C02 - Technology and Legal Ethics: Defining "Competence" and Adapting to AI (2024CLC-C02)

Monday, June 10, 2024

2:00 p.m. to 3:30 p.m.

Connecticut Convention Center

Hartford, CT

CT Bar Institute, Inc.

CT: 1.5 CLE Credits (Ethics)
NY: 1.5 CLE Credits (Cybersecurity, Privacy and Data Protection-Ethics)

No representation or warranty is made as to the accuracy of these materials. Readers should check primary sources where appropriate and use the traditional legal research techniques to make sure that the information has not been affected or changed by recent developments.

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Approved by the House of Delegates October 19, 2020

LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer’s conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

Faculty Biographies

Brendon P. Levesque

Brendon P. Levesque is a partner at Barry, Barall, Taylor & Levesque, LLC in Manchester, Connecticut. He is admitted to practice in Connecticut state courts as well as in the United States District Court for the District of Connecticut, the United States Courts of Appeals for the Second, Third, and Federal Circuits. In addition, he is admitted to practice before the United States Patent & Trade Office. Attorney Levesque began his legal career serving as a law clerk for Judge DiPentima of the Connecticut Appellate Court. Attorney Levesque joined Barry, Barall, Taylor & Levesque in May 2022 after 18 years at Horton Dowd Bartschi & Levesque in Hartford.

Attorney Levesque represents clients in civil, family and criminal appeals before the Connecticut appellate courts and the Second Circuit Court of Appeals. He also represents attorneys before grievance panels, in public hearings before the Statewide Grievance Committee and in presentments and appeals and candidates for bar admission before the Bar Examining Committee. Attorney Levesque presents seminars on risk management and ethics to law firms. Attorney Levesque is a member of the Association of Professional Responsibility Lawyers. Attorney Levesque is co-author of *The Wheeler Court* with Attorney Wesley Horton for the Quinnipiac University Law Review, an article focusing on the Connecticut Supreme Court from 1910 through 1930. With Attorney Horton, he co-authored *The Maltbie Court* for the University of Connecticut Law Review (Vol. 39, No. 5, July, 2007). Attorney Levesque authored *Preparing for your first Appellate Argument* which was published in the Connecticut Lawyer, Vol. 18, No. 12 and co-authored two chapters of Attorney Horton's book, THE HISTORY OF THE CONNECTICUT SUPREME COURT, Thomson/West, 2008.

Attorney Levesque co-authors the CONNECTICUT PRACTICE BOOK ANNOTATED providing authors comments to the chapters on the Code of Judicial Conduct, the Rules of Professional Conduct, motions, and pleadings. He co-authors CONNECTICUT JUVENILE LAW published by Thomson/West with Attorney Michael Taylor. He also co-authored *Connecticut Insurance Law*, a publication of the Connecticut Law Tribune with Attorney Karen Dowd and Attorney Michael Taylor. Since 2009, he has co-authored the annual *Professional Responsibility Review* in the Bar Journal with the Honorable Kimberly A. Knox.

Michael S. Taylor

Michael S. Taylor is a partner at Barry, Barall, Taylor & Levesque, LLC in Manchester, Connecticut. He is admitted to practice in Connecticut state court as well as in the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit and Supreme Court of the United States.

Attorney Taylor represents clients at trial, on appeal and in professional responsibility matters. His appellate litigation has encompassed a wide range of issues including constitutional law, contract law, land use and eminent domain, insurance coverage, criminal law, products liability and torts, dissolution of marriage, child custody and parental rights. Attorney Taylor also

counsels clients and attorneys in attorney ethics matters and at the trial stage regarding the identification and preservation of issues for appeal.

Attorney Taylor co-authors Connecticut Insurance Law with Attorneys Karen Dowd and Brendon Levesque, The Encyclopedia of Connecticut Causes of Action with Attorney Daniel Krisch, and Connecticut Juvenile Law published by Thomson/West with Attorney Brendon Levesque. Attorney Taylor writes and lectures on appellate, insurance coverage and professional responsibility topics and was an adjunct professor at The University of Connecticut School of Law, teaching moot court.

He is a member of the Defense Research Institute's appellate and tort and insurance practice sections, the ABA Judicial Division Council of Appellate Lawyers and the American Counsel Association.

Technology & Legal Ethics: Defining Competence and Adapting to Artificial Intelligence (AI)
2024CLC-C02
2024 Connecticut Legal Conference
Connecticut Convention Center
June 10, 2024
2:00 p.m. – 3:30 p.m.

Agenda

Presenters:
Brendon P. Levesque, Barry Taylor & Levesque LLC, Manchester
Michael S. Taylor, Barry Taylor & Levesque LLC, Manchester

2:00 p.m. – 2:15 p.m.:	Competency
2:15 p.m. – 2:30 p.m.:	Artificial Intelligence and the Law
2:30 p.m. - 2:45 p.m.:	Credential Stuffing
2:45 p.m. - 3:00 p.m.:	Password Managers
3:00 p.m. – 3:15 p.m.:	New Ethics Opinions
3:15 p.m. – 3:30 p.m.:	Confidentiality

Technology & Legal Ethics: Defining Competence and Adapting to Artificial Intelligence (AI)

June 10, 2024



Connecticut Bar Association



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CONNECTICUT LEGAL CONFERENCE

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AGENDA



- Section 1: Competency
- Section 2: Artificial Intelligence and the Law
- Section 3: Credential Stuffing
- Section 4: Password Managers
- Section 5: New Ethics Opinions
- Section 6: Confidentiality

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SECTION 1: COMPETENCY

Introduction



- Should the Rules of Professional Conduct Include Specific Obligations Regarding Technology?

. . .

They Already Do.

Duty of Competence- Rule 1.1



Connecticut Rules of Professional Conduct –

Rule 1.1 “Competence”

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

Duty of Competence- Commentary



Connecticut Rules of Professional Conduct –

Rule 1.1, Comment

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.

Reasons to be Technology Competent:



- Rules of Professional Conduct Requirements
- The World Uses Technology
- Security
- Leveling the Playing Field
- Increase Efficiency
- Improve Access to Justice
- Become Competitive with Online Lawyer Marketing
- Introduction of AI Programs



HOW TO MEASURE CURRENT COMPETENCY

What Can You Do To Ensure You Become Technologically Competent?



- Consult with online resources focused on changes in technology specific for the legal field.

  - https://www.lawsitesblog.com/
  - https://abovethelaw.com/technology/
  - https://www.lawtechnologytoday.org/
  - https://www.mycase.com/blog/
  - https://blogs.findlaw.com/technologist
  - https://technology.findlaw.com
  - www.ltc4.org Legal Technologies Core Competences Certification Coalition
  - www.artificiallawyer.com/legal-tech-courses Colleges & Universities
  - www.procertas.com Legal Tech Assessment/Courses





SECTION 2:
ARTIFICIAL INTELLIGENCE & THE LAW

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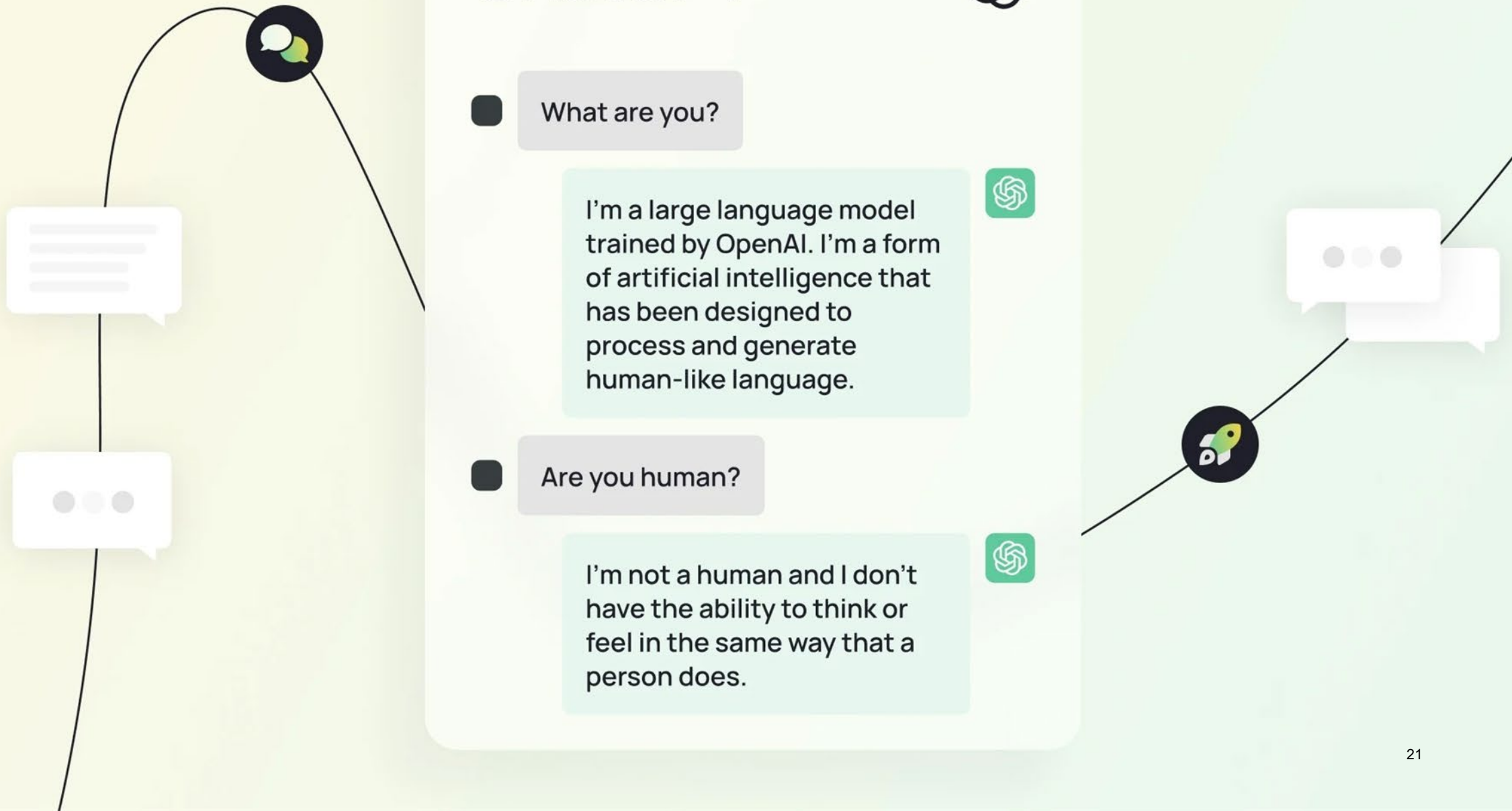
What Are We Talking About?

