



Friday, May 2, 2025

AI & The Law: Ethical Considerations and Trends to Watch for as In-House Counsel

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How AI-Powered Tools Function in Legal Practice

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Appellate Division *First Judicial Department* *Supreme Court of the State of New York*

Wednesday, March 26, 2025



AI-generated attorney outrages judge who scolds man over courtroom fake: 'not a real person'

<https://www.foxnews.com/us/ai-generated-attorney-outrages-judge-who-scolds-man-over-courtroom-fake-not-real-person>

<https://apnews.com/article/artificial-intelligence-ai-courts-nyc-5c97cba3f3757d9ab3c2e5840127f765>

What is “Artificial Intelligence”?

Institute for Electrical and Electronics Engineers (IEEE):

- Artificial Intelligence is ***social and cognitive phenomena*** that enable a machine to ***socially integrate with a society*** to perform competitive tasks requiring cognitive processes and communicate with other entities in society by exchanging messages with high information content and shorter representations.

Britannica:

- The ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings.

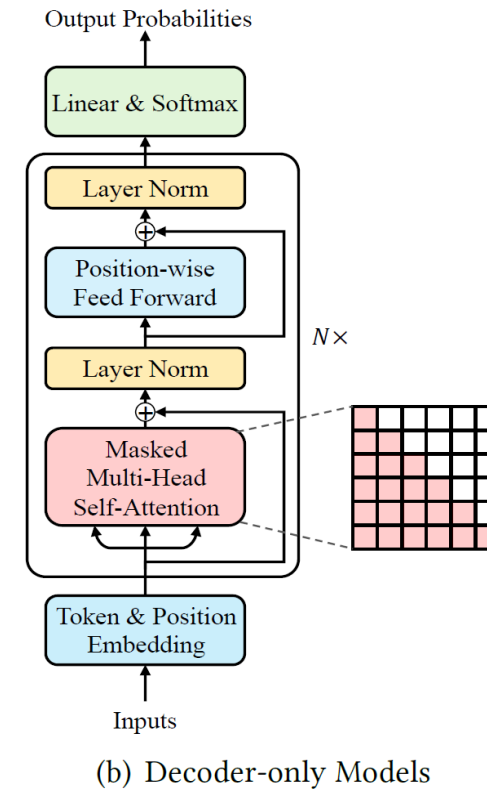
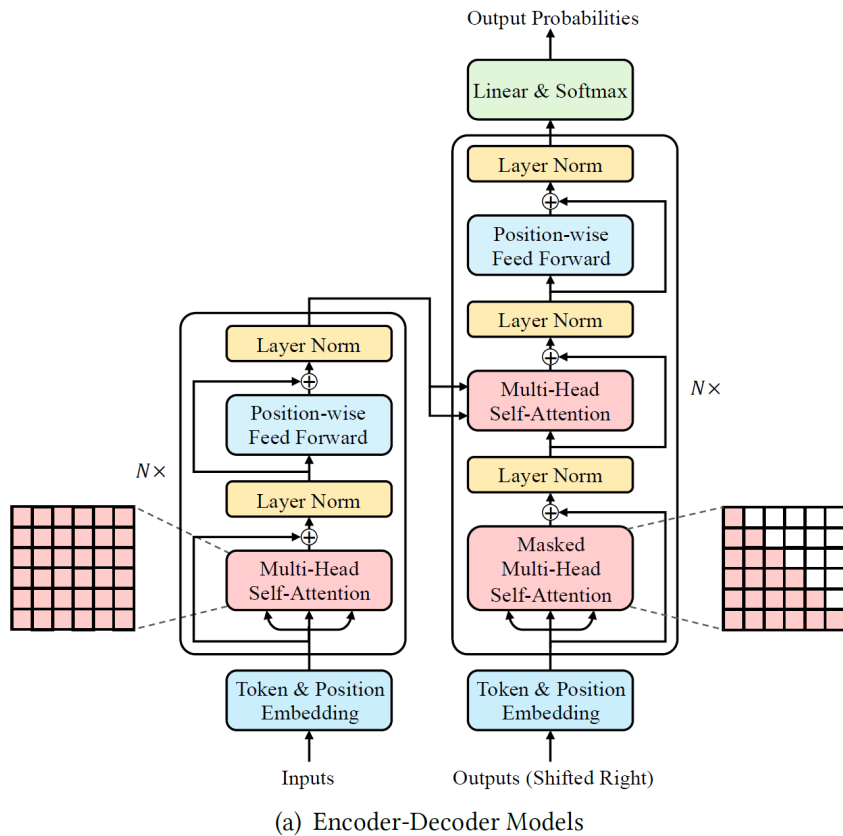
IEEE Editorial: What is Artificial Intelligence?

<https://ieeexplore.ieee.org/document/9523786>

Britannica: Artificial Intelligence

<https://www.britannica.com/technology/artificial-intelligence>

Large Language Models: “Attention”



Attention is All You Need (Google, 2017)

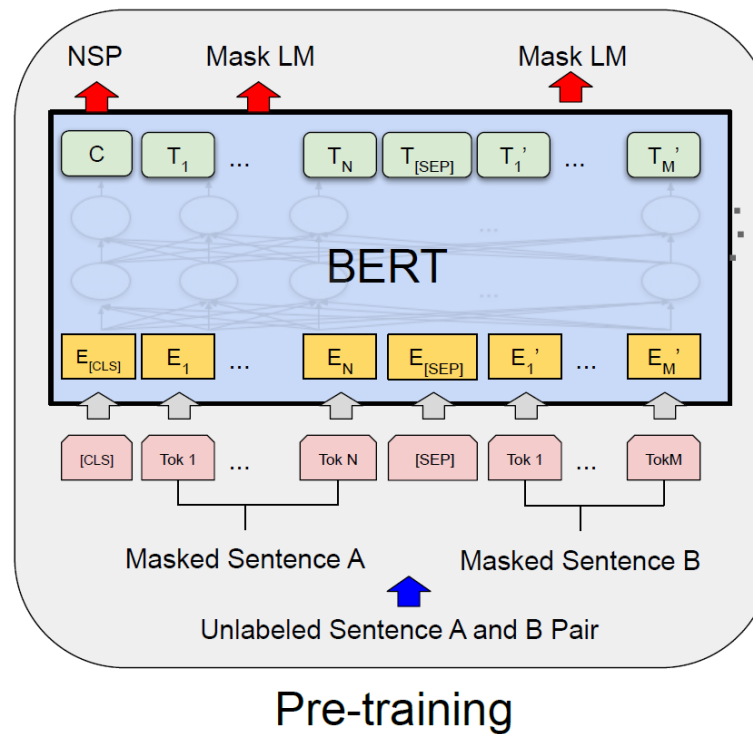
<https://arxiv.org/html/1706.03762v7>

Improving Language Understanding by Generative Pre-Training (OpenAI, 2018)

https://cdn.openai.com/research-covers/language-unsupervised/language_understanding_paper.pdf

Training LLMs: Unsupervised Learning

(1) Masked word prediction and (2) next sentence prediction.

