Artificial Intelligence Update

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- This presentation is not legal advice.

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Types of Artificial Intelligence

- Artificial intelligence

- Generative Artificial intelligence

- Narrow Artificial Intelligence

- General Artificial Intelligence

- Etc.

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What is generative artificial intelligence?

- Artificial intelligence is a <u>broad term</u> used to describe <u>an engineered system that uses</u> various <u>computational techniques to perform or automate tasks</u>. This may include techniques, such as <u>machine learning</u>, in which machines learn from experience, adjusting to new input data and potentially performing tasks previously done by humans. More specifically, it is a field of computer science dedicated to <u>simulating intelligent behavior</u> in computers. It may include automated decision-making.

  - International Association of Privacy Professionals: "Artificial Intelligence"

- Generative AI uses <u>advanced technologies such as predictive algorithms, machine learning, and large language models</u> to process natural language and produce content in the form of text, images and other types of media. Generated content is <u>remarkably similar to what a human creator might produce</u>, such as text consisting of comprehensive narratives with complete sentences.

  - MOM-SITSD: Generative Artificial Intelligence Acceptable Use Standard

- Generative AI is a type of artificial intelligence that <u>creates new, original content</u> such as text, images, audio, video, or code by <u>learning patterns from large datasets</u> and responding to user prompts or requests.

  - Perplexity AI. Prompt: "What is generative ai"

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What is generative artificial intelligence?

- 'AI system' means a <u>machine-based system</u> that is <u>designed to operate with varying levels of autonomy</u> and that may exhibit <u>adaptiveness after deployment</u>, and that, for explicit or implicit objectives, <u>infers, from the input it receives, how to generate outputs</u> such as predictions, content, recommendations, or decisions that can influence physical or virtual environments

  - EU AI Act, Article 3(1)

- "Artificial Intelligence System" means any machine-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including content, decisions, predictions, or recommendations, that can influence physical or virtual environments

  - Colardo AI Act, Section 1(2)

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Montana Legislative Activity

Senate Bill 212 – D. Zolnikov

Creating the Right to Compute Act and requiring shutdowns of AI controlled critical infrastructure

- "The legislature finds that the <u>rights to acquire, possess, and protect property</u> under Article II, section 3, of the Montana constitution, and the <u>freedom of expression</u> under Article II, section 7, of the Montana constitution, also <u>embody the notion of a fundamental right to own and make use of technological tools, including computational resources</u>. <u>Any restrictions placed by the government</u> on the ability to private own or make use of computational resources for lawful purposes <u>must be</u> limited to those demonstrably necessary and <u>narrowly tailored to fulfill a compelling government interest.</u>" Section 2.

Senate Bill 212 – D. Zolnikov

Creating the Right to Compute Act and requiring shutdowns of AI controlled critical infrastructure

- "When critical infrastructure facilities are controlled in whole or in part by a critical artificial intelligence system, the deployer shall develop a risk management policy after deploying the system that is reasonable and considers guidance standards in the latest version of the artificial intelligence risk management framework …." Section 4.

- "Nothing in [sections 1 through 7] may be construed to alter, diminish, or interfere with the rights and remedies available under federal or state intellectual property laws, including but not limited to patent, copyright, trademark, and trade secret laws." Section 5.

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House Bill 178 – B. Mitchell

Limit government use of AI systems

Cosponsors: D. Zolnikov, C. Hinkle, G. Lammers, J. Gillette, T. Falk, K. Bogner

- "Artificial intelligence system" means a machine learning-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including by not limited to content, decisions, predictions, and recommendations that can influence physical or virtual environments." Section 1(1)

- "Cognitive behavioral manipulation" means the use of artificial intelligence systems to influence or alter an individual's or group's thoughts, emotions, decisions, or actions through deceptive, coercive, or subliminal means, or by exploiting psychological vulnerabilities, without the informed consent of the individual or group being influenced." Section 1(2)

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House Bill 178 – B. Mitchell

Limit government use of AI systems

Section 2. Prohibited use of artificial intelligence by government entity. A government entity or state officer may not use an artificial intelligence system:

(1) For the cognitive behavioral manipulation of a person or group;

(2) To classify a person or group based on behavior, socioeconomic status, or personal characteristics resulting in unlawful discrimination or a disparate impact on a person or group based on an actual or perceived differentiating characteristic;

(3) for a malicious purpose; or

(4) For surveillance of public spaces, except:

  (a) To locate a missing, endangered, or wanted person; or

  (b) In conformity with Title 44, chapter 15, part 1, regarding continuous facial surveillance.

