

# Helping Judges Understand AI

Moderated by the Honorable Michelle Rick  
Judge, Michigan Court of Appeals

## Artificial Intelligence in the Courts: Then and Now

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Relativity





THEN

## Technology: Then and Now

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“This judicial opinion now recognizes that computer-assisted review is an acceptable way to search for relevant ESI in appropriate cases.”

*Da Silva Moore v. Publicis Groupe*, 287 F.R.D. 182 (S.D.N.Y. 2012).



## Technology: Then and Now

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“In the three years since *Da Silva Moore*, the case law has developed to the point that it is now black letter law that where the producing party wants to utilize TAR for document review, courts will permit it.”

***Rio Tinto PLC v. Vale S.A.*, 306 F.R.D. 125 (S.D.N.Y. 2015).**



The background is a vibrant green with a subtle hexagonal grid pattern. Scattered throughout are various 3D cubes in different colors and orientations. Some are solid colors like blue, orange, and yellow, while others are white with grey shading to create a 3D effect. Some cubes are outlined in thin lines of the same color as their faces. The overall aesthetic is modern and geometric.

# NOW

# The Court Decisions

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***Varghese v. China Southern Airlines Co., Ltd.***, 925 F.3d 1339 (11th Cir. 2019).

***Shaboon v. Egyptair***, 2013 IL App. (1st) 111279-U (Ill. App. Ct. 2013).

***Peterson v. Iran Air***, 905 F. Supp. 2d 121 (D.D.C. 2012).

***Martinez v. Delta Airlines, Inc.***, 2019 WL 4639462 (Tex. App. Sept. 25, 2019).

***Estate of Durden v. KLM Royal Dutch Airlines***, 2017 WL 2418825 (Ga. Ct. App. June 5, 2017).

***Ehrlich v. American Airlines, Inc.***, 360 N.J. Super. 360 (App. Div. 2003).

***Miller v. United Airlines, Inc.***, 174 F.3d 366, 371-72 (2d Cir. 1999).

***In re Air Crash Disaster Near New Orleans, LA.***, 821 F.2d. 1147, 1165 (5th Cir. 1987).



# Technology: Then and Now

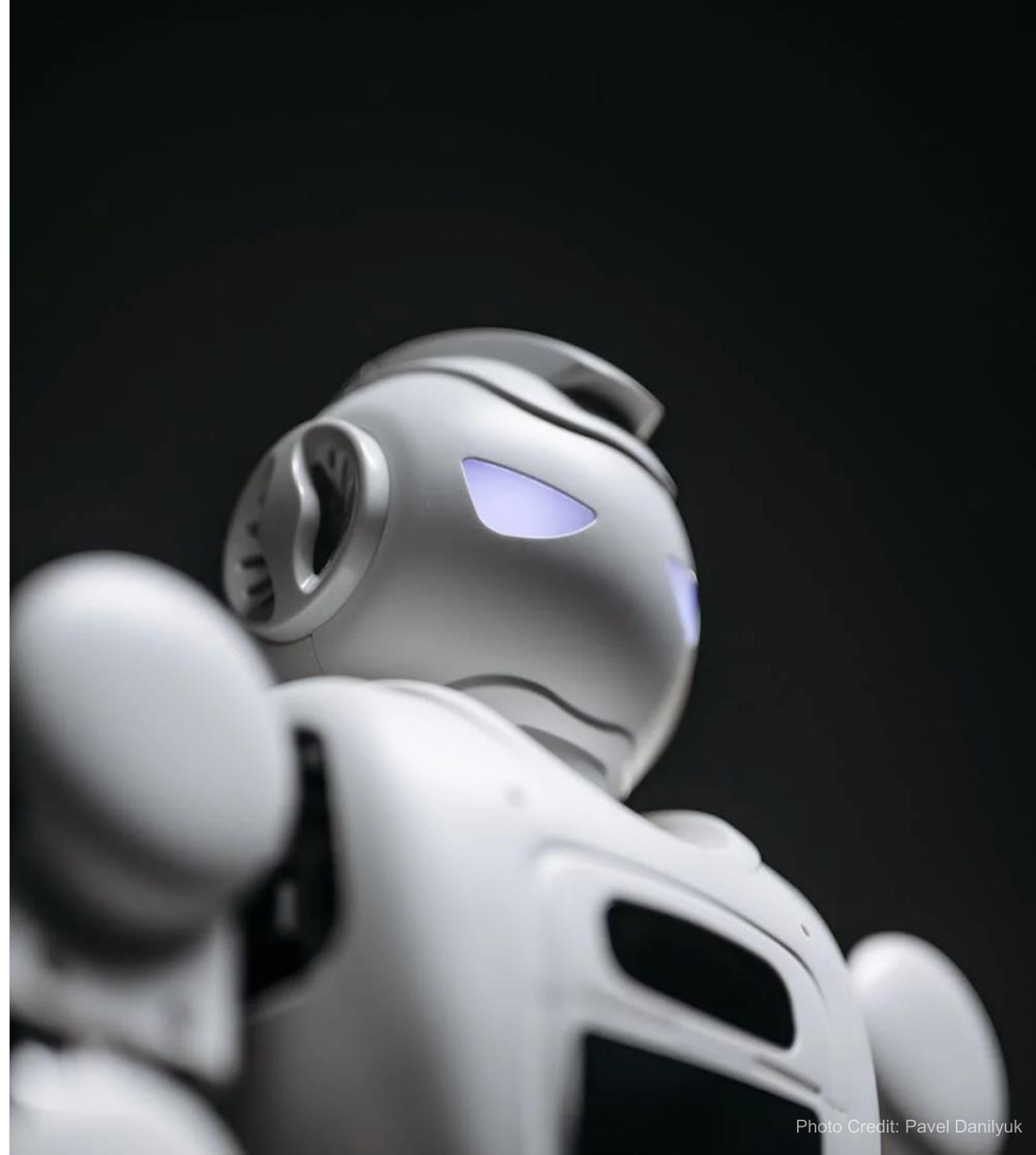
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“The court is presented with an unprecedented circumstance.”