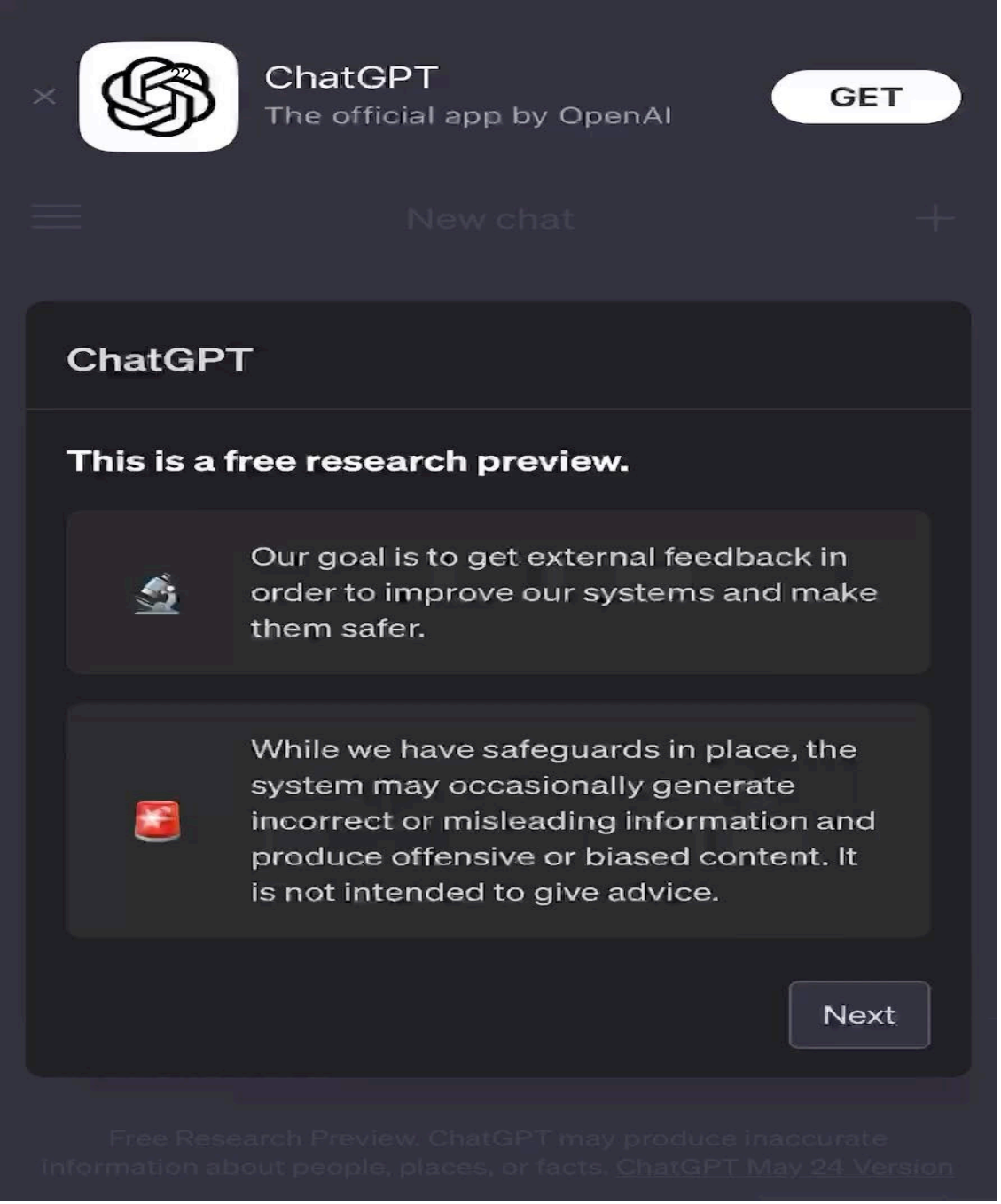


Generative **A**rtificial **I**ntelligence (**GAI**): a type of technology that makes predictions based on historical data patterns in its possession.

Typically, users enter questions, queries, or other inputs, that induce that GAI model or tool to produce output. In addition, some software uses GAI suggest changes, summarize information, or translate text.

GAI includes, but is not limited to, large language general-purpose models (“LLMs”) used in tools such as ChatGPT and Microsoft Copilot, image generations such as DALL-E and Midjourney, other software tools that incorporate GAI elements.


ChatGPT
What are you?
I'm a large language model trained by OpenAI. I'm a form of artificial intelligence that has been designed to process and generate human-like language.
Are you human?
I'm not a human and I don't have the ability to think or feel in the same way that a person does.





Let's Ask CHATGPT

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“OpenAI’s ChatGPT-4 is now intelligent enough to successfully pass the bar exam, with a top 10% score – better than most law school graduates.”

Marc Beckman, *Artificial Intelligence Presents Opportunities and Challenges for the Legal Ecosystem*, N.Y.S.B.A. Journal (2023)

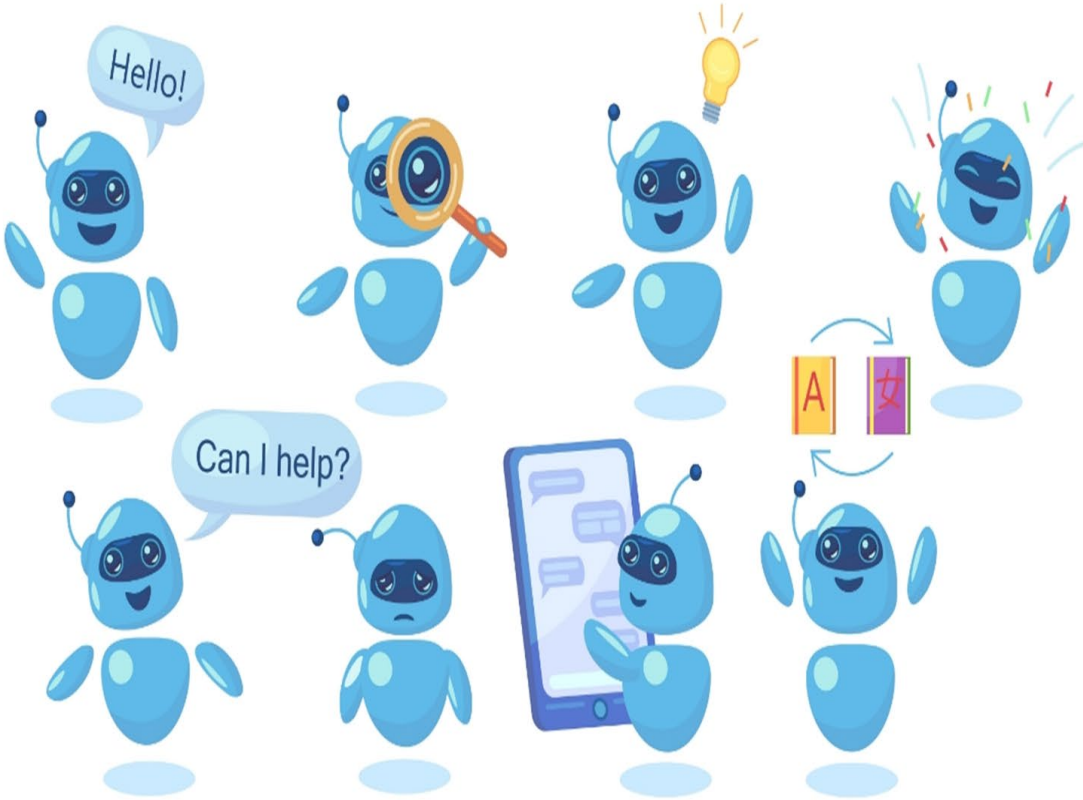
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Suggest arguments to make in a brief/draft briefs and other pleadings

Create legal documents



Provide an overview of an area of law (ex: a description of subject matter jurisdiction)



Help with factual research (ex: developing deposition

Offer advice on correcting a social security payment

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BENEFITS OF CHATGPT



- Efficiently performs repetitive tasks
- Reduces human error
- Increases efficiency
- Cost effective
- Beneficial to low-income individuals/communities

"Generative AI-powered chat bots now hover on the line of unauthorized practice of law, offering high volume, low-cost legal services absent human input areas such as traffic court and immigration, among others."



DRAWBACKS OF CHATGPT

Risks of AI and Generative AI Use



1. Widening Justice Gap
2. Data Privacy and Surveillance
3. Security
4. Social and Ethical Issues
5. Misinformation
6. Economic Impact and Disruption
7. Safety
8. Legal and Regulatory Challenges
9. Loss of Human Centricity and Control



Mata v. Avianca, Inc.

“The Court is presented with an unprecedented circumstance.”

Order to Show Cause
Case 1:22-cv-01461-PKC

MATA v. AVIANCA, Inc. Case (S.D.N.Y. June 22, 2023



- $5,000 fine imposed under Federal Rule 11 against law firm as well as two of their partners

- Lesson learned:

1. Rule 1.1, understand the benefits and risks of technology before using it.

2. All documents filed with the court should be cite-checked.

3. Honesty is the best policy when it comes to mistakes.

A Dissenting Jurist

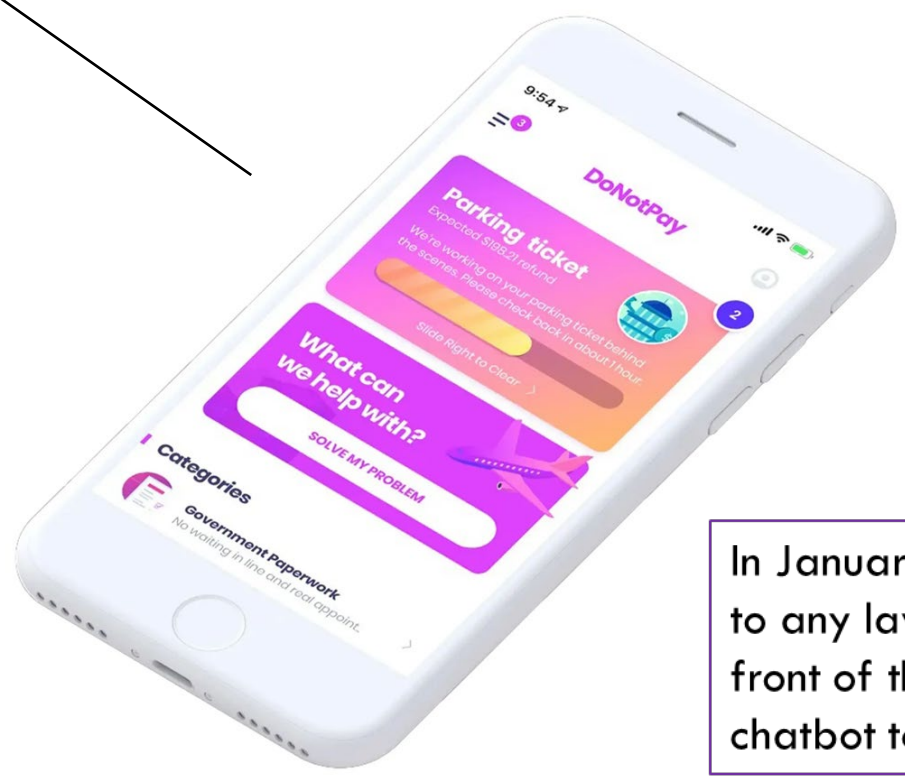


“ …the rapid evolution of AI technology means any specific [standing] order could quickly become outdated, limiting its practical utility. Over regulation in this area might also inadvertently stifle innovation and discourage the legal profession from leveraging beneficial technologies. It is crucial that lawyers retain the ability to exercise judgment in how best to incorporate generative AI tools, adhering to our existing ethical framework. This approach encourages a balanced integration of technology, fostering innovation while upholding the core values of our profession.”

- Judge Scott U. Schlegal (La. Ct. App.)

