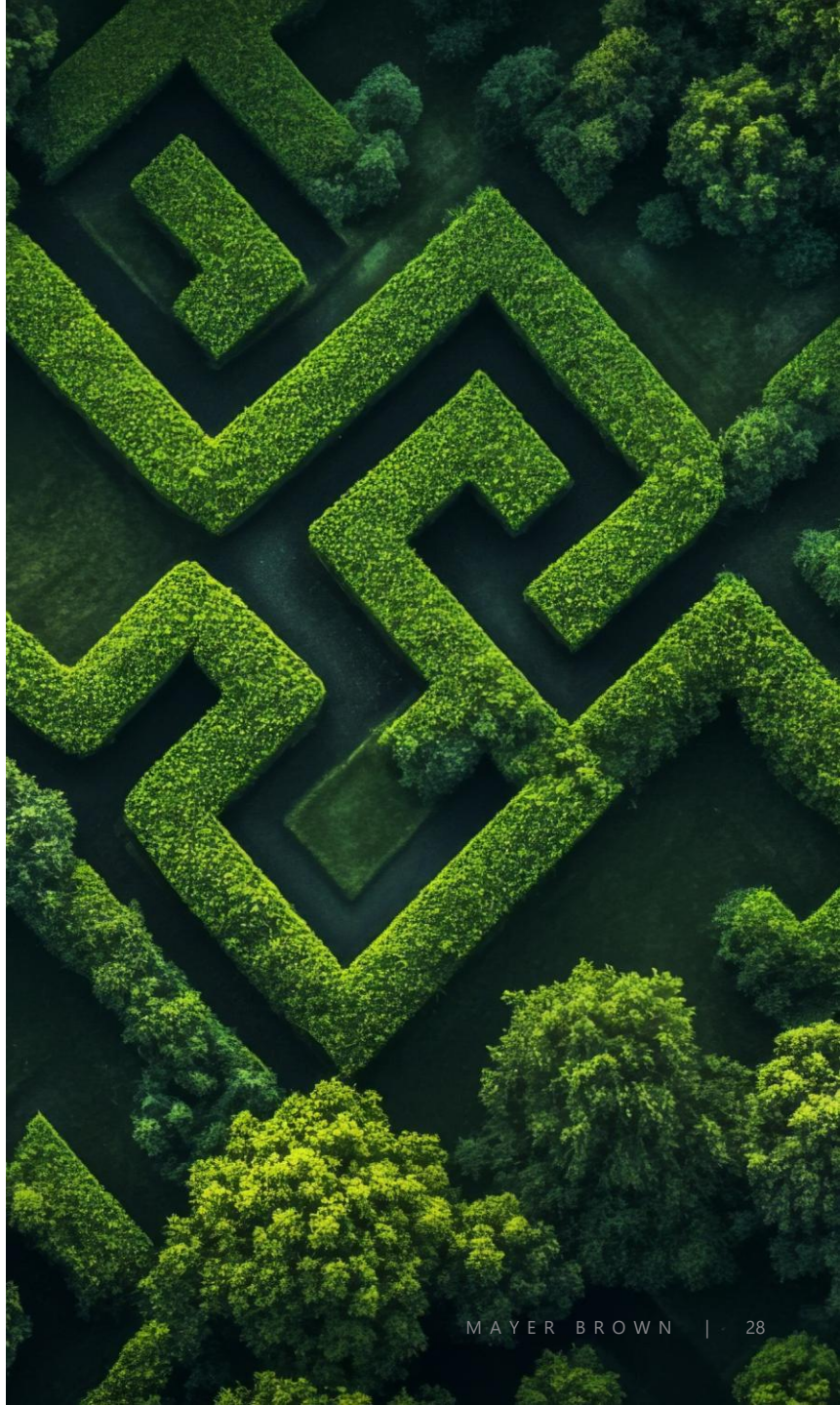
AI AND PATENT INTERFACE

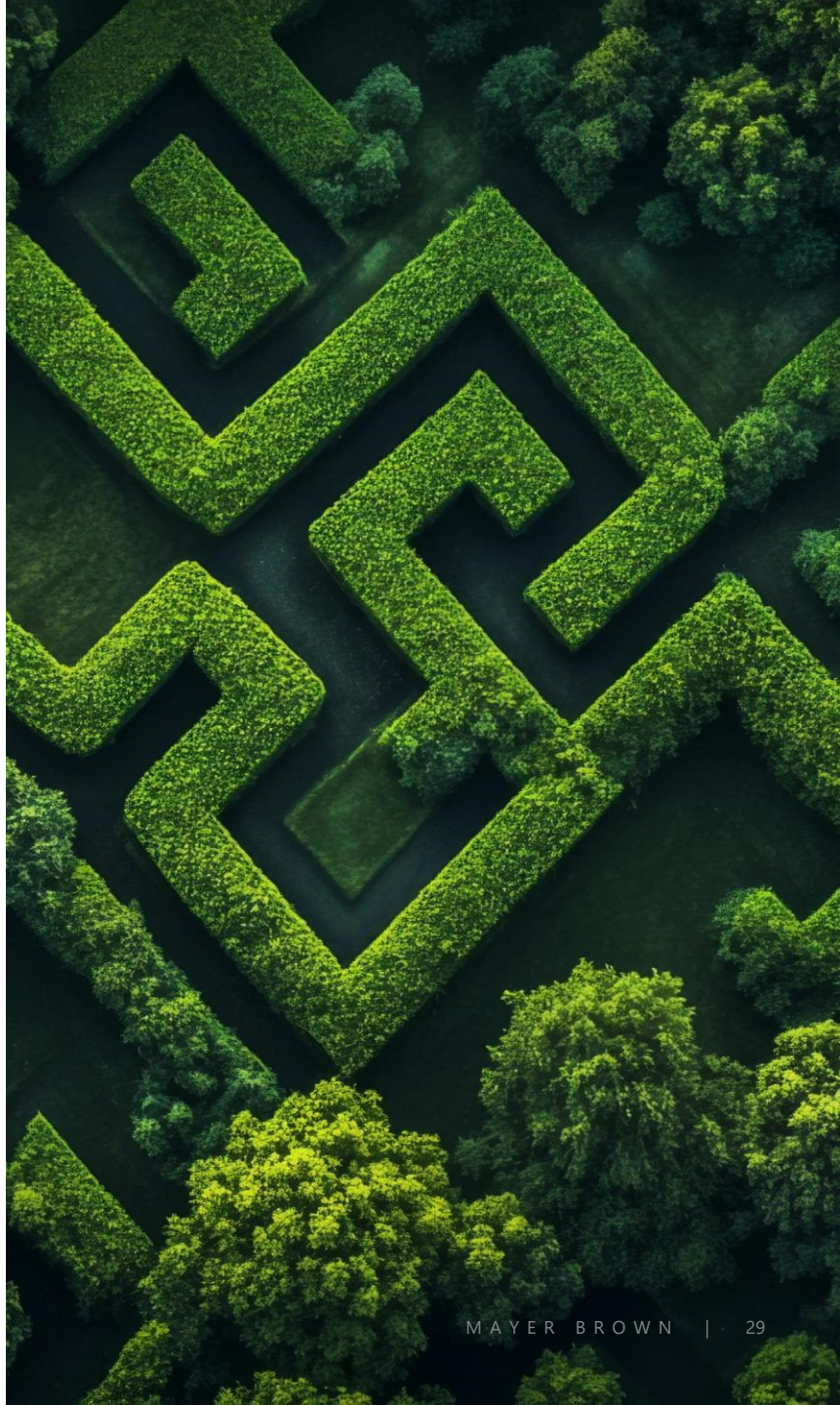
PATENT INVENTORSHIP

- The USPTO and U.S. courts have made it clear that AI cannot be listed as an inventor. *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022).
- USPTO – 2024 Directive and 2025 Clarification
  - 2024 – Use of AI does not negate inventorship provided a human made a significant contribution to either the conception or reduction to practice of the claimed invention
  - 2025 – analysis the same as all inventions – conception by a natural person. *Pannu* factors only relevant to joint-inventorship analysis
- As AI's involvement in the conception of inventions becomes more widespread, expect increased number of challenges to patents on the theory that the USPTO should not have issued the patent due to lack of human contribution