***Mata v. Avianca*, No. 22-cv-1461 (S.D.N.Y. May 4, 2023).**

“Technological advances are commonplace, and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings.”

***Mata v. Avianca*, No. 22-cv-1461 (S.D.N.Y. June 22, 2023).**





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# Technology: Then and Now

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## Copyright

***Author's Guild v. Google, Inc.*, 804 F.3d 202 (2d. Cir. 2015).**

*Google's making of a digital copy to provide a search function is a transformative use, which augments public knowledge by making available information about Plaintiffs' books without providing the public with a substantial substitute for matter protected by the Plaintiffs' copyright interests in the original works or derivatives of them.*

***Author's Guild*, 804 F.3d at 207.**



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# NOW

# Technology: Then and Now

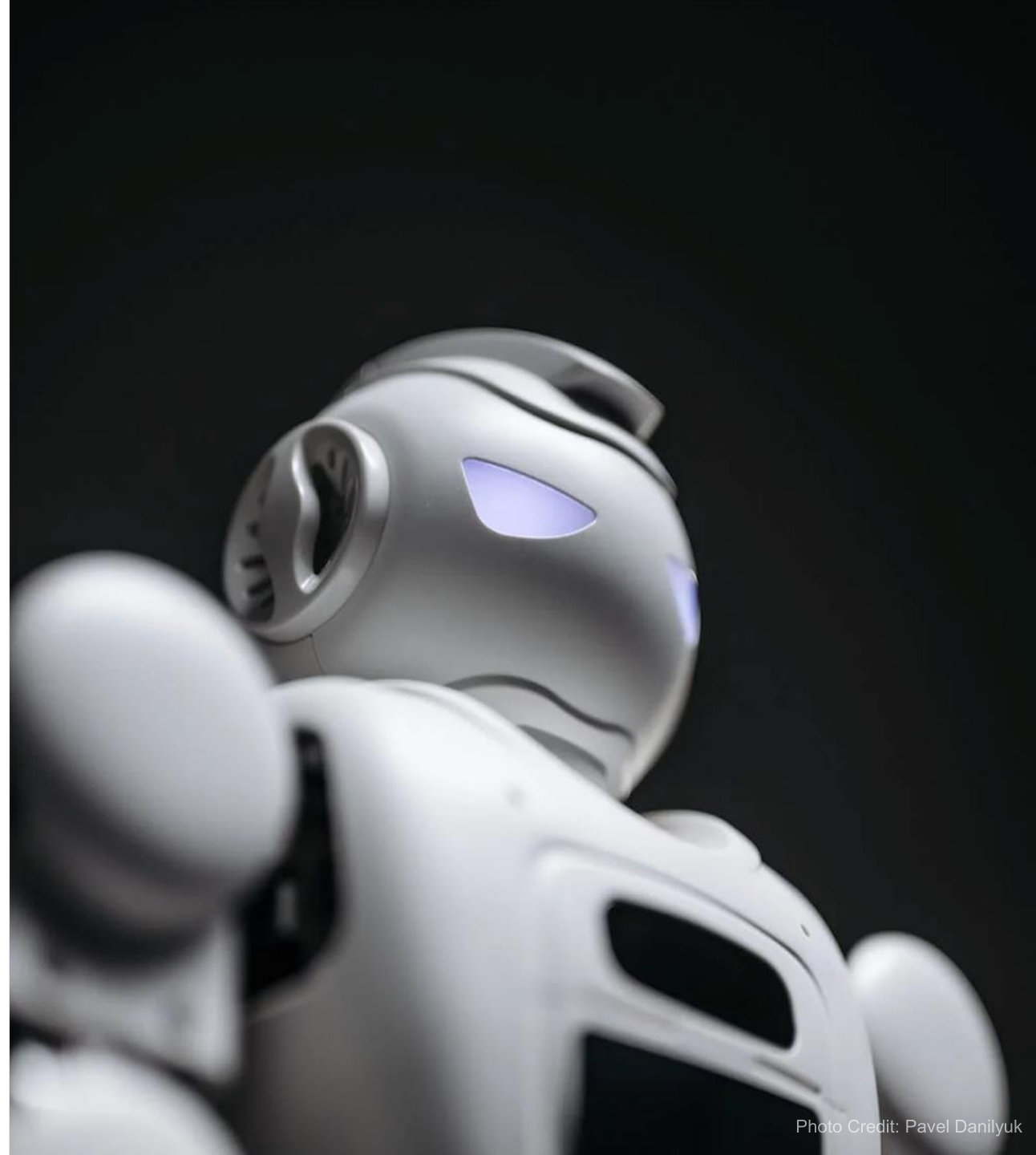
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## Copyright

*Silverman v. Open AI, Inc.* No. 3:23-cv-03416 (N.D. Cal. filed July 7, 2023).

*Hundreds of large language models have been trained on BookCorpus, including those made by OpenAI, Google, Amazon, and others. BookCorpus, however, is a controversial dataset. It was assembled in 2015 by a team of AI researchers for the purpose of training language models. They copied the books from a website called Smashwords that hosts self-published novels, that are available to readers at no cost. Those novels, however, are largely under copyright. They were copied into the BookCorpus dataset without consent, credit, or compensation to the authors.*

*Silverman*, Complaint at 6.



