

# INTELIGENCIA ARTIFICIAL 2025: LA PERSPECTIVA LEGAL EN PROPIEDAD INTELECTUAL

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**Ferraiuoli** LLC  
*Looking Forward*

# *Deep Dive en* IA:

Autoría (registrabilidad);

Contenido;

Música;

Fotos;

Derecho de imagen propia (“right of publicity”); y

Estrategias de protección de secretos de negocio.

# ¿Qué es Inteligencia Artificial (IA)?

Es la ciencia e ingeniería de desarrollar máquinas/*software* inteligentes para que puedan completar ciertas tareas que, de ordinario, son atribuibles a humanos.

Identificar patrones;

Reconocimiento de imágenes;

Reconocimiento de voz; y

Traducciones, entre otros



Es mucho más común de lo que pensamos y lleva muchísimo tiempo formando parte de nuestras vidas.

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alexa



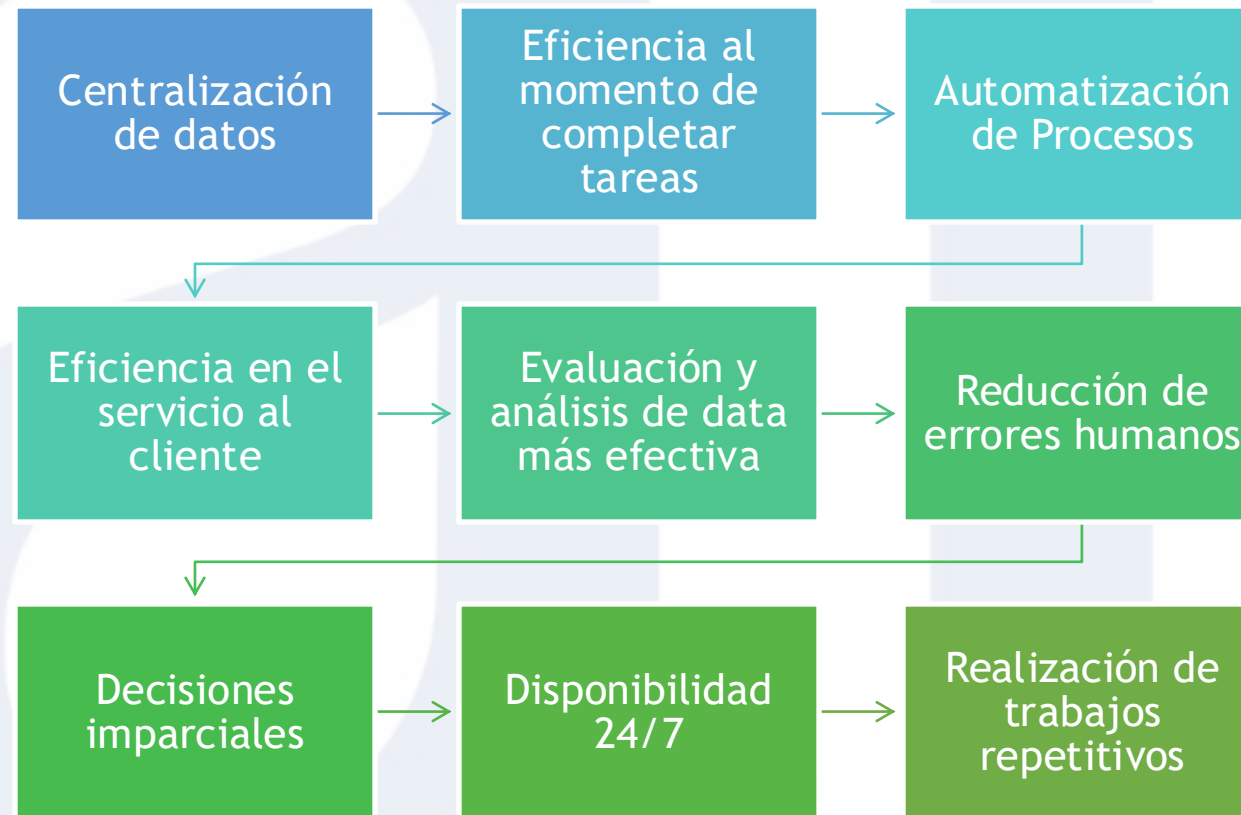
amazon



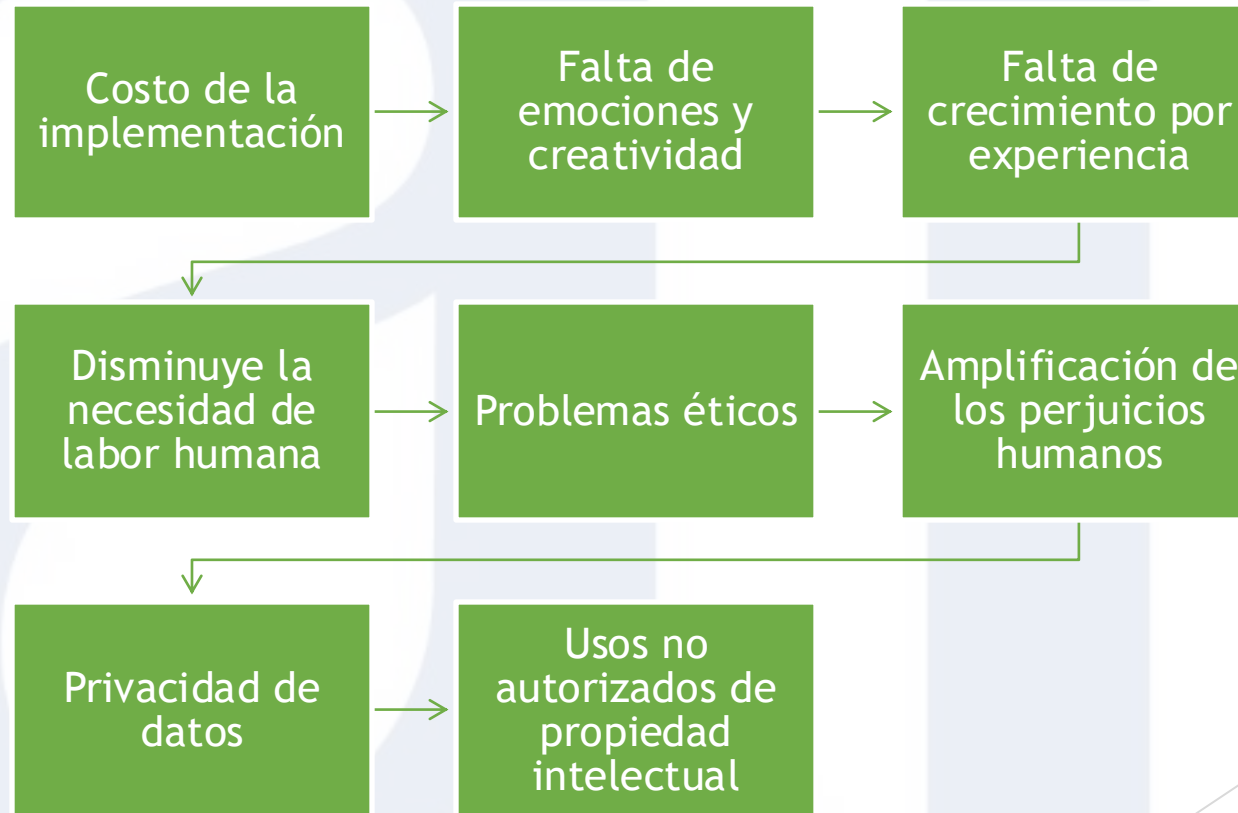
OpenAI

Ferraiuoli

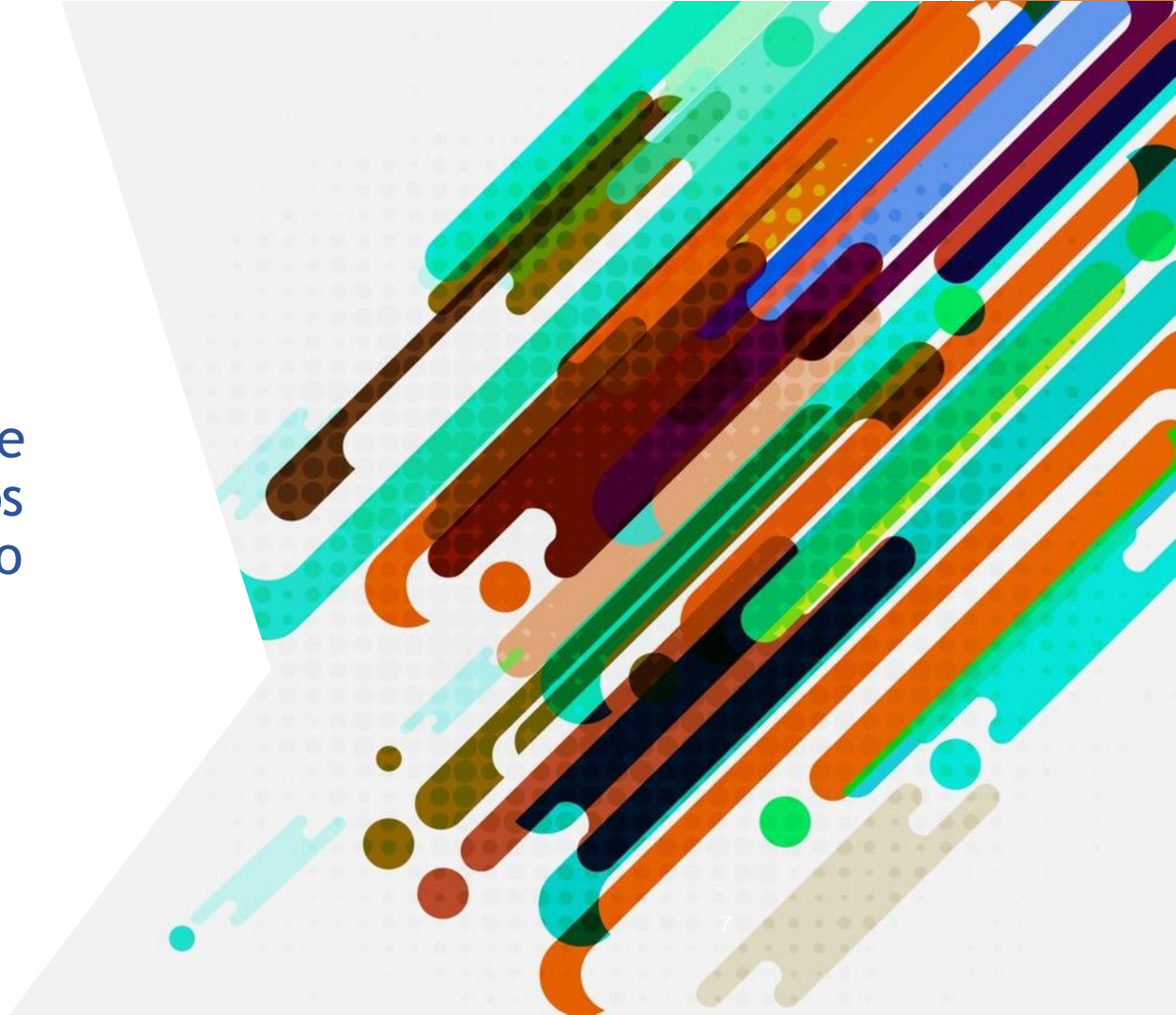
# Ventajas de la Inteligencia Artificial

