

Wednesday, April 26, 2023

# Intellectual property hot topics for in-house counsel and business leaders

Grow | Protect | Operate | Finance

# Agenda



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- 3 Coordinating cross-border IP litigation in the United States and Canada
- 4 Notable developments in trademark law in Canada
- 5 Patents vs. industrial design



# **We need to Chat (GPT): A discussion on generative AI**

Panagiota Dafniotis, Bob Tarantino

# What is Generative AI

- generative AI is a type of artificial intelligence that, in response to prompts provided by human users, can create “new” content, such as images, text, and music, by “learning” (or recognizing patterns) from existing data
- generative AI has a wide range of applications, from creating realistic images and videos to generating personalized recommendations for users - being used in industries such as healthcare, finance, and entertainment
- generative AI can create new content that is virtually indistinguishable from human-generated content, which can be useful for many purposes, including marketing and advertising purposes. It can also automate tasks that require creativity and innovation, freeing up time for employees to focus on more strategic work

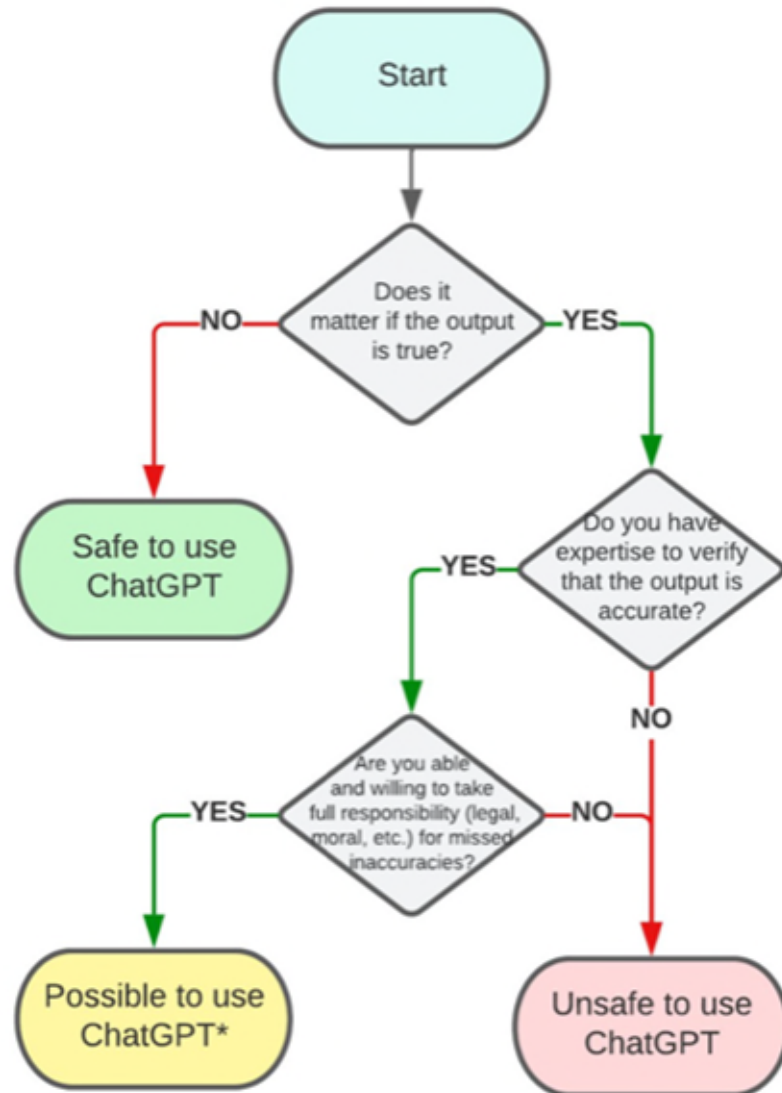
# Output risks

- “Hallucinations” – fabrication of data
  - could make false and defamatory statements about a real person
- Inaccuracy
  - correct for context A, incorrect for context B
  - outdated (dataset is old)
- Incompleteness – “missing” information
  - e.g., does not take into account jurisdictional variance
- Infringing – “new” content contains infringing amount of “old” content
- Bias/discrimination in output or analysis





