

Golden Gate RIMS

WTW & QBE

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Today's Speakers

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Today's Agenda

What is and types of Artificial Intelligence

Creating AI Technology vs. Utilizing AI Technology

Content

Operational / E&O Risks

Security & Privacy

Claims / Regulations

Contractual

AI Underwriting topics

Artificial Intelligence in 2024

Artificial Intelligence creates/expands Technology and Media exposure for all companies

- A Broker's Perspective

Artificial Intelligence – Everything Everywhere All at Once

- An Insurer's Perspective

Artificial Intelligence

What is it:

A computer system capable of performing complex tasks that historically only a human could do:

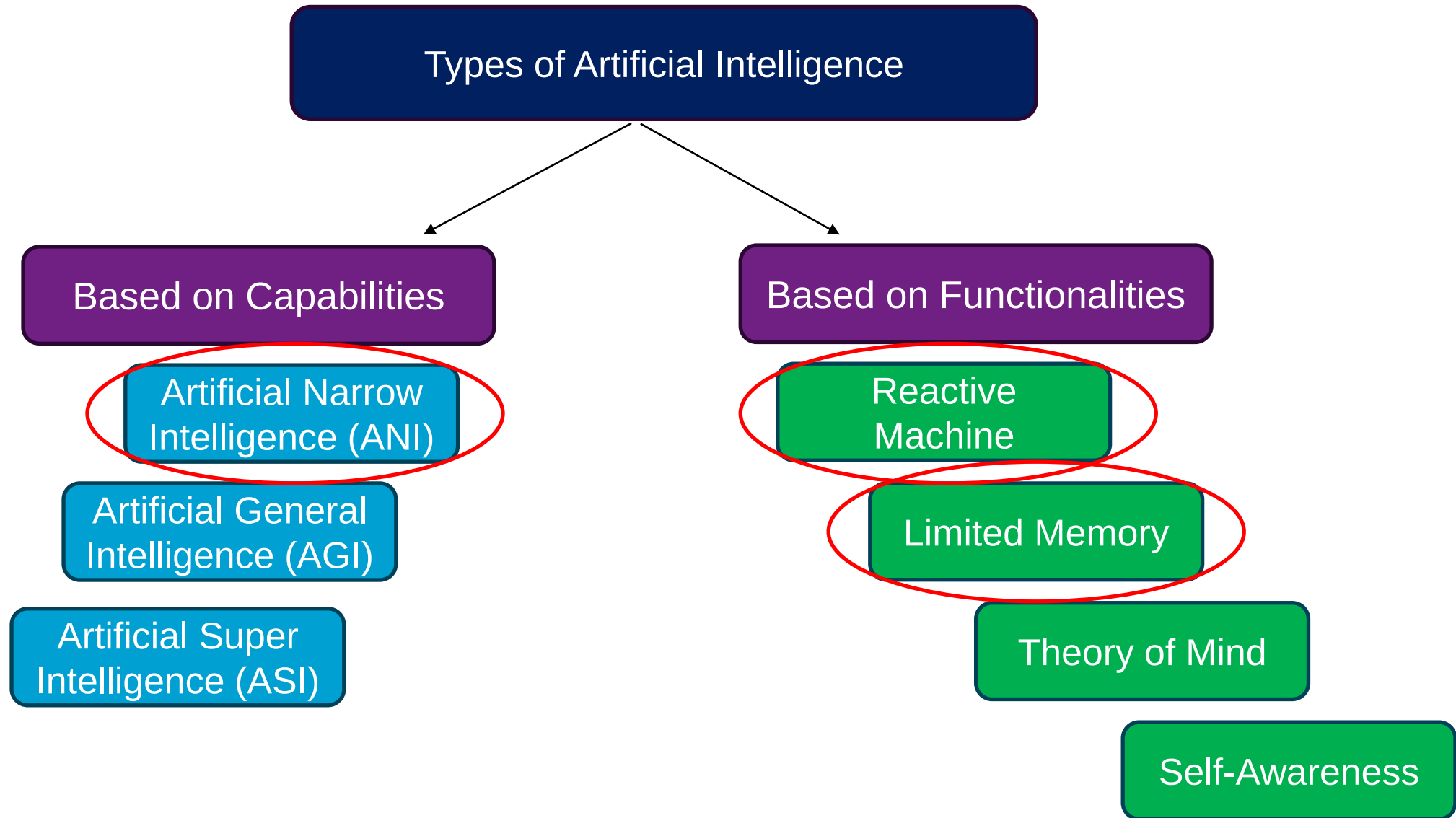
- Reason
- Make decisions
- Solve problems

How does it work:

An algorithm trained on large complex data sets aka Big Data to create machine learning models to:

- Analyze
- Reason
- Learn

7 Types of Artificial Intelligence



Types of Artificial Intelligence - Capabilities

Artificial Narrow Intelligence (ANI)

Artificial General Intelligence (AGI)

Artificial Super Intelligence (ASI)

Machine & Deep Learning

Can understand and learn any intellectual task that a human being can

AI researchers have not been able to achieve strong AI so far - would need to find a method to make machines conscious, programming a full cognitive ability set