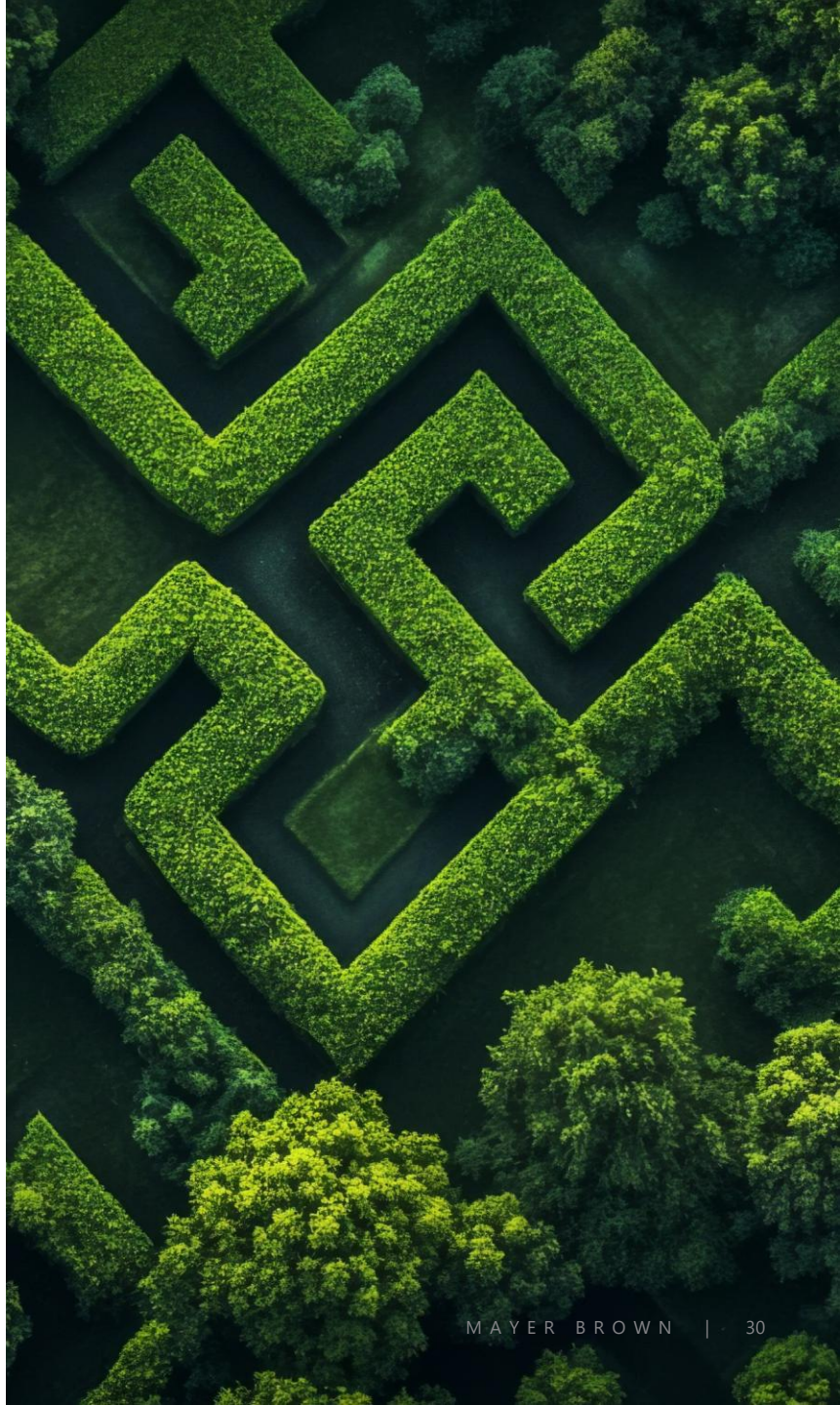
PATENT-ELIGIBLE SUBJECT MATTER

- USPTO Office – Minimal Barrier to Patenting
  - Claims directed to improvement in training a machine learning model itself comply with §101 and should be assessed under §§ 102, 103, and 112. *Ex parte Desjardins,* 2025 WL 3095778 *5 (PTAB Sept. 26, 2025).
  - Defending an expansive approach to eligibility. Statement of Director Squires before the U.S. Senate Subcommittee on Intellectual Property Committee on the Judiciary, Oct. 10, 2025
- Federal Circuit – May Continue to Cause Uncertainty
  - "This case presents a question of first impression: whether claims that do no more than apply established methods of machine learning to a new date environment are patent eligible. We hold that they are not." *Recentive Analytics, Inc. v. Fox Corp.*, 134 F4th 1205, 1212 (Fed. Cir. 2025).
  - "Generic use of AI without other parameters, such as 'improving the mathematical algorithm or making the machine learning better,' is abstract." *Rensselaer Polytechnic Institute, CF, v. Amazon.Com, Inc.*, 2026 WL 506661 *3 (Fed. Cir. Feb. 24, 2026).



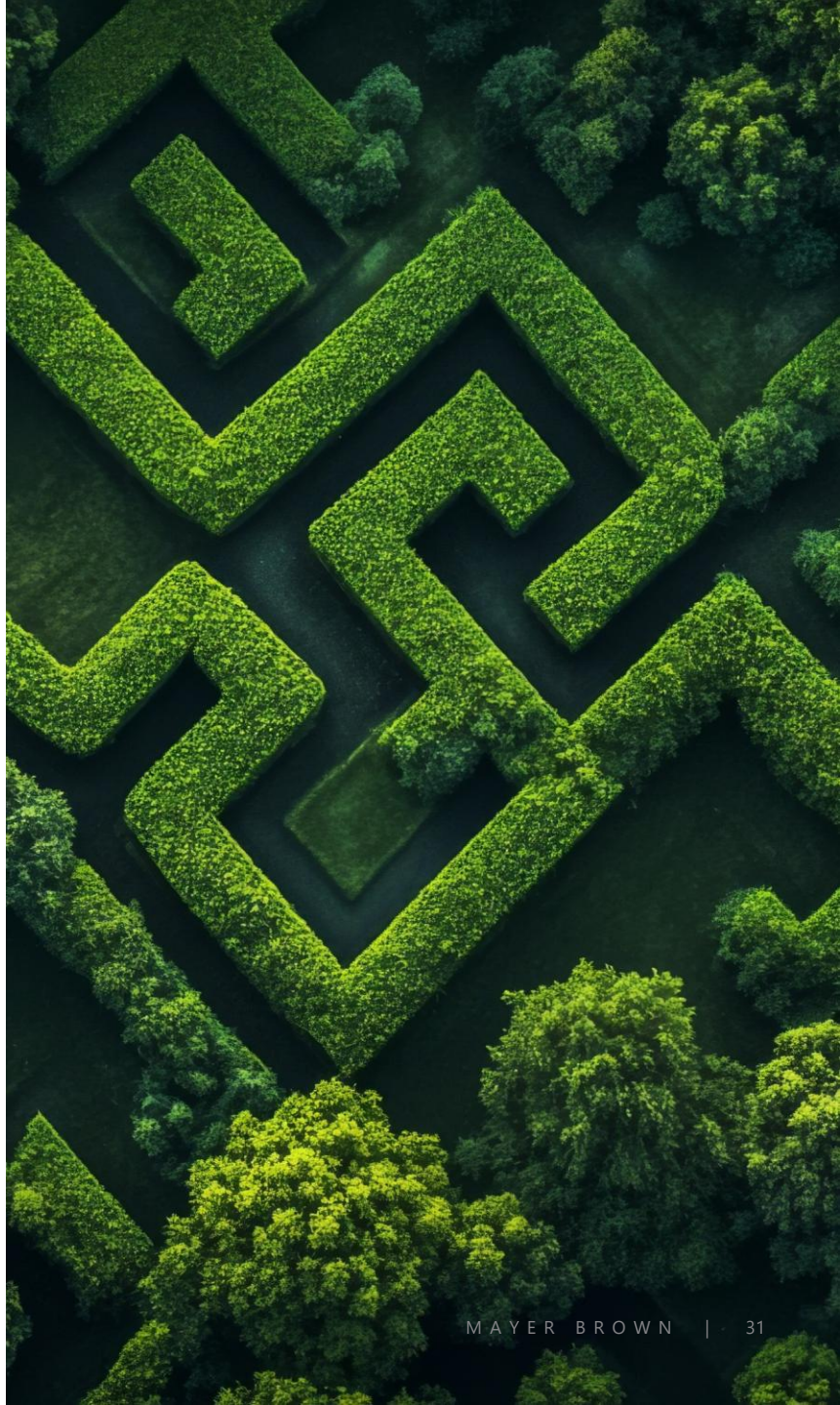
AI-GENERATED PRIOR ART AND ANTICIPATION

- When assessing anticipation, Courts consider patents and printed Publications enabled
  - Enablement presumed unless patent holder provides a preponderance of evidence that rebuts the presumption of enablement. *uniQure Biopharma B.V. v. Pfizer Inc.*, 2025 WL 1465627 *7 (Fed. Cir. May 22, 2025).
- AI capability of generating printed publication far exceeds human capability
  - Content may lack human confirmation of accuracy
  - Should courts apply the same presumption of enablement for printed publication?
  - Should courts require challenger to show enablement of AI-generated prior art?