# Is it safe to use ChatGPT for your task?



\* but be sure to verify each output word and sentence for accuracy and common sense



Aleksandr Tiukanov, January 19, 2023

# Confidentiality and Use of Sensitive Information

- professional services businesses have ethical duties to maintain client confidences
  - how is your client's confidential information being shared and stored?
- check terms of use: some services use data for various purposes (including provision to third parties!)
- is one of your employees going to disclose sensitive information through their prompts?

# How your data is used to improve model performance

Learn more about OpenAI's data usage policies for our API, ChatGPT and DALL-E



Written by Yaniv Markovski. Updated over a week ago

One of the most useful and promising features of AI models is that they can improve over time. We continuously improve our models via scientific and engineering breakthroughs as well as exposure to real world problems and data.

OpenAI does not use data submitted by customers via our API to train OpenAI models or improve OpenAI's service offering. In order to support the continuous improvement of our models, you can fill out [this form](#) to *opt-in* to share your data with us. Sharing your data with us not only helps our models become more accurate and better at solving your specific problem, it also helps improve their general capabilities and safety.

When you use our non-API consumer services ChatGPT or DALL-E, we may use the data you provide us to improve our models. You can request to opt-out of having your data used to improve our non-API services by filling out [this form](#) with your [organization ID](#) and email address associated with the owner of the account.

We remove any personally identifiable information from data we intend to use to improve model performance. We also only use a small sampling of data per customer for our efforts to improve model performance. We take great care to use appropriate technical and process controls to secure your data.

For details on our data policy, please see our [Data Usage Policies](#), [Privacy Policy](#) and [Terms of Use](#).

## 5. Who can view my conversations?

- As part of our commitment to safe and responsible AI, we review conversations to improve our systems and to ensure the content complies with our policies and safety requirements.

## 6. Will you use my conversations for training?

- Yes. Your conversations may be reviewed by our AI trainers to improve our systems.

## 8. Can you delete specific prompts?

- No, we are not able to delete specific prompts from your history. Please don't share any sensitive information in your conversations.



66

## Trade secrets

### Samsung workers made a major error by using ChatGPT

By Lewis Maddison published 7 days ago

Samsung meeting notes and new source code are now in the wild after being leaked in ChatGPT



(Image credit: Valeriya Zankovych / Shutterstock.com)

Samsung workers have unwittingly leaked top secret data whilst using ChatGPT to help them with tasks.

The company allowed engineers at its semiconductor arm to use the AI writer to help fix problems with their source code. But in doing so, the workers inputted confidential data, such as the source code itself for a new program, internal meeting notes data relating to their hardware.

The upshot is that in just under a month, there were three recorded incidences of employees leaking sensitive information via ChatGPT. Since ChatGPT retains user input data to further train itself, these trade secrets from Samsung are now effectively in the hands of OpenAI, the company behind the AI service.

# Copyright

- many unanswered questions about copyright and generative AI

**In generative AI legal Wild West, the courtroom battles are just getting started**

- As companies including Microsoft, Google and OpenAI launch generative AI to the general public, lawsuits are piling up from creative industries about copyrighted work co-opted or used by AI.

- risk: the AI infringes copyright when it creates something by copying a pre-existing work
  - e.g., employee asks AI to create an 800 word article on a topic, which will be posted to the company website and disseminated via company social media channels – problem: the 800 word article includes verbatim passages from articles published in the *New York Times*
  - who is responsible if what the AI creates gives rise to liability?