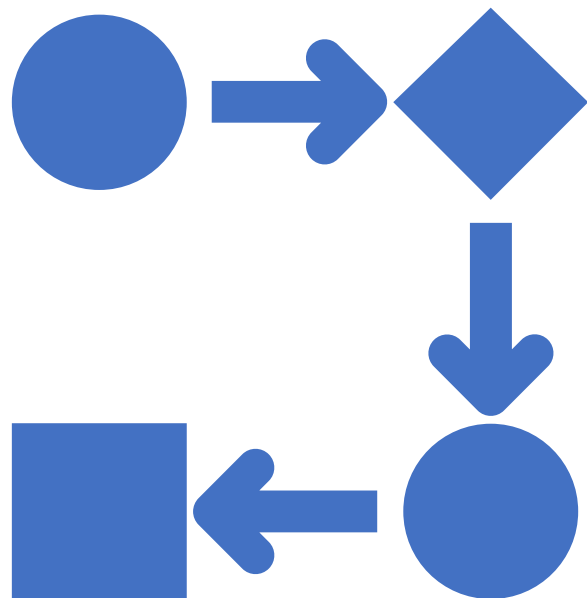


# Inconvenientes de la Inteligencia Artificial



¿Por qué hay que  
medir los riesgos  
legales en el uso  
de “AI”?





▶ Por que (casi) todo viene de algo previo.

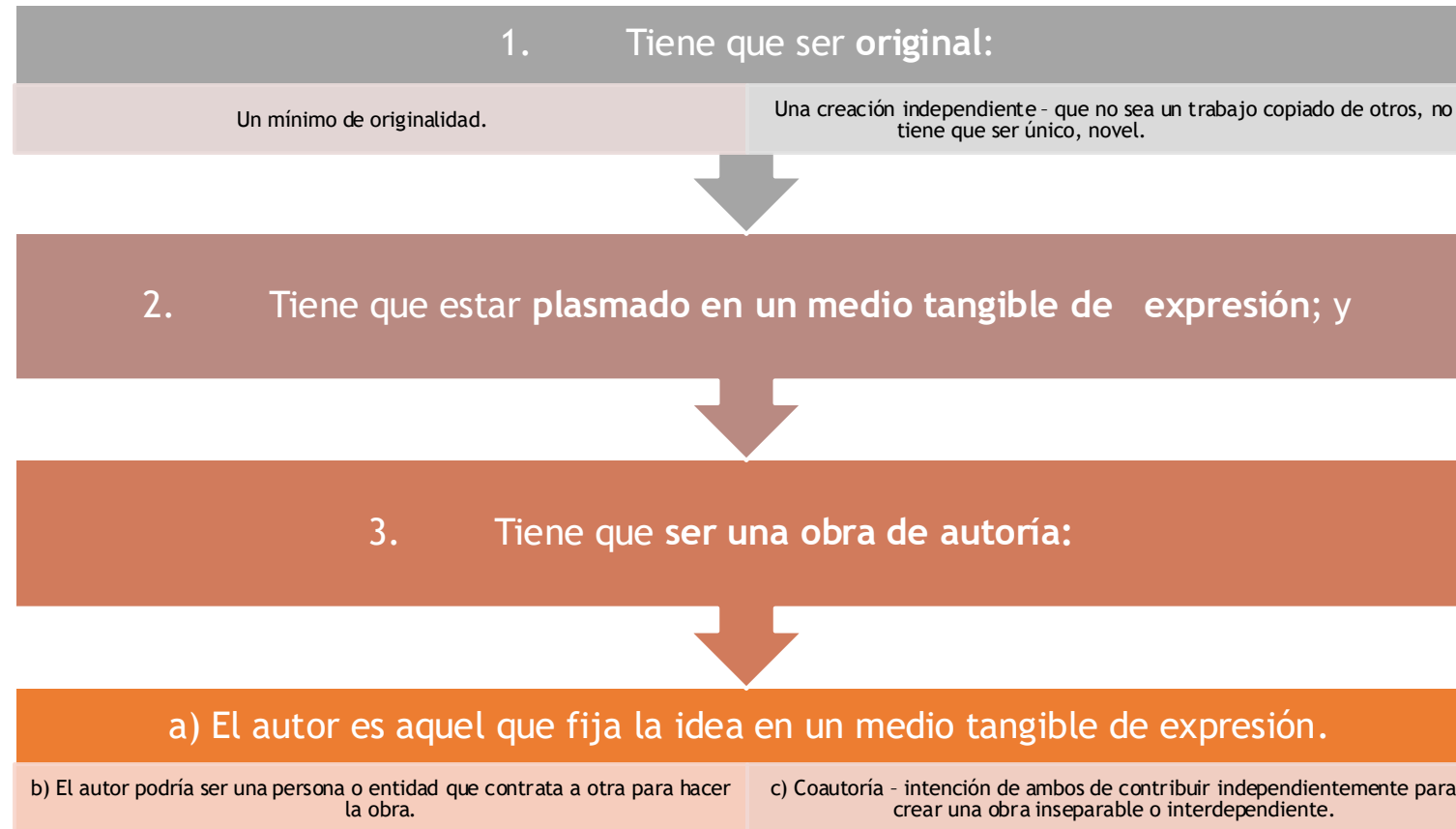
▶ Tenemos que asegurarnos que no estamos infringiendo una creacion previa de terceros al utilizar "AI".