Natural Language Processing

Allows a machine to apply knowledge and skills in different contexts

Examples are Apple's Siri and IBM Watson (super-computer)

AI researchers have not been able to achieve strong AI so far - would need to find a method to make machines conscious, programming a full cognitive ability set

Types of Artificial Intelligence - Functionalities

Reactive Machine

Form of AI that does not store memories or past experiences to determine future actions

Only works with present data

IBM's Deep Blue that defeated chess grandmaster Garry Kasparov

Limited Memory

Trains from past data to make decisions

Memory of such system is short-lived

This technology can be found in self-driving cars, chatbots and virtual assistants

Robotics such as autonomous drones, humanoid robots and autonomous farming equipment – intelligent machines

Theory of Mind & Self-Awareness

Theory of Mind is an advanced class of Technology that exists only in concept and not fully operational

Kismet is a robot head made in late '90s by MIT researcher, it can mimic human emotions and recognize them, but can't follow gazes or convey attention to humans

Self-Awareness is only hypothetically, it would have to understand internal traits, state, conditions and perceived human emotions

Forms of Artificial Narrow Intelligence (ANI)

Generative AI is a type of artificial intelligence technology that can generate text, images, code or other types of content from a prompt

Machine Learning trains AI systems to learn from acquired experiences with data, recognize patterns, make recommendations

Deep Learning in particular, instead of just responding to sets of rules, digital systems build knowledge from examples and then use that knowledge to react, behave, and perform like humans

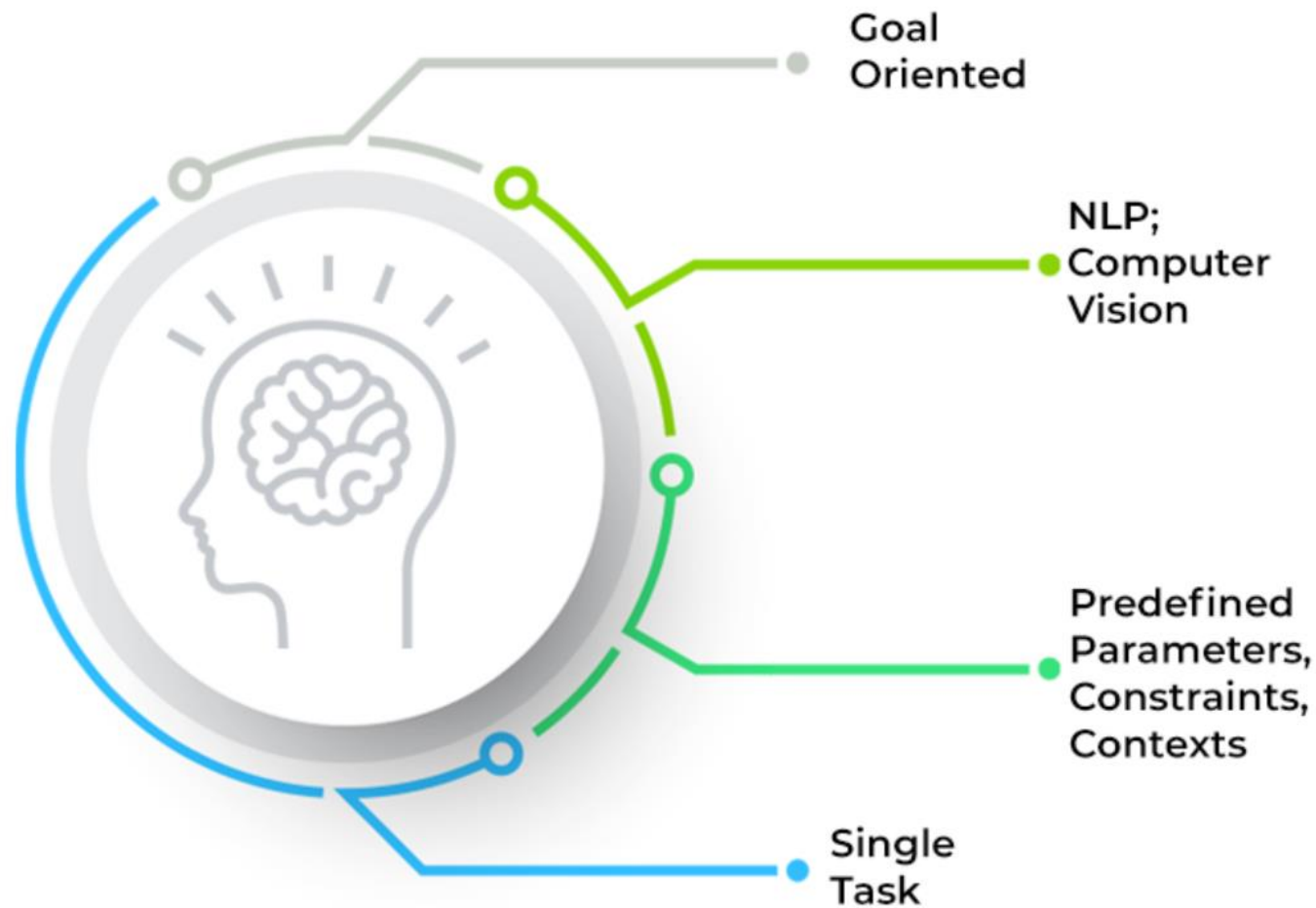
Neural Networks are a subset of machine learning and deep learning algorithms that try to emulate the human brain by combining computer science and statistics. They have a node structure inspired by the human brain, with input, hidden, and output layers

