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Legislative and Regulatory Developments in Artificial Intelligence – Can the Law Keep Pace?

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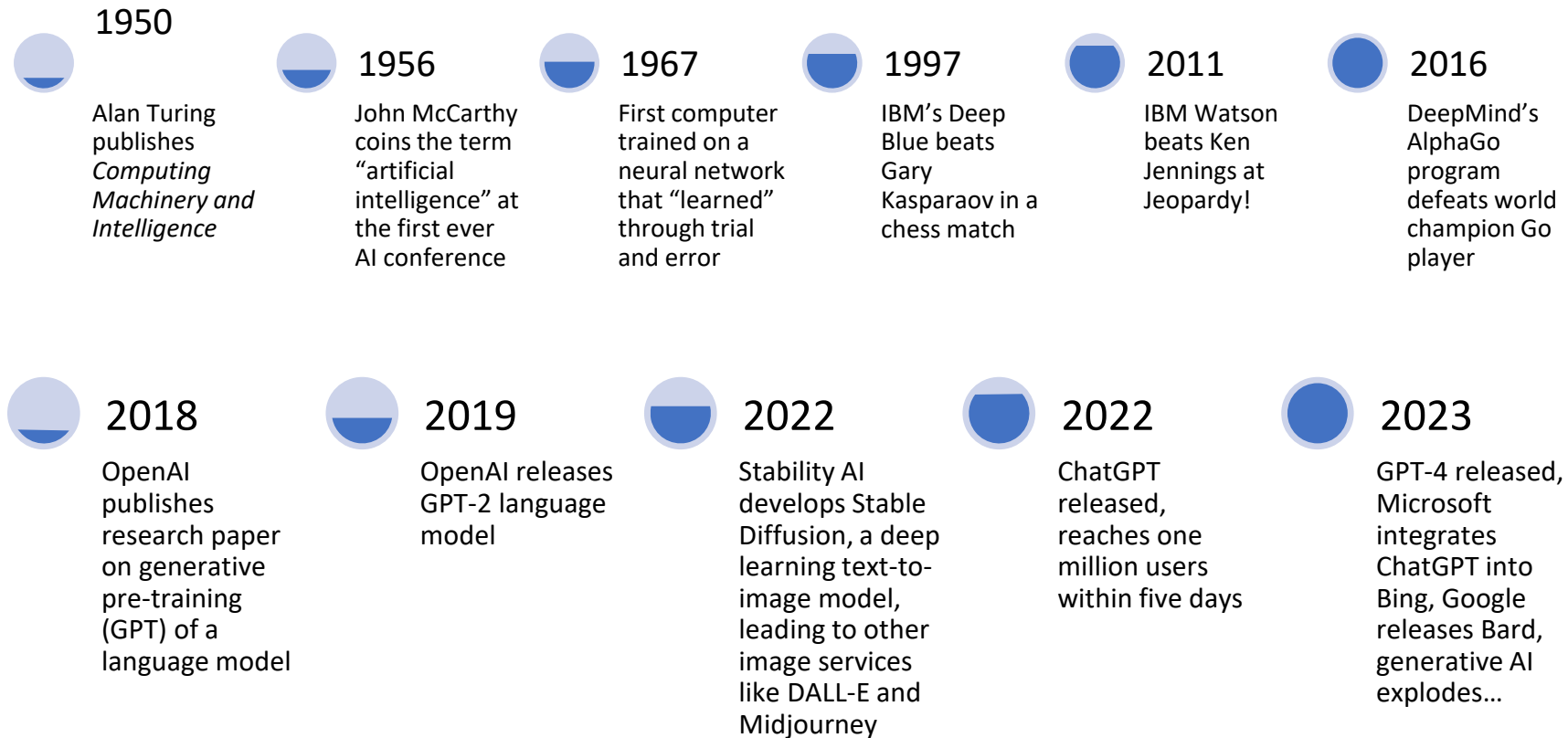
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The Law and AI

Rapid changes in the deployment of AI products bring new concerns about regulation

Gradually, then Suddenly

A Brief AI Timeline



- **Algorithm** – the AI algorithm is a procedure that runs on a dataset to recognize patterns, rules, etc.
- **Model** – Models are essentially the output of the algorithm once it is run through the data (often millions of times)
 - The effectiveness of the algorithm’s training will determine the precision and confidence of the model
- **Foundation Models** – Models trained on a broad set of unlabeled data that can be used for different tasks with minimal fine-tuning (GPT-3, Stable Diffusion, e.g.)
 - Expected to replace task-specific models and carry potential for huge economic and societal benefits
 - But also introduce new areas of risk that are changing the discussion for AI regulation

Hard Law vs. Soft Law

- Soft law frequently outpaces hard law with new technology
 - AI ethics and responsible AI principles have largely been based in AI principles, codes of conduct
 - 63 ethics initiatives published in 2019, 160 different AI guidelines as of April 2020
 - Much of the published research on AI ethics is driven by industry
- AI principles commonly focus on
 - Responsibility – redress mechanisms, organizational accountability
 - Explainability – an explanation of algorithmic decisions and underlying data
 - Accuracy – track and identify errors and uncertainty, understand how systems perform in context
 - Fairness – ensure algorithmic decisions do not discriminate or perpetuate unwanted bias
 - Auditability – documentation, monitoring, feedback

Regulator Concerns are Rapidly Evolving

Before

- Multiple laws already apply to automated decision-making, predictive analytics, “big data” etc.
- Focus on:
 - High Risk Uses
 - Impact assessments
 - Bias/Discrimination
 - “Deepfakes”
- GDPR and State Privacy Laws
 - Rights to opt-out of automated decision-making, profiling
 - Privacy risk and data protection impact assessments

Now

- How to address “foundational” and “general purpose” models?
- Misalignment concerns leading to false, toxic, or hateful content
- Rapid spread of misinformation/disinformation
- Vulnerability to prompt injection exploits that circumvent protections
- Scraping of personal information
- Downstream risk mitigation

Recent Developments: EU

- EU AI Act Draft:
 - Includes Generative AI including disclosures if the model was trained using copyrighted material
- European DPA Inquiries
 - Italian Garante briefly bans Chat-GPT
 - German inquiry into OpenAI



- Request for Comment from the National Telecommunications and Information Administration concerning AI accountability
- Joint Statement from the FTC, CFPB, EEOC, and DOJ Civil Rights division on enforcement of current laws
- Sen. Schumer considering AI legislation

Increased FTC Focus on AI

- Section 5 of the FTC Act
 - Deception
 - False or unsubstantiated AI Claims about what systems can/can't achieve
 - False/misleading claims about data collection, use, and retention in connection with training automated systems
 - Unqualified marketing claims regarding AI
 - Unfairness
 - Can apply to *use or dissemination* of technologies that are likely to cause substantial harm to consumers
 - Past unfairness cases and business guidance
 - Relevance of bias to discussion of harm
- Additional statutes and rules may apply depending on context
 - E.g., FCRA or ECOA

Questions?



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