# Copyright

- who is the author of what AI creates?
  - has many technical implications relating to duration of protection, moral rights, etc.
- who owns what AI creates?
  - possible that the content just isn't owned (public domain)
    - do you care (or want) your content to be public domain, or is it important that it belongs to you?
  - possible, under US law, that the material is a “derivative work” – meaning the owners of the works in the underlying dataset might have claims to control use

# Ethical Issues

- what are the ethical implications of using AI to generate content?
- to what extent do you **care** whether an employee has used AI to create content?
  - do you think more or less of what they've delivered?
  - how does use of AI factor into performance assessments?
    - is it a negative when someone uses AI to create content for their job?
    - is it a positive that they are using AI to be more efficient?
- what if the AI creates the same content for multiple users?
  - do you need your content to be “**unique**” to you?
- should you **disclose** that AI was used to generate the content or make the decision?
  - do your customers have a “right” to know that **you've used AI**?

# What to Do?

- think about it
  - consider whether this is something you can / should be using
- have a policy
- read Terms of Use – make sure you know what you're signing up for
- consider bespoke contracting for liability, data usage, etc.
- consider how use of AI factors into performance assessment
- ensure those using generative AI are properly trained in its use, and are aware of potential risks (and how to mitigate those risks)
  - train to avoid disclosure
  - train to spot potential infringement
  - train to identify errors
  - train to know when not to use





# **Coordinating cross-border IP litigation in the United States and Canada: Opportunities and challenges**

**Matt Diskin, Kevin Greenleaf, Chris Zelyas**



# **Notable developments in trademark law in Canada**

Panagiota Dafniotis, Jennifer McKay



# Patents vs. industrial design

Richard Johnson

# Patents vs. Designs

## Basics

### Patents:

- Protect how things work
- Must apply for protection in each country
- 20 year term in most countries
- Examination is rigorous for both substantive and formal requirements

### Designs:

- Protect how things look
- Unregistered rights possible in some countries (e.g. EU)
- 15 year term in most countries
- Examination is often focussed primarily on drawing quality and consistency

# Patents vs. Designs

## Filing Considerations

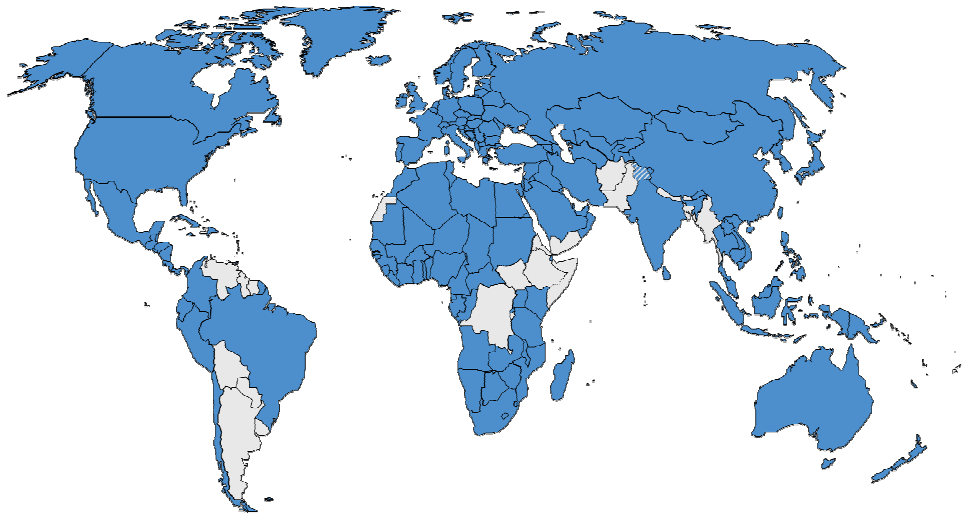
### Patents:

- Can claim priority in other countries for up to 12 months from first application
- International (PCT) application can be filed covering up to 157 countries:

### Designs:

- Can claim priority in other countries for up to 6 months from first filing
- International (Hague) application can be filed covering up to 96 countries:

**PCT System membership**



**Hague System membership**





# Thank you



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