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DoNotPay is a company providing some legal services without the involvement of lawyers



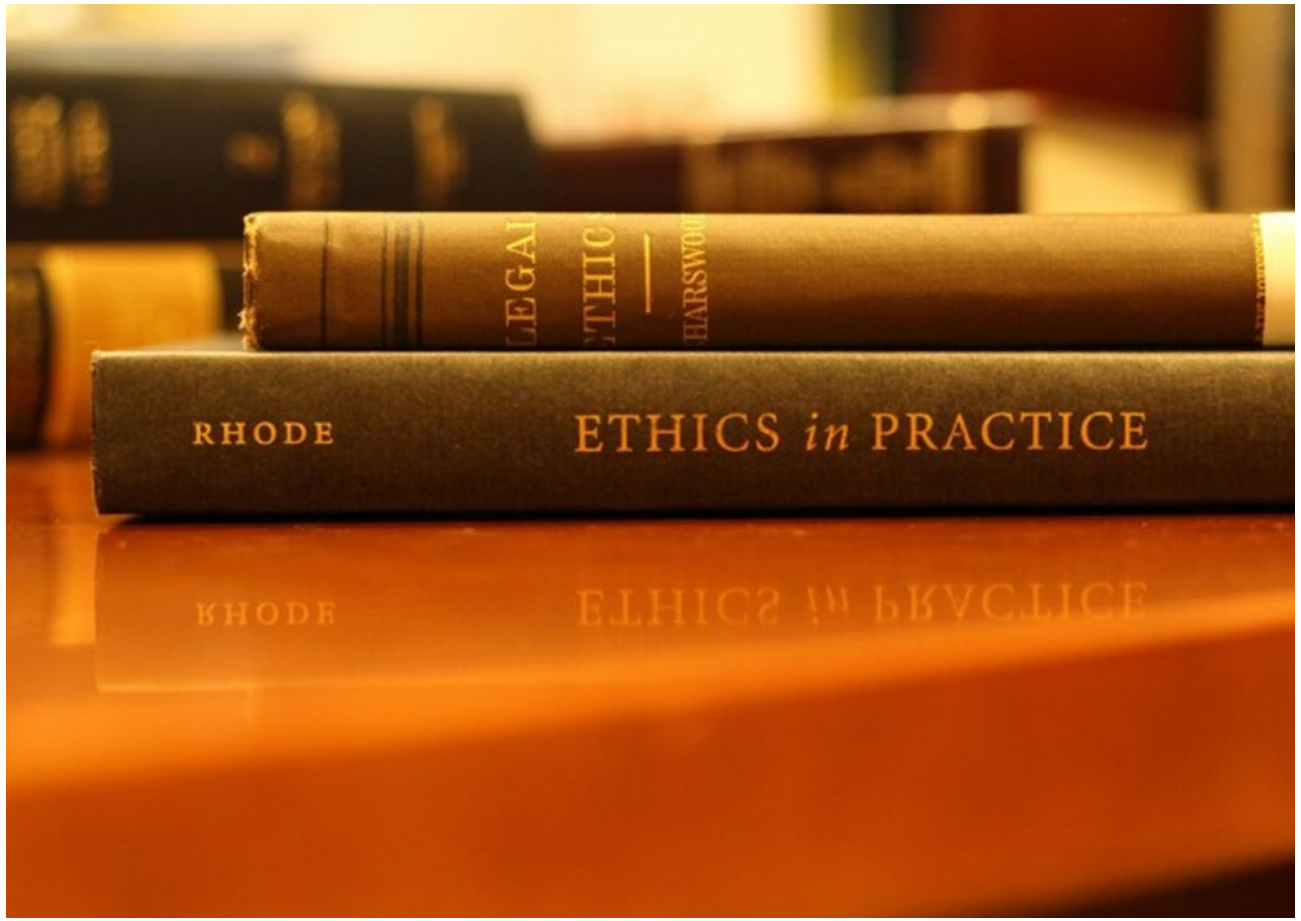


In January, the company offered $1 million to any lawyer or pro se party with a case in front of the U.S. Supreme Court to allow the chatbot to argue on the party's behalf.

ChatGPT

https://openai.com/blog/chatgpt

Ethics and AI



Rule 1.1

Rule 1.6

Rule 3.3

Rule 5.1

Rule 5.3

Rule 5.5

New York Practice Series- Commercial Litigation





New York RPC 1.1 “requires lawyers to generally understand the types of technology available, including AI-based document review and other technology, to improve the legal services they provide to clients.”

§ 79:15 AI and professional conduct rules – Duty of competence

Risk: Confidentiality Breaches



When entering any confidential client information into a GAI platform, immediately place that information outside of the firm's secure systems and onto a third-party server.

This is to ensure that appropriate safeguards are in place to protect the information from disclosure.

March 2023:

OpenAI shuts down ChatGPT to repair a bug that allowed certain users to see titles of chat prompts submitted by other users along with P.I.I. about those users

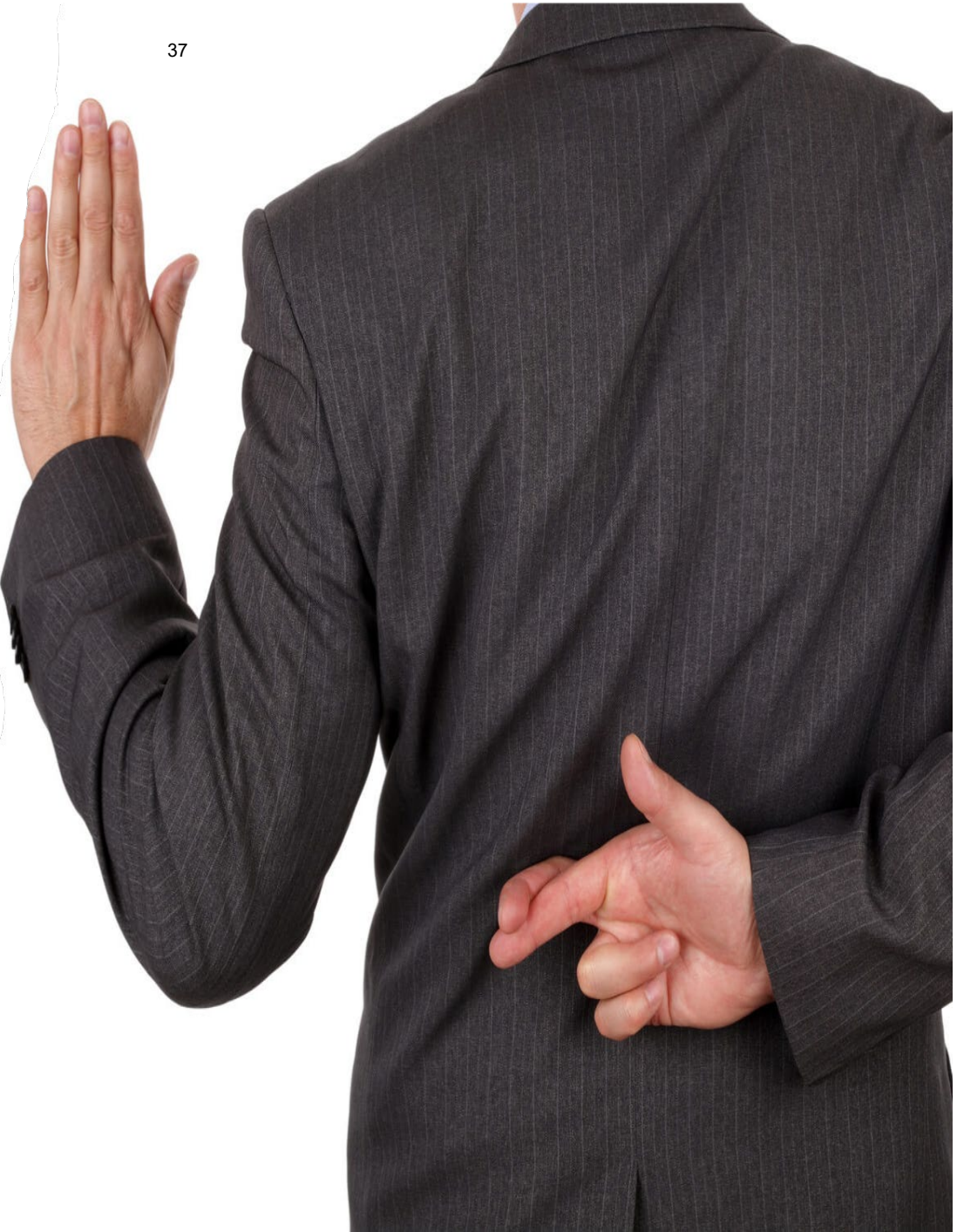
Rule 1.6

A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



Rules of Professional Conduct, 1.6(e).

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Rule 3.3

Risk: Inaccurate and Unreliable Results



"Use of services may in some situations result in incorrect output that dos not accurately reflect real people, place, or facts" and the tool "may occasionally generate incorrect information"

--Open AI's "Terms of Use" (May 2023)

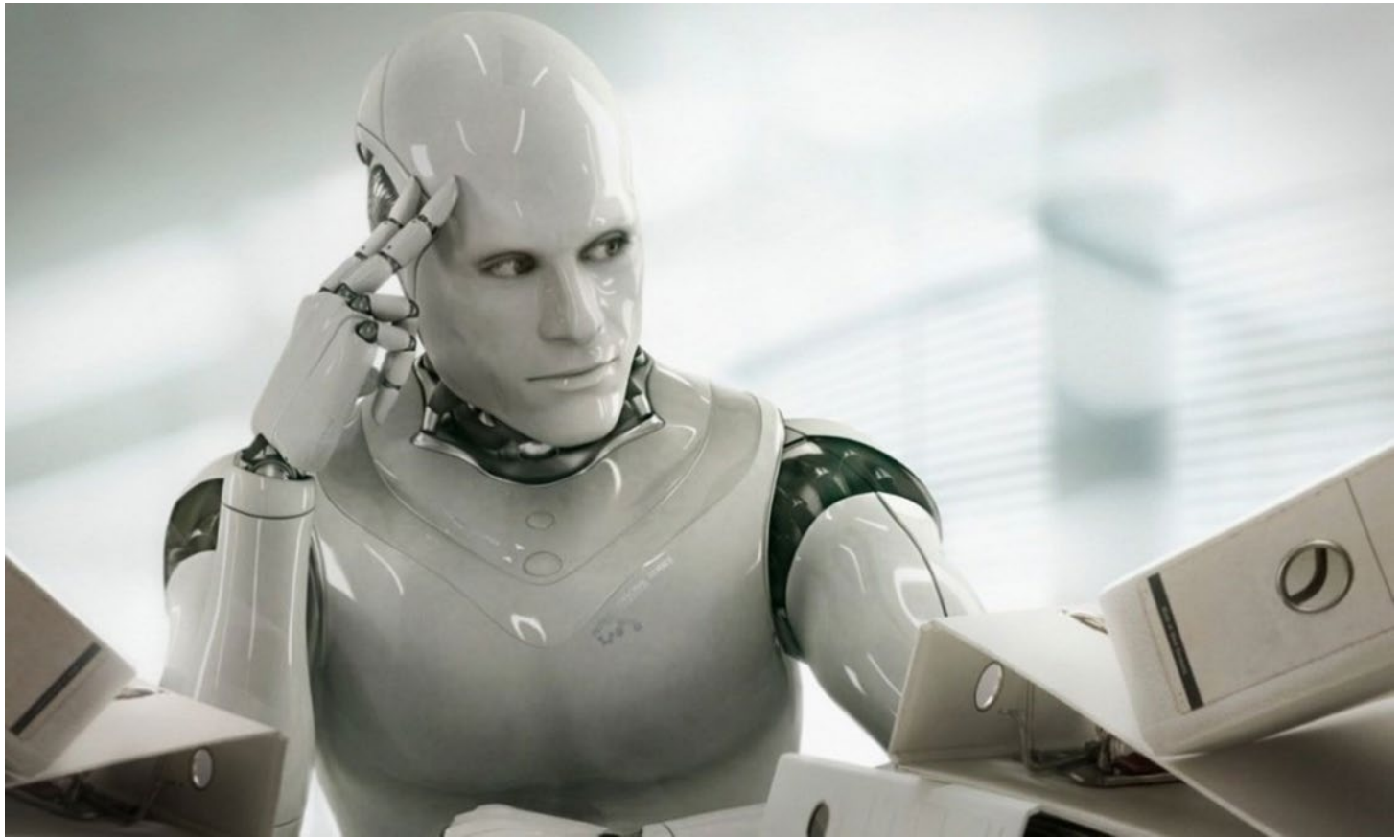
Unreliable "output" may not be distinguishable from looks like…legitimate work

What is an AI “Hallucination”?