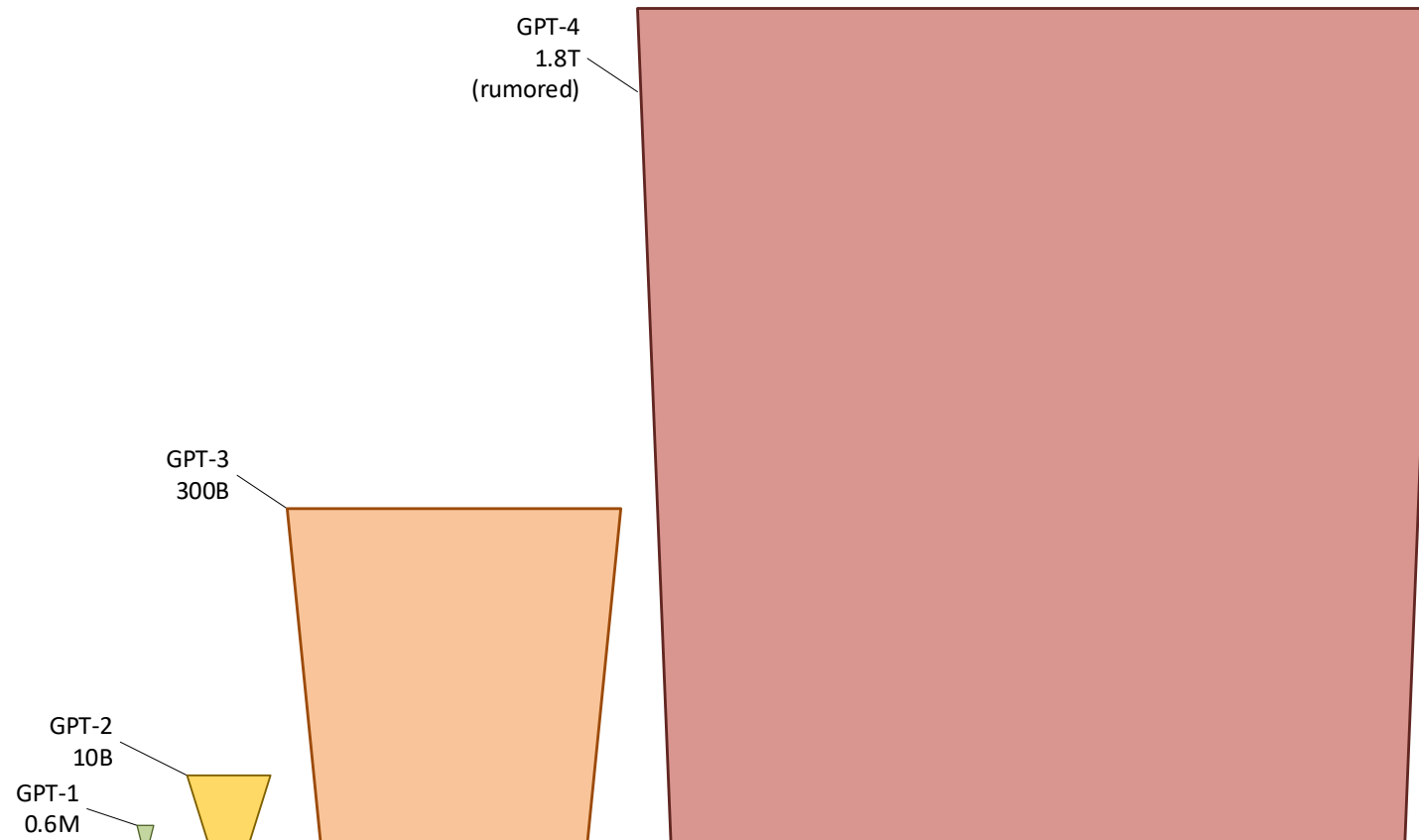


BERT: Pre-training of Deep Bidirectional Transformers for Language Understanding

<https://arxiv.org/pdf/1810.04805> (Google, 2019)

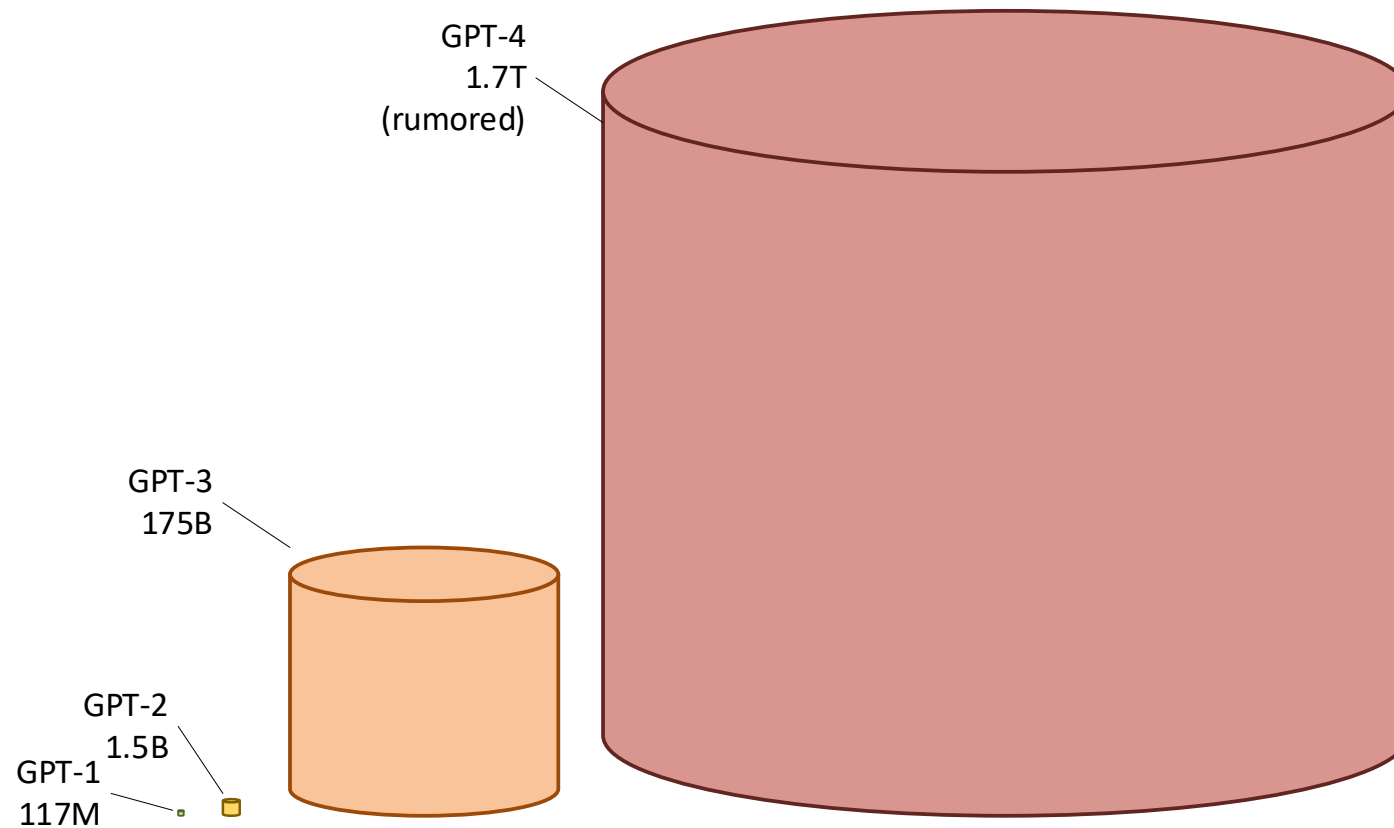
Training: LLMs are HUNGRY

Model size in parameters: GPT-1 (2018) through GPT-4 (2023).



Training: LLMs are HUNGRY

Training corpus size in tokens: GPT-1 (2018) through GPT-4 (2023).



Reasoning: “Chain-of-Thought”

Chain-of-Thought Prompting Elicits Reasoning in Large Language Models

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Brian Ichter Fei Xia Ed H. Chi Quoc V. Le Denny Zhou

Google Research, Brain Team
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Math Word Problems (multiple choice)

Q: How many keystrokes are needed to type the numbers from 1 to 500?
Answer Choices: (a) 1156 (b) 1392 (c) 1480 (d) 1562 (e) 1788

A: There are 9 one-digit numbers from 1 to 9. There are 90 two-digit numbers from 10 to 99. There are 401 three-digit numbers from 100 to 500. $9 + 90(2) + 401(3) = 1392$. The answer is (b).

StrategyQA

Q: Yes or no: Would a pear sink in water?

A: The density of a pear is about 0.6 g/cm^3 , which is less than water. Thus, a pear would float. So the answer is no.

Coin Flip (state tracking)

Q: A coin is heads up. Maybelle flips the coin. Shalonda does not flip the coin. Is the coin still heads up?

A: The coin was flipped by Maybelle. So the coin was flipped 1 time, which is an odd number. The coin started heads up, so after an odd number of flips, it will be tails up. So the answer is no.