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House Bill 178 – B. Mitchell

Limit government use of AI systems

Section 3. Required disclosures by government entities – exemption. (1) Except as provided in subsection (2):

(a) If a government entity or state officer publishes material produced by an artificial intelligence system that is not reviewed by a human in an appropriate responsible position, the material must be accompanied by a disclosure that the material was produced by an artificial intelligence system; and

(b) If a government entity or state officer has an interface with the public that uses an artificial intelligence system, the use of the artificial intelligence system in the interface must be disclosed.

Section 2 exempts peace officers in certain work

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House Bill 513 – J. Cohenour

An Act revising laws related to the name, voice, and visual likeness of individuals

Cosponsors: K. Bogner, L. Brewster, C. Cochran, S. Essman, T. France, M. Marler, T. Millett, R. Miner, B. Mitchell, V. Moore, M. Romano, J. Seckinger, T. Sharp. K. Sullivan, P. Tuss, D. Zolnikov, K. Zolnikov, D. Baum, Z. Zephyr

- **Section 1: "An individual has property rights in their name, voice, and visual likeness" if they are a resident of Montana or domiciled here.**

- **Section 1(3): "A person is liable for damages … if the person, without consent …:**

  - "distributes, transmits, or otherwise makes available to the public an algorithm, software, tool, or other technology, service, or device with actual and specific knowledge that the primary purpose … is to produce one or more unauthorized digital voice depictions or digital visual depictions … for commercial use"

  - "intentionally publishes, performs, distributes, transmits, or makes available to the public …"

- **Liability for "actual damages suffered "plus any profits from the unauthorized use"**

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House Bill 513 – J. Cohenour

- However: Section 1(5): "If a person who violated ... had an <u>objectively reasonable belief</u> that material that is claimed to be an unauthorized digital voice depiction or digital visual depiction did not qualify as an unauthorized digital voice depiction or digital visual depiction, <u>the person is not liable for actual damages</u> regardless of whether the material is ultimately determined to be an unauthorized digital voice depiction or digital visual depiction."

  - Silent as to profits damages

- Section 1(8): "To the extent the use is protected by the First Amendment to the United States Constitution and Article II, section 7, of the Montana constitution, it is not a violation <u>if the use is</u>:"

  - News
  - In connection with news
  - Comment, parody
  - "a representation of an individual as themselves" unless intended to create a false impression it is the person
  - "Fleeting or negligible"
  - An advertisement for one of this list

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House Bill 513 – J. Cohenour

Ok… but what's a "digital visual depiction"?

- "Digital visual depiction" means a <u>newly created</u>, <u>computer-generated</u>, and <u>highly realistic</u> depiction made of the <u>visual likeness</u> of a <u>particular individual</u> that is created or altered in whole or in part <u>using digital technology</u> in a way that the depiction is <u>nearly indistinguishable from an actual depiction</u> of the particular individual. The depiction is such that a <u>reasonable person believes</u> the depiction is genuine and:

  - It depicts the particular individual in a manner that the particular individual did not actually perform or appear; or
  - If the particular individual did perform or appear, the depiction was materially altered from the fundamental character of the performance or appearance.

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- "Visual likeness" means an <u>actual or simulated physical depiction</u> or representation, <u>digital depiction</u> or representation, or other form of depiction or representation, <u>regardless of the means of its creation</u>, that is <u>readily identifiable as an individual's face</u> or <u>other personal information displayed</u> <u>constituting readily identifiable characteristics of the individual</u>.