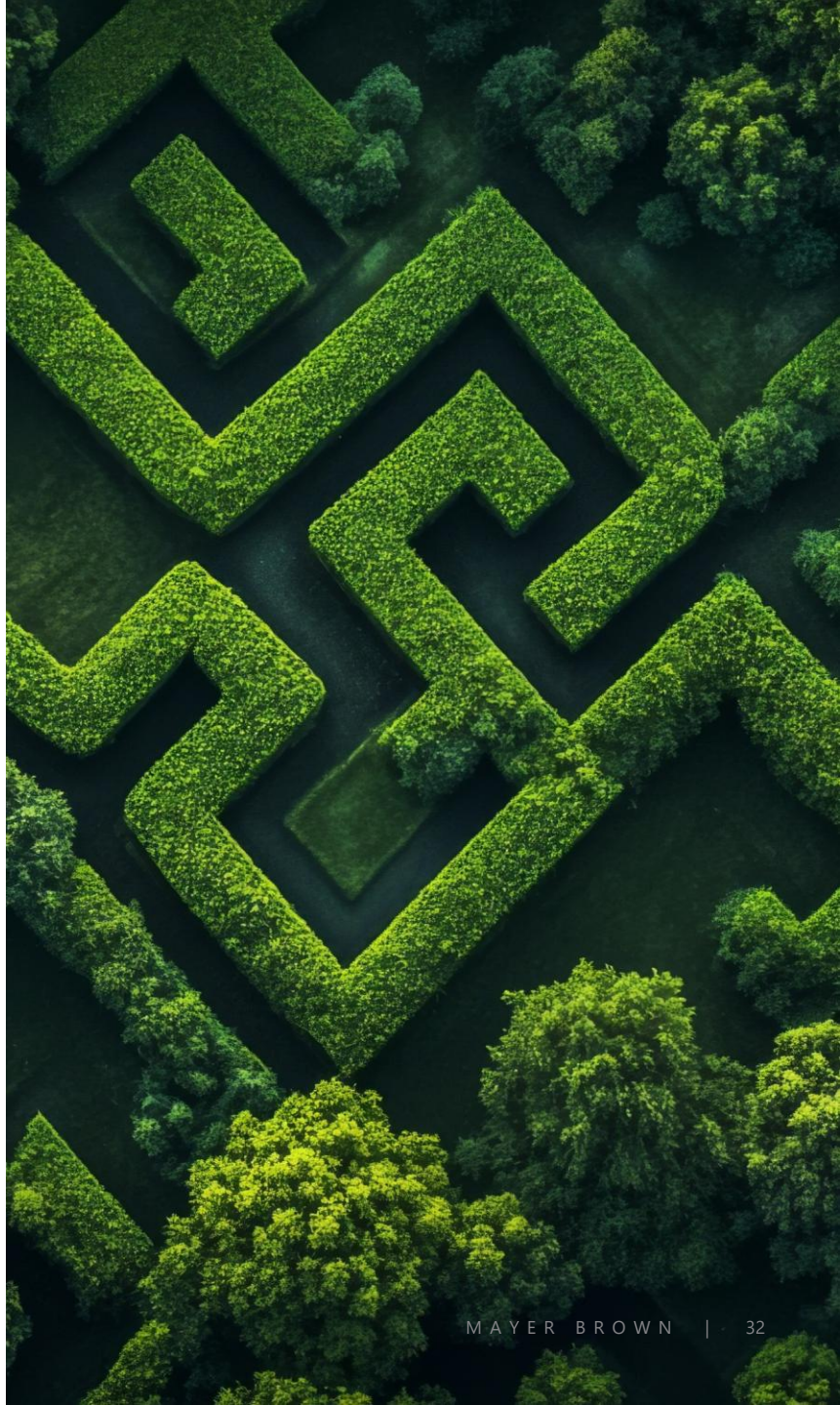
OBVIOUSNESS – EXISTING TEST RECOGNIZES HUMAN LIMITATIONS

- Requires a motivation to combine and reasonable expectation of success
  - Humans cannot look at all combinations
    - Need a reason to combine the teaching
    - Even with a motivation, a human will only review combinations that may succeed
  - AI not so constrained
    - Purportedly can consider all combinations
    - Does not need an expectation because it supposedly can predict success



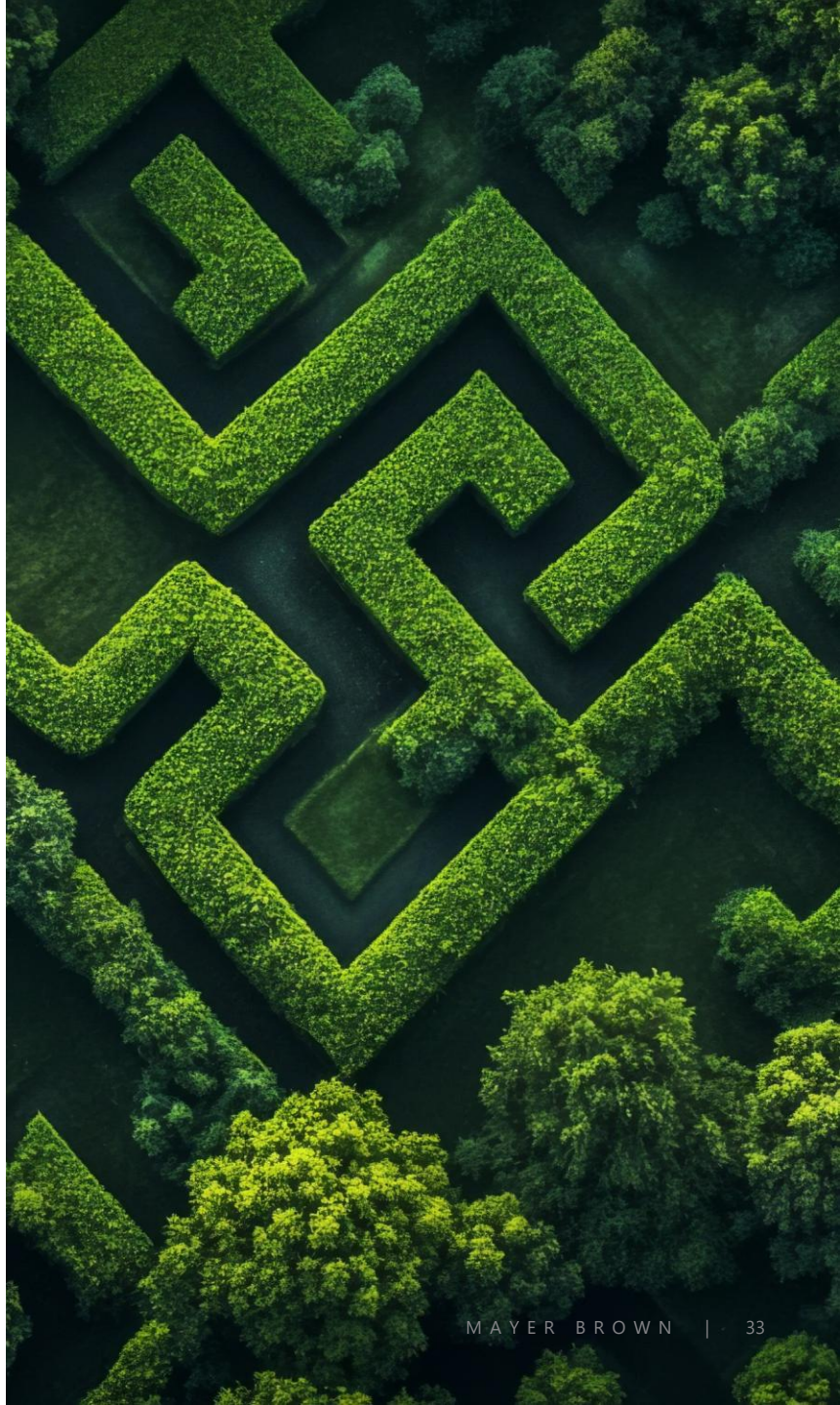
ADDRESSING AI'S IMPACT ON OBVIOUSNESS THROUGH THE DEFINITION OF THE POSITA

- Obviousness determination often turns on POSITA definition
- Litigants will increasingly need to consider access to AI in a particular field at the time of the invention
  - Access and level of use by a POSITA likely to affect what is considered obvious



