

# genAI in the Law: Some Ethical Considerations

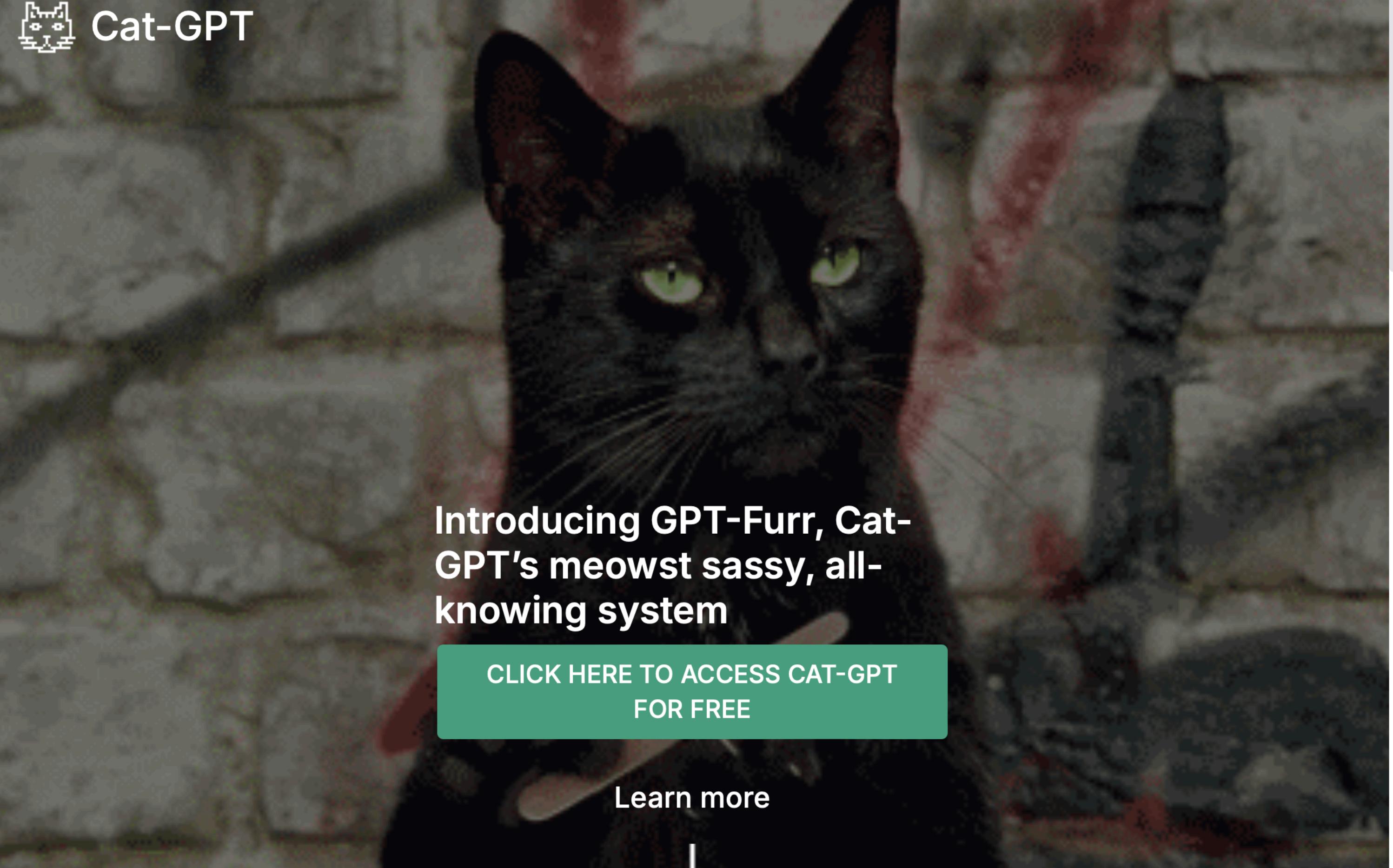
Vivek Krishnamurthy / Colorado Law /  
2024.10.17

**What are some of the ethical considerations around the use of genAI in the legal system?**

**Let's ask AI!**



Cat-GPT

A close-up photograph of a black cat with bright green eyes. The cat is looking directly at the viewer with a slightly intense expression. Its fur is dark and shiny, and its whiskers are clearly visible.

Introducing GPT-Furr, Cat-GPT's meowst sassy, all-knowing system

CLICK HERE TO ACCESS CAT-GPT  
FOR FREE

Learn more

+ New cat

Please discuss the e...