- Hallucinations are incorrect/unreliable information produced by an LLM or generative AI chatbot, such as ChatGPT.



Meet Ross: The Worlds First AI Lawyer



What About Unauthorized Practice of Law?



Rule 5.5 of the Connecticut Rules of Professional Conduct prohibits the unauthorized practice of law.

Section 2-44A of the Practice Book defines “practice of law” to include: “ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person.”

TECHNOLOGICAL COMPETENCY (AGAIN)

&

LEGAL LIABILITY



Internal Policies to Consider



It is suggested that advance approval be requested to install any applications or software (including an AI tool) on the firm's IT system.

There are risks such as:

- Exposure of client information
- Infection with malware

Internal Policies to Consider



Request in advance approval for GAI use

Include:

- Description of project
- Explanation of the proposed use
- Use of information: transmitting, storing, uploading, etc.

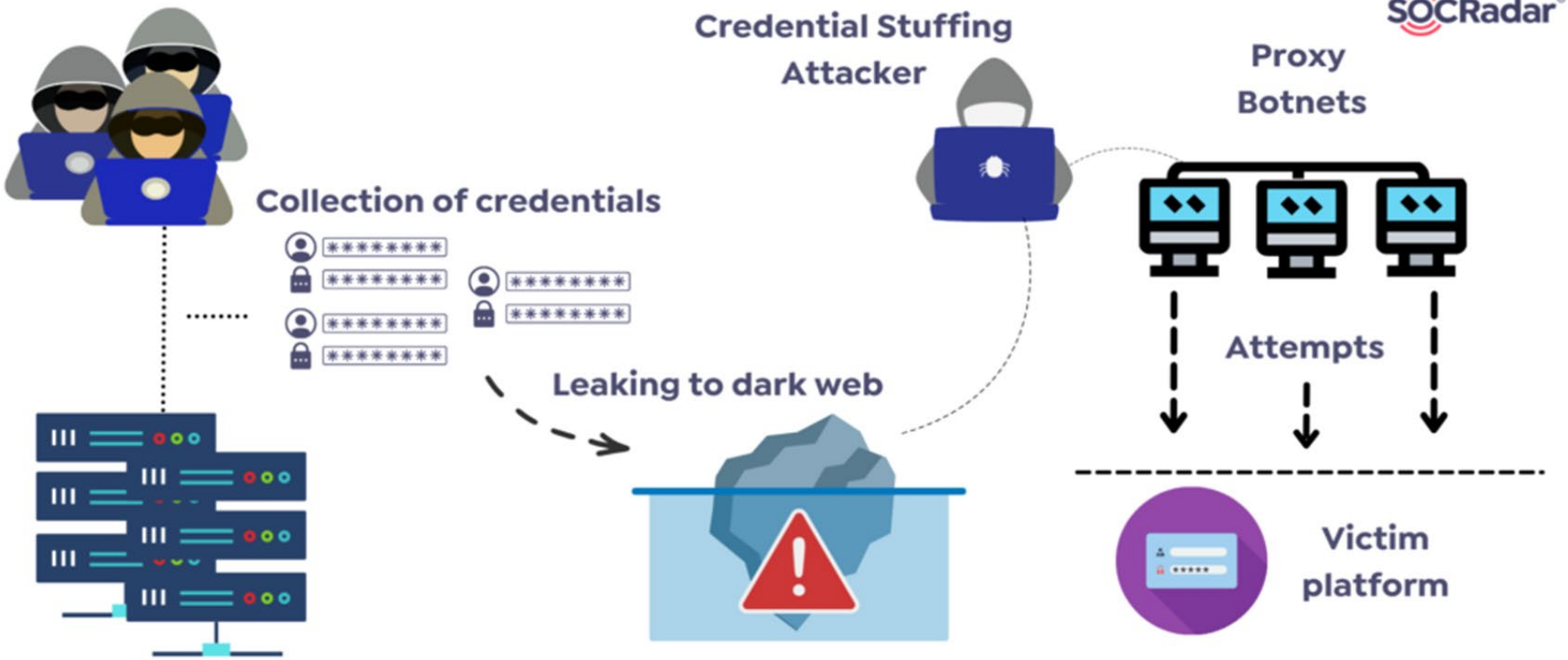
It is essential to review the terms and conditions of the GAI model imposed by the provider

Policies for Law Firms to Consider



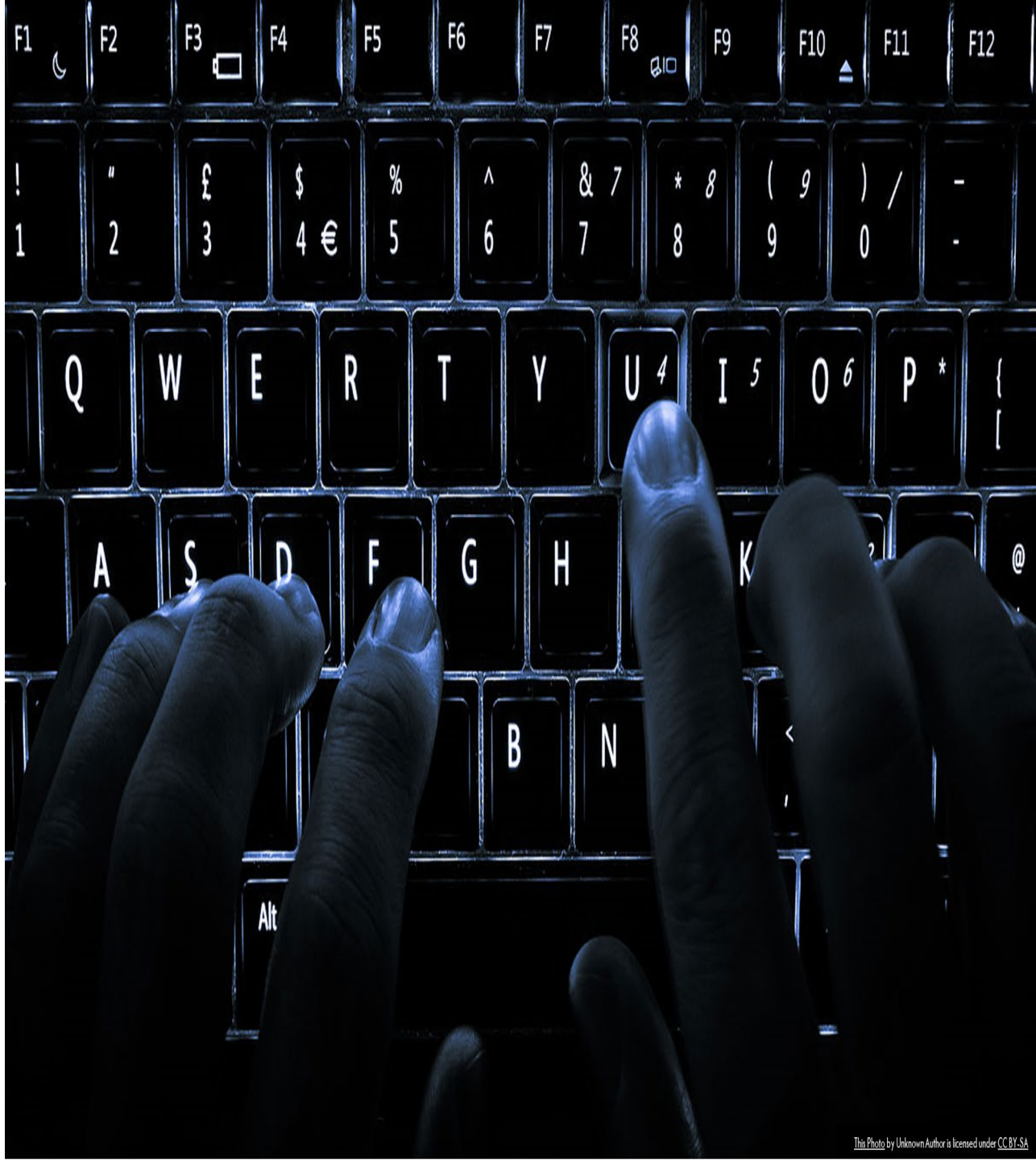
- Is the GAI tool accurate and reliable enough for the proposed purpose?
- Does the GAI tool include adequate security features
- Does the GAI tool use client's confidential information from one customer to train its responses from prompts, queries, or customers?

Section 3: Credential Stuffing



Estimate: 90% of online hacking is the result of credential stuffing

In 2018 and 2019, half of publicly disclosed online breaches involved some combination of phishing and credential stuffing



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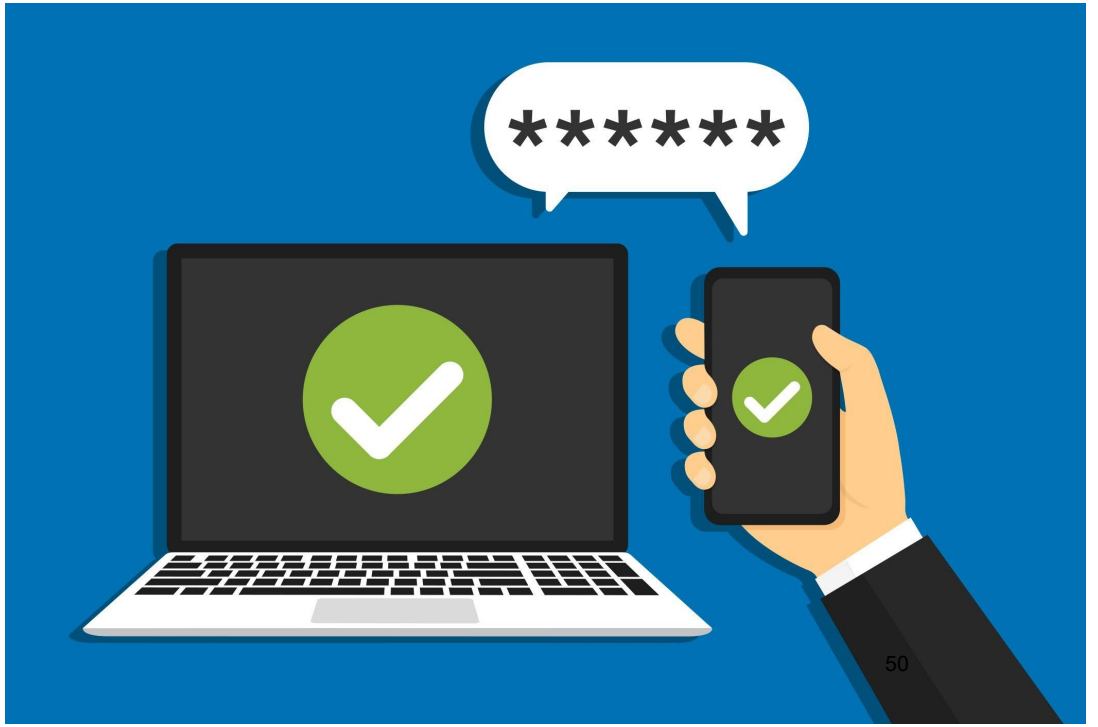


Estimate: Only 1% of online users have a password manager that would prevent credential stuffing

Answers:

- Multiple Passwords
- Password Manager
- Two-Factor Identification





Conclusion



- Have a strong password
- Use common sense
- Use 2 Factor Authentication
- Lock & secure all devices when not in use
- Immediately report lost or stolen wireless devices

2019:

- My Fitness Pal
- My Heritage
- White Pages

840 million records stolen

2020:

1.8 billion credentials stolen





2022:

- Crypto.com
- Microsoft
- Cashapp
- Twitter
- Whatsapp
- Uber
- Nelnet Loan Servicing
- GM – My GM Rewards



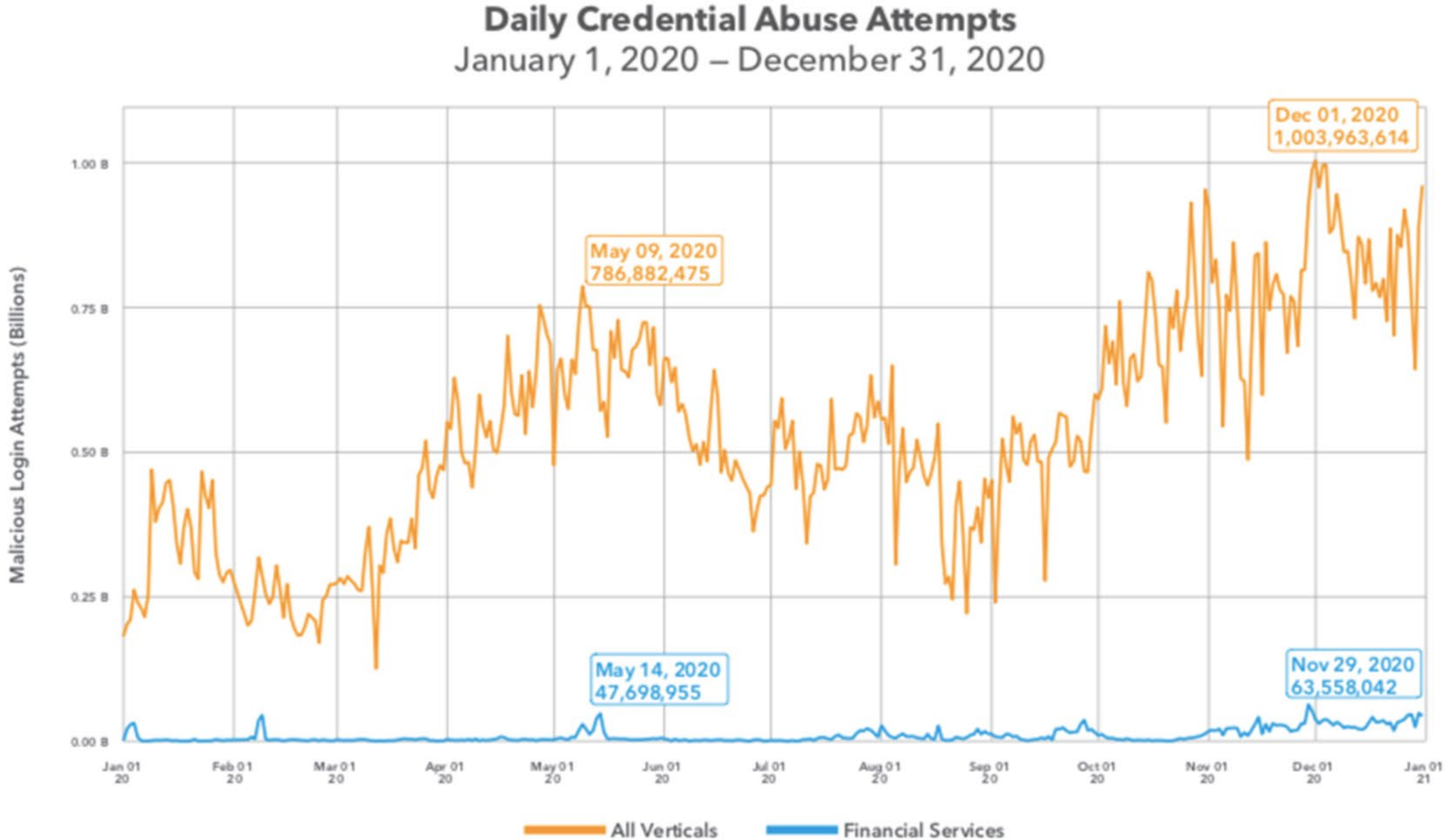


Fig. 1: Financial services experienced tens of millions of credential stuffing attacks each day in 2020,

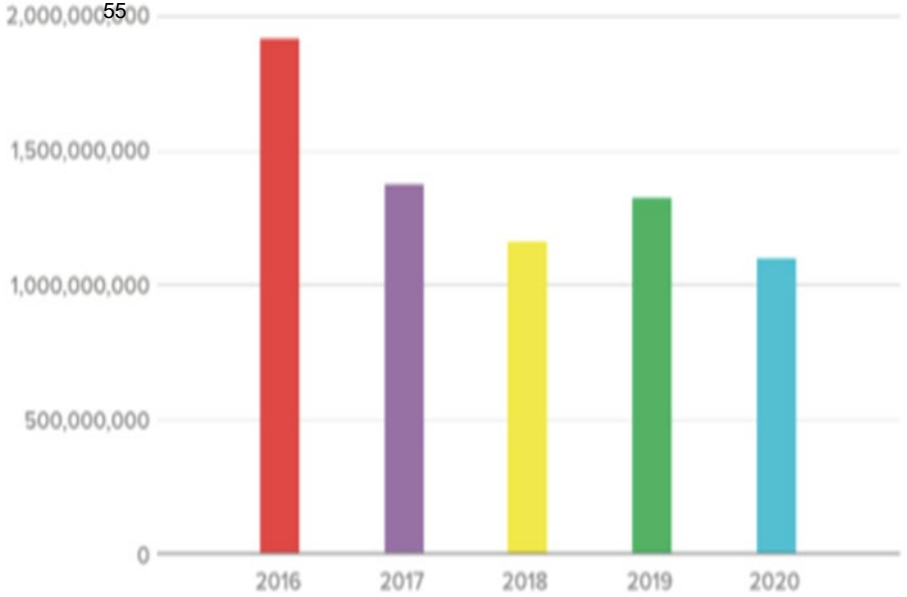


Figure 3. Number of credentials spilled by year, 2016-2020.

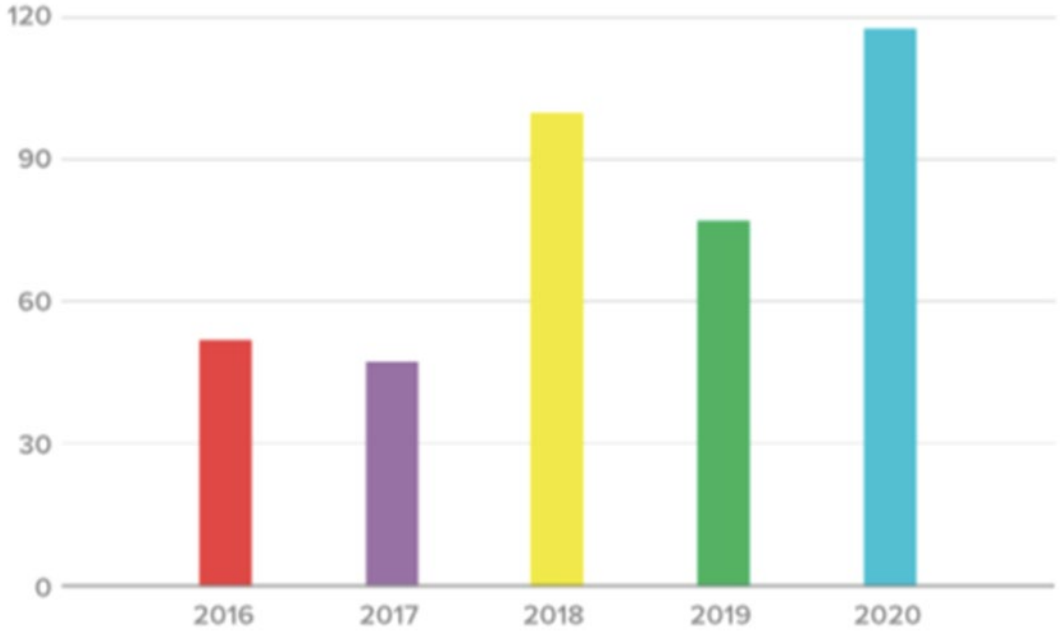


Figure 2. Number of credential spill incidents by year.

	2016	2017	2018	2019	2020
Number of Spills	52	49	101	77	117
Total Credentials Spilled	3,301,824,415	2,328,576,631	1,978,746,345	2,255,253,881	1,860,648,946
Average Spill Size	63,478,585	47,521,972	19,591,548	29,289,011	16,762,603
Median Spill Size	2,750,000	996,000	411,755	598,683	2,000,000
Maximum Spill Size	1,000,000,000	2,000,000,000	336,000,000	763,117,241	538,000,000
Minimum Spill Size	100	3,120	858	277	2,200

Figure 1: Credential spill data between 2016 and 2020

Data from the 2021 F5 Labs Credential Stuffing Report

Resources

Center for Internet Security (CIS)

Critical Security Controls:

https://www.cisecurity.org/controls

National Institute of Standards and Technology (NIST)

Cybersecurity Overview:

https://www.nist.gov/cybersecurity

Cybersecurity and Infrastructure Security Agency (CISA)

Bad Practices:

https://www.cisa.gov/BadPractices

Podcasts

- *The AI Alignment Podcast*
- *AI in Business*

Newsletters

- *The Sequence*
- *Import AI by Jack Clark*

Subscriptions

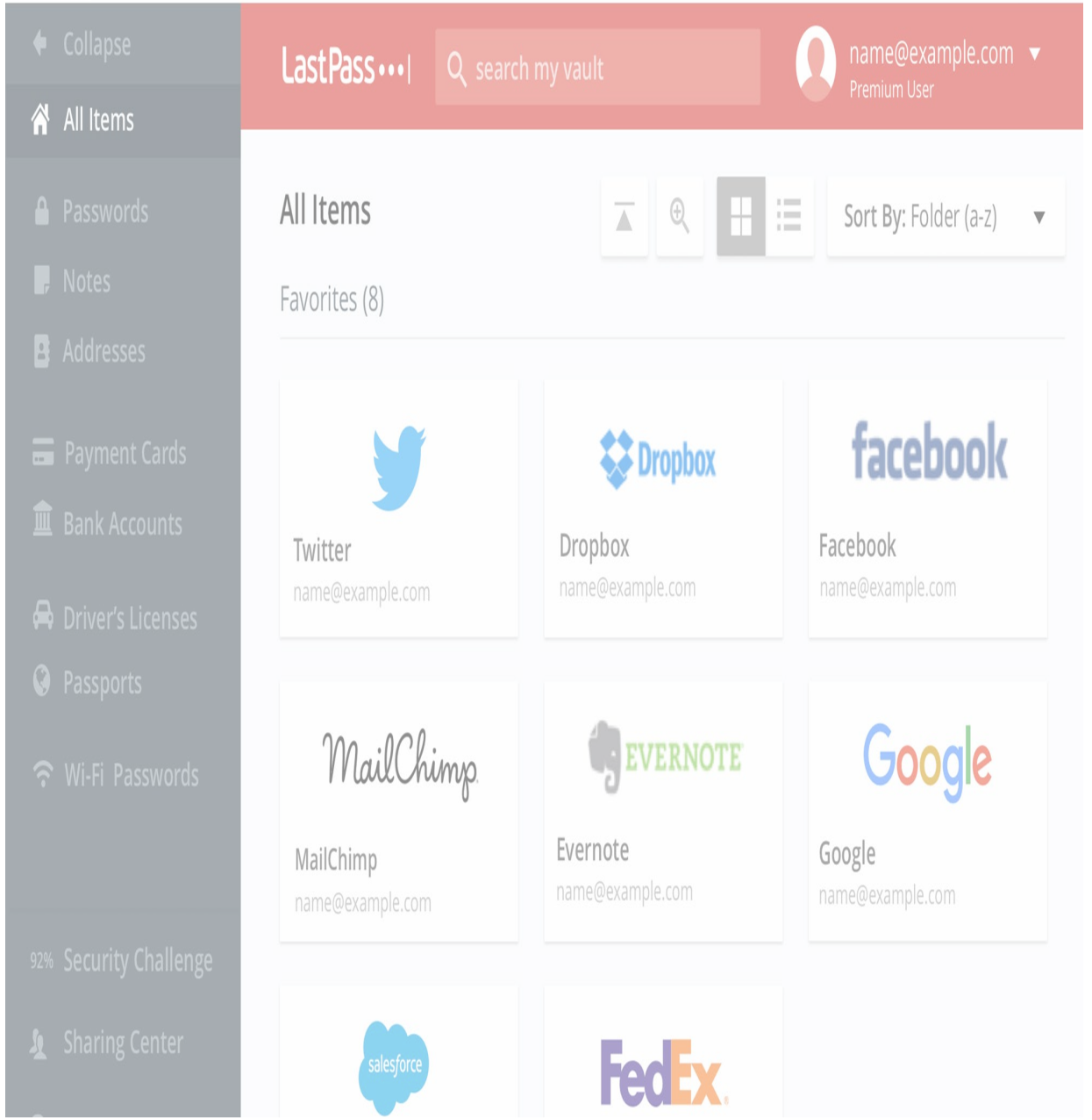
- *Last Week in AI*
- *Inside AI*





https://haveibeenpwned.com/

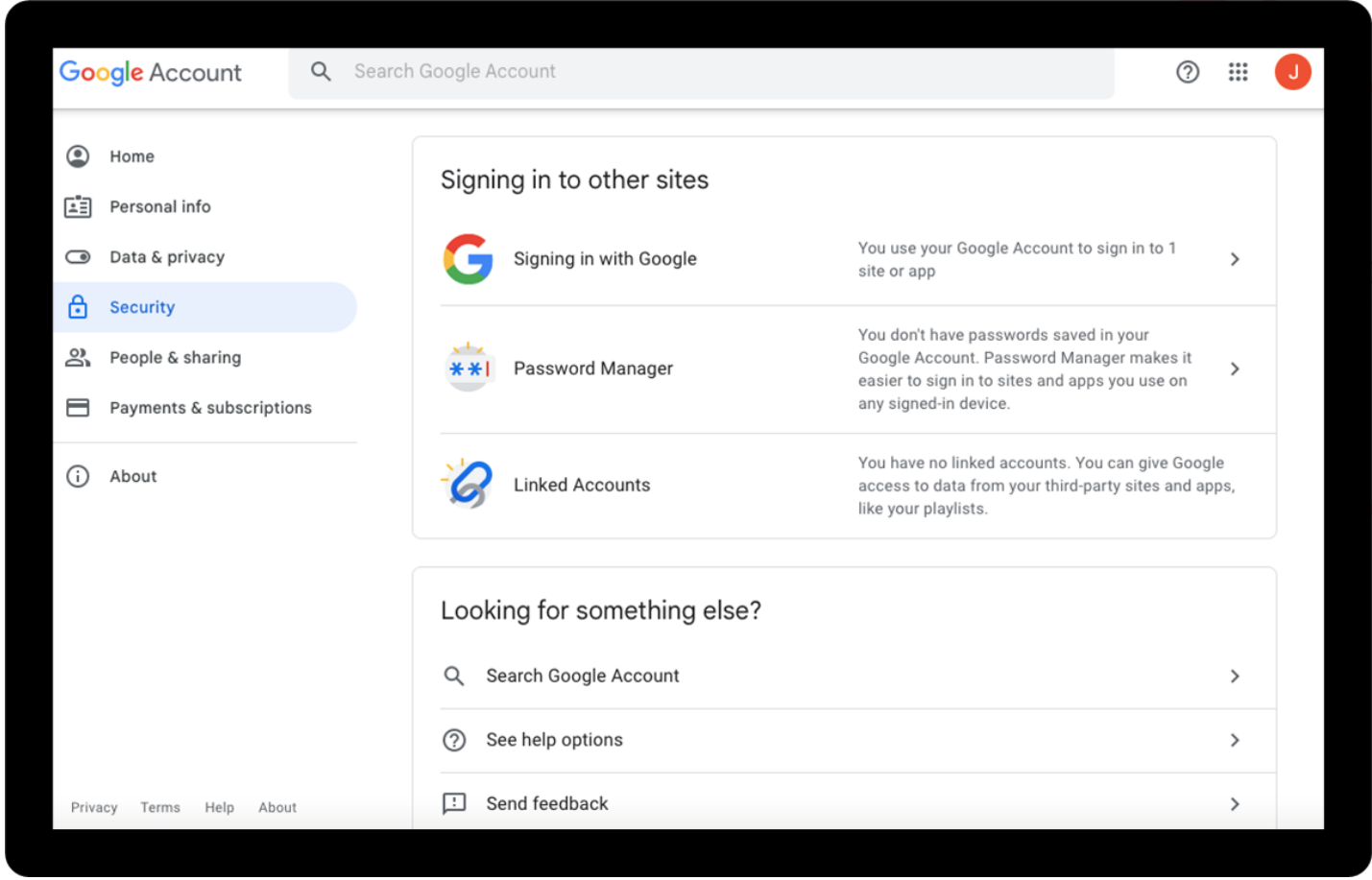
Section 4: Using Password Managers



Google also has its own Password Manager

Where can you find it?

- Log in to your google account
  - Go to “Manage your Google Account”
    - Find the “Security” tab on the left
      - Scroll to “Signing in to other sites” and there is “Password Manager”
        - Click “Learn more”



•Country: Other

•Telephone No: Phone Extension:

•Email Address:

•Confirm Email Address:

Note: An email will be sent to the address you type in here. You must click on a link in that email in order to complete your enrollment and activate your E-Services account.

User ID and Password:

•User ID:

Once enrolled, this User ID cannot be changed and will be displayed on all court documents.

Check if Available

The UserID cannot contain any symbols or special characters, such as @, #, &, or ! and it cannot be your email address.

•Password:

•Confirm Password:

The password must have 8-10 characters including at least one number (0-9). It cannot @, #, & or !.

Use passwords saved in your Google Account

Security Question (In case you

•Secret Question:

•Answer:

•Year of Birth:

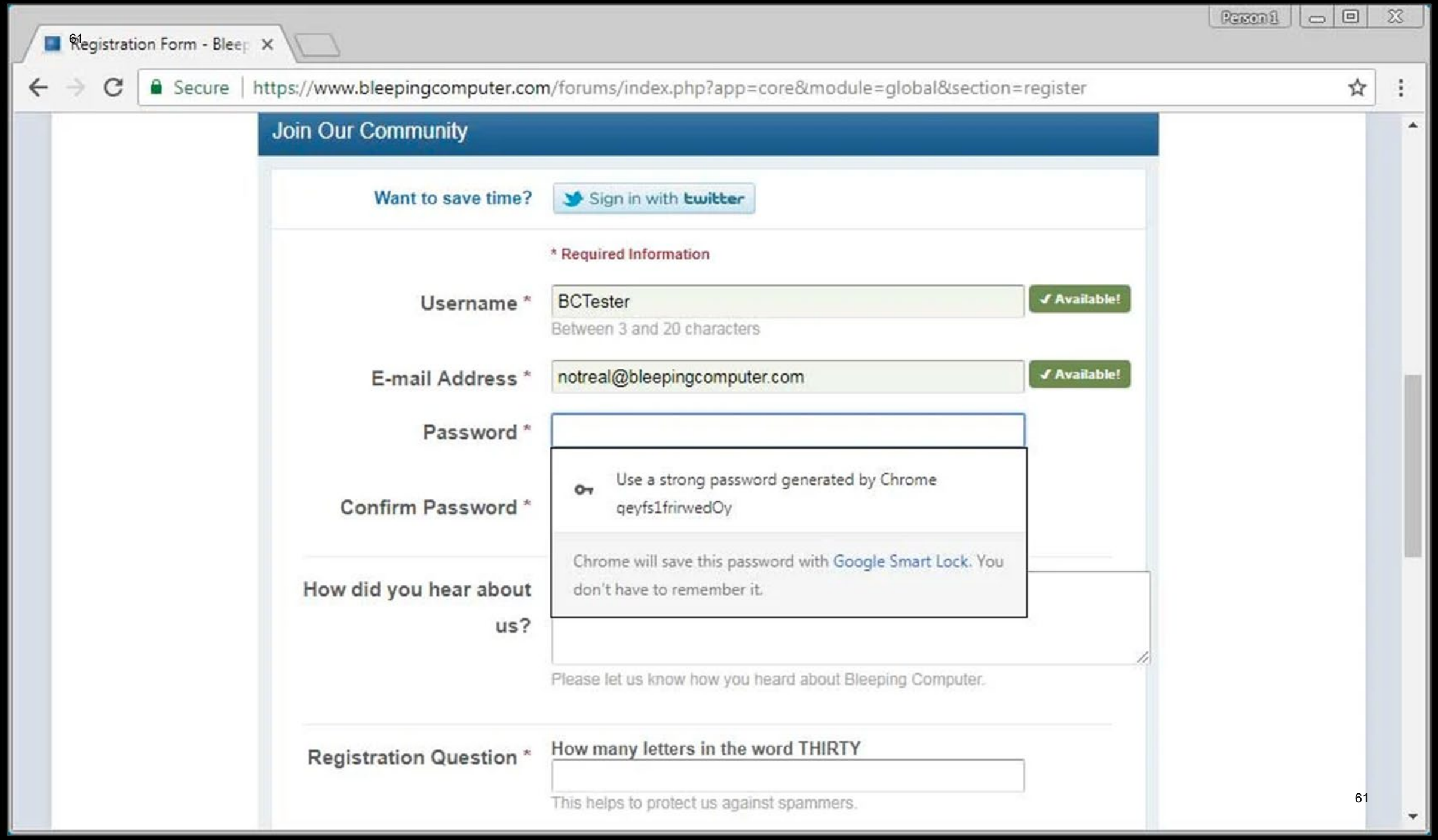
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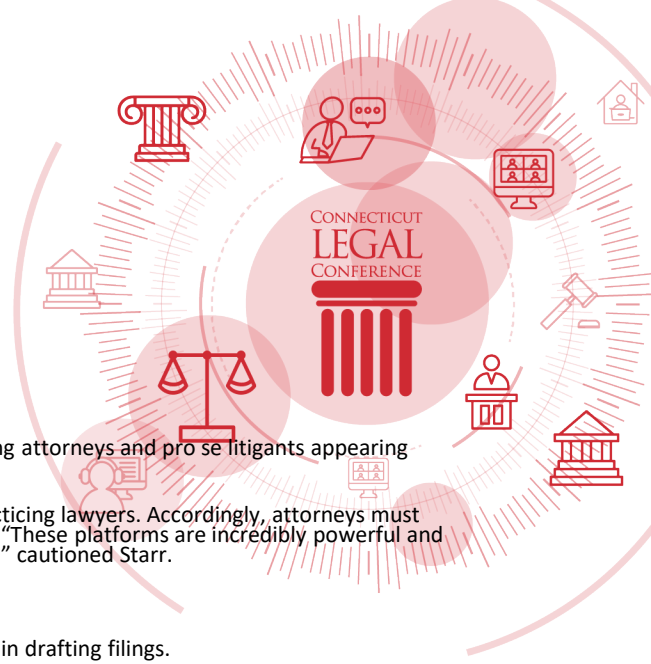

Person 1
Registration Form - Bleep
Secure
https://www.bleepingcomputer.com/forums/index.php?app=core&module=global&section=register
Join Our Community
Want to save time?
Sign in with twitter
* Required Information
Username *
BCTester
Available!
Between 3 and 20 characters
E-mail Address *
notreal@bleepingcomputer.com
Available!
Password *
Confirm Password *
Use a strong password generated by Chrome
qeyfs1frirwedOy
Chrome will save this password with Google Smart Lock. You don't have to remember it.
How did you hear about us?
Please let us know how you heard about Bleeping Computer.
Registration Question *
How many letters in the word THIRTY
This helps to protect us against spammers.