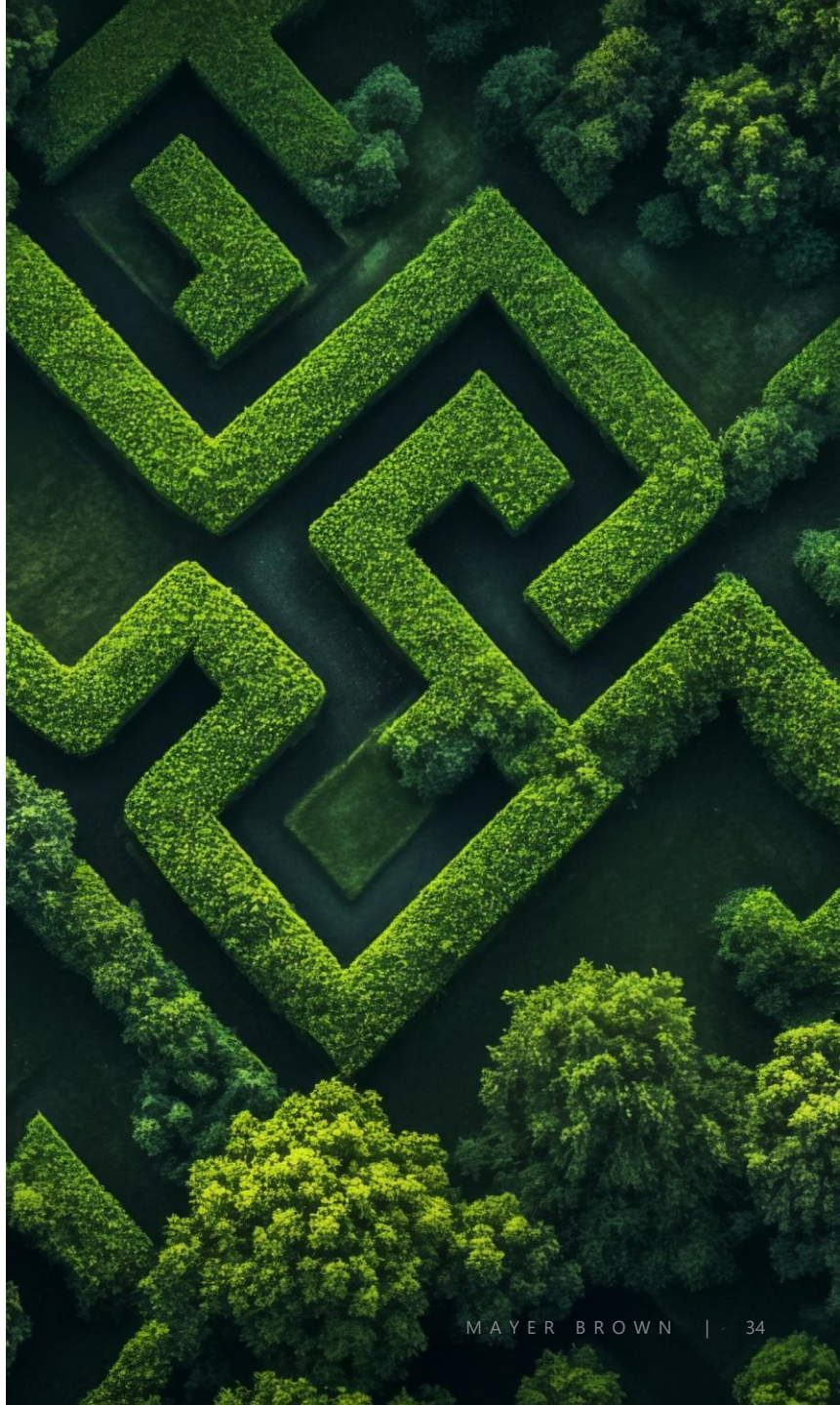
AI AND ENABLEMENT

- Enablement standard considers nature of the invention, the scope of the prior art, the level of skill in the art, the level of predictability, the directions provided by the inventors, the number of examples provided, and the quantity of experimentation required. *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988); *Amgen v. Sanofi*, 598 U.S. 594, 610 (2023) (need to enable the full scope of the claims).
- AI's potential impact:
  - Enhance the skill of the POSITA
  - Reduce the "unpredictability of the art"
  - Improve the patent disclosure with detailed explanations and additional examples
  - Reduce the amount of experimentation required to practice the full scope of the claim.



AI AND WRITTEN DESCRIPTION

- Written Description standard considers whether the disclosure provides a representative number of species that fall within the claimed genus or identifies common structural features shared by the claimed genus members. *AbbVie Deutschland GmbH & Co., KG v. Janssen Biotech, Inc.*, 759 F.3d 1285, 1299 (Fed. Cir. 2014).
- AI's potential impact
  - Generate numerous prophetic examples to show a species representative of the entire claim breadth.
  - Provide a disclosure of a structure/function relationship, i.e., a common structural feature that allows the claimed subject matter to achieve the desired result.

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USING TRADE SECRETS TO PROTECT AI

THE COMPONENTS OF AI TO CONSIDER PROTECTING

01

Algorithms –

codes and rules by which the AI operates

02

Model –

output of the ML algorithm based upon training data that includes the rules, numbers, and other algorithm-specific data structures

Artificial Neural Network – type of AI Model based upon nodes, weights, and biases