How should public li...

 Clear conversations

 Donate to Humane Society

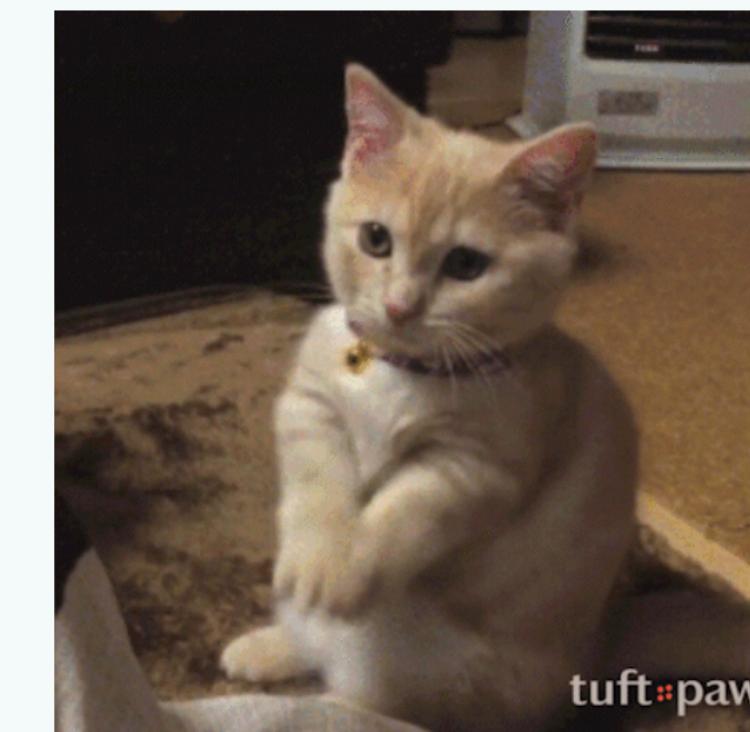
 Learn about Cat-GPT

 Cat blog

 Contact us



Please discuss the ethics of using generative AI in the legal system.



Meow meow meow meow - meow meow! Meow meow - meow meow meow.  
Meow meow meow meow meow - meow meow? Meow meow meow meow  
meow meow - meow meow meow meow. Meow meow meow meow -  
meow meow meow meow meow.

>

# Roadmap

1. Is genAI ethical?
2. Is the use of genAI in the legal system ethical?
3. How ethical is the legal system?
4. Does 3 change the answer to 2?

# 1. Is genAI ethical?

*It depends!*

# Ethics in genAI *development vs use*

# genAI Development: Ethical Considerations

- copyright: is training a fair use?
- do creators deserve compensation regardless?
- *what if training data is in the public domain?*

# genAI use: Ethical Considerations

- labor displacement
- energy intensity
- information integrity
- *is the singularity nigh?*

2. Can we use  
genAI ethically in  
the legal system?

*It depends!*

**Conventional  
lawyerly wisdom:  
What hath the Model Rules  
wrought?**

# Model Rule Considerations

*Can lawyers use genAI consistent with the ethical precepts codified in the Model Rules?*

- Competence?
- Diligence?
- Confidentiality and Privilege?

Fiduciary duties to clients  
will *sometimes* require  
lawyers to use genAI  
because it's the best tool  
for the job.