<https://arxiv.org/pdf/2201.11903> (2023)

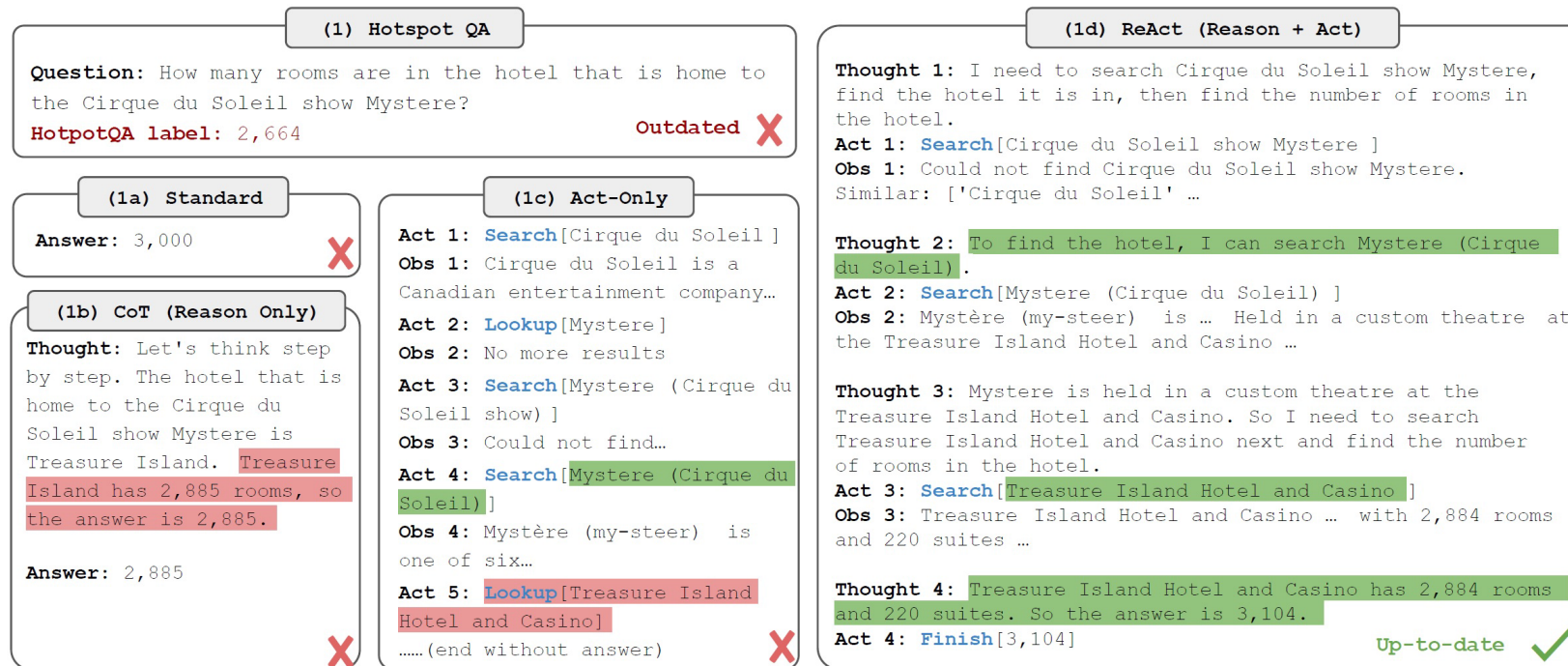
Reasoning and Acting: “ReAct”

REACT: SYNERGIZING REASONING AND ACTING IN LANGUAGE MODELS

Shunyu Yao^{*1}, Jeffrey Zhao², Dian Yu², Nan Du², Izhak Shafran², Karthik Narasimhan¹, Yuan Cao²

¹Department of Computer Science, Princeton University

²Google Research, Brain team



<https://arxiv.org/pdf/2210.03629> (2023)

Training LLMs is EXPENSIVE

“Most companies want to use these large language models but ***the really good ones take billions of dollars*** to train and many years and most companies don’t want to go through that.”

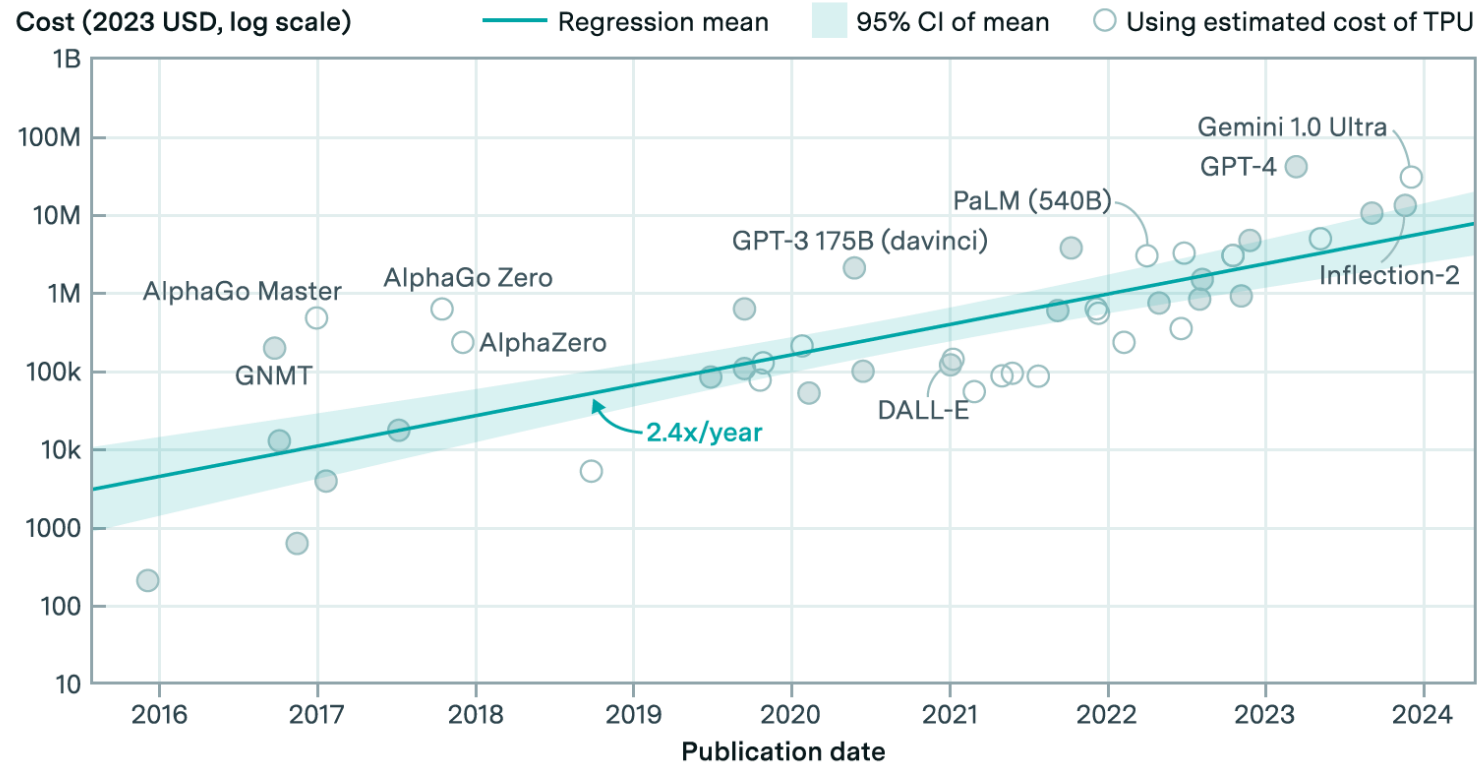
- Andy Jassy, CEO of Amazon, 2023

CNBC, April 13, 2023:

<https://www.cnbc.com/2023/04/13/aws-launches-bedrock-generative-ai-service-titan-llms.html>