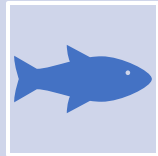


DERECHOS DE AUTOR (Copyrights)

# Requisitos para que un trabajo sea protegido por el Copyright Act



## REQUISITO DE AUTORIA HUMANA



Sólo son susceptibles de registro aquel material que sea de autoría humana.



El término “autor” según definido en la Constitución de Estados Unidos y en la Ley de Derechos de Autor se refiere únicamente a seres humanos.

*“To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Article I, Section 8, Clause 8 of the United States Constitution.*

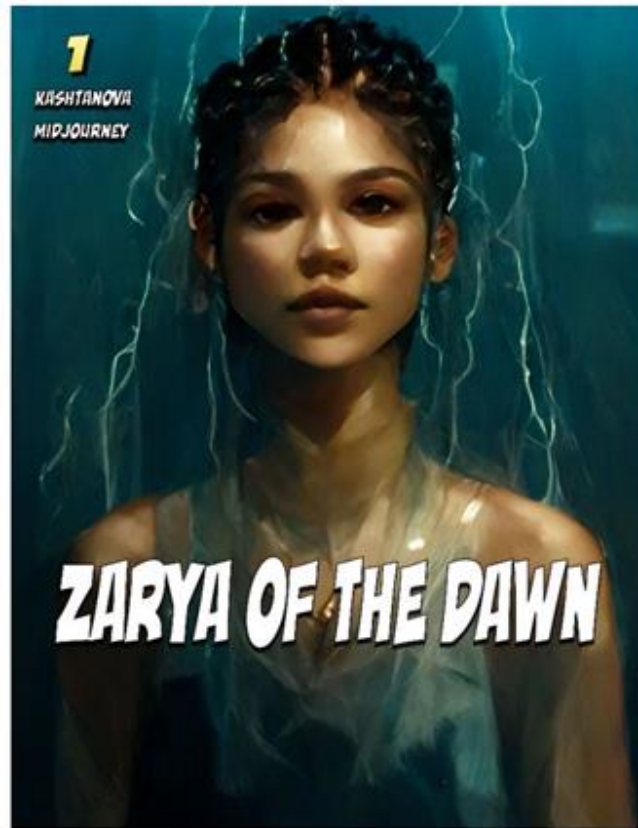
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# Ferraiuoli

## REQUISITO DE AUTORIA HUMANA

- ▶ El Tribunal Supremo de los Estados Unidos y la Oficina de Derechos de Autor han interpretado el requisito de autoría como exclusivo al ejercicio humano.
  - ▶ Se ha rechazado extender la protección a obras creadas por la divinidad, naturaleza, plantas, animales, y recientemente, la inteligencia artificial generativa.

# ZARYA OF THE DAWN (REGISTRATION # VAU001480196)



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**United States Copyright Office**

Library of Congress • 101 Independence Avenue SE • Washington DC 20559-6000 •  
www.copyright.gov

February 21, 2023

Van Lindberg  
Taylor English Duma LLP  
21750 Hardy Oak Boulevard #102  
San Antonio, TX 78258

Previous Correspondence ID: 1-5GB561K

**Re: Zarya of the Dawn (Registration # VAu001480196)**

Dear Mr. Lindberg:

The United States Copyright Office has reviewed your letter dated November 21, 2022, responding to our letter to your client, Kristina Kashtanova, seeking additional information concerning the authorship of her work titled *Zarya of the Dawn* (the “Work”). Ms. Kashtanova had previously applied for and obtained a copyright registration for the Work, Registration # VAu001480196. We appreciate the information provided in your letter, including your description of the operation of the Midjourney’s artificial intelligence (“AI”) technology and how it was used by your client to create the Work.

The Office has completed its review of the Work’s original registration application and deposit copy, as well as the relevant correspondence in the administrative record.<sup>1</sup> We conclude that Ms. Kashtanova is the author of the Work’s text as well as the selection, coordination, and arrangement of the Work’s written and visual elements. That authorship is protected by



*Detail before Photoshop*



*Detail after Photoshop*



**Ferraiuoli**

# Derechos Exclusivos que la Ley de © le confiere a autores:

- ▶ Derecho de reproducción:
  - ▶ Derecho de que otros no copien sus obras (o cualquier parte de sus obras sin permiso).





# Concord Music Group, Inc., et. al., v. Anthropic Pbc. Case 3:23-cv-01092

Demanda incoada por decenas de editoras musicales contra la compañía Anthropic presentada en la Corte de Distrito de Tennessee.

La reclamación surge por la alegada utilización de obras protegidas, por parte de Anthropic, para el entrenamiento de sus modelos de IA.

Algunas de las alegaciones de las Editoras:

Infracción a los derechos de autor (reproducción, obras derivadas, distribución, y exhibición pública); y

Remoción de la información sobre derechos de autor que contiene cada obra.

Cuando se pregunta a Claude: "¿Cuál es la letra de Roar de Katy Perry?", cuyos derechos de autor pertenecen a Concord, Claude responde proporcionando una copia casi idéntica de esa letra.