- **January 1 effective date**

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Senate Bill 25 – J. Ellis

An act regulating the use of deepfakes in election communications and electioneering communications

- "Deepfake" means <u>AI-generated content</u> or <u>synthetic media</u> that depicts a candidate or political party <u>with the intent to injure the reputation</u> of the candidate or party or otherwise deceive a vote. A deepfake:

  - Appears to a <u>reasonable person</u> <u>to depict</u> an individual saying or doing something <u>that did not occur in reality</u>; or

  - <u>Provides a reasonable person</u> a <u>fundamentally different understanding</u> or impression of the appearance, action, or speech <u>than a reasonable person would have</u> from the unaltered, original version of the image, audio recording or video recording

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Senate Bill 25 – J. Ellis

An act regulating the use of deepfakes in election communications and electioneering communications

- "AI-generated content" means image, video, audio, multimedia, or text content that is <u>substantially created or modified by generative artificial intelligence</u> in a manner that <u>materially alters the meaning or significance</u> that a <u>reasonable person</u> understands from the content.

  - The <u>term does not include</u> image, video, audio, multimedia, or text content that is <u>minimally edited</u>, adjusted, or enhanced by generative artificial intelligence in a manner that does not materially alter the meaning or significance that a reasonable person understands from the content.

- "Synthetic media" means an image, audio recording, or video recording of an <u>individual's appearance, speech, or conduct</u> that has been created or intentionally manipulated with the use of <u>generative artificial intelligence or other digital technology</u> to create a realistic but false image, audio, or video.

Senate Bill 25 – J. Ellis

- "Generative artificial intelligence" means an artificial intelligence system capable of generating novel image, video, audio, multimedia, or text content based on prompts or other forms of data provided by a person.

- NOTE: A strict reading of these definitions includes <u>misleading</u> depictions, whether or not AI is involved, so long as the editing is more than "minimal."

Senate Bill 25 – J. Ellis

- Bars use of deepfakes "within 60 days of the initiation of voting in an election"

  - UNLESS: The communication includes a disclosure stating "This (image/audio/video/multimedia) has been significantly edited by artificial intelligence and depicts speech or conduct that falsely appears to be authentic or truthful."

- Provides for injunctive relief, monetary damages, and up to $10,000 in punitive damages. Plaintiff must make a showing by clear and convincing evidence.

- Commissioner of Political Practices may also enforce

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House Bill 514 – J. Cohenour

An Act generally revising laws related to violating privacy in communications

Cosponsors: K. Bogner, L. Brewster, C. Cochran, S. Essman, T. France, C. Keogh, M. Marler, T. Millett, R. Miner, B. Mitchell, V. Moore, M. Romano, J. Seckinger, T. Sharp, K. Sullivan, P. Tuss, D. Zolnikov, K. Zolnikov, D. Baum, Z. Zephyr

- Makes a crime, "with the purpose to terrify, intimidate, threaten harass, or injure or to obtain money or other valuable consideration, publishes, distributes, or discloses real or digitally fabricated" naked pictures or images of engaging in sexual acts.

- "Digitally fabricated" means using technical means, such as artificial intelligence, to create media that realistically misrepresents an identifiable individual as engaging in conduct in which the identifiable individual did not engage.

- Misdemeanor first offense; felony second and subsequent

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Senate Bill 414 – L. Smith

An Act creating the crime of disclosing explicit synthetic media

Cosponsors: D. Harvey, B. Usher, D. Hawk, F. Mandeville, K. Bogner, J. Hinkle

- **Felony to disclose "explicit synthetic media":**
  - Without consent if one shows or reasonably should know it will cause substantial emotional distress
  - With an intent to terrify, intimidate, threaten, harass, or injure; or
  - Possess and threaten to disclose with an intent to obtain money or other valuable consideration
- **"Synthetic media" means an image or video created or altered using technical means, including artificial intelligence, to realistically misrepresent an identifiable individual as engaging in conduct in which the identifiable individual did not engage.**
- **"Explicit synthetic media" means sexual conduct, nudity, etc.**

