

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Intros / Agenda
- NYS Budget
- Public Health Updates

Frank Patyi – (12:10PM-12:20PM)

- Bond Supports First-of-Its-Kind Acquisition in Higher Education

Mark Beloborodov – (12:20PM-12:30PM)

- Can AI Invent, Create, or Infringe – Legally Speaking?

Mario Ayoub – (12:30PM-12:40PM)

- Website Accessibility Requirements

G. Oberfield / A. Mastroleo – (12:40PM-12:45PM)

- Changing of the Guard

G. Oberfield – (12:45PM)

- Wrap Up

New York State Budget

Source: New York Times

New York State Negotiations...

Source: PoliticoPro

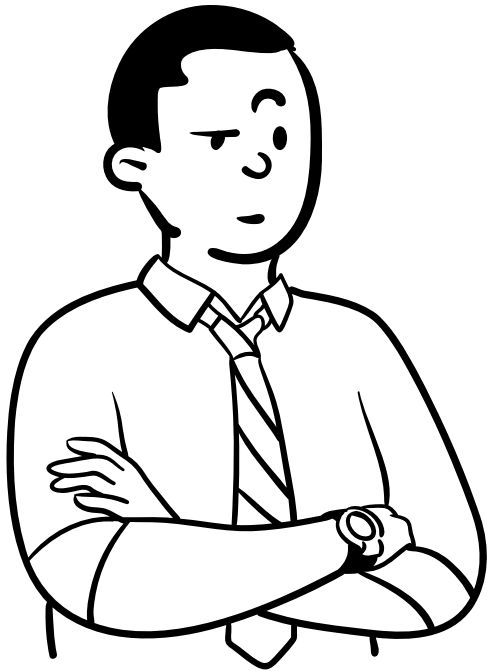
- Senate and Assembly each have released their 'one house' budgets
- More money in each budget for healthcare providers ... but is it enough?
 - Additional investments across provider types
 - Hospitals
 - Senate → \$1B billion for financially distressed and safety-net hospitals
 - Assembly → \$850 million for financially distressed hospitals
 - Nursing Homes
 - Assembly → \$100 million for certain 'distressed' nursing homes
 - Senate → \$25 million CHHAs/hospice
 - Transformation funds for capital projects
 - Coverage for uninsured?
 - Former Health Commissioner Bassett on board



New York State Capital – Office of General Services

Other Contentious Issues...

Source: City and State



- Key differences on issues including:
 - Housing – Senate and Assembly take more modest approaches than does the Governor
 - Bail reform
 - Not yet eye-to-eye on environmental reform
 - Metropolitan Transit Authority
 - *Will the Budget eek past April 1, 2023?*

Public Health Updates

Nursing Homes in NYS – Negative COVID-19 Test No Longer Required

- Negative test to enter a nursing home no longer required
- New York State lines up with Federal standards
- Another marker of progress in controlling the pandemic



DATE: March 17, 2023
TO: Nursing Homes, Local Health Departments
FROM: New York State Department of Health

Health Advisory

Update: Nursing Home Visitor Testing and Screening for COVID-19

Please distribute immediately to: Operators, Nursing Home Administrators, Directors of Nursing, Infection Preventionists and Medical Directors

The purpose of this health advisory is to announce that the New York State Department of Health (NYSDOH) is fully aligning with the [Centers for Medicare and Medicaid Services \(CMS\) Nursing Home Visitation - COVID-19 \(REVISED\)](#) regarding nursing home COVID-19 screening and visitor testing. **Specifically, nursing homes are no longer required to verify that visitors have a negative COVID-19 test before entry or conduct active COVID-19 screening.**

This advisory supersedes all previous NYSDOH requirements related to nursing home screening and visitor testing including, but not limited to, requirements outlined in DAL NH 21-30, issued on January 4, 2022, and *Health Advisory: Nursing Home Testing, Cohorting and Visitation Guidance*, issued on October 13, 2022.

Paxlovid – Here, to Stay?

Sources: McKnight's, Reuters

- Paxlovid, which has been approved under EUA, is nearing FDA approval for permanent use
- Advisors to the FDA voted 16-1 on March 16 to support permanent approval for the drug – and the FDA is likely to follow suit this spring
- The medication would be available through non-governmental contracts
- While COVID-19 prevalence is diminishing and the end of the PHE is nearing, this is a sign of the 'new normal'