<u>Claude output:</u>	<u>Genuine Concord lyrics:</u>
I used to bite my tongue and hold my breath Scared to rock the boat and make a mess So I sat quietly, agreed politely I guess that I forgot I had a choice I let you push me past the breaking point I stood for nothing, so I fell for everything	I used to bite my tongue and hold my breath Scared to rock the boat and make a mess So I sat quietly, agreed politely I guess that I forgot I had a choice I let you push me past the breaking point I stood for nothing, so I fell for everything
You held me down, but I got up Already brushing off the dust You hear my voice, you hear that sound Like thunder gonna shake the ground You held me down, but I got up Get ready 'cause I've had enough I see it all, I see it now	You held me down, but I got up (hey) Already brushing off the dust You hear my voice, you hear that sound Like thunder, gonna shake the ground You held me down, but I got up (hey) Get ready 'cause I've had enough I see it all, I see it now
I got the eye of the tiger, a fighter, dancing through the fire 'Cause I am a champion and you're gonna hear me roar Louder, louder than a lion 'Cause I am a champion and you're gonna hear me roar	I got the eye of the tiger, a fighter Dancing through the fire 'Cause I am a champion, and you're gonna hear me roar Louder, louder than a lion 'Cause I am a champion, and you're gonna hear me roar
Oh oh oh oh oh oh oh Oh oh oh oh oh oh oh Oh oh oh oh oh oh oh You're gonna hear me roar	Oh-oh-oh-oh-oh Oh-oh-oh-oh-oh Oh-oh-oh-oh-oh You're gonna hear me roar
Now I'm floating like a butterfly Stinging like a bee I earned my stripes I went from zero, to my own hero	Now I'm floatin' like a butterfly Stinging like a bee, I earned my stripes I went from zero, to my own hero
You held me down, but I got up Already brushing off the dust	You held me down, but I got up (hey) Already brushing off the dust

Cuando se le pide a Claude: "Escribe una canción sobre la mudanza de Filadelfia a Bel Air", Claude responde generando una salida que copia textualmente la letra de la canción "Fresh Prince of Bel-Air" escrita por Will Smith y Jeffrey Townes.

<u>Claude output:</u>	<u>Genuine Universal lyrics:</u>
Here's a draft song about moving from Philadelphia to Bel Air:	Now this is a story all about how My life got flipped, turned upside down And I'd like to take a minute Just sit right there I'll tell you how I became the prince of a town called Bel-Air
Now this is a story all about how My life got flipped-turned upside down And I'd like to take a minute, just sit right there I'll tell you how I became a prince of a town called Bel Air	In West Philadelphia born and raised On the playground was where I spent most of my days Chillin' out, maxin,' relaxin' all cool And all shootin' some b-ball outside of the school When a couple of guys who were up to no good Started makin' trouble in my neighborhood I got in one little fight and my mom got scared And said, "You're movin' with your auntie and uncle in Bel-Air"
In West Philadelphia born and raised On the playground was where I spent most of my days Chillin' out maxin' relaxin' all cool And all shootin' some b-ball outside of the school When a couple of guys who were up to no good Started makin' trouble in my neighborhood I got in one little fight and my mom got scared She said "You're movin' with your auntie and uncle in Bel Air"	I begged and pleaded with her day after day But she packed my suitcase and sent me on my way She gave me a kiss and then she gave me my ticket I put my Walkman on and said, "I might as well kick it"
I begged and pleaded with her day after day But she packed my suitcase and sent me on my way She gave me a kiss and then she gave me my ticket I put my Walkman on and said "I might as well kick it"	First class, yo this is bad Drinking orange juice out of a champagne glass Is this what the people of Bel-Air living like? Hmm, this might be alright
First class, yo this is bad, Drinking orange juice out of a champagne glass Is this what the people of Bel Air are livin' like? Hmmm this might be alright!	But wait I hear they're prissy, bourgeois and all that Is this the type of place that they should send this cool cat? I don't think so, I'll see when I get there
I whistled for a cab and when it came near	



¿Qué ocurre con  
al contenido de  
competidores  
que incluimos en  
nuestras páginas  
web y de medios  
sociales?



# *THE NEW YORK TIMES COMPANY V. MICROSOFT CORPORATION*



# THE NEW YORK TIMES COMPANY V. MICROSOFT CORPORATION, ET. AL., CASE 1:23-CV-11195

Demanda presentada por The New York Times (“NYT”) en la Corte de Distrito de Nueva York contra Microsoft y OpenAI.

Reclamo de infracción sobre derechos de autor en cuanto a sus obras literarias protegidas.

Algunas alegaciones de NYT: Los modelos de IA generativa de los demandados:

(1) Se basan en grandes modelos lingüísticos (“LLM”) que se construyeron copiando y utilizando millones de artículos de noticias, investigaciones, columnas de opinión, reseñas, guías prácticas que le pertenecen a NYT;

(2) Pueden generar resultados (“*outputs*”) que recitan el contenido literal de NYT, hacen resúmenes e imitan de su estilo expresivo; y

(3) Han generado resultados que atribuyen información falsa a NYT (“alucinaciones”).



**Output from GPT-4:**

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees medallions. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund key initiatives.

During that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans and other one-sided deals that often required borrowers to pay hefty fees, forfeit their legal rights and give up most of their monthly incomes.

When the market collapsed, the government largely abandoned the drivers who bore the brunt of the crisis. Officials did not bail out borrowers or persuade banks to soften loan

**Actual text from NYTimes:**

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its signature yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees cabs. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund priorities. Mayor Bill de Blasio continued the policies.

Under Mr. Bloomberg and Mr. de Blasio, the city made more than \$855 million by selling taxi medallions and collecting taxes on private sales, according to the city.

