

# AI Issues for Content Providers

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Rachel Brook, IAC Inc.

Geanette Foster, NPR



ROTHWELL FIGG

# Introduction to Panel



## **Steven Lieberman, Partner at Rothwell Figg**

Litigator and counselor whose practice encompasses the spectrum of IP law, including patent litigation, privacy, eCommerce, and post-grant proceedings. Expertise in the rapidly growing field of AI. 20 years of experience representing media entities on wide range of privacy issues.



## **Jennifer Maisel, Partner at Rothwell Figg**

IP litigator and technology lawyer who helps clients navigate through their IP, data protection, and privacy concerns relating to breakthrough innovations in AI, VR/AR, IoT, quantum, blockchain, and other digital technologies. Technical background building language models for AI systems.



## **Rachel Brook, Corporate Counsel at IAC Inc.**

Litigator and counselor specializing in commercial, IP, privacy, and other compliance matters. More than 10 years of experience as outside litigation counsel, advising clients involved in litigation and other disputes, as well as regulatory issues. Joined IAC as Corporate Counsel in 2022.



## **Geanette Foster, Counsel, Distribution Relations at NPR**

Contract lawyer providing strategic counseling on technology transactions, distribution, data privacy, and data security matters. Reviews, drafts, and negotiates contracts involving advertising technologies and other third-party tools and technology solutions.

# How are Content Creators using AI?

Ideation

First draft  
generation

Editing

Translation

Generating  
summaries

Research

# Legal Risks

# Regulation of AI

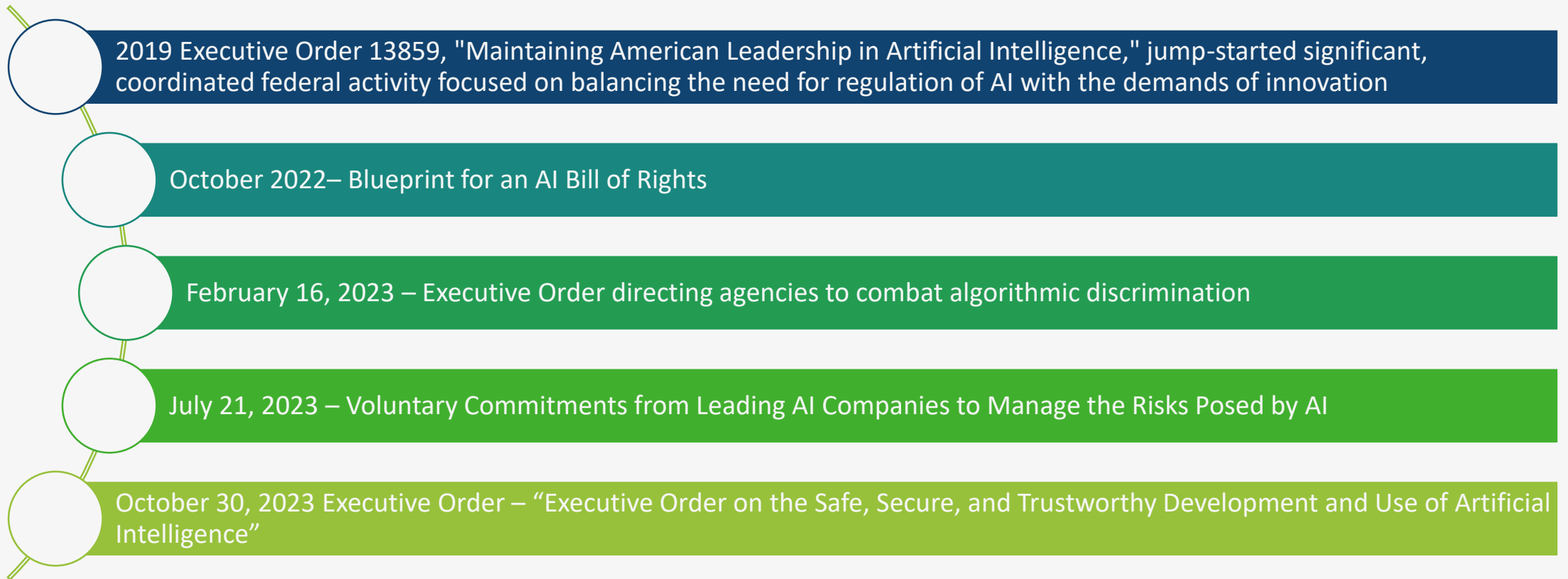


Executive Orders; Federal Agencies (FTC, U.S. Copyright Office)