Large Language Models is a Deep Learning algorithm that can perform a variety of Natural Language Processing tasks

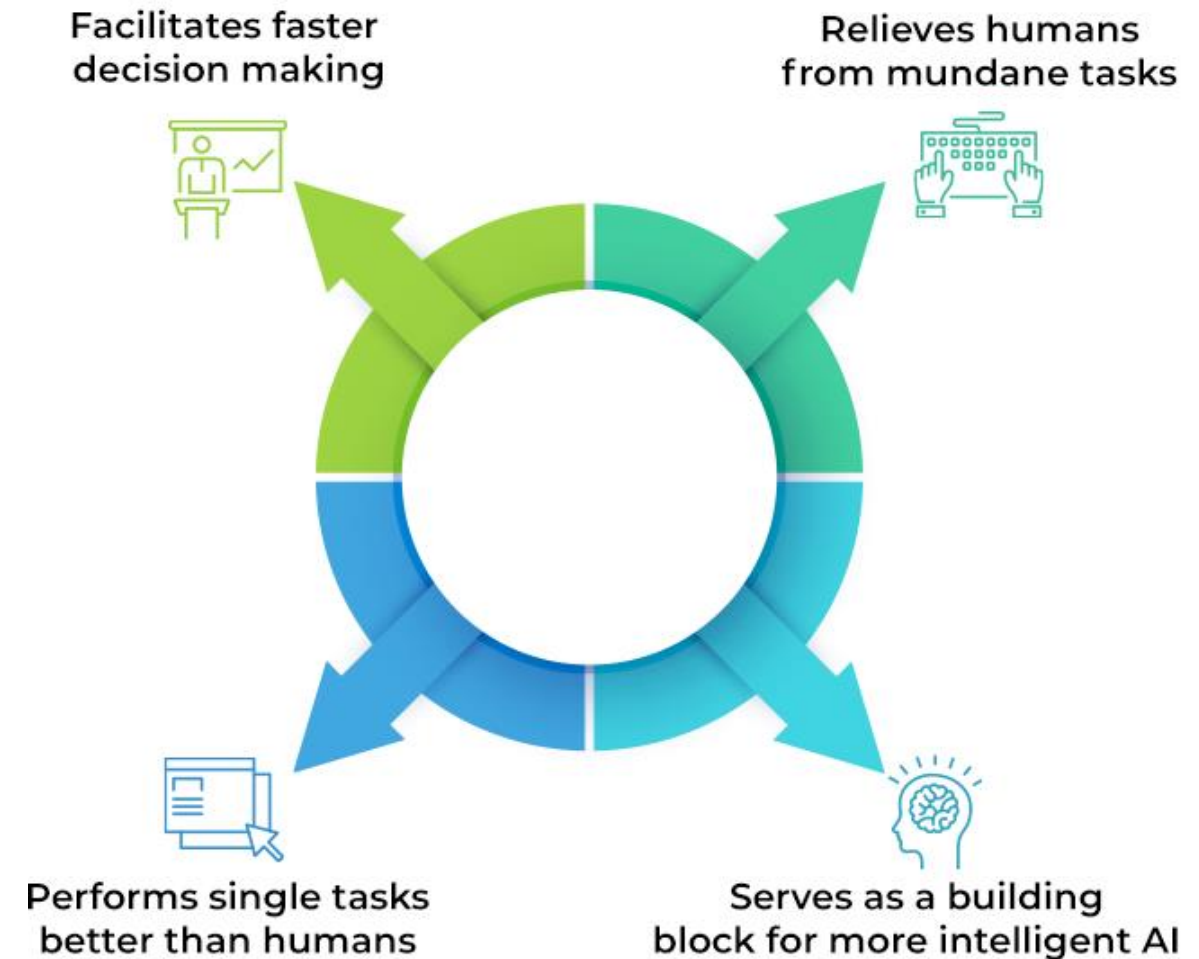
ANI includes Reactive AI or Limited Memory AI

Examples of Artificial Narrow Intelligence (ANI)