Training LLMs is EXPENSIVE

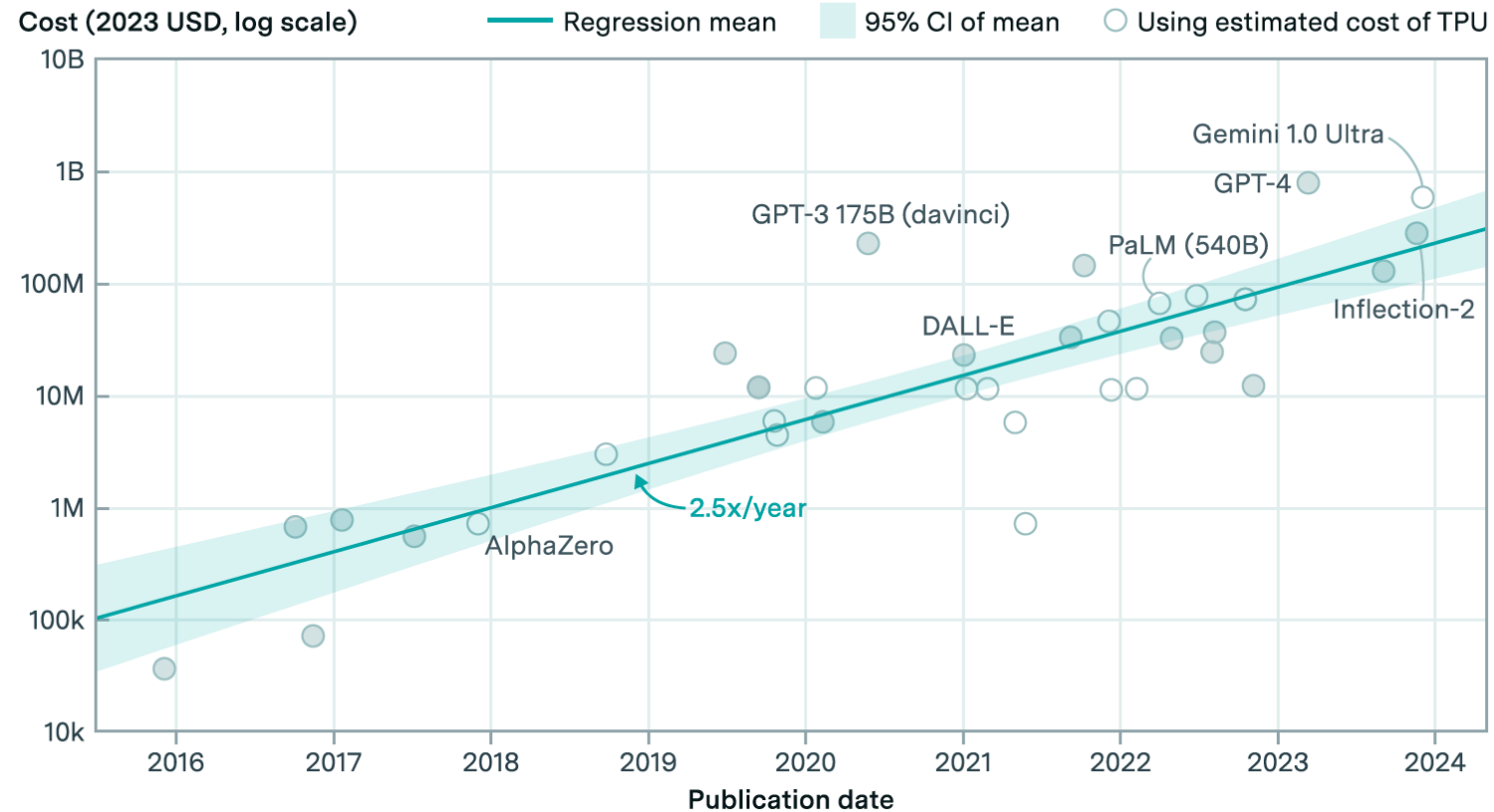
Amortized hardware and energy cost to train frontier AI models over time



The rising costs of training frontier AI models <https://arxiv.org/html/2405.21015v1> (Stanford, 2024)

Training LLMs is EXPENSIVE

Hardware acquisition cost to train frontier AI models over time

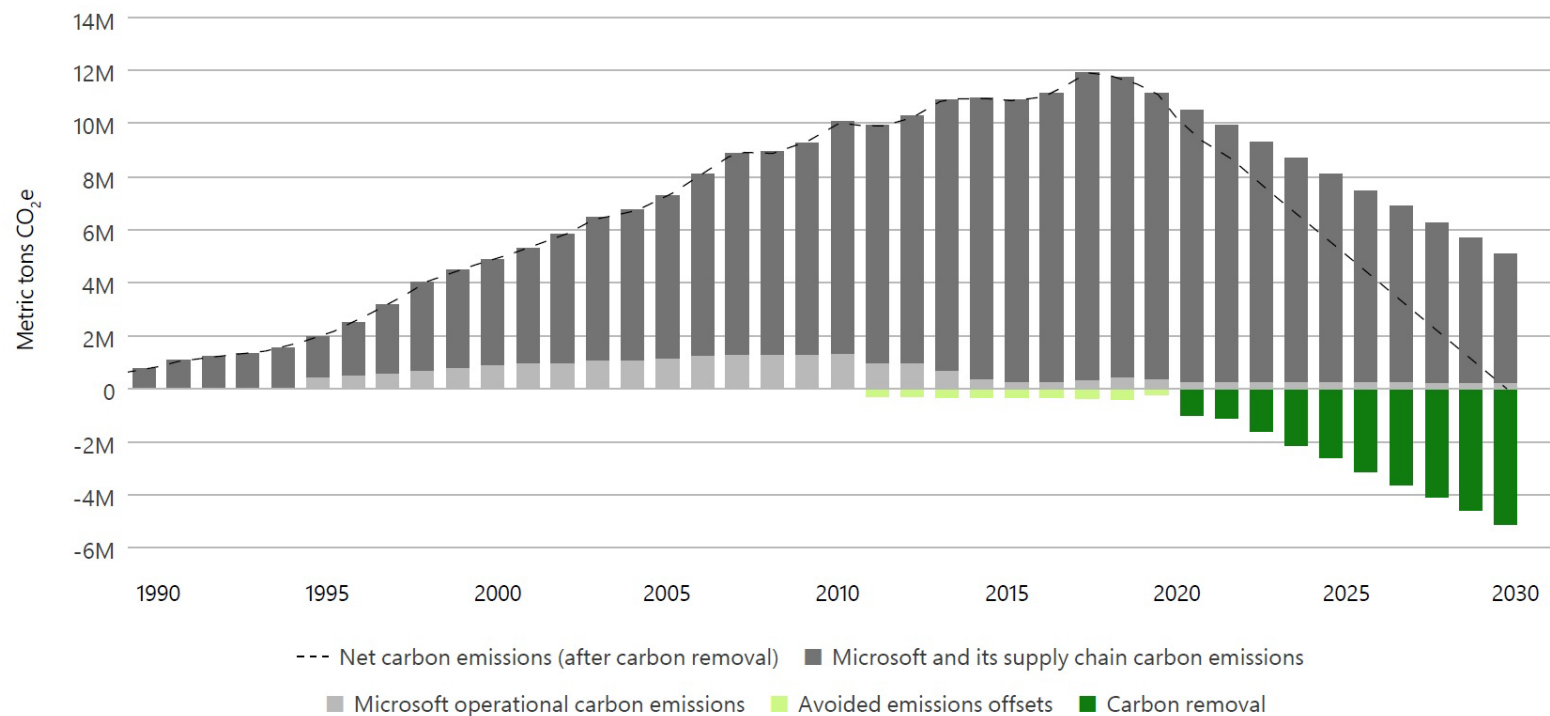


The rising costs of training frontier AI models <https://arxiv.org/html/2405.21015v1> (Stanford, 2024)

Training LLMs is EXPENSIVE

Table 1

Microsoft's pathway to carbon negative by 2030¹



Microsoft 2020 Environmental Sustainability Report

<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/Microsoft-Environmental-Sustainability-Report-2020.pdf>

Training LLMs is EXPENSIVE

Our progress

✓ Scope 1 and 2 emissions

Our Scope 1 and 2 emissions decreased by 6% from the 2020 base year. This result is driven by our ongoing work to advance clean energy procurement, green tariff programs, and use of unbundled renewable energy certificates.

✓ Scope 3 emissions

Our value chain or Scope 3 emissions increased by 30.9% from our 2020 baseline. Microsoft continues to work to scale corporate clean energy purchases across our supply chain and invest to help decarbonize hard-to-abate industries, including steel, concrete, and other building materials used in our datacenters.

✓ 5M metric tons of carbon removal

We contracted 5,015,019 metric tons of carbon removal in FY23. We are continuing to build a portfolio of projects, balanced across low, medium, and high durability solutions.

