IP and Generative AI

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Why AI Law is So Complicated

- Divergent definitions of "AI"

- Hard to analogize to precedent technology
  - We already routinely use machine-assisted tools to generate and find content

- Dozens of legal issues are in play

- Technology still evolving & not well-understood

- AI Paranoia/Techlash
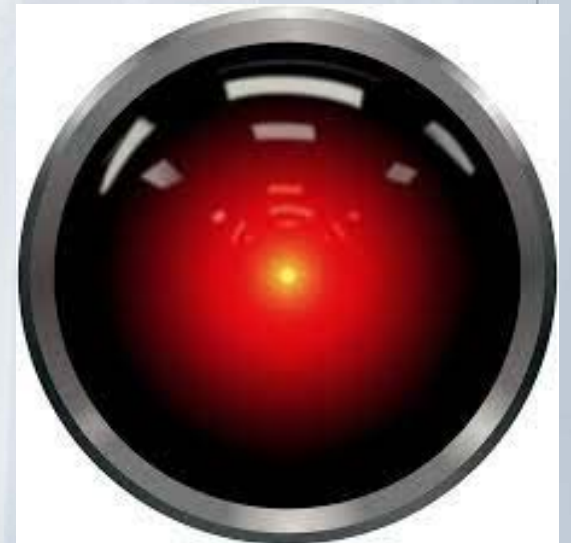
Who Owns AI-Generated Works?

- ## Copyright Office: No one does

  - "human authorship is a prerequisite to copyright protection in the United States"

  - "Midjourney users are not the 'authors' for copyright purposes of the images the technology generates" because "Midjourney's specific output cannot be predicted by users"

  - "applicants have a duty to disclose the inclusion of AI-generated content in a work submitted for registration and to provide a brief explanation of the human author's contributions to the work"
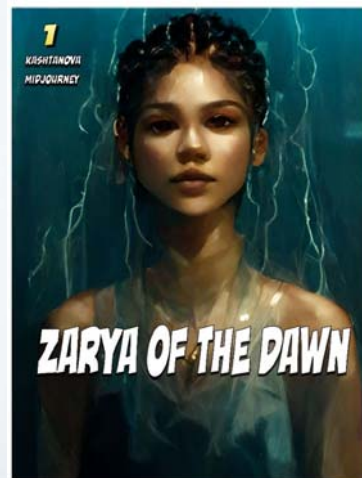
Generative AI and Inputs/Outputs

- **Copying for Training Data Purposes**
  - The Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015): "Google's unauthorized digitizing of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses. The purpose of the copying is highly transformative, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals. Google's commercial nature and profit motivation do not justify denial of fair use"'
  - Preliminary rulings
    - Doe 1 v. GitHub Inc., N.D. Cal., No. 4:22-cv-06823, dismissed in part 5/10/23
    - Andersen v. Stability AI Ltd., N.D. Cal., No. 3:23-cv-00201, hearing on motion to dismiss 7/19/23

- **Do the Outputs Infringe?**
  - No copyright protection for genres/styles

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