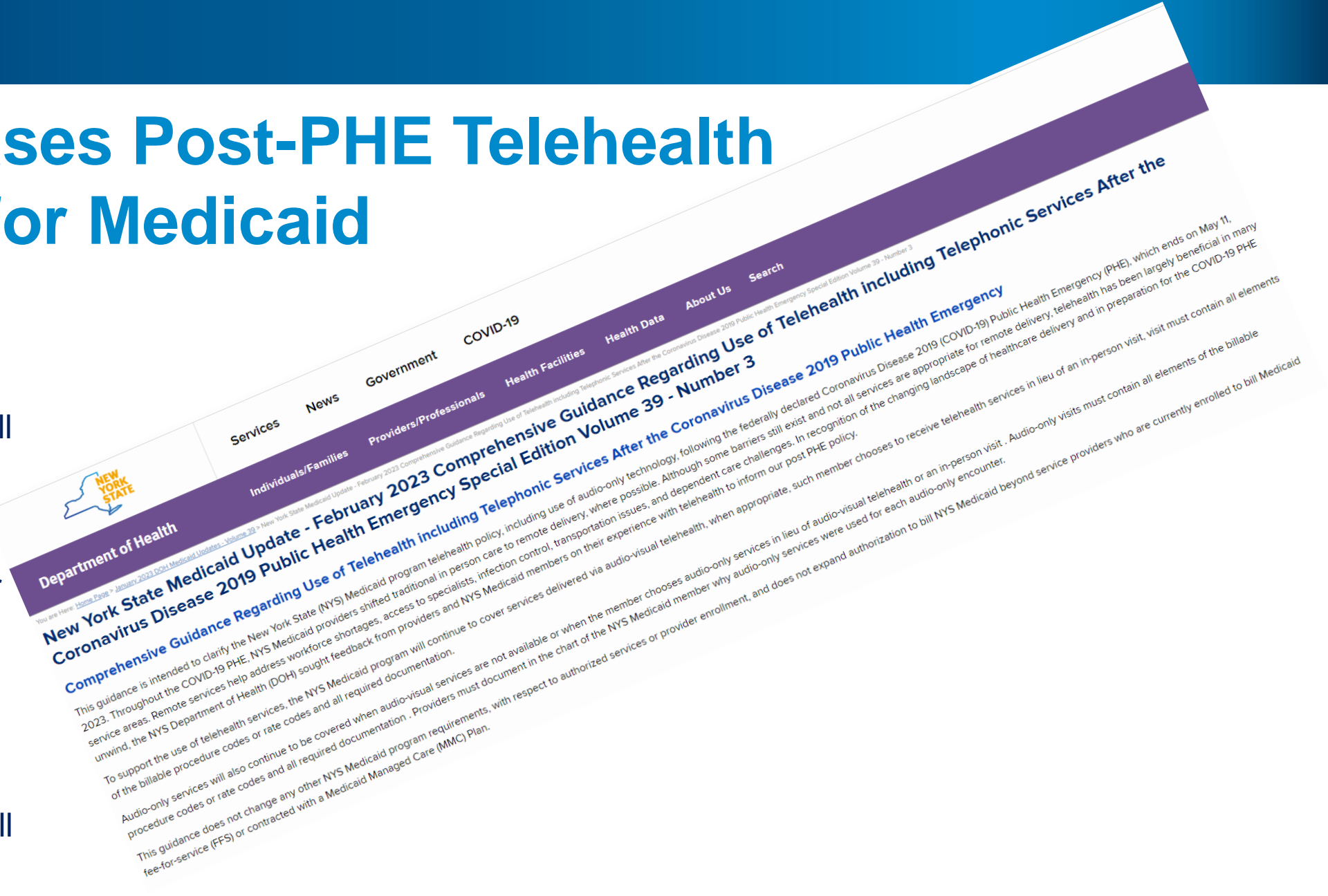
The antiviral COVID-19 drug Paxlovid should receive full Food and Drug Administration approval to treat older adults at high risk for severe outcomes, the FDA's advisers agreed in a Thursday meeting.

Paxlovid, delivered as a pill, was [authorized for emergency use](#) in 2021 for people aged 12 and older. The panel of outside experts voted 16 to one that the drug be approved only for vulnerable adults aged 50 years and older, as requested by its maker, Pfizer, Reuters [has reported](#).

DOH Releases Post-PHE Telehealth Guidance for Medicaid

Source: New York State Dept. of Health

“To support the use of telehealth services, the NYS Medicaid program will continue to cover services delivered via audio-visual telehealth, when appropriate, such member chooses to receive telehealth services in lieu of an in-person visit, visit must contain all elements of the billable procedure codes or rate codes and all required documentation.”



Bond Supports First-of-Its-Kind Acquisition in Higher Education



Frank J. Patyi

Member

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Severe Downturn Expected in Higher-Education

- 2008 Great Recession resulted in huge decline in birth rate
- Number of 18-year-olds will decline by 15% beginning in 2025
- Declines will be even more substantial in Northeast and Midwest due to migration
- Booming labor market putting additional stress on enrollment as students confront a market that (for now) may not justify the cost of degrees
- Decline in investments and high inflation adding to financial stress faced by institutions

Need to be Proactive Before it's Too Late

- Taking actions which may be necessary to assure the continued success of the institution can take a long time
- Institutions should assess their situations and determine how they are willing to act

Many Options May Exist

- Cost cutting
- Increase revenue/enrollment
- Affiliations with other institutions
- Mergers and Consolidations
- Closure

Can AI Invent, Create, or Infringe – Legally Speaking?