House Joint Resolution 4 – G. Parry

A joint resolution of the senate and house of representatives of the state of Montana requesting an interim study on artificial intelligence

Cosponsors: M. Nikolakakos, G. Overstreet, C. Schomer

- Examine state and federal laws; examine transparency; assess benefits and risks

- Assigned to Energy and Technology Interim Committee (ETIC)

- .15 FTE currently allocated:

  - Review Montana laws and regulations on transparency requirements and civil and criminal liability for entities that use AI
  - Panel on how state agencies currently use and regulate AI
  - Presentation from national experts on state/federal AI regulatory structures

National conversations about AI

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In re: OpenAI, Inc. Copyright infringement litigation

- "The Court has reviewed the News Plaintiffs' renewal of their request for an order directing OpenAI to preserve all output log data on a going forward basis, and even OpenAI's latest responses do not represent whether they have taken—or would take—steps to preserve and segregate the output log data that has been marked or requested for deletion, absent a court order."

- "Accordingly, OpenAI is **NOW DIRECTED to preserve <u>and segregate</u> all output log data that would otherwise be deleted on a going forward basis until further order of the Court** (in essence, the output log data that OpenAI has been destroying), whether such data might be deleted at a user's request or because of "numerous privacy laws and regulations" that might require OpenAI to do so."

Magistrate Ona T. Wang. 23-cv-11195, 25-md-3143 (SHS) (OTW)

Order (May 13, 2025) (S.D. NY)

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In re: OpenAI, Inc. Copyright infringement litigation

- "The New York Times is suing OpenAI. As part of their baseless lawsuit, they've recently asked the court to force us to retain all user content indefinitely going forward, based on speculation that they might find something that supports their case."

- "Is my data impacted?

  - Yes, if you have a ChatGPT Free, Plus, Pro, and Team subscription or if you use the OpenAI API (without a Zero Data Retention Agreement"

How we're responding to The New York Times' data demands in order to protect user privacy

https://openai.com/index/response-to-nyt-data-demands/

Accessed 9/21/2025

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Discrimination

- "Black Box" and AI

- AI Games for job applicants

  - Describing games requiring repeated pressing a key on the keyboard—may prove challenging for certain disabilities

- AI interviews

  - "...in AI-based video interviews: 'If the software cannot understand the interviewee because of a disability, such as a speech impediment, the program will automatically score them lower than someone without a disability, even though they are the most qualified applicant...'" quoting Keith Sonderling, former EEOC Commissioner

  - Stuttering: "Most forms of stuttering, such as when applicants stop their speech stream or repeat the beginning of a word, do not induce problems in the AI's transcriptions and predictions. But she [Lindsey Zuloaga, chief data scientist at HireVue] found one problem: when applicants repeat whole strings of words. ... She described her test cases as extreme cases of stuttering and <u>wondered how humans would also judge them</u>."

Schellman, Hilke: "The Algorithm: How AI decides who gets hired, monitored, promoted & fired & why we need to fight back now" 2024

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Legal filings

Judge disqualifies three Butler Snow attorneys from case over AI citations

By Sara Merken

July 24, 2025 11:22 AM MDT · Updated July 24, 2025

FILE PHOTO: Figurines with computers and smartphones are seen in front of the words "Artificial Intelligence AI" in this illustration taken, February 19, 2024. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights

July 24 (Reuters) - A federal judge in Alabama disqualified three lawyers from U.S. law firm Butler Snow from a case after they inadvertently included made-up citations generated by artificial intelligence in court filings.

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Massachusetts Lawyer Sanctioned for AI-Generated Fictitious Case Citations

"Many harms flow from the submission of fake opinions."