NARROW AI



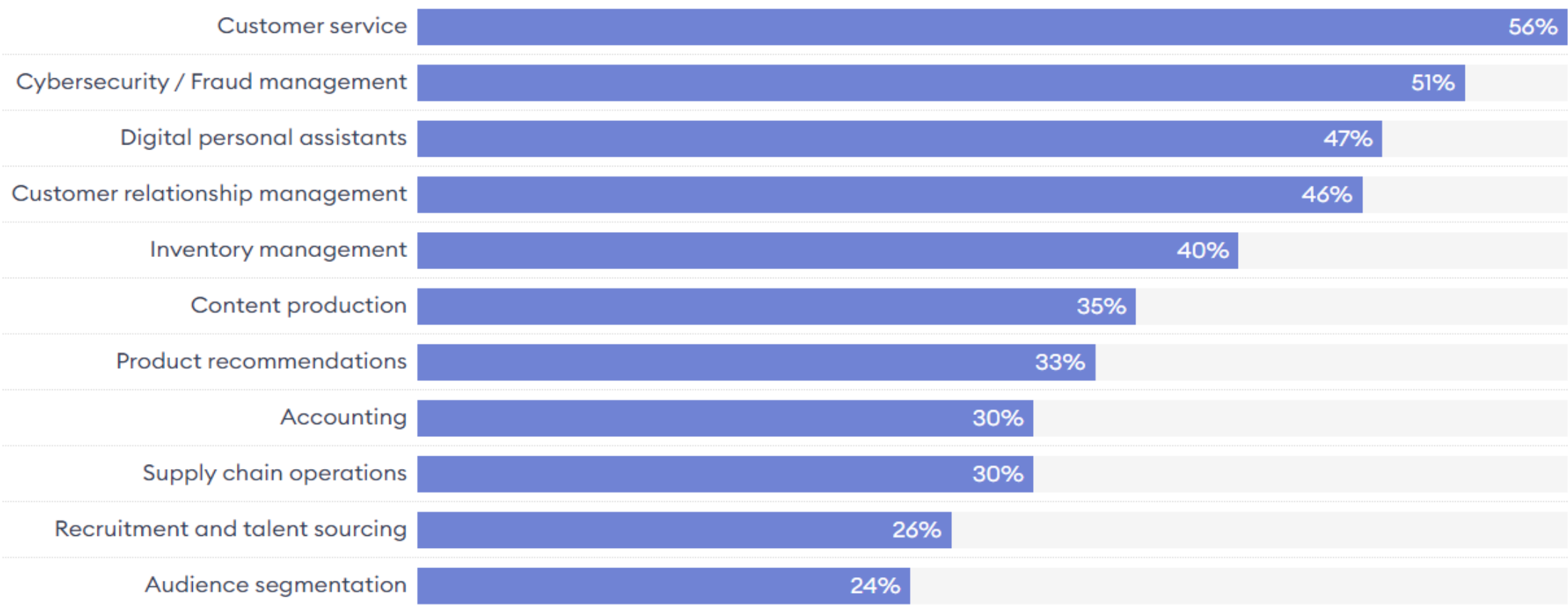
ADVANTAGES OF NARROW AI



How are Companies Utilizing AI in 2024

Top Ways Business Owners Use Artificial Intelligence

Forbes Advisor surveyed business owners to find out how they currently use or plan to use AI within their business



Source: Forbes Advisor • Embed

Forbes ADVISOR

Creating AI

- ✓ When a company is generating revenues creating ***AI products for others to use/create AI models***

Companies Creating AI Models for companies to use with their customers with different types of service models:

- Service Model – AI as a service
 - Model Rights – company provides data, third party creates and fine tunes the AI model
 - Algorithms Rights – Third party owns the AI; however, the company licenses algorithm, may have limited rights
- ✓ A company creating **AI products for their customers to use to create content** (Open AI, Microsoft, Adobe)
 - ✓ A company **creating its own AI models to use with its customers**

Creating AI vs. Utilizing AI

Creating AI

Utilizing AI

Inputs (used for training AI Model)



Outputs (results from AI Model)



AI Generated Content



Utilizing Algorithms via API



Creating AI vs. Utilizing AI

INPUTS:

- Data being used to train the models
 - ? Does the company have ownership or licensing rights to use the data
 - ? How does the data used for models compare with the company's privacy policy, terms of service and customer contracts
 - ? Does it utilize sensitive data: Children's information, biometric data or genetic data

OUTPUTS:

- Using AI to create software code
 - ? Is the generated code within licensing agreements
 - ? Is the generated code secure
- If the model is trained on biased data, Output will reflect bias, be discriminatory
- Can the model be used to create disparaging or infringing content

Creating Content

Inputs – Fair Use

Companies such as OpenAI, Microsoft, Meta and Google are currently relying on a 2015 court decision *Authors Guild v. Google, Inc.* (U.S. 2nd District Court of Appeals)