03

Datasets –

Training – data initially used to train the model

Validation – data that helps identify problems with the model

Test – unknown to the model and used to test accuracy of the model

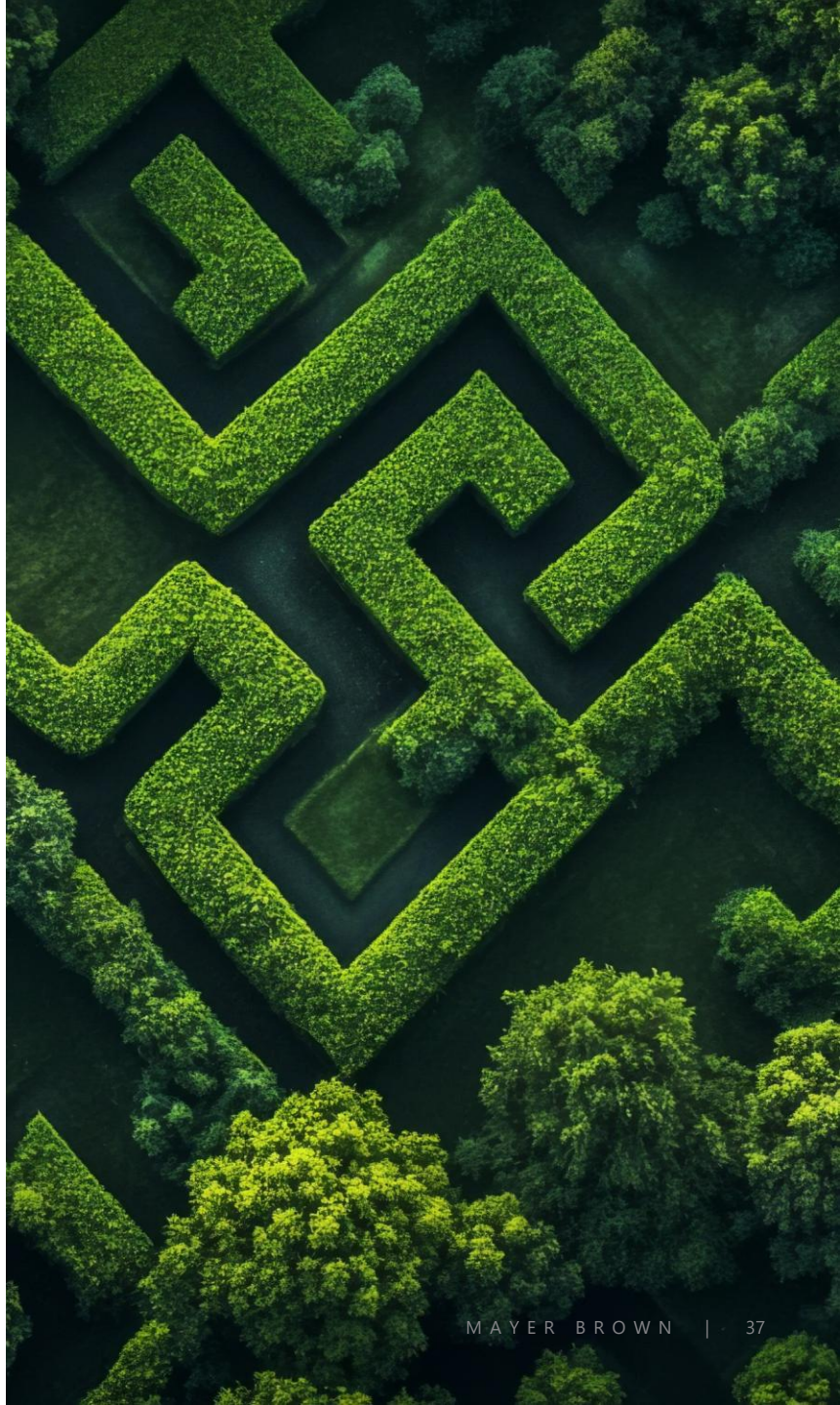
04

Results –

output of a model

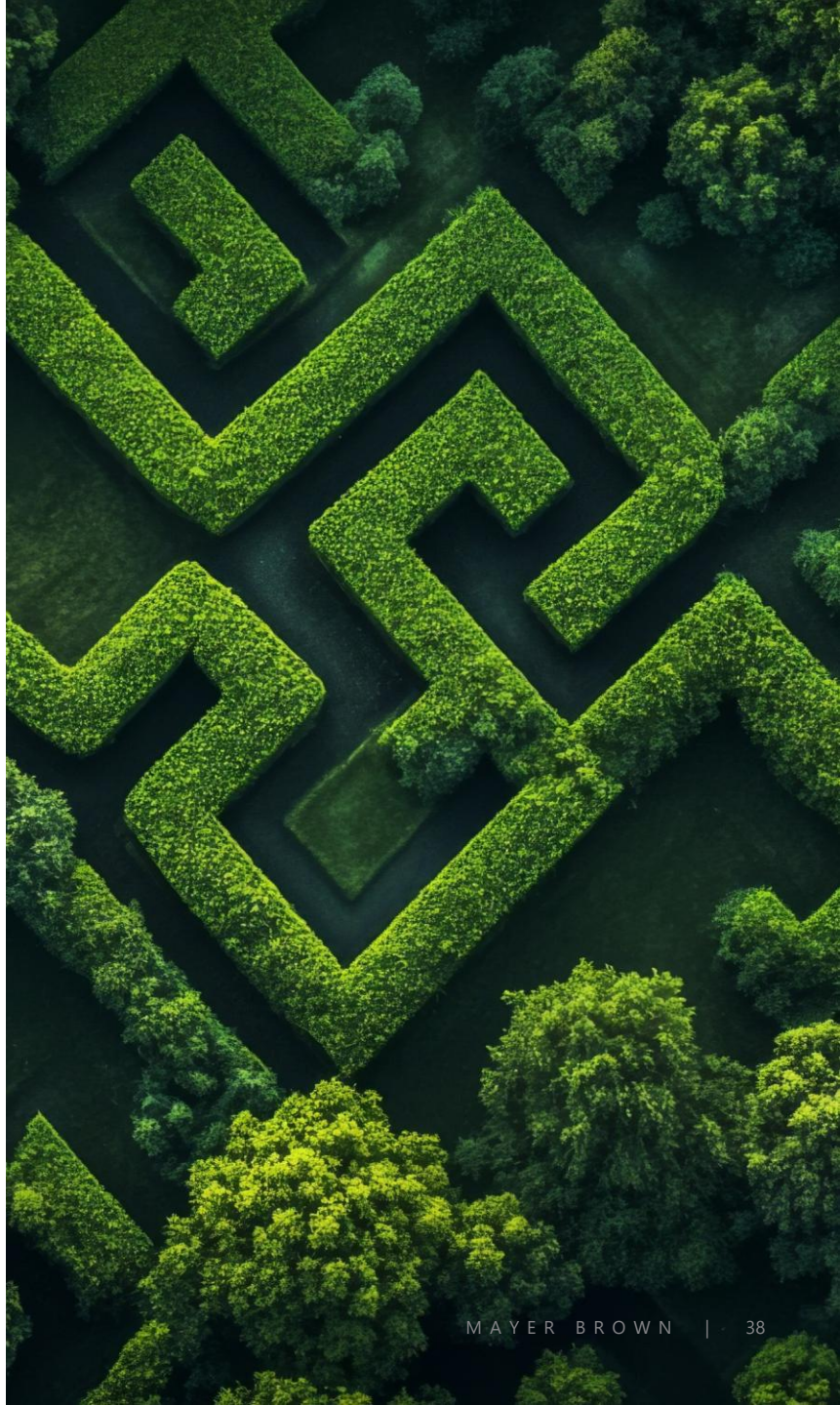
WHICH AI COMPONENTS CAN TRADE SECRETS PROTECT AND AGAINST WHAT?

- Each component can be protected provided the following are true:
  - The information derives independent economic value from not being generally known;
  - The company takes reasonable efforts to keep the information secret; and
  - In litigation, the component can be described with reasonable particularity
- May offer best method of protection for the components individually
  - Algorithm by itself likely only protectable as a trade secret
  - Unique collection of data probably best protected by trade secrets
  - Structure of model may be best protected by trade secret to avoid publication
- Prevents use of the components by any third party that obtains the information by improper means



WHY CONSIDER TRADE SECRETS AS A TOOL TO PROTECT AI?

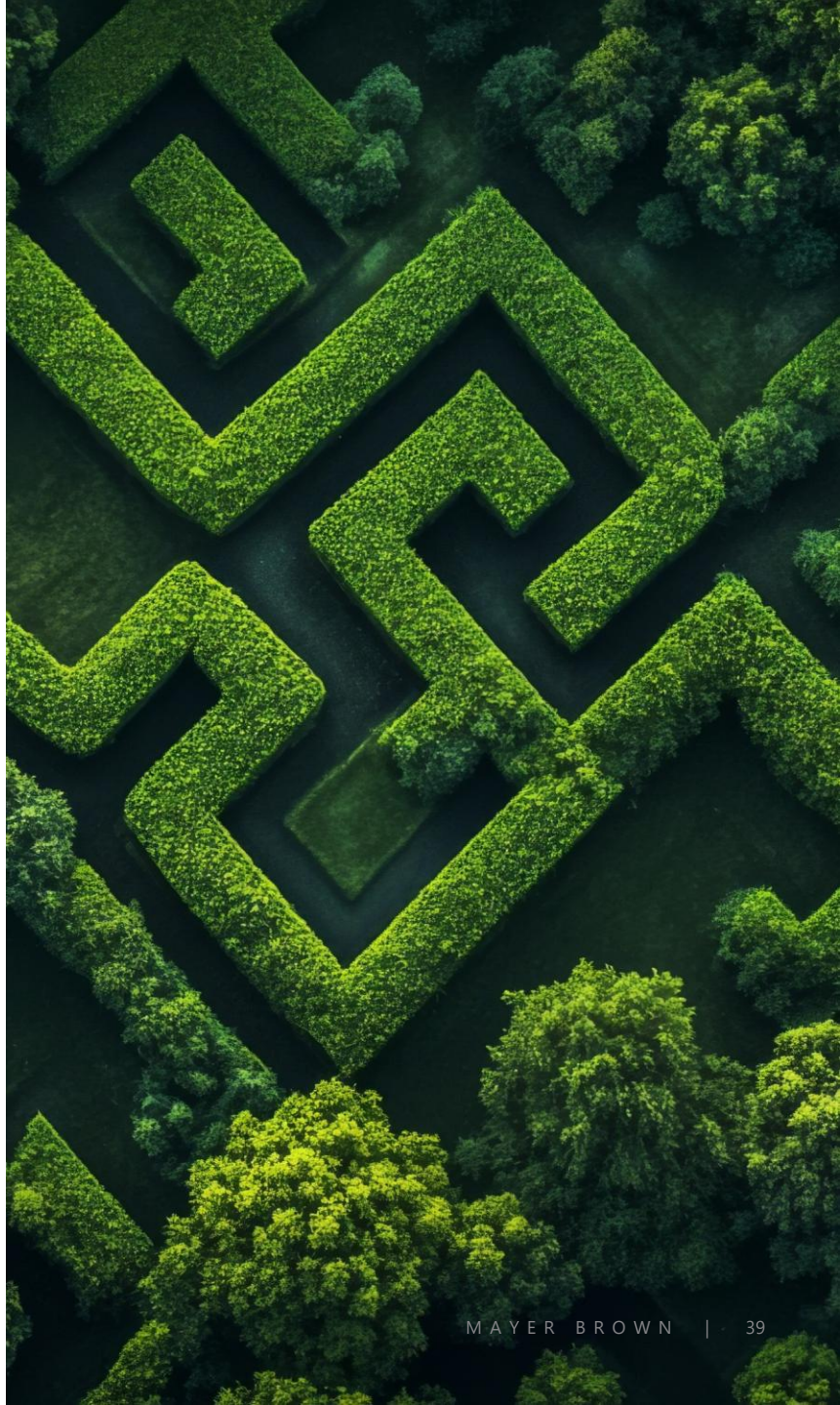
- US courts have rejected the notion that AI may be the sole inventor or creator of a patented invention or copyrighted work.
- Certain aspects of generative AI may face challenges overcoming the patent eligibility, written description, enablement, and novelty hurdles to patentability.
- DTSA does not require a human creator.
  - Ownership is defined by possession—not creation.
  - Parties can allocate ownership through contractual provisions.
- DTSA also defines “trade secret” broadly to include all forms and types of information so long as it meets certain requirements.