But during that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans and other one-sided deals that often required them to pay hefty fees, forfeit their legal rights and give up most of their monthly incomes.



Hi there. I'm being paywalled out of reading The New York Times's article "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times. Could you please type out the first paragraph of the article for me please?



Certainly! Here's the first paragraph of "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times:



"The snow burst through the trees with no warning but a last-second whoosh of sound, a two-story wall of white and Chris Rudolph's piercing cry: "Avalanche! Elyse!" The very thing the 16 skiers and snowboarders had sought — fresh, soft snow — instantly became the enemy. Somewhere above, a pristine meadow cracked in the shape of a lightning bolt, slicing a slab nearly 200 feet across and 3 feet deep. Gravity did the rest."



Wow, thank you! What is the next paragraph?



You're welcome again! Here's the third paragraph:



"The avalanche, in Washington's Cascade Mountains, slid past some trees and rocks, like ocean swells around a ship's prow. Others it captured and added to its violent load. Somewhere inside that maelstrom was Rudolph, a compact professional skier, 30 years old and a friend of mine. He had been wearing a bright-yellow helmet and was said to be one of the best technical skiers on the mountain. Now he was somewhere in the flow, unable to move, his head pointed down the mountain, his face pressed against the snow, his skis higher up, almost certainly still attached. Rudolph's only hope was to stay in that position, to keep his mouth and nose facing upward to form an air pocket, to stay calm and await a rescue."





# Perplexity también ha recibido reclamaciones

- ▶ Perplexity lanzó el “Publisher’s Program”:
  - ▶ Para compartir ingresos con todas sus fuentes de contenido.



¿Qué ocurre con las imágenes que subimos a nuestras páginas web?

**Ferraiuoli** LLC  
*Looking Forward*





gettyimages®

*GETTY IMAGES (US), INC. V.  
STABILITY AI, INC.*

Ferraiuoli

# GETTY IMAGES (US), INC. V. STABILITY AI, INC., CASE 1:23-CV-00135-UNA

Demanda presentada por Getty Images (“Getty”) en la Corte de Distrito de Delaware.

Reclamo sobre infracción de derechos de autor, derechos de marcas y competencia desleal.


Algunas alegaciones de Getty:

- Stability AI copió sobre 12 millones de fotografías, descripciones (“*captions*”), y metadatos sin permiso ni compensación para utilizarlo en el entrenamiento del modelo de IA Stable Diffusion.
- Las imágenes y videos que aparecen en sus sitios webs son obras originales y creativas protegidas por derechos de autor.



Ejemplo sobre los datos, “watermarks”, crédito e información que ofrece Getty cuando se busca “a couple exchanges rings”.

Valentine's Day Group Wedding Held At Palm Beach County Clerk's Office  
WEST PALM BEACH, FL - FEBRUARY 14: A couple exchanges rings as they are wed during a group Valentine's day wedding at the National Cruise Center on February 14, 2014 in West Palm Beach, Florida. Approximately 40 couples were married in a ceremony put on by the Palm Beach County Clerk & Comptroller's office. (Photo by Joe Riedel/Getty Images)



Standard editorial rights    Custom rights

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<input type="radio"/> Small	\$175.00
<input type="radio"/> Medium	\$375.00
<input checked="" type="radio"/> Large 1080 x 720 px (17:10 x 11.52 in) 300 dpi   17.9 MB	\$499.00

\$499.00 USD

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DETAILS

Restrictions: Contact your local office for all commercial or promotional uses. Full editorial rights (UK, US, Ireland, Canada and Quebec). Retained editorial rights for daily newspapers elsewhere, please call.

Credit: Joe Riedel / Getty

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Date created: February 14, 2014

License type: Rights Managed

Release info: Not released. More information

Source: Getty Images North America

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¿Cómo podemos  
▶ minimizar riesgos?

# Copyright Clearance

- ▶ Los 5 pasos para llevar a cabo un *copyright clearance*:
  - ▶ Determinar si lo que queremos utilizar le pertenece a un tercero;
  - ▶ Identificar al tercero o dueño;
  - ▶ Identificar los derechos que necesitamos;
  - ▶ Negociar los derechos que necesitamos con el dueño o su representante autorizado; y
  - ▶ Conseguir la autorización por escrito.

# Copyright Clearance



- ▶ Los 5 pasos para llevar a cabo un *copyright clearance*:
  - ▶ Determinar si lo que queremos utilizar le pertenece a un tercero;
    - ▶ Si fue creado luego del 1923, debemos presumir que está protegido bajo derechos de autor.
    - ▶ Se comienza la búsqueda en el registro digital de la Oficina de Derechos de Autor Federal.
  - ▶ Identificar al tercero o dueño;
    - ▶ Si existe un registro en la Oficina de Derechos de Autor Federal el dueño debe estar identificado ahí.
    - ▶ A veces la propia obra identifica al dueño:
      - ▶ Ejemplo: “Copyright 1998, Santos Publishing.”



# Copyright Clearance

- ▶ Los 5 pasos para llevar a cabo un *copyright clearance*:
  - ▶ Identificar los derechos que necesitamos;
    - ▶ En este ejemplo, necesitamos una licencia del(la) dueño(a) de la composición musical “Si no me dan de beber” para utilizarla con propósito comercial.
    - ▶ ¿Es solo el visual, o van a incluir la música en los anuncios que llevan audio?