# Technology: Then and Now

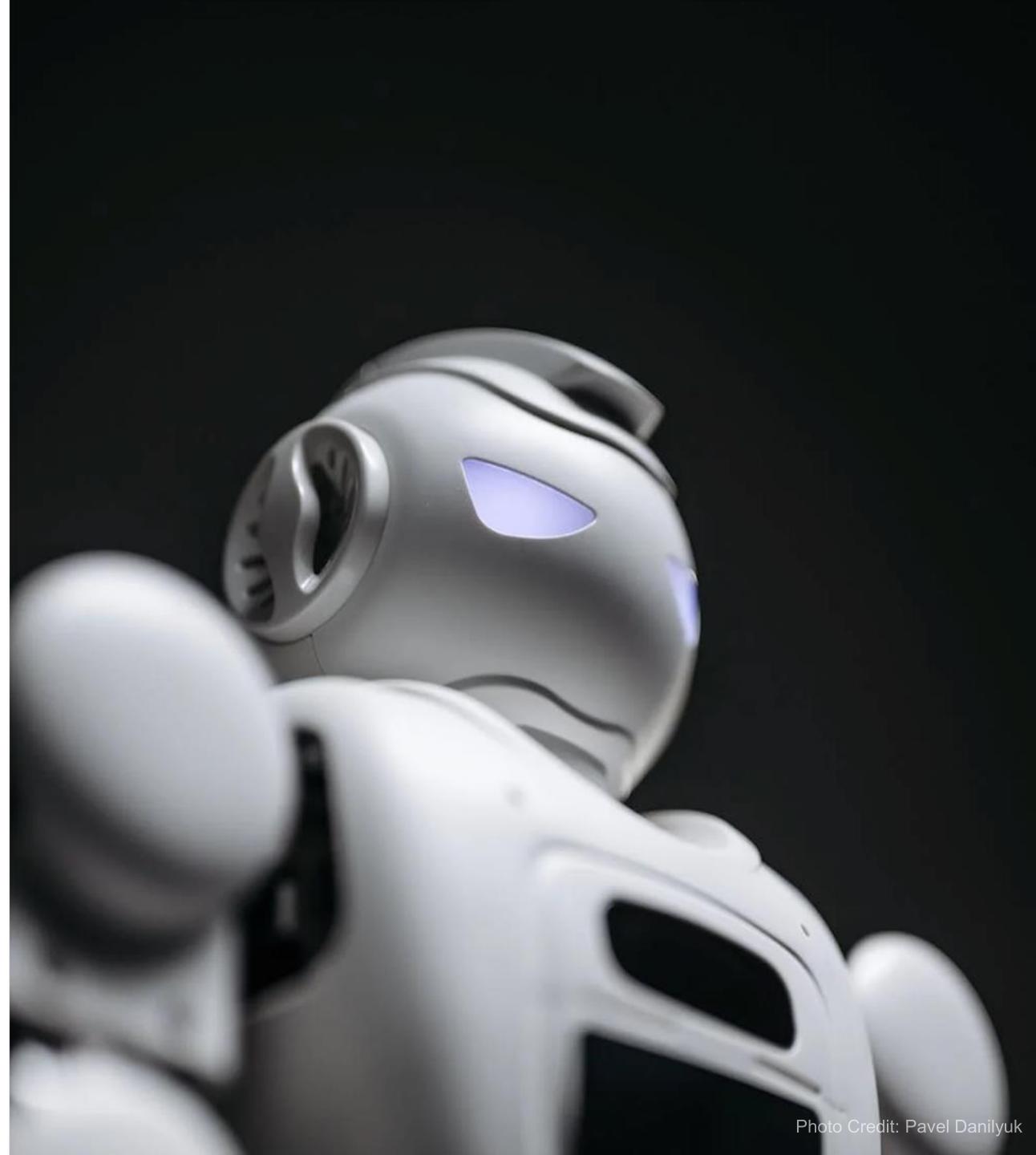
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## Data Privacy

*P.M. v. Open AI LP*, No. 3:23-cv-031199 (N.D. Cal. filed June 28, 2023).

- This class action lawsuit arises from Defendants’ unlawful and harmful conduct in developing, marketing, and operating their AI products, including ChatGPT-3.5, ChatGPT-4.0, Dall-E, and Vall-E (the “Products”), which use stolen private information, including personally identifiable information, from hundreds of millions of internet users, including children of all ages, without their informed consent or knowledge. Furthermore, Defendants continue to unlawfully collect and feed additional personal data from millions of unsuspecting consumers worldwide, far in excess of any reasonably authorized use, in order to continue developing and training the Products.
- Defendants’ disregard for privacy laws is matched only by their disregard for the potentially catastrophic risk to humanity. Emblematic of both the ultimate risk—and Defendants’ open disregard—is this statement from Defendant OpenAI’s CEO Sam Altman: “AI will probably most likely lead to the end of the world, but in the meantime, there’ll be great companies.”

--*P.M.*, Complaint at 2.