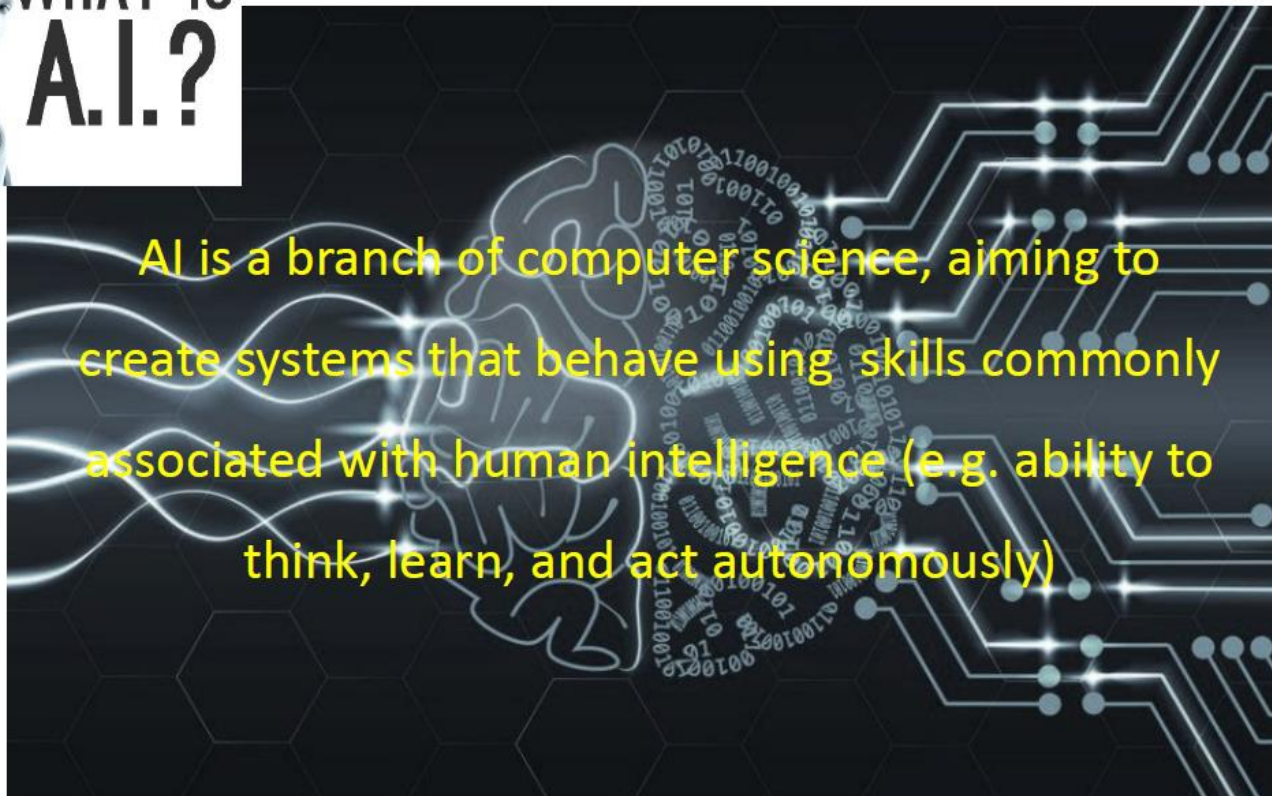


Mark L. Beloborodov

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AI is a branch of computer science, aiming to create systems that behave using skills commonly associated with human intelligence (e.g. ability to think, learn, and act autonomously)

Why IS AI Trending NOW?

The accelerating growth of enabling technologies is driving AI development:

- ✓ Flood of data and advancements in technology for data collection
- ✓ Availability of practically infinite storage
- ✓ Powerful computing and wide availability of GPUs
- ✓ Fast connectivity
- ✓ Development of smart algorithms

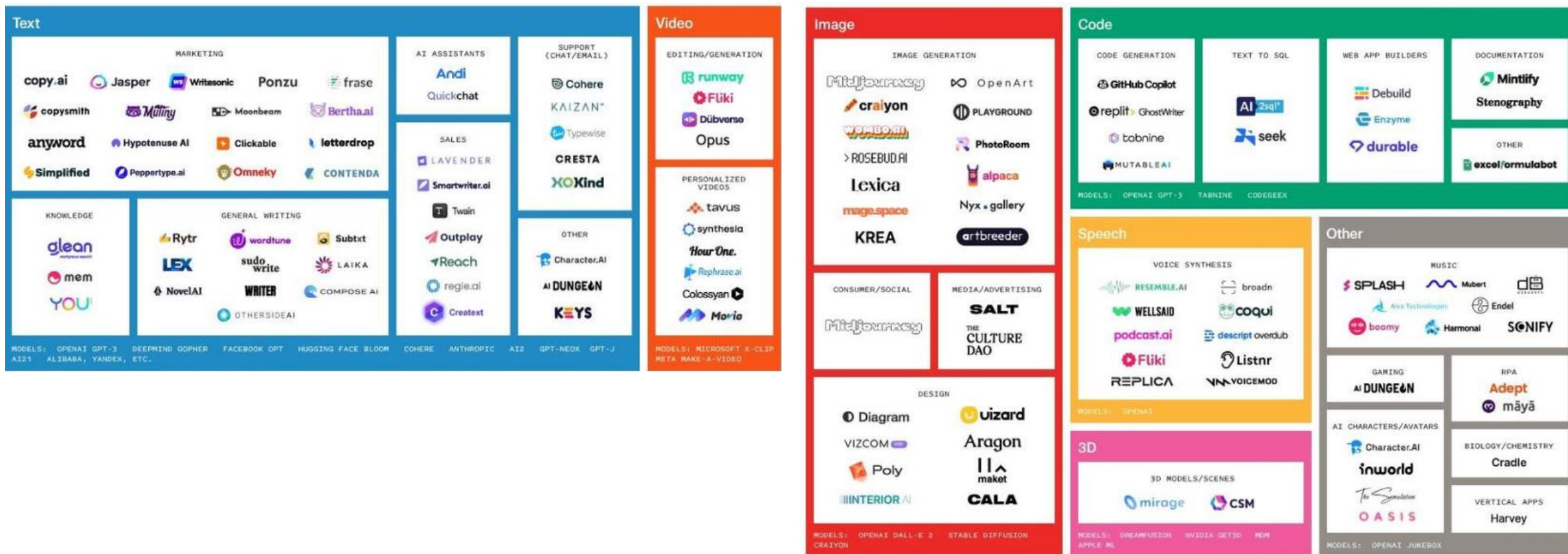
+

Increased need to identify patterns with large volumes of data relevant to business opportunities, including