DESCRIBING AI COMPONENTS WITH REASONABLE PARTICULARITY

A trade secret plaintiff must identify the alleged trade secrets with sufficient specificity to inform the defendant of what information is at issue.

- In *T2 Modus LLC v. Williams-Arowolo*, the court held that it is not enough to "merely describe the end results of or functions performed by the claimed trade secrets" or "merely describe the claimed trade secret in conclusory terms such as 'artificial intelligence,' 'machine learning,' or 'proprietary software,' without additional specific information." No. 4:22-CV-00263, 2023 WL 6221429, at *5 (E.D. Tex. Sept. 25, 2023); *Yammine v. Toolbox For HR*, 21-cv-00093, 2023 WL 6259412, at *6 (D. Az. Aug. 8, 2023).
- In collaboration or licensing scenarios, consider using contractual provisions to define technology that is the trade secret.

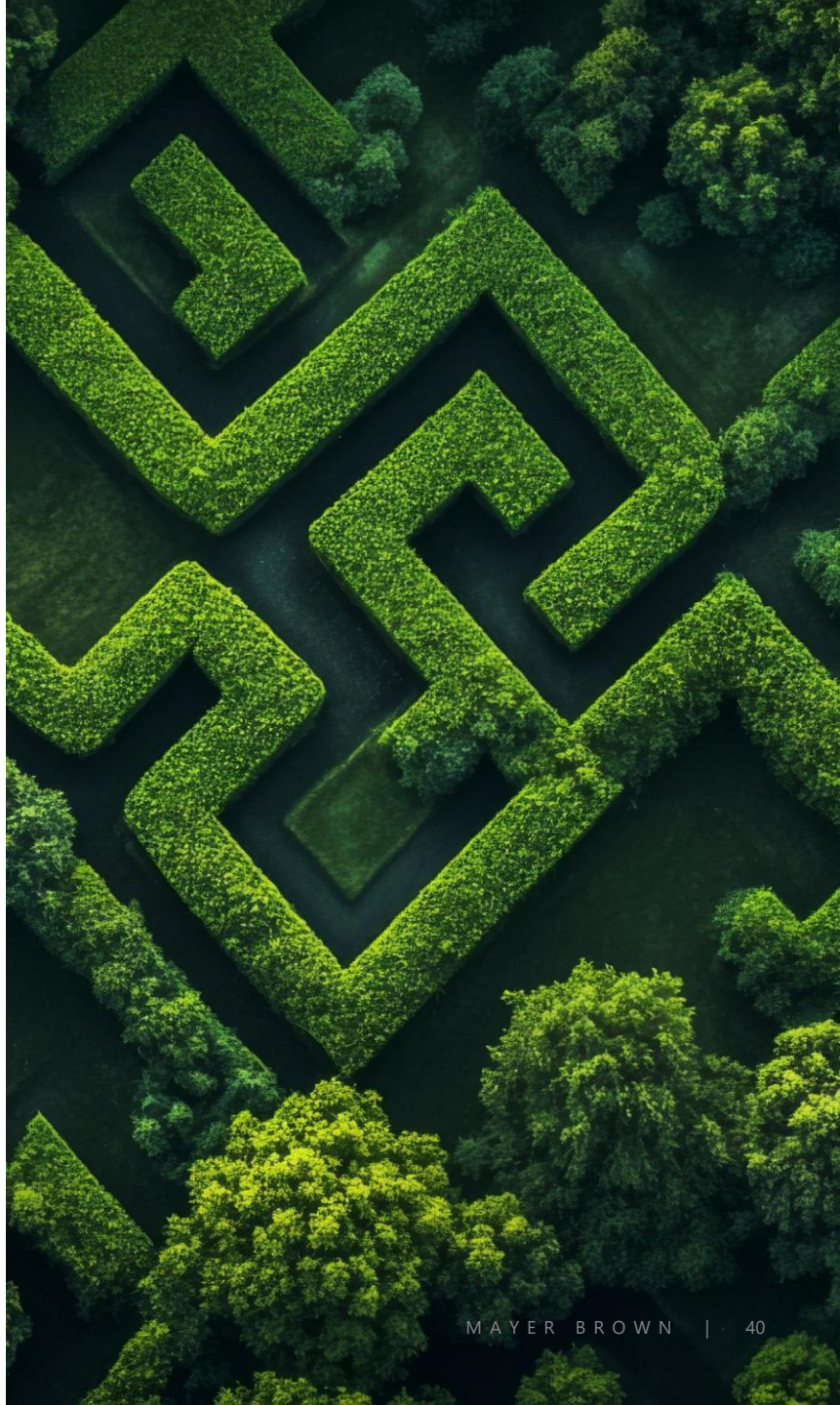


BLACK BOX NATURE OF AI PRESENTS DIFFICULTY IN SHOWING MISAPPROPRIATION

When competitor's algorithms are used to train AI algorithm, structure of model may be difficult to understand

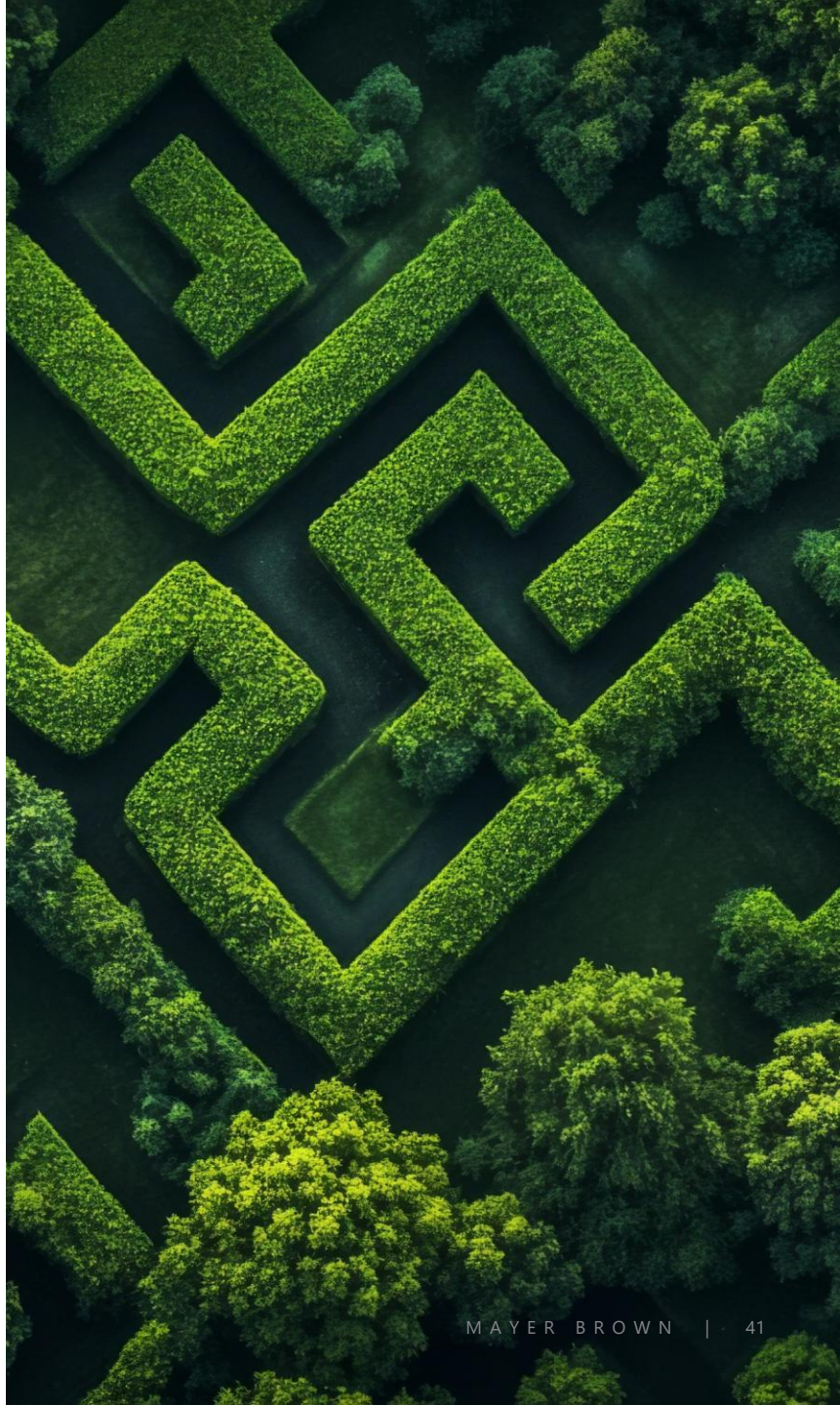
1. Need to establish a basis to assert a misappropriation of trade secrets.