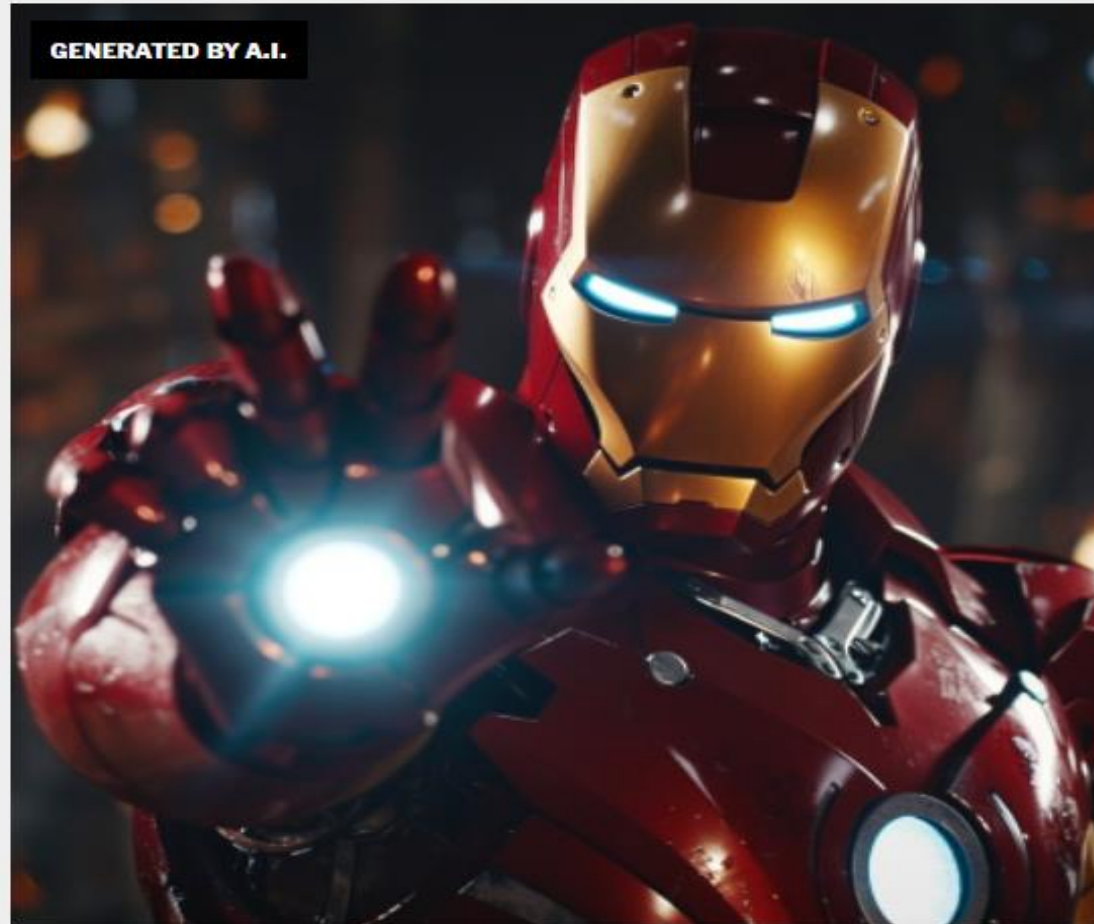
This decision unanimously affirmed the lower court's decision that Google's digital scanning of books without prior permission from rights holders is deemed "fair use"

The court said Google had not violated copyright law; scanning of entire books was permissible because Google didn't make the full book available and that it was "transformative" use of copyrighted material

Creating Content

Outputs – TBD | Prompt: Popular movie screen cap

 Midjourney's response



NYT, Stuart A. Thompson, January 25, 2024 Article

Copyrighted image from Marvel



Creating Content

Outputs – Deepfakes

First Amendment Protection

**False Light
Misappropriation of Likeness
Emotional Distress
Defamation
Fraud**

- ✓ People have rights
- ✓ Speech is what's protected under the First Amendment
- ✓ Software Code has been deemed speech
- ✓ Legal remedies are against natural and corporate persons
- ✓ AI - Who is responsible (create v. use)? What are the legal remedies?

Content Case Study

NY Times v. Open AI and Microsoft

Issue: NYT is suing Open AI and Microsoft for using their content to train their models without legal permission to do so

Allegations in the Complaint:

- Copyright Infringement
- Vicarious and Contributory Copyright Infringement,
- violation of the DMCA
- Common Law Unfair Competition by Misappropriation
- Trademark Dilution

Key Point:

If your company is sued for using data to train your AI models that is not owned/licensed, does your Media coverage in provide coverage for the allegations above?

Content – Media Coverage

Key AI Concerns	Description	Coverage Triggers
Hallucination	Incorrect, inaccurate information	Negligence, misrepresentation, misstatement or misleading statement
Deepfake	A picture/video of a person whose face, body has been altered	False Light Misappropriation of Likeness Emotional Distress Defamation
Disinformation	False information deliberately and possibly covertly spread	Negligence, misrepresentation, misstatement or misleading statement Severability under Deliberate Acts Exclusion

Operational Risks – Technology / E&O Coverage

Use of AI creating Technology and Media Risk for non-Tech and Media companies

Developing standard of what is Negligence when using AI

Human Error v. AI Error

Use of AI by Human Resource Department

Use of AI to create software code

Copyright/License

Vulnerability

Operational Risks – Technology / E&O Coverage

Key AI Concerns

Coverage

Intellectual Property
Infringement

Affirmative IP infringement arising out of Content, Services, and Technology Products

Contractual

Affirmative coverage for contractual liability assumed for Tech, Media, Network Security & Privacy Wrongful Acts with contractual liability exclusion (if applicable) in alignment