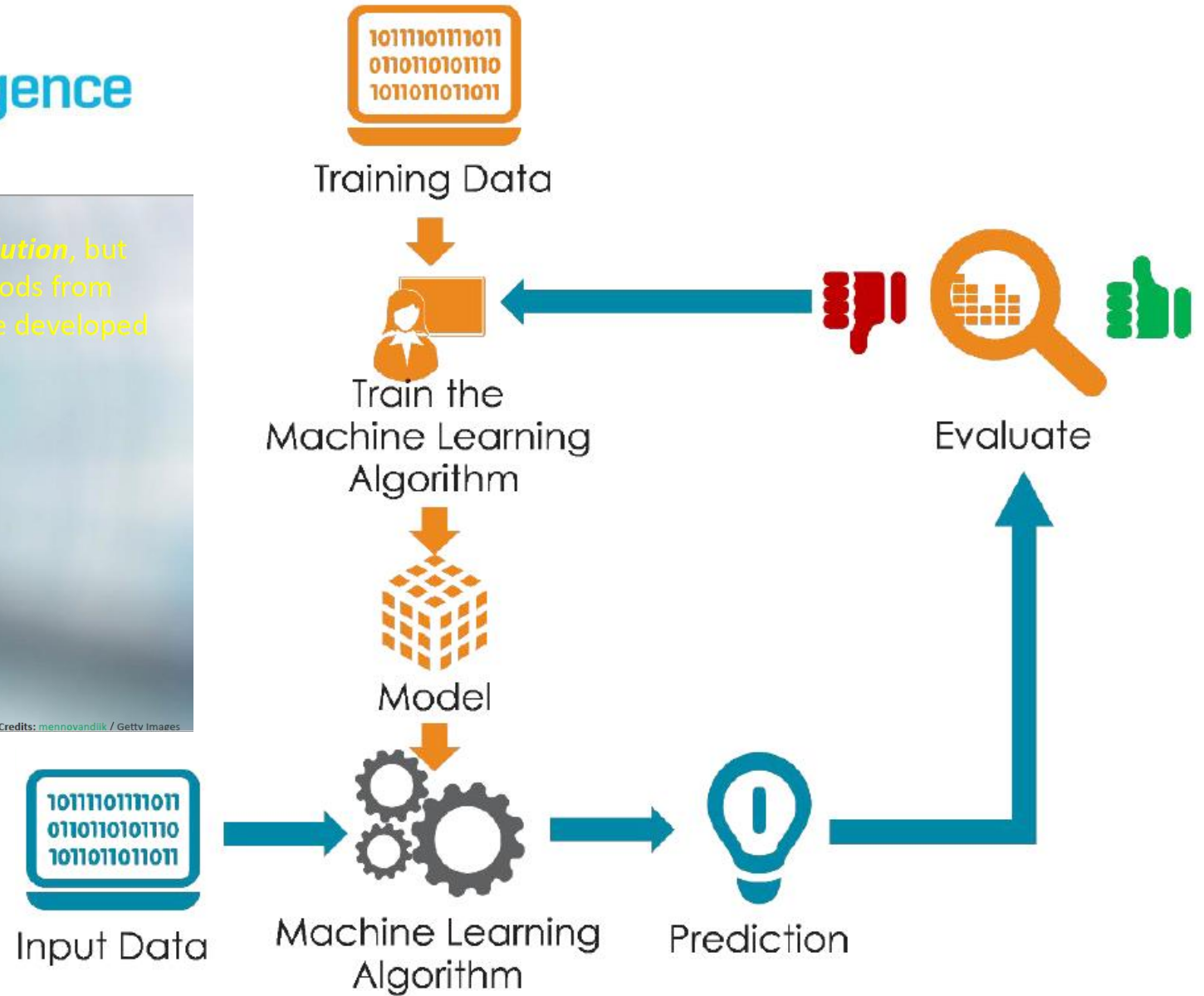
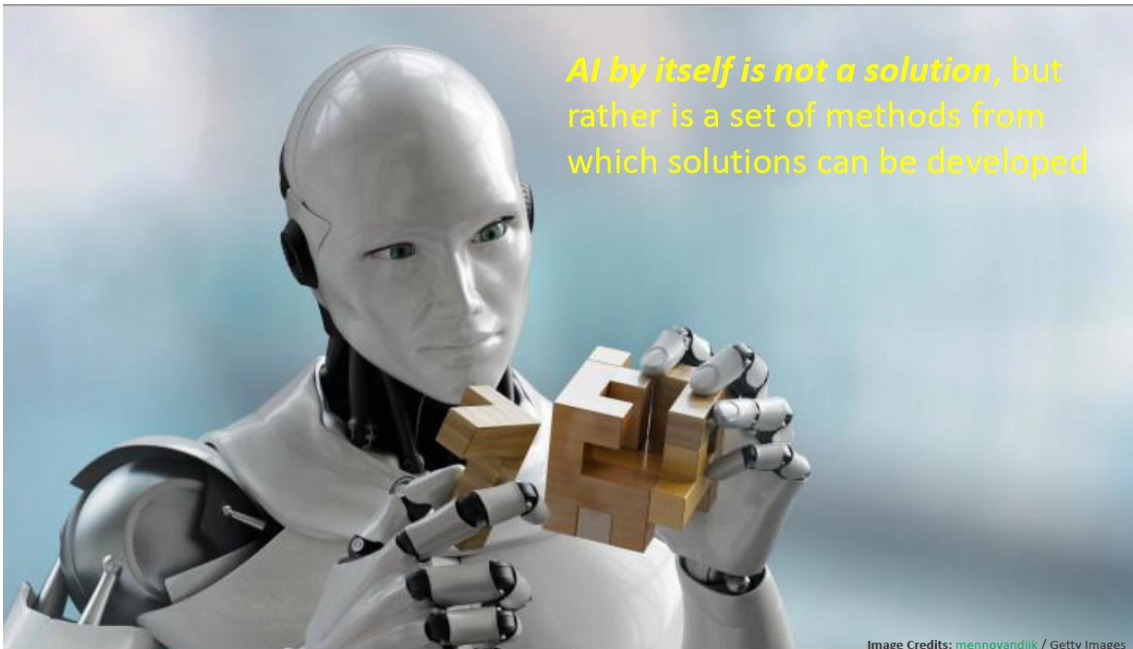
- *image analytics,*
- *pattern recognition,*
- *new content generation*