Judge Castel in Mata v. Avianca

In a well-reasoned opinion, a Court sanctioned a Massachusetts lawyer in the amount of $2,000 for citing fictitious cases in court pleadings that were produced by an AI tool. The case highlights some of the real risks of using AI in the legal profession, emphasizing that attorneys must exercise due diligence and be transparent when relying on AI-generated content. There is nothing wrong with using reliable AI technology for assistance in preparing legal documents. However, the ethical and professional rules that govern all attorneys require them to ensure the accuracy of their filings. This particular case highlights those obligations.

https://www.msba.org/site/site/content/News-and-Publications/News/General-News/Massachusetts_Lawyer-Sanctioned_for_AI_Generated-Fictitious_Cases.aspx

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A recent high-profile case of AI hallucination serves as a stark warning

Jaclyn Diaz

MyPillow CEO Mike Lindell arrives at a gathering of Donald Trump supporters near Trump's residence in Palm Beach, Fla., on April 4, 2023. On July 7, 2025, Lindell's lawyers were fined thousands of dollars for submitting a legal filing riddled with AI-generated mistakes.

Octavio Jones/Getty Images

A federal judge ordered two attorneys representing MyPillow CEO Mike Lindell in a Colorado defamation case to pay $3,000 each after they used artificial intelligence to prepare a court filing filled with a host of mistakes and citations of cases that didn't exist.

Christopher Kachouroff and Jennifer DeMaster violated court rules when they filed the document in February filled with more than two dozen mistakes — including hallucinated cases, meaning fake cases made up by AI tools, Judge Nina Y. Wang of the U.S. District Court in Denver ruled Monday.

Federal Guidance

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Removing Barriers to American Leadership in Artificial Intelligence

- Executive Order issued January 23, 2025

- "It is the policy of the United States to sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security."

- Ordered AI Action Plan be issued within 180 days

- Order to "immediately review, in coordination with the heads of all agencies as they deem relevant, all policies, directives, regulations, orders, and other actions taken pursuant to the revoked Executive order 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence).

  - Revoke or rescind, in conformance with law, anything that contravenes this executive order.

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Winning the AI Race: America's AI Action Plain

Released by the White House July 23, 2025

https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf

- **"The United States is in a race to achieve global dominance in artificial intelligence (AI). Whoever has the largest AI ecosystem will set global AI standards and reap broad economic and military benefits. Just like we won the space race, it is imperative that the United States and its allies win this race."**

- **Three pillars**

  - Accelerate AI Innovation

  - Build American AI Infrastructure

  - Lead in International AI Diplomacy and Security

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TEGL No. 03-25

Encouraging the Use of Workforce Innovation and Opportunity Act Funding to Help Youth and Adults Develop Artificial Intelligence Skills – August 26, 2025

https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2025/TEGL%2003-25/TEGL%2003-25.pdf

- "Encourages" the use of WIOA funding for AI education and training in Youth programs as well as Adult and Dislocated worker programs

Is it a bubble?

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AI investment bubble inflated by trio of dilemmas

Edward Chancellor

September 26, 2025 6:00 AM MDT · Updated 3 hours ago

Tech leaders claim that AI is going to usher in a new golden age, boosting productivity and profits. But there's little evidence so far to justify the hype. A recent report ⬈ from the Massachusetts Institute of Technology found that 95% of businesses that had integrated AI into their operations had yet to see any return on their investment. Of the nine sectors examined in the study only media and technology had experienced major structural changes. It's not for want of effort, as the report states: "adoption is high, but disruption is low."

The trouble, according to MIT, is that generative AI systems don't retain feedback, adapt to context or improve over time. For mission-critical work, the vast majority of companies still prefer to use humans. Instead, employees are using personal chatbot accounts for relatively mundane tasks, such as reading emails. Though loss-making OpenAI's revenue has grown rapidly, it does not justify the investment spend. Fewer than 2% of the 800 million or so people using ChatGPT pay for the service, and a growing number of them live in low-income countries such as India.

https://www.reuters.com/commentary/breakingviews/ai-investment-bubble-inflated-by-trio-dilemmas-2025-09-25/

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Just How Bad Would an AI Bubble Be?

The entire U.S. economy is being propped up by the promise of productivity gains that seem very far from materializing.