State and federal legislation – narrow applications of AI in specific contexts including employment, autonomous vehicles, facial recognition, insurance, deepfakes

Litigation of disputes

# White House



# FTC – Consumer Concerns about AI

- Copyright & IP
- Biometric and personal data (e.g., voice prints)
- Bias and inaccuracies
- Limited pathways for appeal/lack of contact with a human support person
- Scams, fraud, and malicious use

Oct. 3, 2023, Blog Post available at <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/10/consumers-are-voicing-concerns-about-ai>

# Overview of AI Litigation Risks

## Activities that could pose risk

- Training data
- Deployment of AI systems
- Use of AI systems



# Examples of Claims for AI-Related Litigation

Breach of  
contract

Copyright  
infringement

Patent  
infringement

Unfair  
competition

Data privacy and  
security

Trade secret  
misappropriation

Torts

# Content Creators' Use of AI

# Copyright Protection Over AI-Generated Output



Refused to register copyright claim over work generated entirely by AI system.

[A Recent Entrance to Paradise \(Feb. 14, 2022\)](#)

# Copyright Protection Over AI-Generated Output



Midjourney Image

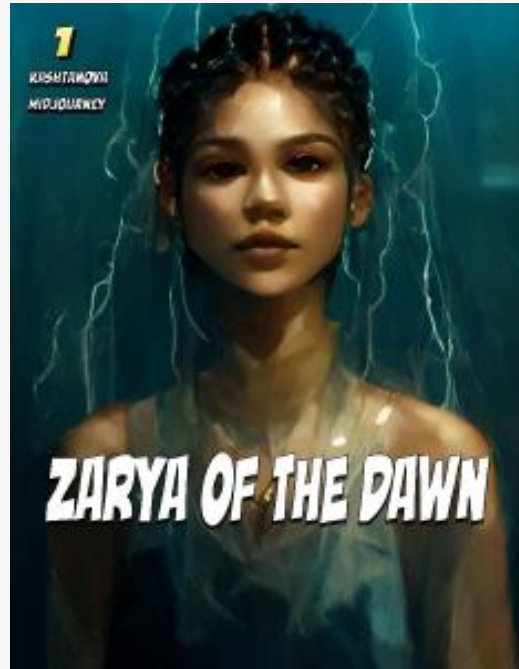


The Work

Midjourney image must be disclaimed, even though the artist “input numerous revisions and text prompts at least 624 times” before producing the Midjourney Image

[Théâtre D’opéra Spatial \(Sept. 5, 2023\)](#)

# Copyright Protection Over AI-Generated Output



Issued new registration over what artist contributed to this work, namely, the “text” and the “selection, coordination, and arrangement of text created by the author and artwork generated by artificial intelligence.” . . .The new registration will explicitly exclude “artwork generated by artificial intelligence.”

[Zarya of the Dawn \(Feb. 21, 2023\)](#)

# “Radioactive” Training Data

Personal and sensitive data

Third-party intellectual property rights

Contractual limitations / scraping and terms of use

Training data purchased/licensed from others

# Undesired Output

Output that infringes upon a third-party IP right

- Plagiarized output

Output that violates third-party privacy right

- Defamatory output

Hallucinations

# Guardrails

Human review

Plagiarism detection

Indemnification or limitations on liability



# Use of Content to Train AI

# License v. Fair Use of Works to Train AI

- License model: AI systems built only on owned, licensed, or public domain content
- Fair use model: AI systems built on scraped website content, corpora containing copyrighted works, etc.

# Protection of Content from Unauthorized Use

Robots.txt or other  
computer readable  
instructions

Watermarking or  
labeling of content

Terms of service

Technological  
gates (paywalls,  
bot detection)

“Easter Eggs” in  
content

Make content  
unusable for  
training

Add copyright  
notice

# AI-Specific Contractual Clauses

No use of my  
data for AI  
training

Ownership of AI  
outputs

Security controls

Indemnification

Transparency  
obligations and  
data audits

No processing of  
personal  
information

Restrictions on  
automated  
decision-making

# Questions & Contacts



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