Generative AI Companies Map

SEQUOIA 



Artificial Intelligence



Can AI be an “Inventor” or an “Author”?



Article 1 Section 8

“Intellectual Property Clause”

Congress has the power "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."

Can AI be an “Inventor”?

PATENT ACT

35 U.S. Code § 100 – Definitions

When used in this title unless the context otherwise indicates —

(f) The term “inventor” means the **individual** or, if a joint invention, the **individuals** collectively who invented or discovered the subject matter of the invention.

35 U.S. Code § 101 - Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor...

35 U.S. Code § 115 - Inventor’s oath or declaration

- (a) [E]ach **individual** who is the inventor ... of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.
- (b) An oath or declaration under subsection (a) shall contain statements that (1) the application was made or was authorized to be made by the affiant or declarant; and (2) such **individual** believes himself or herself to be the original inventor ... of a claimed invention in the application.

Enter DABUS...



Artificial Invention - Over the last decade, Thaler has produced a totally new AI paradigm called "DABUS" that conceives new inventions and art forms. These are not parametric optimizations, but whole new concepts formed by the linkages between myriad artificial neural networks. To find out more, check out the Artificial Inventor Project. To discover more about the patent producing these inventions, see US Patent 10,423,875. (And no, DABUS is not the combination of a generator net with another net distinguishing 'real' from 'fake'. That issue was elegantly solved long ago with Thaler's patent US07454388, "Device for the autonomous bootstrapping of useful information," that issued 11/18/2008.)