Microsoft 2024 Environmental Sustainability Report

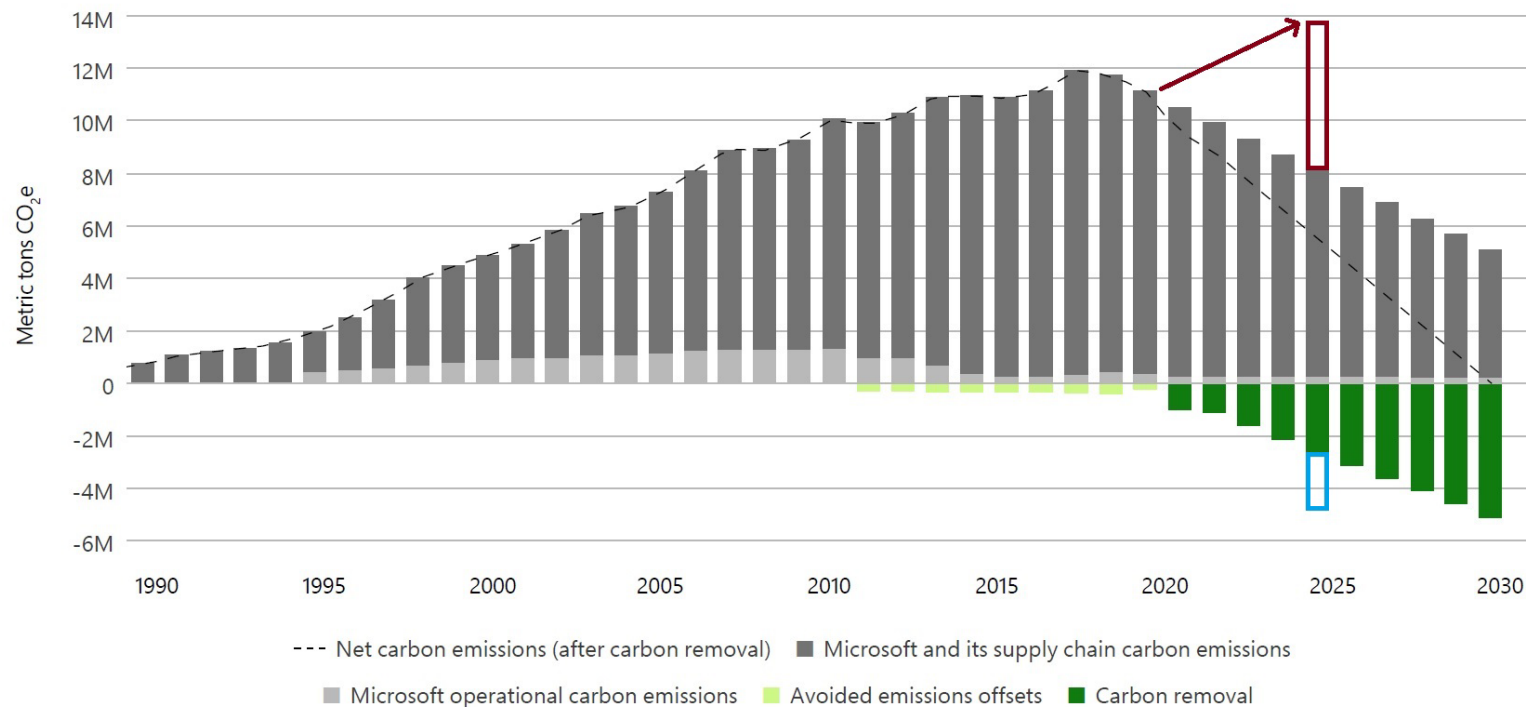
<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/Microsoft-2024-Environmental-Sustainability-Report.pdf>

Training LLMs is EXPENSIVE

Table 1

Microsoft's pathway to carbon negative by 2030¹

Scope 3 emissions increased by 30.9% from our 2020



Microsoft 2024 Environmental Sustainability Report

<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/Microsoft-2024-Environmental-Sustainability-Report.pdf>

Generative models are RANDOM

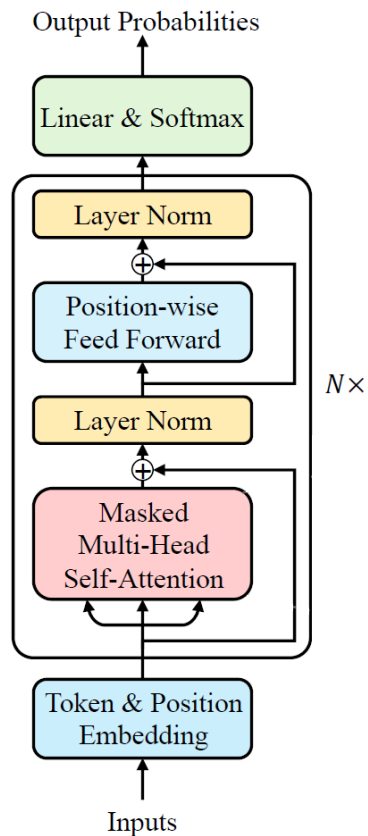
“The core irony of generative AIs is that AIs were supposed to be all logic and no imagination. Instead we get AIs that make up information, engage in (seemingly) emotional discussions, ***and which are intensely creative.***”

- **Ethan Mollick, PhD, MBA**
the Wharton School

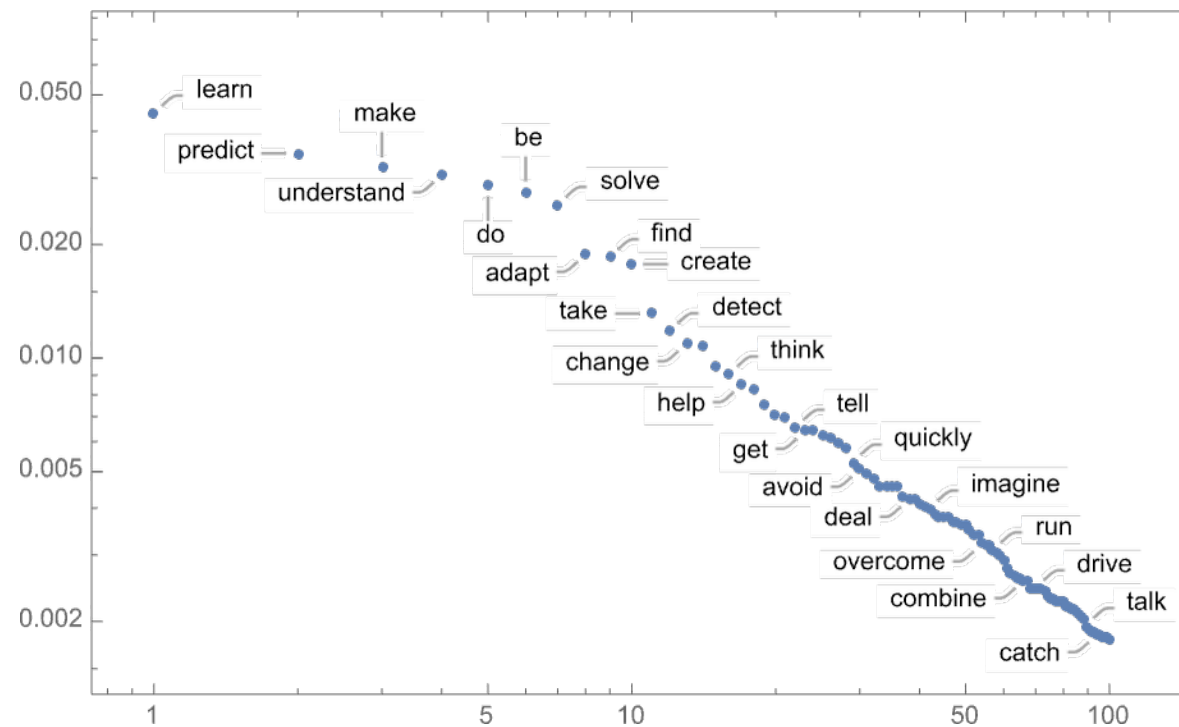
Automating Creativity

<https://www.oneusefulthing.org/p/automating-creativity>

Generative models are RANDOM



“The best thing about AI is its ability to...”



Stephen Wolfram: What Is ChatGPT Doing ... and Why Does It Work?

<https://writings.stephenwolfram.com/2023/02/what-is-chatgpt-doing-and-why-does-it-work/>

Randomness is controlled by “Temperature”

Temp=0.1

Once upon a time, in the bustling city of San Francisco, there lived a brilliant data scientist named Alex. Alex was known for their exceptional skills in Python programming and data analysis. They spent their days and nights immersed in the world of data, using Python to extract insights and make predictions.

One day, Alex was tasked with analyzing customer churn for a popular streaming service. They used Python's scikit-learn library to build a machine learning model that could predict which customers were likely to cancel their subscriptions.

Temp=0.75

Every day, Alex would wake up early, brew a pot of coffee, and sit down at their desk. They would spend hours writing code in Python, exploring datasets, and building predictive models. Their love for Python was not just about the language itself, but also about the community that had grown around it.