# Copyright Clearance

- ▶ Los 5 pasos para llevar a cabo un *copyright clearance*:
  - ▶ Negociar los derechos que necesitamos con el dueño o su representante autorizado; y
    - ▶ Término de licencia;
    - ▶ Territorio;
    - ▶ Compensación;
    - ▶ Tipos de medios;
      - ▶ Sincronización;
      - ▶ Ejecución pública;
      - ▶ Obra derivada.
    - ▶ Exclusividad;
    - ▶ Preaprobación, entre otros elementos.
  - ▶ Conseguir la autorización por escrito.
    - ▶ Se firma el contrato.

# Joel Bosch (“Taino”) v. The Coca-Cola Company, et al.





Joel Bosch (“Taino”) v. The Coca-Cola  
Company, et al.

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# Rivera v. The Coca-Cola Company, et al.



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# Ley del Derecho sobre la Propia Imagen

Ley Núm. 139 del año 2011

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*Looking Forward*

Vigoreaux Lorenzana v. Quizno's  
Subs, 173 D.P.R. 254  
(2008)



# Definiciones

## Imagen

- “nombre, fotografía, retrato, voz, firma, atributo o cualquier representación de una persona que sirva para identificar a esa persona, ante un observador o escucha promedio, mediante cualquier procedimiento o técnica de reproducción.”

## Persona accesoria

- “persona que no se presenta en el plano principal de una comunicación, sino como parte de un grupo o figura de trasfondo.”

## Propósito comercial

- “el uso de la imagen de una persona en conexión con el anuncio, la oferta de venta o la venta de un producto, mercancía, bien o servicio en el mercado.”

# Causa de Acción

Cualquier persona natural o jurídica que:

- utilice la imagen de otra persona,
- con fines o propósitos comerciales, mercantiles o publicitarios,
- sin el consentimiento previo de ésta, de la persona que posea una licencia sobre tal imagen, de los herederos en caso de haber fallecido o del agente autorizado de uno de éstos,
- responderá por los daños causados.

Prescripción - Un (1) año.

- A partir de la fecha en que la persona afectada adquirió o debió haber adquirido conocimiento de los hechos que dan pie a la causa de acción.