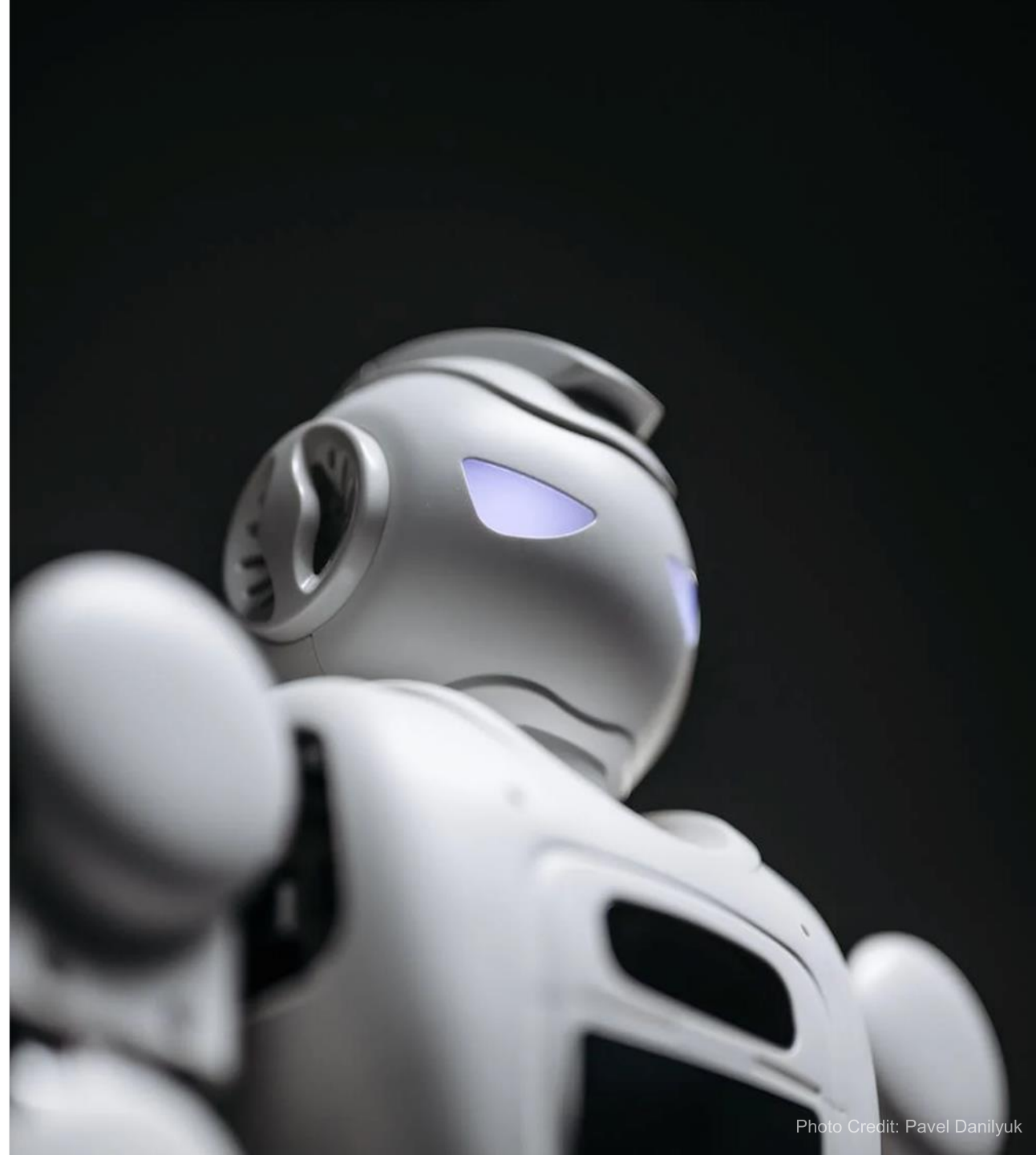


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*You have people arguing that AI will end civilization as we know it, and others hyping it up as magic that will save the planet. I'd argue that there's at least a tiny bit of room for some nuance between those two outcomes*