Regulatory

Affirmative coverage for regulatory matters emanating from use of AI beyond Privacy Regulatory

Bodily Injury/Property
Damage

Identify which policy will respond (GL/Products, E&O, Cyber)

Developing new Negligence
standard

Wrongful Act definitions (Tech, Professional Services, etc.) are any act, error or omission (remove negligence from definition)

Operational Risks – Technology / E&O Coverage

Key AI Concerns

Coverage

Discrimination in your
Technology
Services/Products or
Professional Services

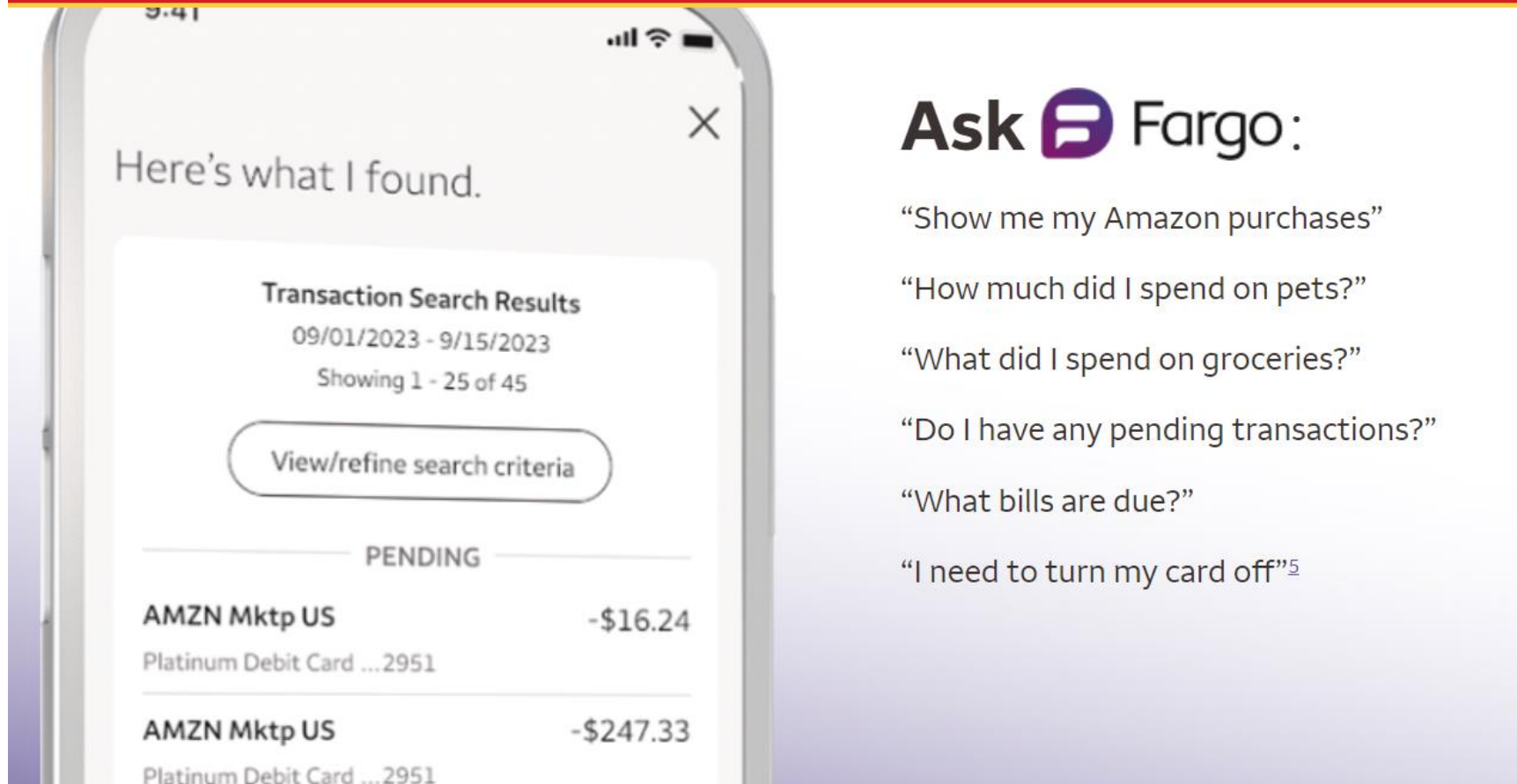
Coverage trigger – Wrongful Act is any act, error or omission with broad definition of Technology Services/Products – with only an EPLI exclusions not a broad discrimination exclusion (third party discrimination coverage – E&O/Cyber and EPLI policy)

AI Model Disgorgement,
Destruction

First Party Reimbursement for loss of investment or loss of revenues (similar concept to what the market created for Patent) – does not currently exist

Operational Risks – Case Study

WELLS FARGO



Mobile Application to utilize features – Tech E&O

Security / Privacy Exposure

How does AI models impact products/services offered to customers? – Bankers Professional Liability

Media – negligence, misstatement, misleading statement

Security – Network Security Coverage

Key AI Concerns

Chatbots to create malware
(jailbreak, workaround limitations
prohibiting this)

Deepfakes – to bypass voice print
authentication

Social Engineering

ChatGPT leaking private
conversations and login credentials

Coverage

Network Security coverage is triggered either under the insuring agreement or the definition of Network Security Wrongful Act.