Temp=1.75

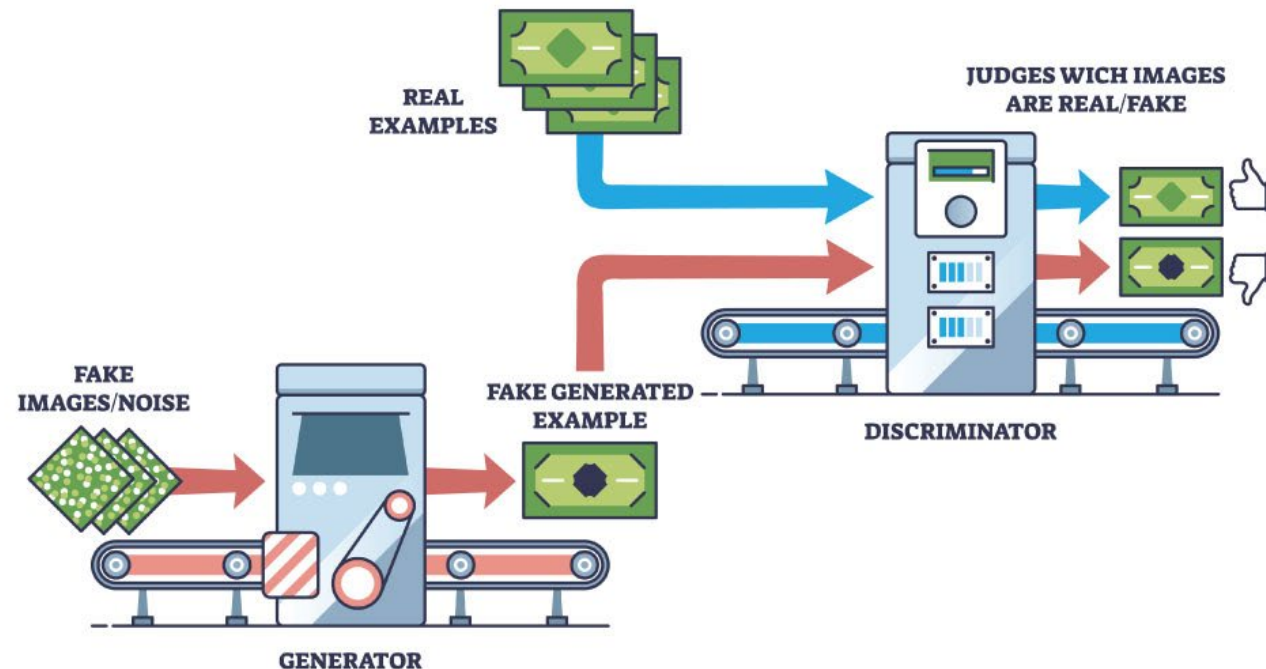
One day, the data scientist is working on a complex coding problem. Suki keeps meowing loudly as if she is trying to communicate a message to the data scientist. The data scientist notices that the loud meowing usually happens when they are close to a solution to the complex coding problem.

What is LLM Temperature?

<https://www.ibm.com/think/topics/llm-temperature>

Generative Adversarial Networks (GANs)

GENERATIVE ADVERSARIAL NETWORKS GANs



What Is a Generative Adversarial Network?

<https://pg-p.ctme.caltech.edu/blog/ai-ml/what-is-generative-adversarial-network-types>

Generative Adversarial Nets

https://proceedings.neurips.cc/paper_files/paper/2014/file/f033ed80deb0234979a61f95710dbe25-Paper.pdf

Reinforcement Learning through Human Feedback



The story of the workers who made ChatGPT possible offers a glimpse into the conditions in this little-known part of the AI industry, which nevertheless plays an essential role in the effort to make AI systems safe for public consumption. “Despite the foundational role played by these data enrichment professionals, a growing body of research reveals the precarious working conditions these workers face,” says the Partnership on AI, a coalition of AI organizations to which OpenAI belongs. *“This may be the result of efforts to hide AI’s dependence on this large labor force when celebrating the efficiency gains of technology. Out of sight is also out of mind.”*

Time Magazine, January 18, 2023

<https://time.com/6247678/openai-chatgpt-kenya-workers/>

So, what are generative models good for?

- Handling complex, unseen inputs.



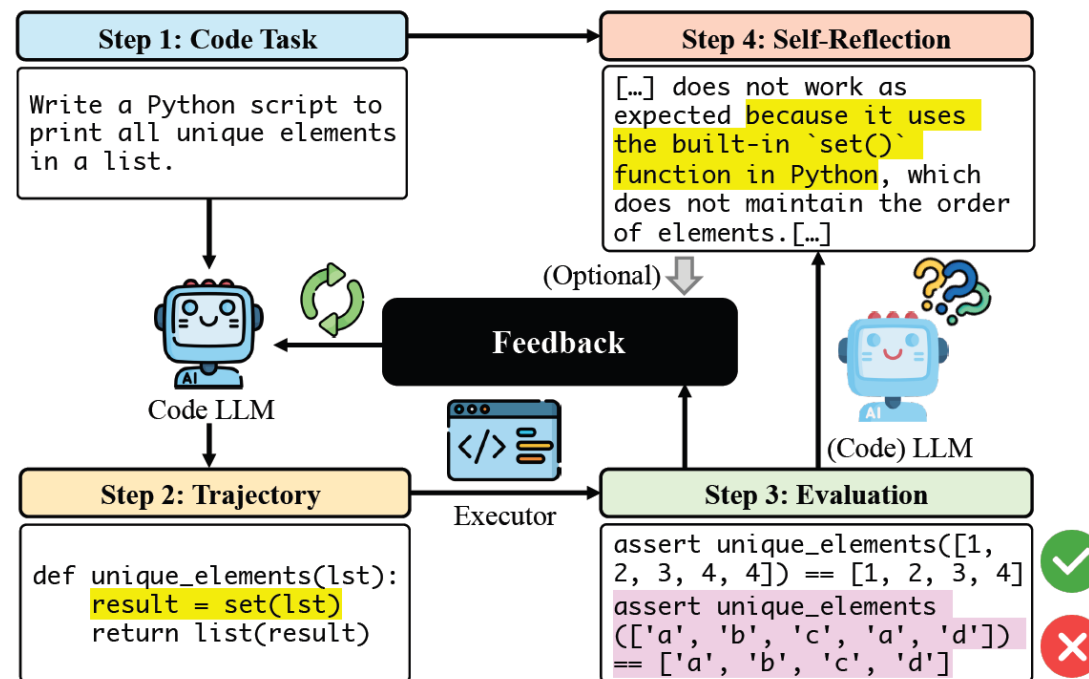
A Waymo-operated Jaguar I-Pace in San Francisco, 2023. This model was recalled after a crash into a pole.^[9]

 Dllu - Own work

https://en.wikipedia.org/wiki/Self-driving_car

So, what are generative models good for?

- Formalized language with validation



LLMs for Code Generation: A Comprehensive Survey of Challenges, Techniques, Evaluation, and Applications

<https://arxiv.org/abs/2503.01245>

So, what are generative models good for?