--Stephanie Wilkins, Editor-in-Chief, *Legaltech News*

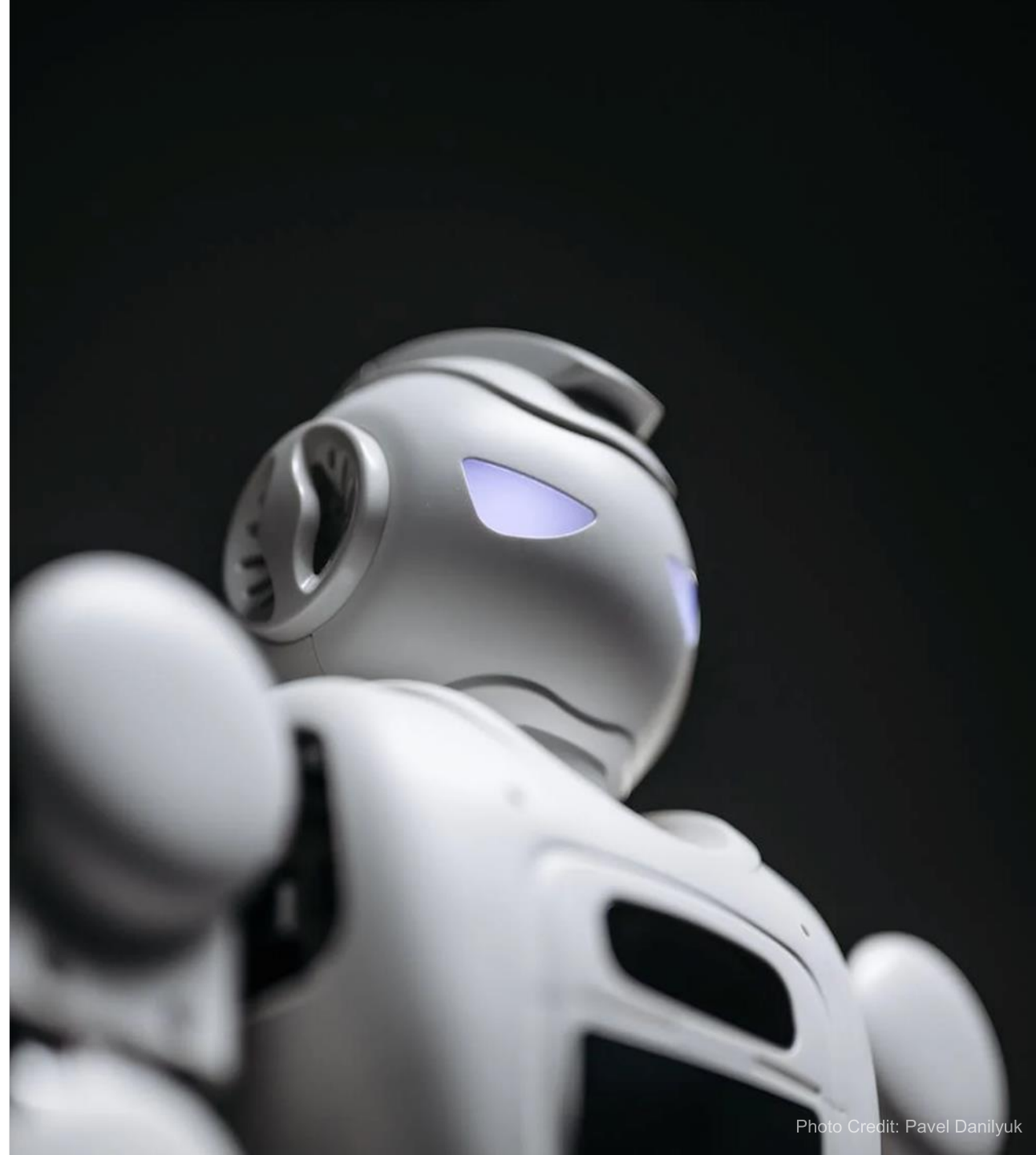


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*I don't fear artificial intelligence. Instead, I look forward to it and embrace it. This is primarily because artificial intelligence cannot possibly be worse than certain levels of human intelligence I've suffered over the years.*

--U.S. Magistrate Judge William Matthewman  
(S.D. Fla.)



**Thanks for Attending!**