By Rogé Karma

In the study, published in July, the think tank Model Evaluation & Threat Research randomly assigned a group of experienced software developers to perform coding tasks with or without AI tools. It was the most rigorous test to date of how AI would perform in the real world. Because coding is one of the skills that existing models have largely mastered, just about everyone involved expected AI to generate huge productivity gains. In a pre-experiment survey of experts, the mean prediction was that AI would speed developers' work by nearly 40 percent. Afterward, the study participants estimated that AI had made them 20 percent faster.

But when the METR team looked at the employees' actual work output, they found that the developers had completed tasks 20 percent *slower* when using AI than when working without it. The researchers were stunned. "No one expected that outcome," Nate Rush, one of the authors of the study, told me. "We didn't even really consider a slowdown as a possibility."

https://www.theatlantic.com/economy/archive/2025/09/ai-bubble-us-economy/684128/

OpenAI's Sam Altman sees AI bubble forming as industry spending surges

Dylan Butts
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KEY POINTS

- OpenAI CEO Sam Altman has reportedly said that he believes AI could be in a bubble, comparing market conditions to those of the dotcom boom in the 1990s.

- "Are we in a phase where investors as a whole are overexcited about AI? My opinion is yes. Is AI the most important thing to happen in a very long time? My opinion is also yes," he's quoted as saying.

- Alibaba co-founder Joe Tsai, Bridgewater Associates' Ray Dalio and Apollo Global Management chief economist Torsten Slok have all raised similar warnings.

https://www.cnbc.com/2025/08/18/openai-sam-altman-warns-ai-market-is-in-a-bubble.html
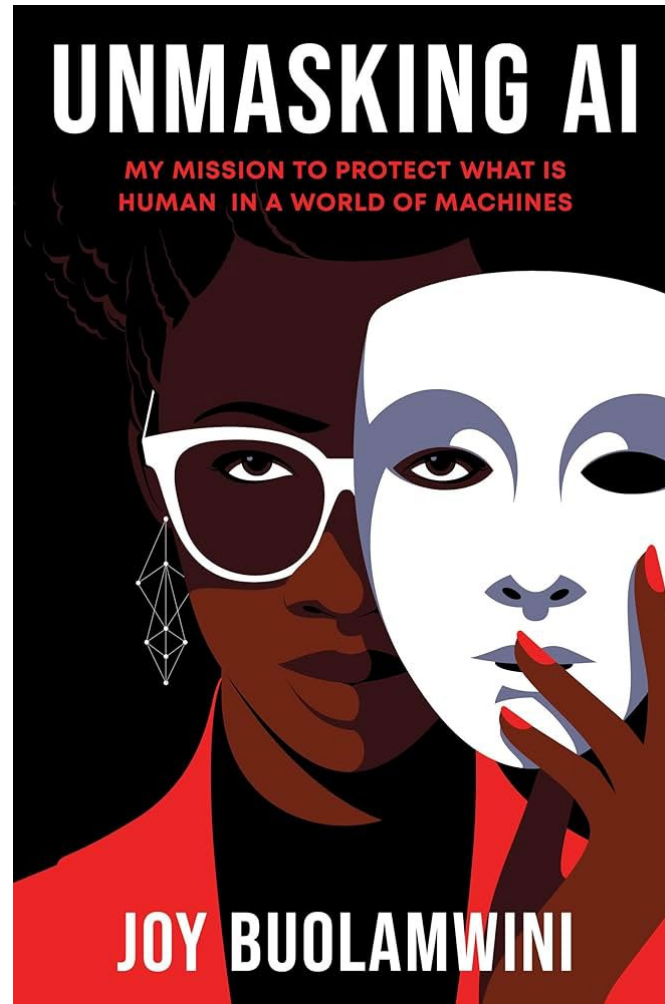
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Parting thoughts

- AI use, regulation, and guidance are evolving daily. If you're going to use it, you need to keep up with the changes taking place.

- Be wary of the bubble. If there's a collapse, will the tool you're using survive? If not, what was the onboarding investment? And what will happen to your data?

- Follow the law: AI doesn't (usually) forget. Inputs can be baked into the model—and sometimes retrieved by other users; or subject to discovery

- Never use a free model

Unmasking AI: My Mission to Protect What is Human in a World of Machines

Joy Buolamwini