2. Important to establish access to the AI trade secrets while balancing the need to show that the company has taken necessary steps to protect the AI trade secrets.



REASONABLE MEASURES TO PROTECTA AI COMPONENTS

- A trade-secret plaintiff must establish that the owner has taken reasonable measures to keep such information secret.
  - Reasonable measures typically include nondisclosure and confidentiality agreements, employee training, security restrictions, and exit interviews.
  - What is reasonable will depend on the particular circumstances, including the company's size, sophistication, and industry.
  - Given that both AI and companies' use of it is rapidly evolving, generic practices adopted by a company before its use of AI may be insufficient. Companies should develop measures that identify what aspects of AI a company believes are confidential.
    - If AI can access password protected and encrypted databases, would those protective measures suffice?



IMPORTANT TO CONTROL DATA USED FOR TRAINING AND INFERENCE WITH AI MODEL

Use Of External Data To Train

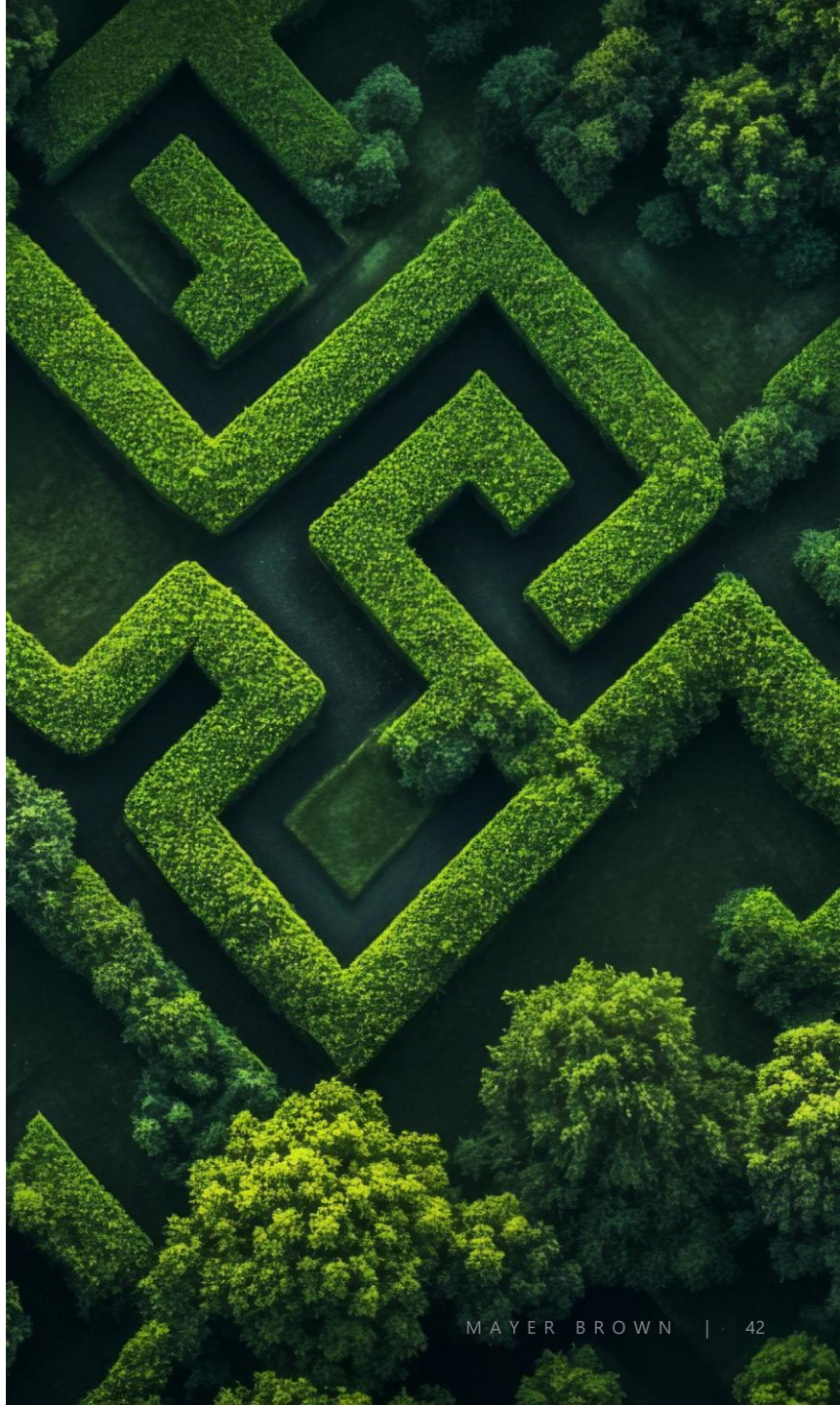
- Consider third-party rights.
- Trade secret protection may arise with unique combination of public information.
  - Challenge may arise to whether output would be readily ascertainable to others using the AI model.

Use Of Internal Data To Train Model May Expose Data

- Responses to prompts may provide confidential information
- Important to control access to AI model

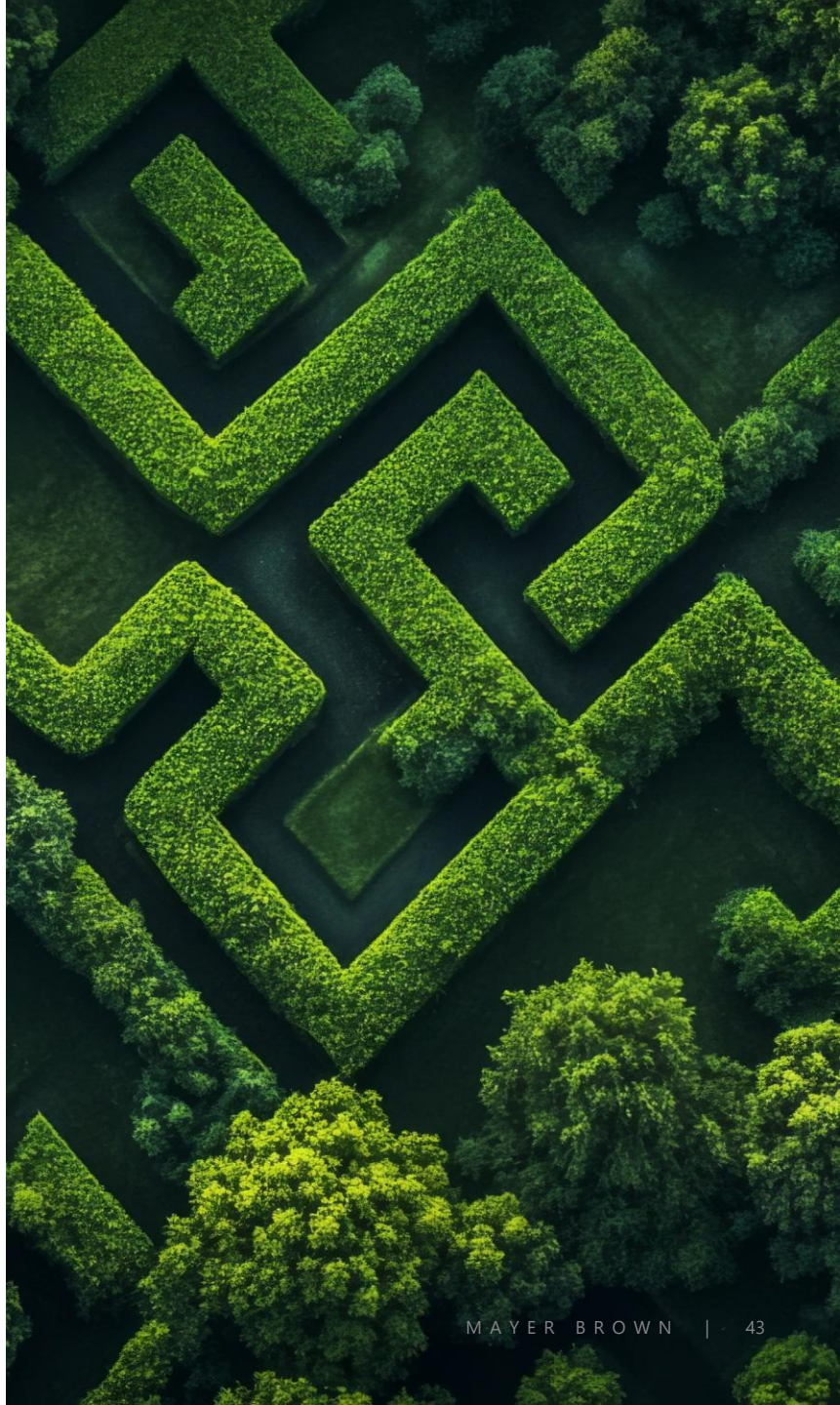
Use Of Internal Data In AI Model Without Restrictions May Present Issues