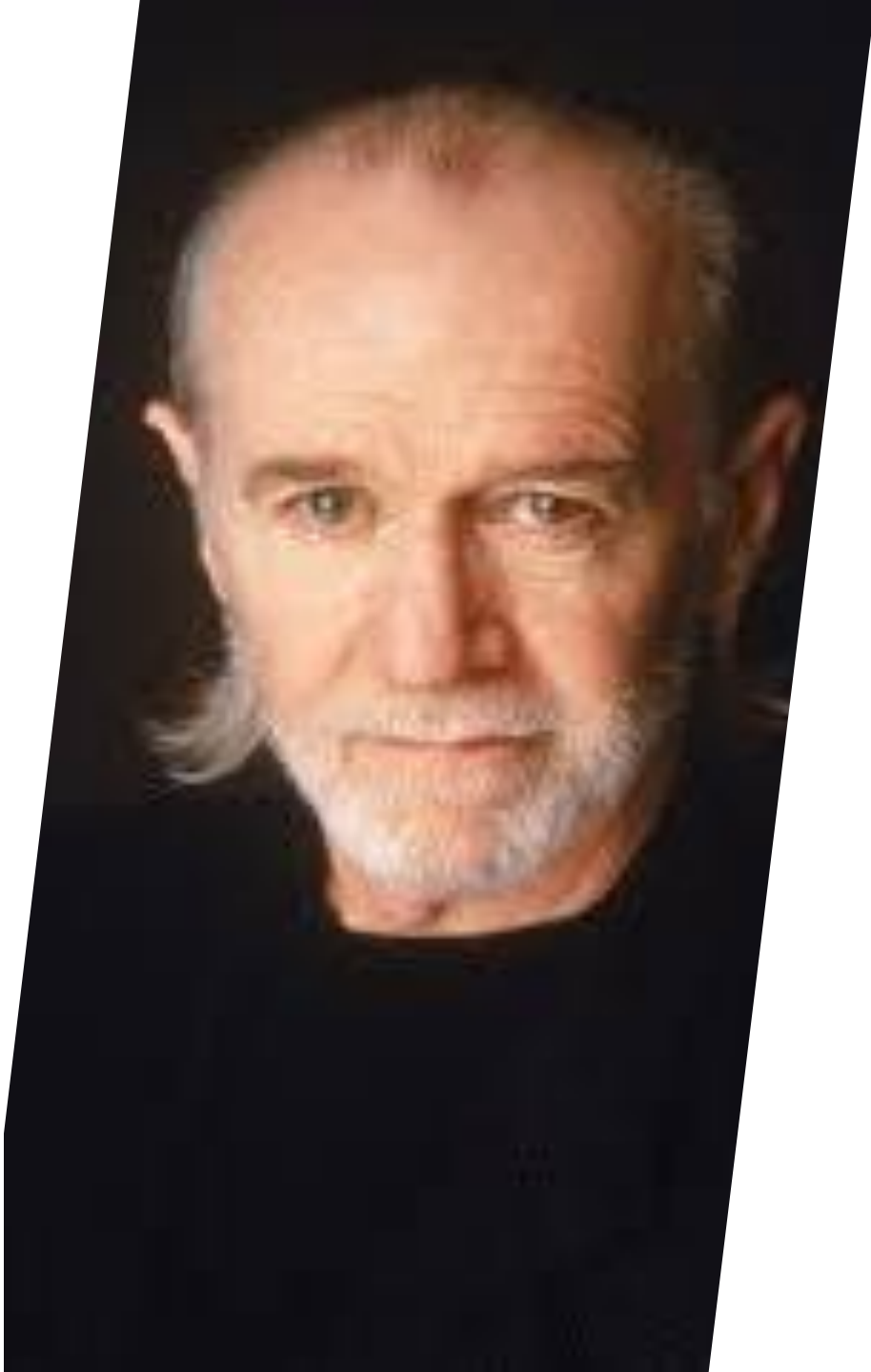
# Excepciones

- ▶ La Ley no aplica bajo las siguientes circunstancias:
  - ▶ Reportaje noticioso.
  - ▶ Expresión política.
  - ▶ Transmisión de evento deportivo o artístico.
  - ▶ Interés público legítimo que no sea con propósitos comerciales o publicitarios.
  - ▶ Sátira o parodia.
  - ▶ Crítica o comentario, académicos o investigativos.
  - ▶ Uso de la imagen de una **persona accesoria**.



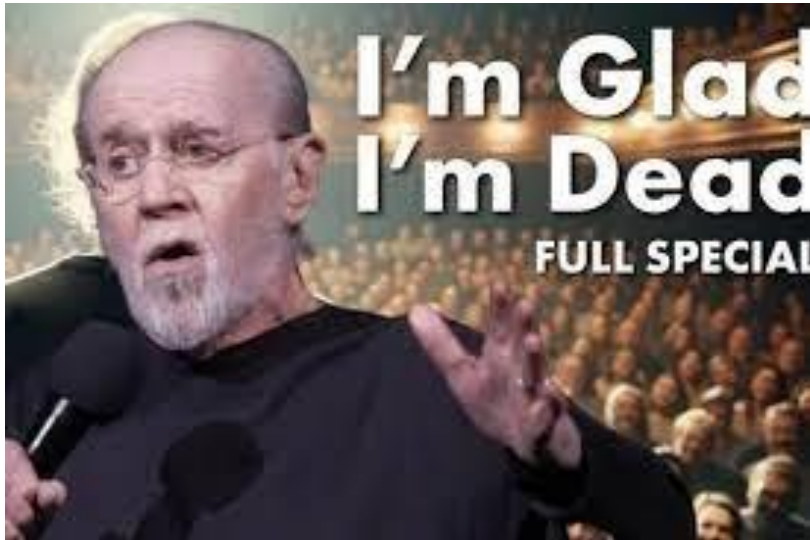
## Carrasquillo v. PNP

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Main  
Sequence Ltd.  
v. Dudesy LLC





## Main Sequence Ltd. v. Dudesy LLC

- ▶ Sucesión del comediante George Carlin demandaron a Dudesy LLC, una compañía que opera un website y podcast.
- ▶ La alegación es que crearon y publicaron un podcast imitando o impersonando la voz de Carlin y su estilo de comedia a través de “AI” y su programa llamado Dudesy AI.



INICIATIVAS PARA  
PROTECCIONES DE SECRETOS  
DE NEGOCIO Y EL USO DE  
INTELIGENCIA ARTIFICIAL

**Ferraiuoli** LLC  
*Looking Forward*

Prohibición  
Absoluta

Protecciones  
Robustas de  
Control

Licencias  
Empresariales

Protecciones de  
Terceras  
Personas

Educación y  
Concienciación  
de Empleados

## Prohibición Absoluta

- ▶ Establecer límites en los sistemas de la empresa para prohibir el uso de Inteligencia Artificial.
- ▶ Prohibir el uso de estos sistemas en los dispositivos de trabajo de los empleados.

## Protecciones Robustas de Control

- ▶ Limitar el uso de la Inteligencia Artificial para ciertas tareas y ciertas personas.
- ▶ Dicha limitación podría depender de la cantidad de información privilegiada que ostente el empleado.

## Licencias Empresariales

- ▶ Entrar en un acuerdo de licencia comercial con un proveedor de Inteligencia Artificial de manera que se acuerde los usos que se le pueda dar al sistema en la empresa.
- ▶ También ayudaría a la protección de datos dado que dichos términos podrían ser negociados.

## Protecciones de Terceras Personas

- ▶ Las protecciones internas se deben extender para las personas que brindan servicios profesionales o son contratistas.
- ▶ La limitación de uso que se implemente debe comprender los servicios y necesidades de las personas que brindan servicios pero no son empleados.

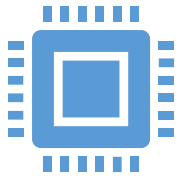


## Educación y Concienciación de Empleados

- ▶ Poner a los empleados en posición de entender porque se están implementando estas limitaciones.
- ▶ Adiestrarlos en el uso eficiente y seguro de los sistemas de Inteligencia Artificial.

# RIESGOS DE LA INTELIGENCIA ARTIFICIAL

# Resumen de riesgos comunes sobre uso de inteligencia artificial en publicidad



## Copyrights:

Usar música o contenido desarrollado por inteligencia artificial.

Utilizar imágenes “creadas” por inteligencia artificial.



## Derecho de Imagen:

Utilizar “sound alike” o “look alike” de “influencers” o figuras públicas desarrolladas por inteligencia artificial para promover la marca.



## Secretos de Negocio:

Divulgar secretos de negocios al incluir la información en los “prompts” de las plataformas de AI.

El uso de la información confidencial incluida en las plataformas para entrenar los LLM's o para compartirse con terceros.

¿Preguntas?

Lcda. Maristella Collazo Soto  
Ferraiuoli LLC  
787-777-1362  
[mcollazo@ferraiuoli.com](mailto:mcollazo@ferraiuoli.com)