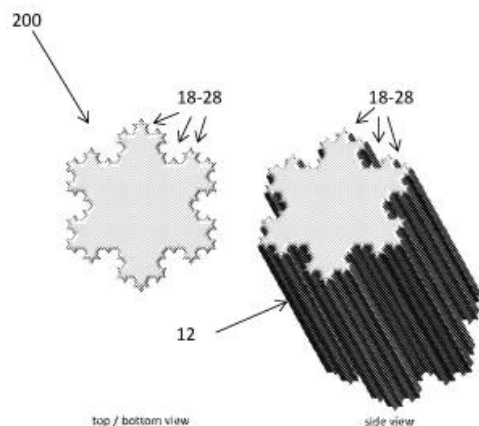


Fig. 6

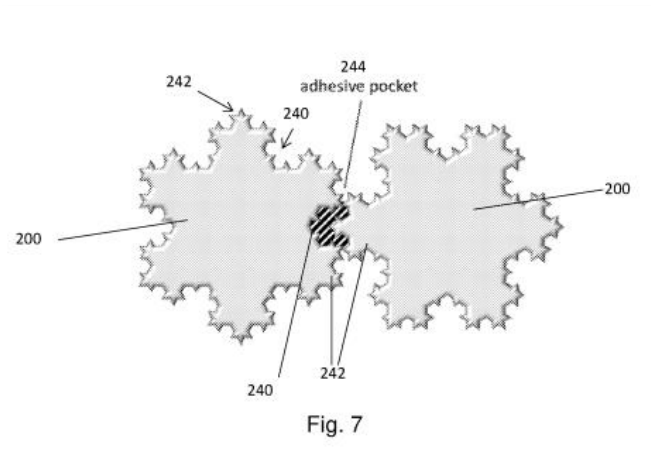


Fig. 7

(12) INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)
(19) World Intellectual Property Organization International Bureau
(43) International Publication Date 23 April 2020 (23.04.2020)
(51) International Patent Classification: B65D 8/02 (2006.01); B65D 21/02 (2006.01); B65D 8/00 (2006.01); B65D 16/00 (2006.01); B65D 23/02 (2006.01); B65D 21/00 (2006.01)
(21) International Application Number: PCT/US2019/057809
(22) International Filing Date: 17 September 2019 (17.09.2019)
(25) Filing Language: English
(26) Publication Language: English
(30) Priority Data: 10,423,875 17 October 2018 (17.10.2018) EP; 10,423,875 07 November 2018 (07.11.2018) EP
(71) Applicant: THALER, Stephen L. (US/US); 1767 Waterfall Dr., St. Charles, Missouri 63303 (US)
(72) Inventor: DABUS, The invention was autonomously generated by an artificial intelligence; 1767 Waterfall Dr., St. Charles, Missouri 63303 (US)
(74) Agent: ABBOTT, Ryan, 11601 Wilshire Blvd #2000, Los Angeles, CA 90024 (US)
(81) Designated States (unless otherwise indicated, for every class of national protection available): AE, AG, AL, AM, AO, AT, AU, AZ, BA, BB, BG, BE, BN, BR, BW, BY, BZ, CA, CH, CL, CN, CO, CR, CU, CZ, DE, DJ, DK, DM, DO, DZ, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, GT, HN, HR, HU, ID, IL, IN, IR, IS, JO, JP, KE, KG, KH, KN, KP, KR, KW, KZ, LA, LC, LK, LR, LS, LU, LY, MA, MD, ME, MG, MK, MN, MW, MX, MY, MZ, NA, NG, NI, NO, NZ, OM, PA, PE, PG, PH, PL, PT, QA, RO, RS, RU, RW, SA,

(54) Title: FOOD CONTAINER AND DEVICES AND METHODS FOR ATTRACTING ENHANCED ATTENTION

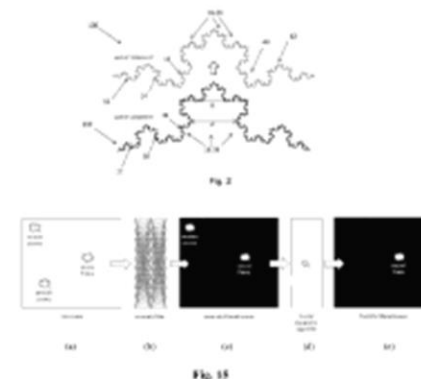


Fig. 11

(57) Abstract: A container (10) for use, for example, for beverages, has a wall (12) with an external surface (14) and an internal surface (16) of substantially uniform thickness. The wall (12) has a fractal profile which provides a series of fractal elements (18-28) on the interior and exterior surfaces (14-16), forming pits (40) and bulges (42) in the profile of the wall and in which a pin (44) as seen from one of the exterior or interior surfaces (12, 14) forms a bulge (42) on the other of the exterior or interior surfaces (12, 14). The profile enables multiple containers to be coupled together by inter-engagement of pins and bulges on corresponding ones of the containers. The profile also improves grip, as well as heat transfer into and out of the container. Devices for attracting enhanced attention include: an input signal of a lacunar pulse train having characteristics of a pulse frequency of approximately four Hertz and a pulse-train fractal dimension of approximately one-half; and at least one controllable light source configured to be pulsatingly operated by the input

“Monkey Can See but Monkey Can’t Sue”



Photo by Naruto, a Sulawesi crested macaque

Enter DABUS (again)...

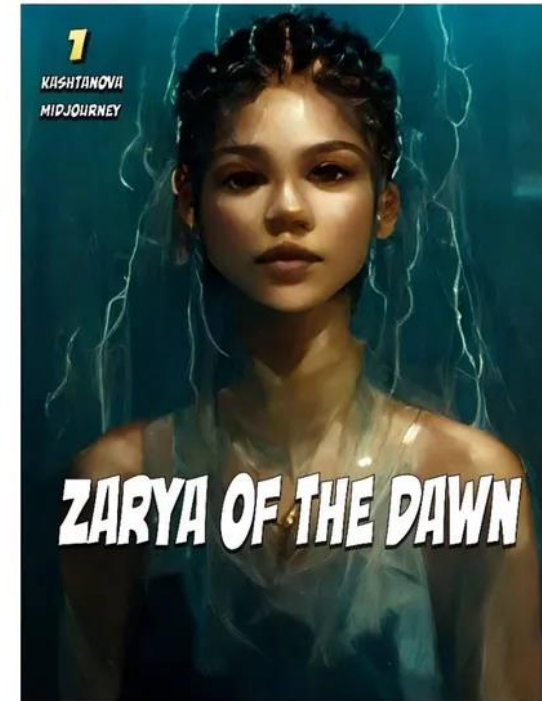


Imagination Engines Incorporated

...ushering in the dawn of conscious computing!



Thinking Art into Existence



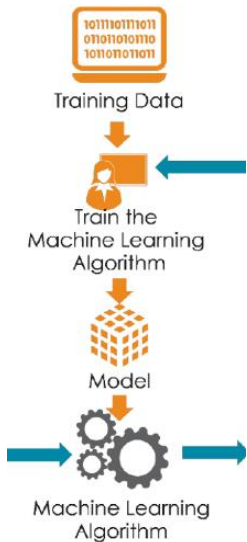
US Copyright Office Has Spoken



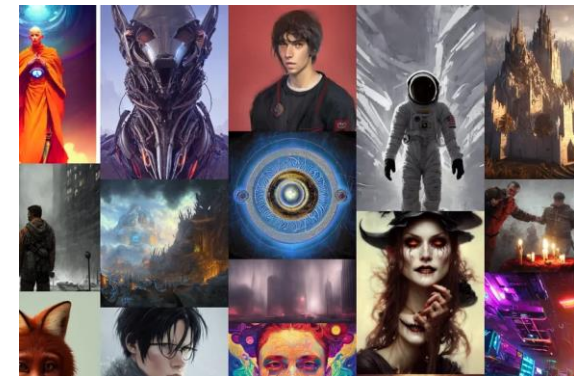
Shira Perlmutter, USCO Director - Register of Copyrights

- "If a work's traditional elements of authorship were produced by a machine, the work lacks human authorship and the Office will not register it," she wrote in a [document](#) outlining copyright guidelines.
- "For example, when an AI technology receives solely a prompt from a human and produces complex written, visual, or musical works in response, the 'traditional elements of authorship' are determined and executed by the technology – not the human user.
- "Instead, these prompts function more like instructions to a commissioned artist – they identify what the prompter wishes to have depicted, but the machine determines how those instructions are implemented in its output."