Section 5: New Ethics Opinions



Decisions from Across the U.S.

Standing orders



- **Northern District of Texas**
- Judge Brantley Starr of the US District Court for the Northern District of Texas was the first to issue a standing order on AI. On May 30, Starr issued a standing order requiring attorneys and pro se litigants appearing before his court to file a certificate declaring whether any portion of their filings will be drafted using generative AI tools.
- The standing order's description cites both the danger of generative AI "mak[ing] stuff up," and of generative AI's lack of a sense of "duty, honor, or justice" that binds practicing lawyers. Accordingly, attorneys must certify that either none of the content in any of their filings will be drafted using generative AI, or that generative AI content will be verified for accuracy by a human being."These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them," cautioned Starr.
- **Eastern District of Pennsylvania**
- Judge Michael Baylson of the US District Court for the Eastern District of Pennsylvania issued his own order requiring attorneys and pro se litigants to disclose the use of AI in drafting filings.
- However, Baylson's standing order does not limit the scope to the use of only *generative* AI tools. The breadth of Baylson's order is noteworthy, as "AI" is an umbrella phrase used to describe a variety of advanced technologies capable of simulating certain aspects of human thought. Many legal practitioners have been using machine learning, a technique that falls under this umbrella, for years. Use scenarios for such machine learning techniques have included contract analytics, library research tools, and e-discovery methods such as technology-assisted review. Baylson's standing order is considerably broader than Starr's and has the potential to sweep in any of the aforementioned technologies that may fall under the AI label.
- **Northern District of Illinois**
- Two days later, on June 8, Magistrate Judge Gabriel A. Fuentes of the US District Court for the Northern District of Illinois issued a revised standing order for civil cases. This order—more akin to Starr's than Baylson's—includes language requiring parties that use generative AI "to conduct legal research or to draft documents for filing with the Court" to disclose the specific tool and the manner in which it is used. Fuentes reminded practitioners of the applicability of Federal Rule of Civil Procedure 11, emphasizing that this court will "presume that the Rule 11 certification is a representation by filers, as living, breathing, thinking human beings, that they themselves have read and analyzed all cited authorities to ensure that such authorities actually exist and that the filings comply with Rule 11(b)(2)."
- **US Court of International Trade**
- On the same day as Fuentes, Judge Stephen Alexander Vaden of the US Court of International Trade issued a related order requiring the identification of any generative AI program used and of all portions of text drafted with the assistance of generative AI.
- Vaden also cautioned of the "novel risks" posed by using generative AI, particularly noting that potentially confidential information could be submitted through prompts given to an AI program. In light of these risks, Vaden's order also requires certification that "the use of such program has not resulted in the disclosure of any confidential or business proprietary information to any unauthorized party."
- Although these four judges are—so far—the only ones who have released standing orders limiting the use of some form of AI in court filings, they will likely not be the last. Regardless of the proliferation of such orders, legal practitioners should take note and employ good practices when using generative AI in legal drafting.

Last viewed at https://www.ropesgray.com/en/insights/alerts/2023/08/judges-guide-attorneys-on-ai-pitfalls-with-standing-orders

Ethics Opinions



- NYSBA: Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence
- Florida Bar Association: Florida Bar Ethics Opinion 24-1
- ABA: Established the ABA Task Force on Law and Artificial Intelligence.
  - It is dedicated to understanding the AI on the legal profession and mitigating risks where necessary.
- New Jersey:
- California: California Bar's Committee on Professional Responsibility and Conduct (COPRAC) formally recommended that the Board of Trustees adopt recommendations regarding generative AI usage in legal practice. Specifically, COPRAC recommended that the Board:
  - Develop a one-hour minimum continuing legal education course that addresses generative AI;
  - Work with the state legislature and supreme court to evaluate the need for further regulations pertaining to the unauthorized practice of law and the use of legal generative AI products;
  - Consider adding requirements regarding generative AI for law schools and the bar exam; and
  - Publish a document called the “Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law.”

Connecticut Bar Association

Responding to Online Criticism



American Bar Association Standing Committee on Ethics and Professional Responsibility – Formal Opinion 496 (January 13, 2021)

A lawyer who chooses to post an online response must not disclose information relating to a client matter, or information which could reasonably lead to discovery of confidential information in the lawyer's response.

Ephemeral Messaging



What is ephemeral messaging?

- Transmission of multimedia messages which automatically disappear from the recipient's screen after the message has been viewed

- State & Federal data privacy laws require periodic disposal of certain information. Lawyers may be inclined to use ephemeral messaging as a tool for legal risk mitigation

- But where certain information must be retained for legal matters, there are certain legal risks where ephemeral messaging is used



Section 6: Confidentiality



Confidentiality- Rule 1.6



Connecticut Rules of Professional Conduct - Rule 1.6

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).

. . .

(e) A lawyer shall make *reasonable efforts* to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Connecticut Rules of Professional Conduct - Rule 1.6, Comment

Acting Competently to Preserve Confidentiality

Subsection (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.



Confidentiality

Rule 1.6: Confidentiality of Information

- No disclosures unless client gives informed consent and disclosure impliedly authorized to carry out representation

Note: Lawyer must make reasonable efforts to prevent inadvertent disclosure or unauthorized access.





Overview of Data Risks for Law Firms



Why are law firms a target?

- Rich collection of confidential information
- Sub-standard security



Frequency of law firm data breaches

- Lack of reporting requirements
- Failure to detect a breach

Business Reasons to Address Information Risk

- Increased cyber security regulation of law firms and clients
- Clients increasingly making data security a key criterion for their vendor relationships



Opportunities to Heighten Security

1. Encrypt, encrypt, encrypt
2. Use Caution in the Cloud
3. Beware of BYOD
4. Vet Your Vendors
5. Staff Training is Critical
6. Be Wireless Savvy
7. Have a Password Policy
8. Consider Cyber Liability Insurance





Confidentiality in the Cloud

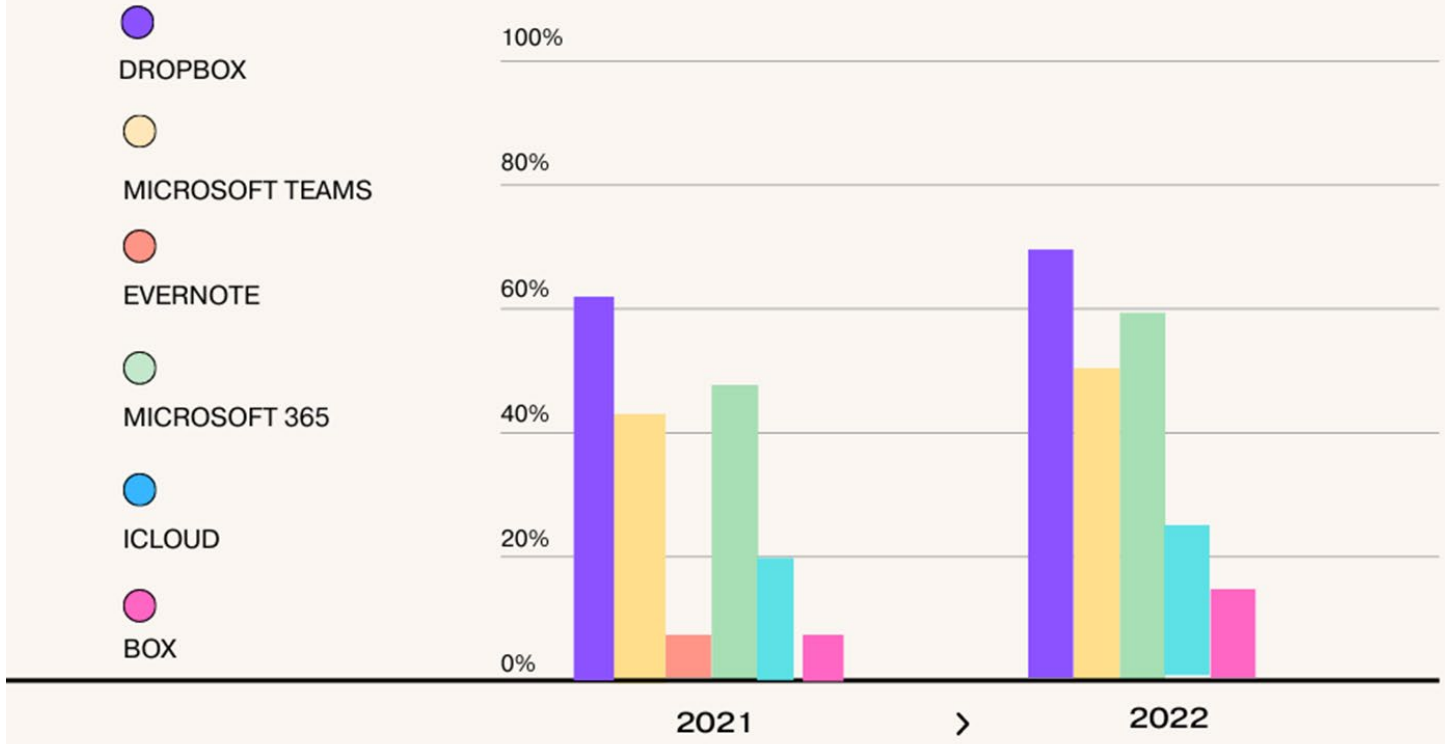


Lawyers may use cloud services in their practice to promote mobility, flexibility, organization and efficiency. However, lawyers must be conscientious to comply with the duties imposed by the Rules to knowledgeably and competently maintain confidentiality and supervisory standards. The Rules require that lawyers make reasonable efforts to meet their obligations to preserve the confidentiality of client information and to confirm that any third party service provider is likewise obligated.