- Idea generation in a practical science pipeline

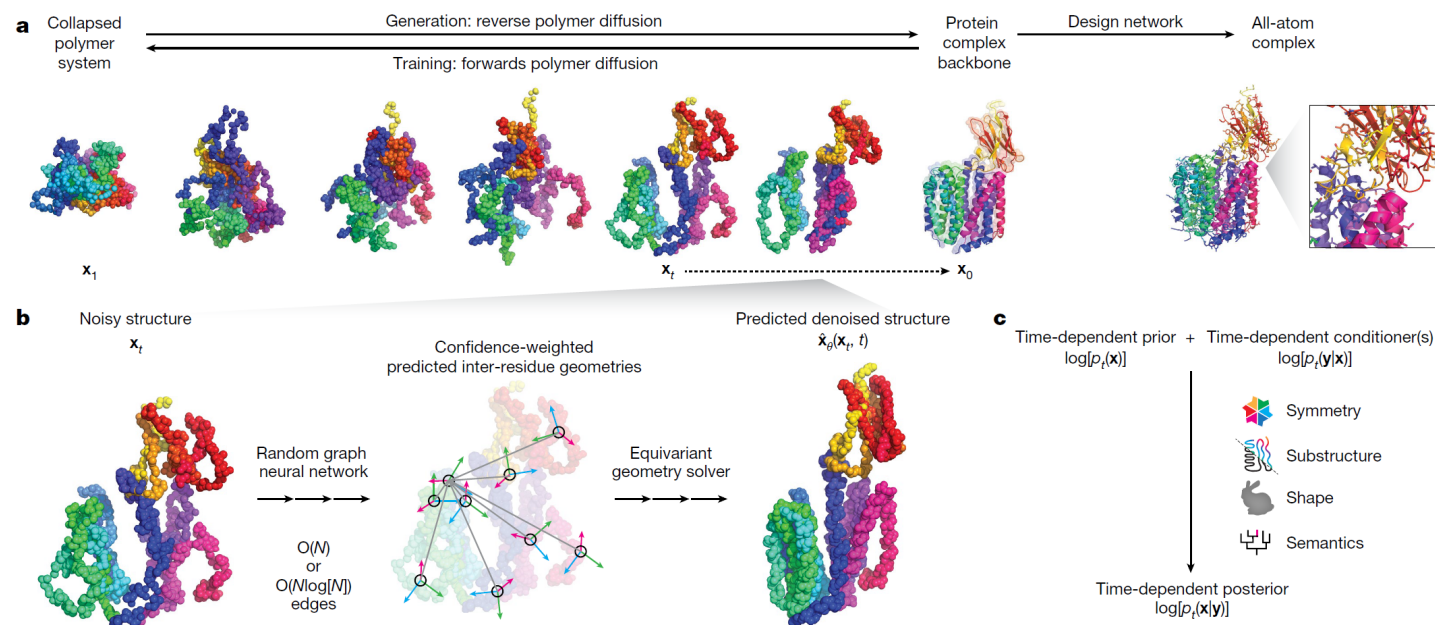


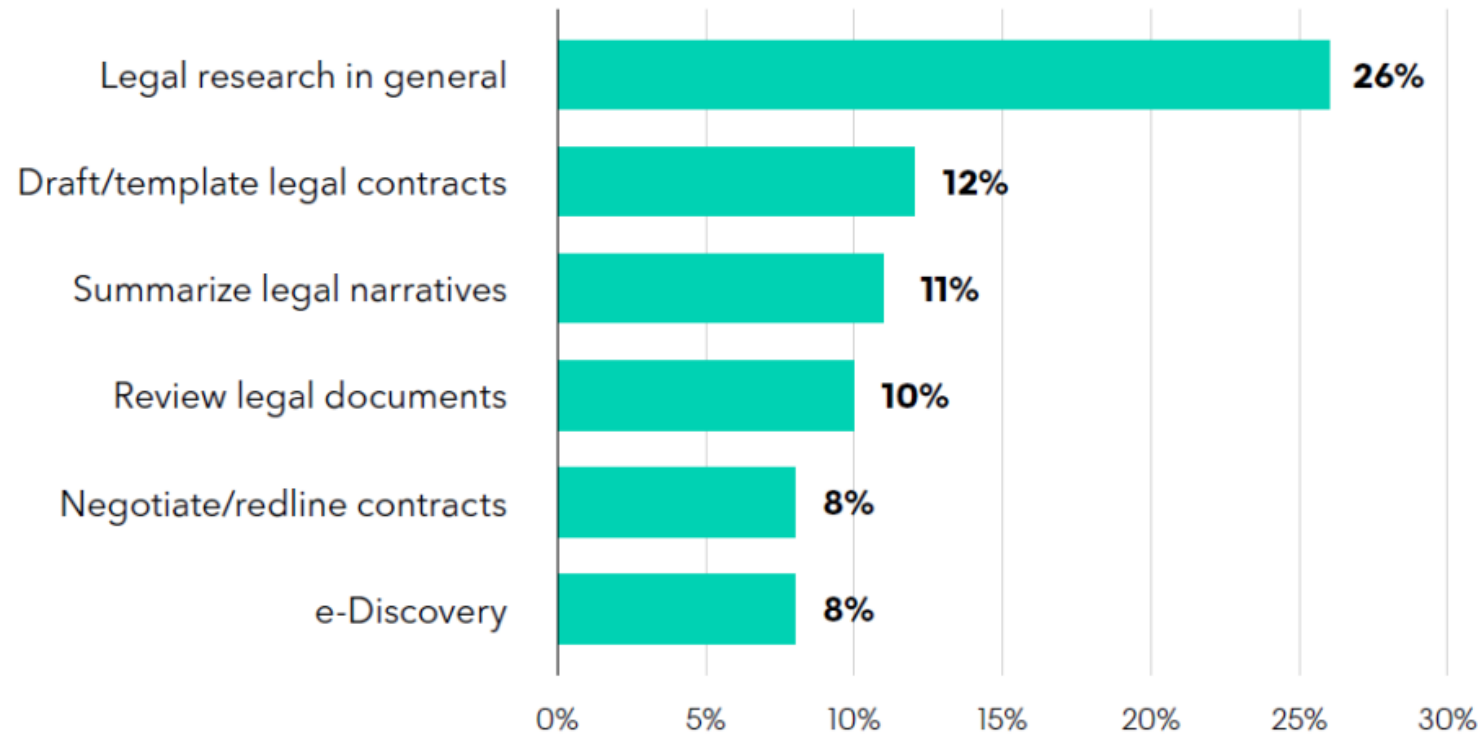
Fig. 1 | Chroma is a generative model for proteins and protein complexes that combines structured diffusion for protein backbones with scalable molecular neural networks for backbone synthesis and all-atom design.

Illuminating protein space with a programmable generative model

<https://www.nature.com/articles/s41586-023-06728-8> (Generate Biomedicines, 2024)

AI in the practice of law

How have you used generative AI in your practice?



Source: Bloomberg Law 2024 Legal Tech & Ops Survey

Bloomberg: AI for Legal Professionals

<https://pro.bloomberglaw.com/insights/technology/ai-in-legal-practice-explained/#how-is-ai-used-in-law>

An interesting use: “ordinary meaning”

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10478

23-10478

NEWSOM, J., Concurring

1

NEWSOM, Circuit Judge, concurring:

This is a sequel of sorts to my separate opinion in *Snell v. United Specialty Insurance Co.*, 102 F.4th 1208 (11th Cir. 2024) (Newsom, J., concurring). There, I floated the following suggestion, which I suspected (rightly, as it turns out) would be fairly provocative: “Those, like me, who believe that ‘ordinary meaning’ is *the* foundational rule for the evaluation of legal texts should consider—consider—whether and how AI-powered large language models like OpenAI’s ChatGPT, Google’s Gemini, and Anthropic’s Claude might—*might*—inform the interpretive analysis.” *Id.* at 1221. With the benefit of a little perspective, and incorporating by reference here all the caveats that I expressed there, I stand by what I said.

US v. Deleon, Slip Op. No. 23-10478 (11th Cir., 2024)

<https://pro.bloomberglaw.com/insights/technology/ai-in-legal-practice-explained/#how-is-ai-used-in-law>

Summarizing large bodies of text



I had an ai summarize this. I get it.

5:49 PM

SMS conversation with Ben Fisher prior to the Formula 1 Japanese Grand Prix (2025)



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Application of Ethical Duties to Use of Artificial Intelligence Tools

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Ethical Duties Implicated by GAI Use

Duties under Rules of Professional Conduct (the “Rules”)

- Represent client competently. Rule 1.1
- Keep confidential client’s confidences and secrets. Rule 1.6
- Communicate with client. Rule 1.4
- Pursue only meritorious claims and be candid and truthful with tribunals. Rules 3.1, 3.3 and 8.3(c)
- Manage and Supervise Subordinate Attorneys and Outside Vendors. Rules 5.1 and 5.3

Duty to Charge a Reasonable Fee (Rule 1.5) not addressed herein.

Application of Ethical Duties to Use of Artificial Intelligence Tools

On July 29, 2024, the ABA Standing Committee on Ethics and Professional Responsibility (the “Committee”) issued Formal Opinion 51 entitled Generative Artificial Intelligence Tools (the “Opinion”), offering “general guidance for lawyers attempting to navigate this emerging landscape.” Opinion at p. 2.

1. Duty of Competence

Rule 1.1 requires lawyers to exercise “legal, knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Comment 8 to Rule 1.1 states, “To maintain the requisite knowledge and skill, a lawyer shall keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . .”

The Opinion states that the duty of competence requires lawyers to “become aware of the GAI tools relevant to their work so that they can make an informed decision, as a matter of professional judgment, whether to avail themselves of these tools or to conduct their work by other means.” Opinion at p. 5.