The first-of-its-kind lawsuits begin!

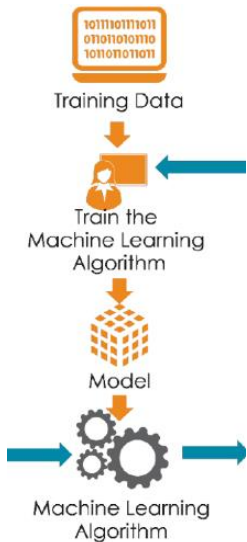


1. **November 2022** - proposed class action lawsuit in CA accuses **Microsoft, GitHub, and OpenAI** of copyright infringement because snippets of computer code automatically generated by their Copilot tool does not include the attribution required by the open-source licenses
2. **January 2023** - a trio of independent artists sued Stability AI and Midjourney, creators of AI art generators Stable Diffusion and Midjourney, in CA alleging that these companies have infringed the rights of “millions of artists” by training their AI tools on five billion images scraped from the web “without the knowledge of consent of the original artists.”
3. **February 2023** – Getty Images sued Stability AI in DE, accusing them of using IP rights of Getty’s contributors without authorization “to build a commercial offering for their own financial benefit”



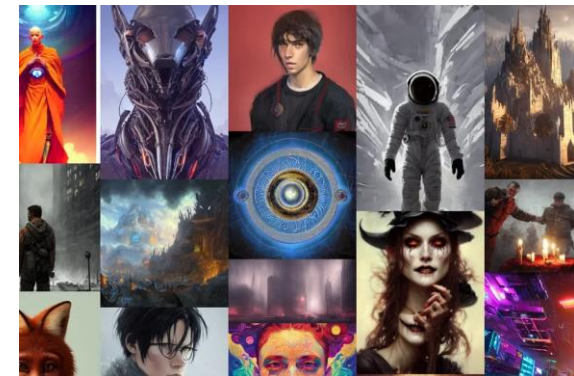
The first-of-its-kind lawsuits begin!

BUT



1. Is using copyrighted text and images as training data tantamount to copying? How to prove?
2. If so – isn't it transformative "fair use"?

```
1 #!/usr/bin/env ts-node
2
3 import { fetch } from "fetch-h2";
4
5 // Determine whether the sentiment of text is positive
6 // Use a web service
7 async function isPositive(text: string): Promise<boolean> {
8   const response = await fetch('http://text-processing.com/api/sentiment/', {
9     method: "POST",
10    body: `text=${text}`,
11    headers: {
12      "Content-Type": "application/x-www-form-urlencoded",
13    },
14  });
15  const json = await response.json();
16  return json.label === "pos";
17 }
```



Preventing ADA Website Accessibility Lawsuits



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Title III at a Glance

- Title III of the ADA prohibits discrimination against persons with disabilities in any place of “public accommodation.” Such places generally include, restaurants, hotels, parks, retail stores and doctor’s offices, among many others.
- Although Title III may have been traditionally construed to apply to physical brick-and-mortar locations, some courts have ruled that internet websites are included in that list and therefore must be accessible to persons with disabilities.
- The ADA does not offer concrete recommendations for website compliance.

DOJ Accessibility Guidance – March 2022

- The ADA's accessibility requirements apply to all goods, services, privileges or activities offered by public accommodations, **including those offered on websites.**
- Common characteristics of inaccessible websites:
 - Poor color contrast.
 - Reliance on color to provide information.
 - Lack of text alternatives, or alt-text, on images.
 - No captions on videos. Inaccessible online forms.
 - Mouse-only navigation rather than keyboard navigation.

DOJ Accessibility Guidance – March 2022

- While the DOJ's guidance does not offer any prescriptive measures for establishing compliance, it does point to two specific resources:
 - Web Content Accessibility Guidelines (WCAG)
 - Section 508 Standards of the Rehabilitation Act (Section 508)

Web Content Accessibility Guidelines

The WCAG are organized around four foundational principles:

- **Perceivable** - Information and user interface components must be presentable to users in ways they can perceive.
- **Operable** - User interface components and navigation must be operable.
- **Understandable** - Information and the operation of user interface must be understandable.
- **Robust** - Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies.