Key point here is when it comes to the definition of Network Security Wrongful, Security Breach, Security Failure, Cyber Attack, etc. – coverage should be triggered by what happened (e.g., Theft or loss of **Data**; or unauthorized disclosure, unauthorized access, or unauthorized modification of **Data**) AND NOT HOW

AI concerns are about different way HOW the Security Breach, et al may happen

Data - Privacy Coverage

Key AI Concerns

Coverage

Bias, Discrimination

Limit discrimination exclusion to only Employment Discrimination (rely on EPLI policy, assuming there is E&O, Media coverage under the policy)

Use of sensitive PI (children's data, biometric or genetic information)

Broad definition (all risk based on privacy principles) of Privacy Injury, definition of Privacy Regulation will need to be expanded

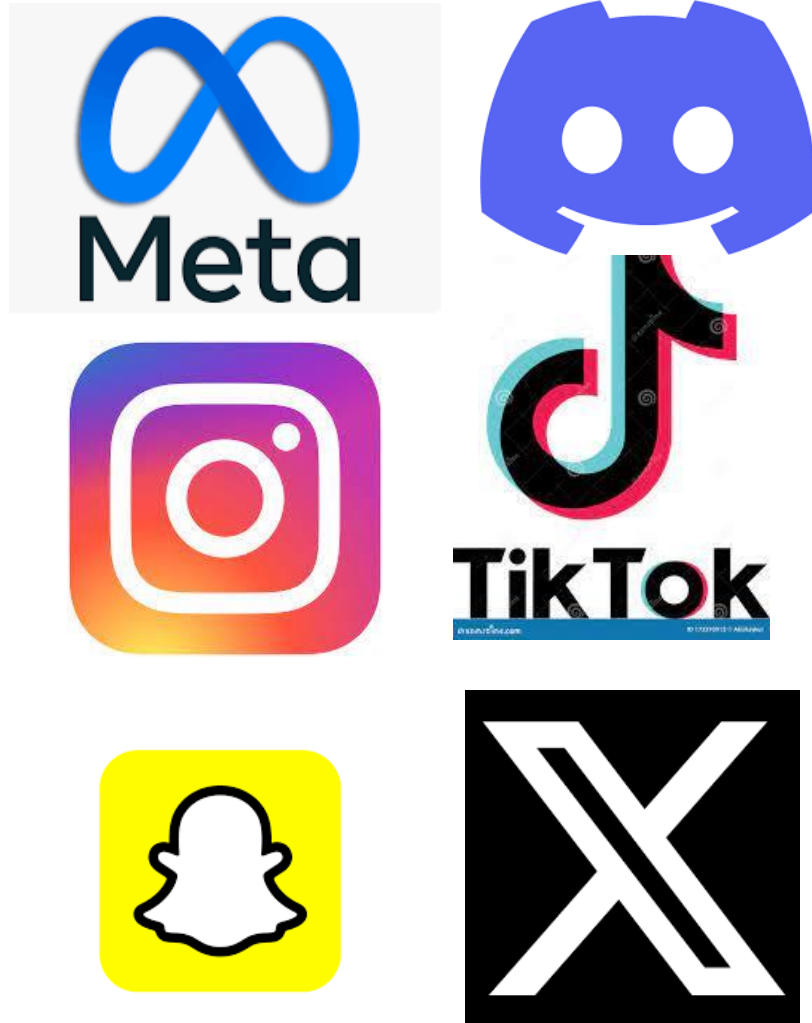
Using unstructured data consistently with the company's privacy policy / terms of service and customer's contracts

Broad definition of Personal Information

Coverage Considerations

- Identify AI exposures and where potential gaps and overlaps in coverage may exist
- For AI exposures identified, what policies may be implicated in a loss?
 - Technology / Media / Cyber
 - Miscellaneous or other Professional Liability
 - General Liability
 - Employment Practices Liability
 - D&O Officers Liability
 - Crime
- Which policy do you want to address which AI exposure?
- For AI exposures where multiple policies may apply, which policy should primary and which policy(ies) be excess?
 - Will payment under one policy satisfy retention of another policy?

Case Study



Key Take Aways from Senate Hearing:

Bi-Partisan Support in the Senate (will voting records on bills pending actually match?)

Only Federal Internet Law recently passed is SESTA

Pending Laws:

STOPSCAM

REPORT Act

Kids Online Safety Act

When does congress amend Section 230 to hold content hosting sites liable?

Taking on Social Media Companies to amend their products to minimize harm to children:

Give more transparency and rights – parental controls

More transparency around algorithms and how it impacts the user experience

Current Litigation

Training AI Model (Inputs)

NYT v. OpenAI LLC, Microsoft (filed Dec. 2023, S.D. NY) NYT alleges use of millions of their articles being accessed without permission to train its chatbots.