1. Duty of Competence (*cont.*)

According to the Opinion, the duty of competence requires lawyers who use GAI tools to:

- Have a reasonable understanding of the benefits and risks of the GAI tools they use or “draw on the expertise of others who can provide guidance about the relevant GAI tool’s capabilities and limitations.” Opinion at p. 3.
- Independently verify all material content created by a GAI tool. Uncritical reliance on content created by GAI tool can violate the duty of competence.
- NOT rely on GAI tools to perform tasks calling for the exercise of professional judgment (e.g. offering legal advice, negotiating).

2. Duty of Confidentiality

Rule 1.6(a) provides that, with limited exceptions, “[a] lawyer shall not reveal a confidence or secret of a client.”

Rule 1.6(c) requires lawyers to make “reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

According to the Opinion, the duty of confidentiality requires lawyers who use GAI tools to:

- Evaluate the risks that information entered into a GAI tool can be disclosed to or accessed by unauthorized persons.
 - › Some GAI tools use information supplied by a lawyer in a query in generating a response to another lawyer’s query.
 - › Could be a lawyer in the same or a different firm (depending on tool).

2. Duty of Confidentiality (*cont.*)

- Obtain the client's informed consent prior to inputting information relating to the representation into a GAI tool if there is any risk that use of a GAI tool could lead to the disclosure of confidential information. Informed consent requires:
 - › Explanation of benefits of using tool.
 - › Explanation of risks.
 - › Identification of client information to be inputted.
 - › “[M]erely adding general, boiler-plate provisions to engagement letters . . . is not sufficient.” Opinion at p. 7.

2. Duty of Confidentiality (*cont.*)

- Because of uncertainty concerning various GAI tools' ability to protect information, "read and understand the Terms of Use, privacy policy, and related contractual terms and policies" of the particular GAI tools they use. Opinion at p.7.
 - › Consultation with IT professionals or cybersecurity experts is acceptable and, in fact, may be required.

If there is no risk that use of a GAI tool could lead to the disclosure of confidential information because the lawyer will not be inputting confidential information, consent is not required (except as discussed below).

3. Duty of Communication

Rule 1.4(a)(2) provides that a lawyer must “reasonably consult with a client about the means by which the client’s objectives are to be accomplished.”

Obviously, consultation is required if informed consent is required.

According to the Opinion, disclosure of the use of GAI tools in circumstances where informed consent is not required, is, nevertheless, required if:

- The client asks whether GAI tools are going to be or have been used, or the engagement letter or applicable client outside counsel guidelines require disclosure.
- When the GAI tool output “will influence a significant decision in the representation,” including evaluation of potential outcomes or jury selection. Opinion at 8-9.
- When use of the tool is relevant to the reasonableness of the fee.

4. Duty of Candor, Truthfulness and Good Faith

Rule 3.1 provides, “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law or fact for doing so that is not frivolous.”

Rule 3.3 prohibits lawyers from making false statements of law or fact to tribunals and failing to correct previously-made materially false statements of law or fact.

Rule 8.4(c) prohibits lawyers from engaging “in conduct involving dishonesty, fraud, deceit or misrepresentation.”

4. Duty of Candor, etc. (*cont.*)

The Opinion observes that GAI tools are susceptible of providing output that includes “citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments.” Opinion at p.10.

According to the Opinion, to satisfy a lawyer’s duty of competence, the lawyer must “review for accuracy all GAI outputs,” and to satisfy the lawyer’s duty of candor to the tribunal, the lawyer must, before submitting any pleading, “review these outputs, including analysis and citations to authority, . . . to correct errors, including misstatements of law and fact, [cure any] failure to include controlling legal authority, and [correct] misleading arguments.” Opinion at p. 10.

NEVER RELY UNCRITICALLY ON GAI OUTPUT!

5. Duty of Supervision

Rule 5.1 requires that lawyers who manage or supervise other lawyers make reasonable efforts to ensure that all lawyers conform to the Rules.

Rule 5.3 requires that lawyers who rely on outside vendors of GAI tools and suppliers of GAI services make reasonable efforts to ensure that staff conduct is “compatible” with the lawyers’ professional obligations under the Rules.

According to the Opinion, lawyers who supervise other lawyers should ensure that subordinate lawyers receive training on:

- Basics of GAI technology;
- Capability and Limitations of GAI tools;
- Ethical issues implicated by use of GAI tools;
- Best practices for secure data handling, privacy and confidentiality.

5. Duty of Supervision (*cont.*)

According to the Opinion, lawyers who rely on outside vendors of GAI tools and suppliers of GAI services should:

- Check references and credentials of GAI vendors and service providers;
- Investigate and understand reliability of vendors' tools and services;
- Require vendors to maintain confidentiality and security of information, ensure that GAI tools are configured to preserve confidentiality and security, and require vendors to provide prompt notification of any unauthorized disclosure.

Conclusion

There are many benefits of using tools employing Generative Artificial Intelligence.

Lawyers have a duty of competence that includes maintaining technological competence, which, in turn requires an understanding of the uses, benefits, risks and duties attendant to use of GAI tools.

Lawyers also have duties of confidentiality, communication, candor, truthfulness, management and supervision that are implicated by GAI use.

Lawyers must be vigilant in complying with such duties to ensure that they are adhering to their ethical responsibilities and that their clients' interests are protected.

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Scenarios: Real-world AI Use Cases

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covetrus  [®]

Scenario I

RetailCorp uses the Microsoft suite of products, and those products were recently updated to enable Microsoft Copilot. The inhouse department was informed of this via email. Copilot seems to be generating useful output, and the inhouse team sees a number of valuable use cases, including email drafting, summarizing regulations, and helping with analyzing contracts and preparing issues lists. The head of the department has run a couple tests and been happy with the results. Can the department proceed with using the tool?

Scenario II

The in-house legal team at FinServe is using a generative AI tool called LegalAssist to perform legal research. The in-house team is double-checking case law to confirm the analysis of the AI, but it is not conducting independent legal research to confirm that the AI has detected all of the cases. What, if any, potential ethical issues arise in this case?

Scenario III

The in-house legal team at MegaCorp is using a generative AI tool called DueDiligenceAI to conduct due diligence for a large acquisition. Timing is extremely tight, and the level of diligence needed would be impossible to conduct (at least without great expense) by humans with the same time period. The acquisition is critical to the company's strategic goals, and the executive sponsoring the transaction has informed the legal department that they are prepared to accept some risk of a less careful review in order to meet the deadline. Can the inhouse department rely on the AI's output in this circumstance?

Scenario IV

The in-house legal team at BuildCorp is using a generative AI tool called DraftMaster to assist with contract drafting. The tool is trained on a specific set of capabilities and can generate complex contract clauses. Non-lawyers at the company have found out about DraftMaster and requested that legal make this tool available to them for their own use in “low-risk” transactions that, under the legal department’s existing policies, do not normally require engagement by a member of the inhouse legal team. Any issues with authorizing non-lawyer use of this tool on that basis?

Scenario V

The in-house legal team at HealthCorp is using a generative AI tool called ComplianceAI to provide regulatory compliance advice to internal clients. The AI tool generates detailed compliance reports that are used to make significant business decisions. While it is not a secret that AI is being used, the in-house team has not provided any formal notice or detailed information to its lines of business about the nature and extent of AI use. Any ethical issues here?

Scenario VI

Acme has just approved use of a ChatGPT based generative AI tool for a variety of tasks, including generating meeting transcripts and summaries. Acme's technology group has started using this tool to summarize discussions and advice given by the inhouse legal department during internal meetings. Any ethical issues with allowing AI monitoring and summary of discussions and advice?

Scenario VII

The in-house legal team at MediaCorp is using a generative AI tool called OfficeHelper to perform non-legal tasks, such as summarizing facts, writing emails, and formatting documents. The tool is used by both lawyers and non-lawyers within the legal department. What level of oversight and double-checking is required?

Scenario VIII

The in-house legal team at TechCorp is using a generative AI tool called DocReviewAI for e-discovery in a major litigation case. This tool is commonly used by law firms and businesses for this use case. The tool processes vast amounts of data to identify relevant documents and is being relied upon to identify documents as privileged or not. The tool has a non-zero but very low error rate for this task. What is the legal team's obligation with respect to double-checking the identification of privilege? Because of the volume of discovery, to fully check this would be a very time-consuming and costly process.

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Trends to Watch in AI-Related Litigation, Enforcement & Lawmaking

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Trends

- AI Class Action Litigation Trends
- Copyright and Trade Secret Implications of Generative AI
- AI Legislative and Regulatory Trends
- Evolving Approaches to AI Compliance/Governance/Prudence



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