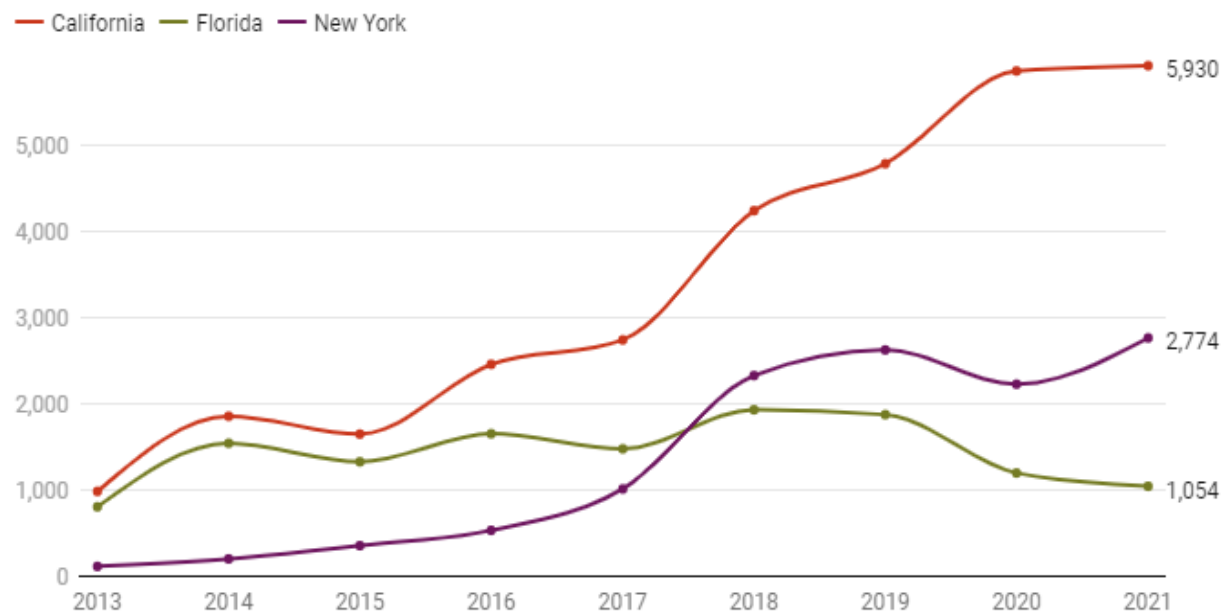
Section 508 Standards of the Rehabilitation Act

- Section 508 applies to websites operated by Federal agencies but can still be a useful tool for private businesses.
- Very similar to the WCAG
- Sample Standards:
 - Text equivalent for every non-text element
 - Web pages must be presentable with or without color
 - Documents must be readable without requiring a style sheet
 - Row and column headers must be included for all data tables

ADA Title III Litigation on the Rise

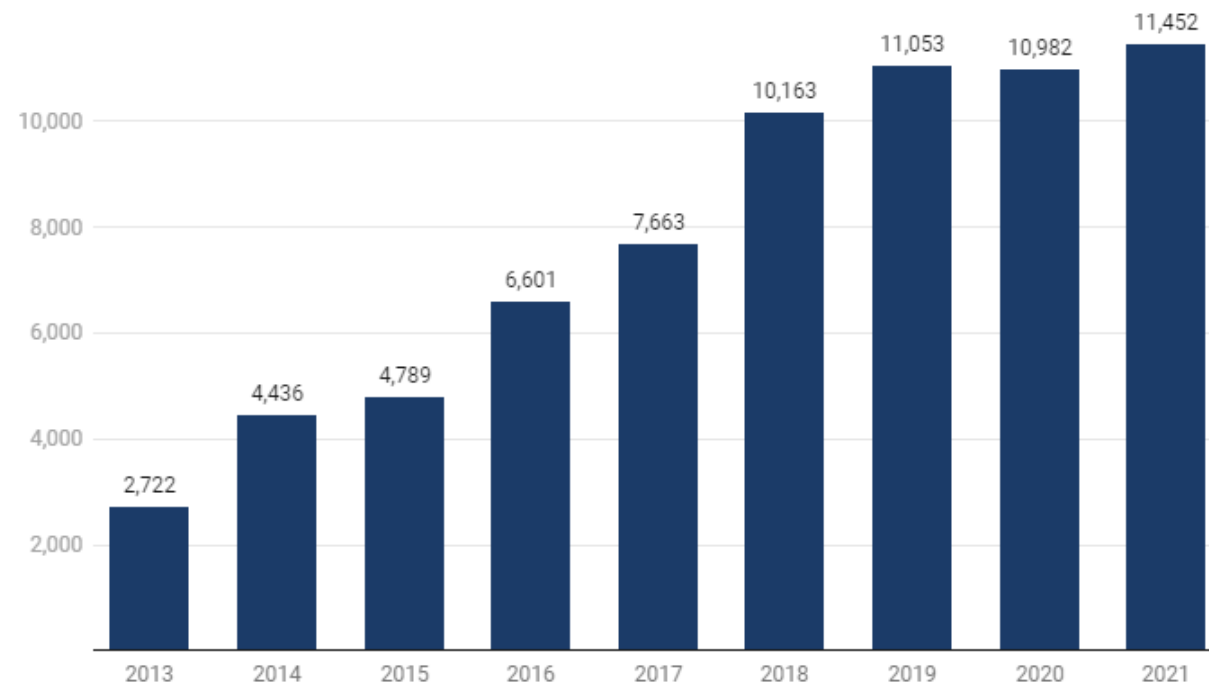
California Leads All Other States in ADA Title III Federal Lawsuits

Hover over each line to see the total number of ADA Title III federal lawsuits in the state by year.



Source: Seyfarth Shaw analysis, February 2022. • Created with [Datawrapper](#)

Total Number of ADA Title III Federal Lawsuits Filed Each Year



Source: Seyfarth Shaw analysis, February 2022. • Created with [Datawrapper](#)

Key Takeaways

- At least annually, evaluate your website against the standards set by the WCAG and Section 508.
- Determine whether you need outside help with compliance.
- If your website is not compliant, remedy as soon as practicable. Plaintiff firms routinely scan websites to identify non-compliant websites.

Your Questions



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NYS Budget Public Health Updates

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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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