-CT Informal Op. 2013-07 (Approved June 19, 2013)

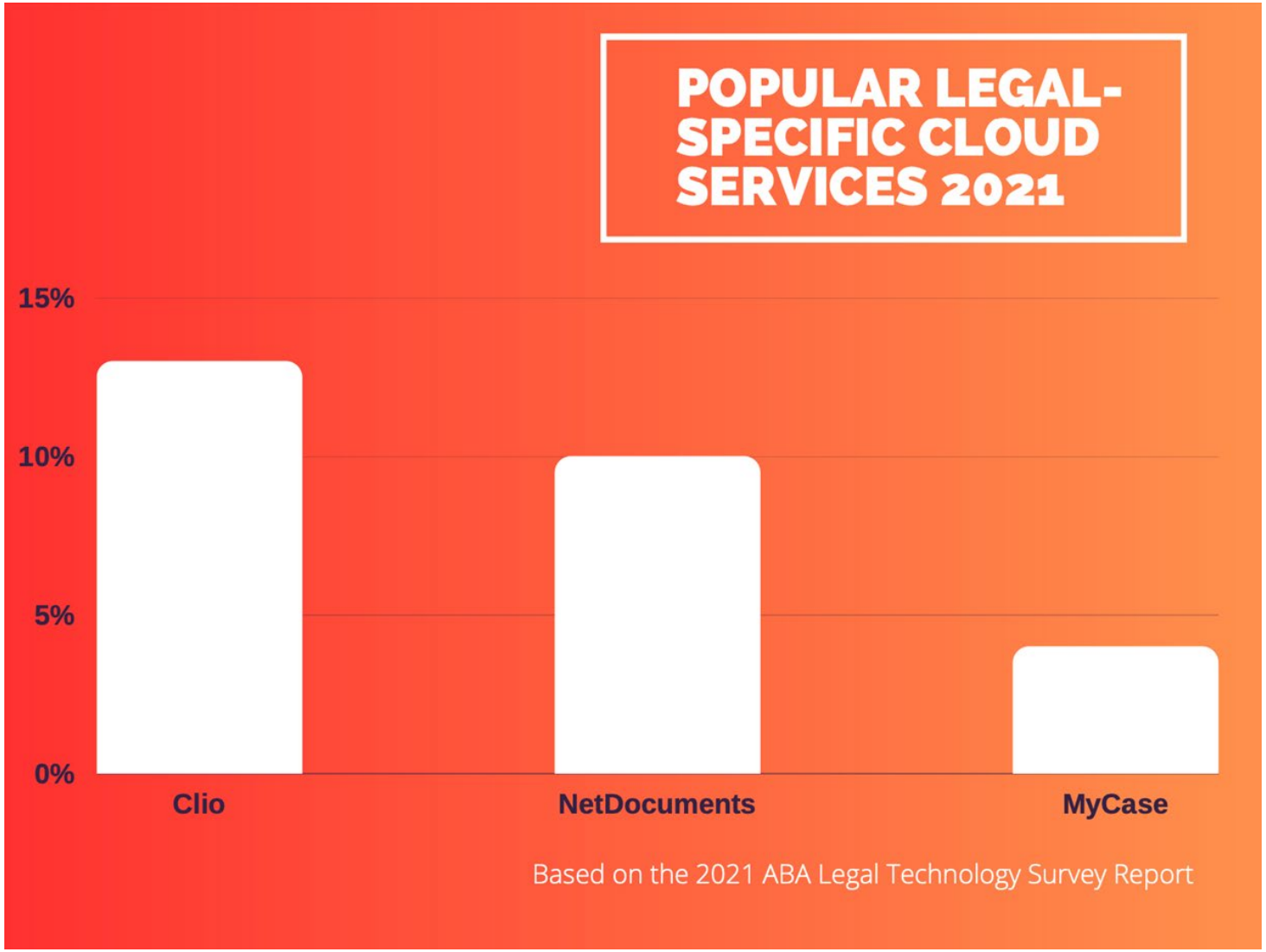
CONSUMER CLOUD SERVICES 2021-2022

In 2022:
Dropbox -66%
Microsoft 365 - 59%
Microsoft Teams - 51%
iCloud - 21%
Box - 18%



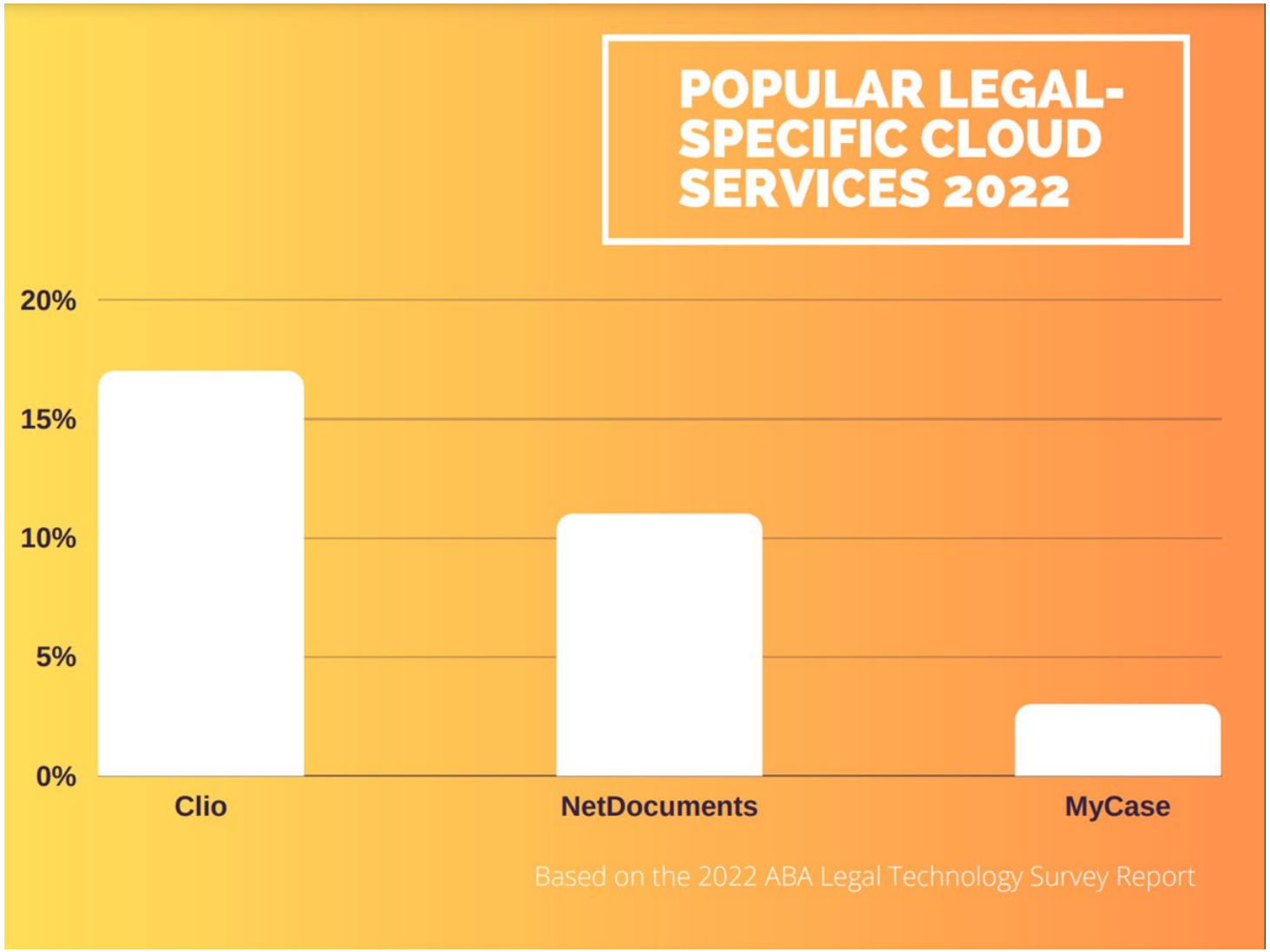
2021:

- CLIO – 13%
- NetDocs – 10%
- MyCase – 4%



2022:

- CLIO – 17%
- NetDocs – 11%
- MyCase – 3%





Confidentiality

First Defense: Passwords on iOS

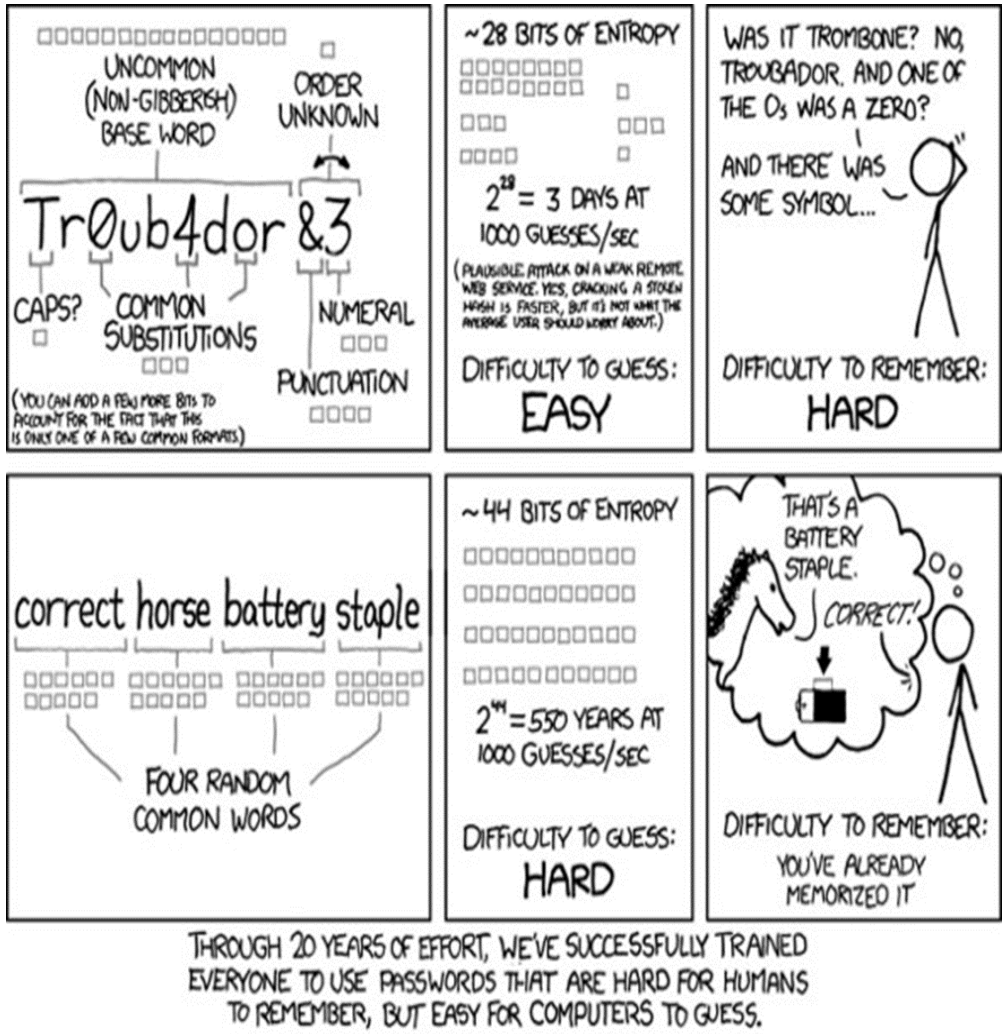
Using iOS:

Just because almost all mobile malware targets Android, it doesn't mean iPhone users can be complacent. In fact, iOS 11 has recently downgraded its security.

Best practices:

- ✓ A 6-digit passcode is better than 4.
- ✓ Enable Touch ID?
- ✓ Require a passcode immediately.
- ✓ Enable Face ID?
- ✓ Turn on remote data erase.

First Defense: Passwords





According to cartoonist Randall Monroe (with math confirmed by the WSJ), the password “correct horse battery staple” written as a single phrase, would take 550 years to crack, while its predictable counterpart using standard numeric and special character substitution techniques such as “Tr0ub4dor&3” would be cracked in about 3 days.

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First Defense: Passwords



Don’ts:

- **Don’t** use easily guessed passwords, such as “password” or “user.”
- **Don’t** use confidential details, such as birth days, Social Security number, phone number or names of family members.
- **Don’t** use simple adjacent keyboard combination, such as “qwerty” and “asdzxc” and “123456.”
- **Don’t** use your email account password at an online retailer.

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Second Defense: Common Sense



- Never download files from a commercial web email or entertainment sharing sites.
- Never open emails from unknown users.
- Never open suspicious emails.
- Never assume security is enabled on public WIFI access points.
- Never click on pop-up messages or unknown links.



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Third Defense: Two Factor Authentication



Whenever possible, turn on two-factor authentication (2FA) on your mobile device. 2FA adds an additional authentication step to your basic log-in procedure. Apple, Google, Microsoft, Slack, Twitter, LinkedIn and Amazon are among some of the platforms where 2FA is available.


Q
&
A


The End