- Company confidential data in prompts can be incorporated into AI model
- The potential for subsequent users to benefit from data may support lack of reasonable measures argument



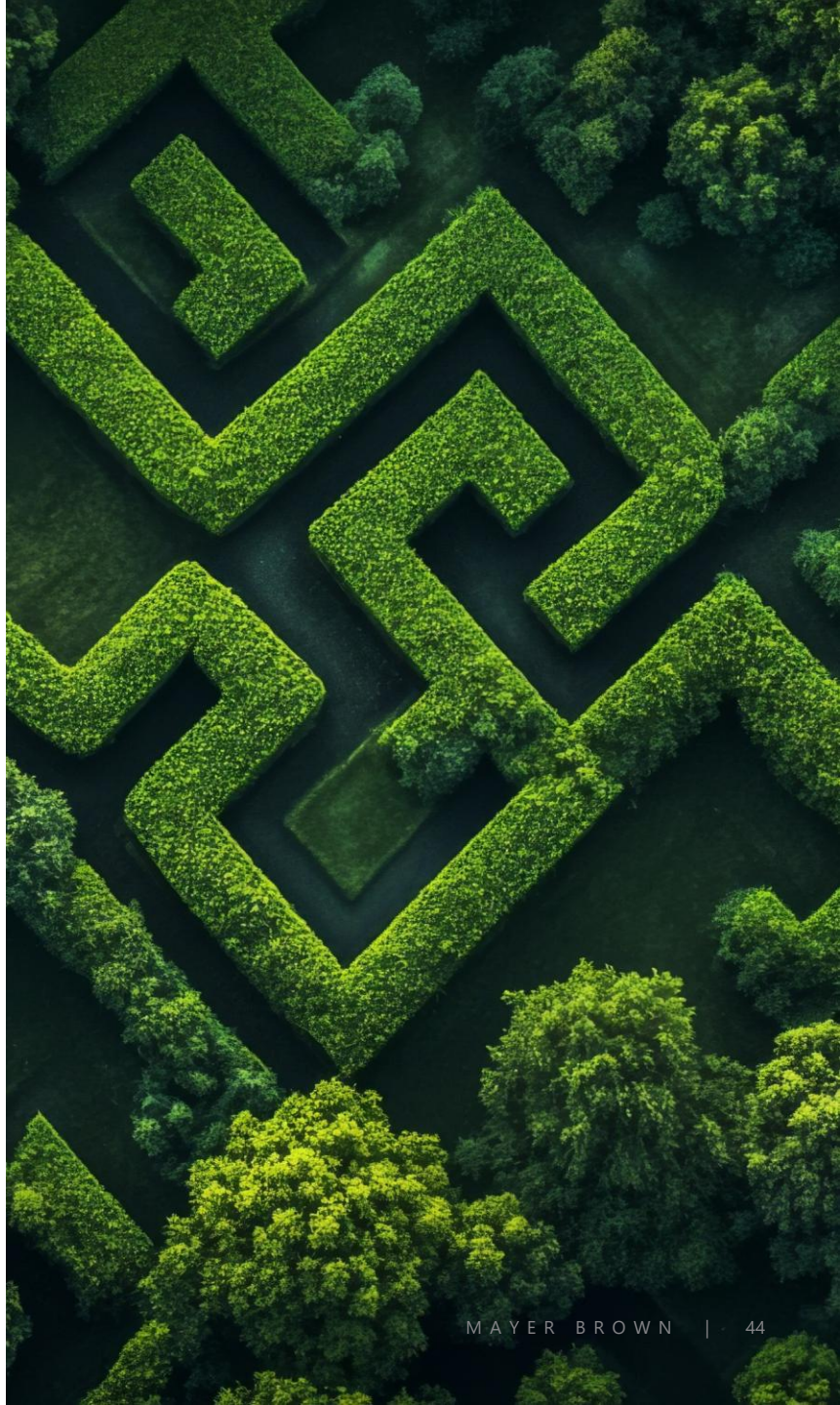
POTENTIAL LIABILITY FOR ACCESSING AND USING DATA FROM ANOTHER MODEL

- Allegations that Deepseek queried competitor AI models to obtain responses used to train its models.
- Compilations of data may meet the definition of trade secret – has independent economic value by not generally being known.
  - A compilation of public data may also be a trade secret under the 9th Cir. case *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012).
- Using computer "scraping" techniques to harvest substantial amounts of data from a data compilation could be found to be use of "improper means."
  - *Compulife Software, Inc. v. Newman*, 111 F.4th 1147 (11th Cir. 2024)
    - Affirmed finding of trade secret misappropriation where a competitor used "scraping" to obtain millions of insurances quotes from a proprietary database and used the data to compete.
    - Does it matter that AI applications are meant to disclose large amounts of information?
  - *See also UAB "Planned5D" v. Facebook, Inc.*, 2020 WL 4290733, *7 (N.D. Cal. July 24, 2020)



IMPROPER MEANS – VIOLATION OF TERMS OF USE AND "PROMPT INJECTION"

- OpenEvidence Inc. alleges that Doximity, Inc. improperly obtained trade secrets through submitting dozens of "prompt injection" attacks.
  - "Prompt injection" can cause an AI system to provide proprietary information such as the system prompts that govern how the AI operates.
- Asserts that Doximity, Inc. violated various terms of use, e.g., misrepresentation of user data, showing malicious intent
- Doximity Motion to Dismiss
  - Argued complaint failed because it did not identify the trade secrets and OpenEvidence alleged attempts to obtain trade secrets—not success in obtaining trade secrets
- OpenEvidence amended complaint drops trade secret cause of action
  - Highlights potential difficulties in describing what trade secret information was misappropriated



OpenEvidence Inc. v. Doximity, Inc., et al., 25-cv-11802 (D. Mass.)

ECONOMIC VALUE OF AI COMPONENTS

A trade secret plaintiff must establish that the alleged trade secret has value because it is unknown to others.

ONE

This means that publicly disclosed outputs will necessarily prevent trade secret protection from applying to the output themselves.

TWO

Care must be taken when using open-source code.

THREE

Plaintiff also needs to be able to isolate the economic value that results from each asserted trade secret.

SHOULD A COMPANY RELY UPON TRADE SECRETS OVER PATENTS?

PROS

CONS

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1. Trade secret avoids the barriers of patent protection
2. Trade secrecy immediacy helpful in rapidly developing technology
3. Unlimited term provided secrecy remains

SHOULD A COMPANY RELY UPON TRADE SECRETS OVER PATENTS?

PROS

CONS

1. Trade secrets do not provide a monopoly against all competitors
2. Independent development and reverse engineering defenses
3. May be difficult to detect trade secret misappropriation