Authors Guild et al. v. OpenAI, LLC, Microsoft (filed September 2023) Authors Guild class action complaint alleges direct, vicarious and contributory copyright infringement from using the authors' work to train its model

Getty Images v. Stability AI (Feb. 2023, D. Del.) Getty Images filed a lawsuit accusing Stability AI of infringing its copyrights by misusing millions of Getty photos to train its AI art-generation tool

Anderson v. Stability AI (Jan. 2023, N.D. Cal.) Three artists filed a putative class action lawsuit against AI companies Stability AI, Midjourney and DeviantArt for copyright infringement over the unauthorized use of copyrighted images to train AI tools. The complaint describes AI image generators as “21st-century collage tools” that have used plaintiffs’ artworks without consent or compensation to build the training sets that inform AI algorithms

Current Litigation

Software Code (Copyright), Rights of Publicity, Defamation:

Doe v. GitHub (filed Nov. 2022, N.D. Cal.) Pseudonymous software engineers filed a putative class action lawsuit against GitHub, Microsoft and OpenAI alleging that the defendants trained two generative AI tools—GitHub Copilot and OpenAI Codex—on copyrighted material and licensed code. The court dismissed part of a DMCA claim in May 2023, with leave to amend. (Considered first case challenging the training/output of AI.)

Young v. NeoCortex (Apr. 2023, C.D. Cal.) Reality TV personality Kyland Young alleges in a putative class action lawsuit that NeoCortex, Inc.'s face-swapping Reface app violates California's publicity law.

Walters v. OpenAI LLC (June 2023, Super. Ct. Ga.) Plaintiff radio host claims ChatGPT defamed him by writing that he was accused of embezzling money from a gun rights organization. First defamation-related lawsuit against an AI company.

AI Regulations

Federal: No Artificial Intelligence Fake Replicas And Unauthorized Duplications (No AI FRAUD) proposed in the House January 2024

State: In 2023 legislative session, at least 25 states, Puerto Rico and the District of Columbia introduced artificial intelligence bills, and 18 states and Puerto Rico adopted resolutions or enacted legislation.

California Fair Employment & Housing Council (FEHC) proposed “Draft Modifications to Employment Regulations Regarding Automated Decision Systems” that would revise the state’s non-discrimination laws with regard to employers and employment agencies that use or sell employment screening tools and services with artificial intelligence (AI), machine learning, and automated decision-making

California has proposed (AB 331 Automated Decision Tools) combat algorithmic discrimination in the use of automated tools that make consequential decisions

AI Regulations / Regulatory Proceedings

International: EU AI Act

Risk based framework from: Unacceptable Risk, High Risk, General Purpose (Generative AI) vs. Limited Risk. Provision Agreement reached December 2023, now the text of the agreement needs to be formally adopted by Parliament and Council to become law

FTC v. Rite Aid Corporation

Rite Aid will be prohibited from using facial recognition technology for surveillance purposes for five years to settle Federal Trade Commission charges that the retailer failed to implement reasonable procedures and prevent harm to consumers in its use of facial recognition technology in hundreds of stores

FCC unanimous ruling to ban AI generated robo calls under TCPA and will fine companies that use AI voices

Contracts

CONTRACT TERMS	CLIENT / VENDOR
Scope of Services	Defined duties under the contract Define deliverables Define responsibility of each party
Indemnification Clause	Mutual Indemnity Define for specific instances what will and will not be indemnified “As Is” Representation
Limitation of Liability	Connect to revenue under the contract Limit to Direct Damages only (exclude consequential)
Arbitration Clause	Client contracts: knowing the risk of mass arbitration vs. class action Vendor contracts: more strategic in terms of litigation strategy

The key contractual items for humans performing the task is similar to a computer performing the task; AI presents heightened risk but the contractual protections sought is similar

Underwriting Topics for 2024

- What AI is the company **creating**?
- What AI is the company **acquiring**?
- How is the company **utilizing** AI in its products / services?
- How is the company **monitoring** the company use of AI?
- How is the company **monitoring** the use of AI against its: customer contracts, privacy policy, terms of service?

Underwriting Topics for 2024

✓ Policy Development and Monitoring

Creating AI and/or Purchasing/Licensing AI

How are the models trained?

Based on what data?

What type of model is purchased/licensed?

Service Model – third party runs AI model as a service

Model Rights – company provides data, third party creates and finetunes the AI model

Algorithms Rights – company licenses algorithm, may have limited rights

✓ Using AI

How is AI being used in the delivery of the company's products/services?

What's the company's process to review "output" prior to being provide to the client?

For content created by AI, is it watermarked as such?

Underwriting Topics for 2024

- ✓ Monitoring AI models for compliance with company's policies, contractual requirements
 - Tracking AI performance (outputs)
 - Policy and process for corrections needed and implemented
- ✓ Training staff on acceptable use of AI
- ✓ Use of Technology (e.g., Nightshade / Glaze) to keep content out of models

Q & A