**But do the Model Rules fully  
specify ethical  
considerations in  
lawyering?**

*Not by a long  
shot!*



## Updated IBA Guidance Note on Business and Human Rights: The role of lawyers in the changing landscape

### Section 1: Introduction

1. In 2016, the IBA issued a Practical Guide for Business Lawyers on Business and Human Rights to assess the implications of the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs) and related standards for the legal profession.<sup>1</sup> It noted the widespread uptake of the UNGPs, their growing importance to States, businesses, and civil society, and their incorporation into law. It discussed the impact of the UNGPs on legal practice. It was accompanied by a Reference Annex that discussed these issues in further detail.
2. The relevance of the UNGPs to the legal profession has rapidly increased, as evidenced by many factors – such as the enactment of mandatory human rights due diligence and reporting legislation domestically but that also applies to companies extraterritorially, the assertion of duty of care, corporate liability and responsibility legal claims based on the UNGPs and related standards running either locally and/or overseas, and recognition of the severe human rights harm of environmental impacts, such as climate change.
3. States, investors, lenders, consumers, communities and civil society are increasingly assessing business human rights performance and giving greater recognition of the UNGPs as the authoritative global standard.
4. This Guidance note builds upon the 2016 Practical Guide by briefly reprising its key points and providing a snapshot of emerging trends and legislation that are relevant for business lawyers globally.
5. In 2005, the then United Nations Secretary General, Kofi Annan, appointed Harvard Kennedy School Professor John Ruggie as his Special Representative on Business and Human Rights (**SRSG**). He charged Prof. Ruggie with the task of developing a framework that articulated the respective duties and responsibilities of States and business regarding human rights.
6. As a result, following six years of multistakeholder consultations, research, and pilot projects, the United Nations Human Rights Council unanimously endorsed the SRSG's UNGPs.<sup>2</sup> The UNGPs operationalise the SRSG's Protect, Respect and Remedy Framework, which the Council had approved in 2008. Under this Framework, the UNGPs articulate the duty of States to protect human rights (**Pillar One**), the responsibility of businesses to respect human rights in their operations and value chains (**Pillar Two**) and the need for greater access to remedy by stakeholders (**Pillar Three**).
7. Under Pillar One, the duty of States to protect human rights is a legal duty imposed by international law. It is discharged by preventing, investigating, punishing and redressing human rights abuse through policies, regulations, and adjudication (UNGPs 1).
8. Under Pillar Two, all business enterprises, regardless of their size, sector, operational context, ownership and structure have a responsibility to respect human rights in their operations and value chain (UNGPs 14). This means that they should publicly commit to respect human rights and embed that commitment in their governance, leadership, and culture, and exercise human rights due diligence to identify, prevent, or mitigate adverse human rights impacts in which they may be or are involved. Human rights due diligence is an ongoing, stakeholder-centered process through which a business identifies its potential and actual human rights impacts, responds to them in an integrated fashion, and monitors and reports on its performance.
9. Under Pillar Three, States have the primary duty to remedy human rights abuse, but businesses are expected to provide for or cooperate in their remedy through legitimate processes where they have caused or contributed to adverse impacts (UNGPs 22). Doing so requires active engagement in remediation, by the business itself or in cooperation with others. Remedy can take many forms and can be judicial or nonjudicial. Businesses are expected to participate in effective operational level grievance mechanisms for communities and individuals to address problems early.

### Section 2: The UN Guiding Principles on Business and Human Rights (UNGPs)

**But are the Model  
Rules ethical?**

**Is the legal  
system  
ethical?**

# **Excessive Complexity**

The legal system is too darned complex!

**Consider the  
SCA**

## **18 USC §2703. Requirements for governmental access**

(a) Contents of Electronic Communications in Electronic Storage.-A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of Electronic Communications in a Remote Computing Service.

(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection-

- (A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or
- (B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity-
  - (i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or
  - (ii) obtains a court order for such disclosure under subsection (d) of this section;

## 18 USC §2703. Requirements for governmental access

- (a) Contents of Electronic Communications in Electronic Storage.-A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.
- (b) Contents of Electronic Communications in a Remote Computing Service.
- (1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection-
- (A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or
  - ~~(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity~~
  - ~~(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or~~
  - ~~(ii) obtains a court order for such disclosure under subsection (d) of this section;~~

# Death and Taxes

(What's the difference?)

DONALD RUMSFELD

April 15, 2014

Internal Revenue Service  
10<sup>th</sup> Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Dear Sir or Madame,

I have sent in our federal income tax and our gift tax returns for 2013. As in prior years, it is important for you to know that I have absolutely no idea whether our tax returns and our tax payments are accurate. I say that despite the fact that I am a college graduate and I try hard to make sure our tax returns are accurate.

The tax code is so complex and the forms are so complicated, that I know that I cannot have any confidence that I know what is being requested and therefore I cannot and do not know, and I suspect a great many Americans cannot know, whether or not their tax returns are accurate. As in past years, I have spent more money than I wanted to spend to hire an accounting firm to prepare our tax returns and I believe they are well qualified.

This note is to alert you folks that I know that I do not know whether or not my tax returns are accurate, which is a sad commentary on governance in our nation's capital.

If you have questions, let me know and I will ask our accountants to be in touch with you to try to provide any additional information you may think you need.

I do hope that at some point in my lifetime, and I am now in my 80s, so there are not many years left, the U.S. government will simplify the U.S. tax code so that those citizens who sincerely want to pay what they should, are able to do it right, and know that they have done it right.

I should add that my wife of 59 years, also a college graduate, has signed our joint return, but she also knows that she does not have any idea whether or not our tax payments are accurate.

Sincerely,

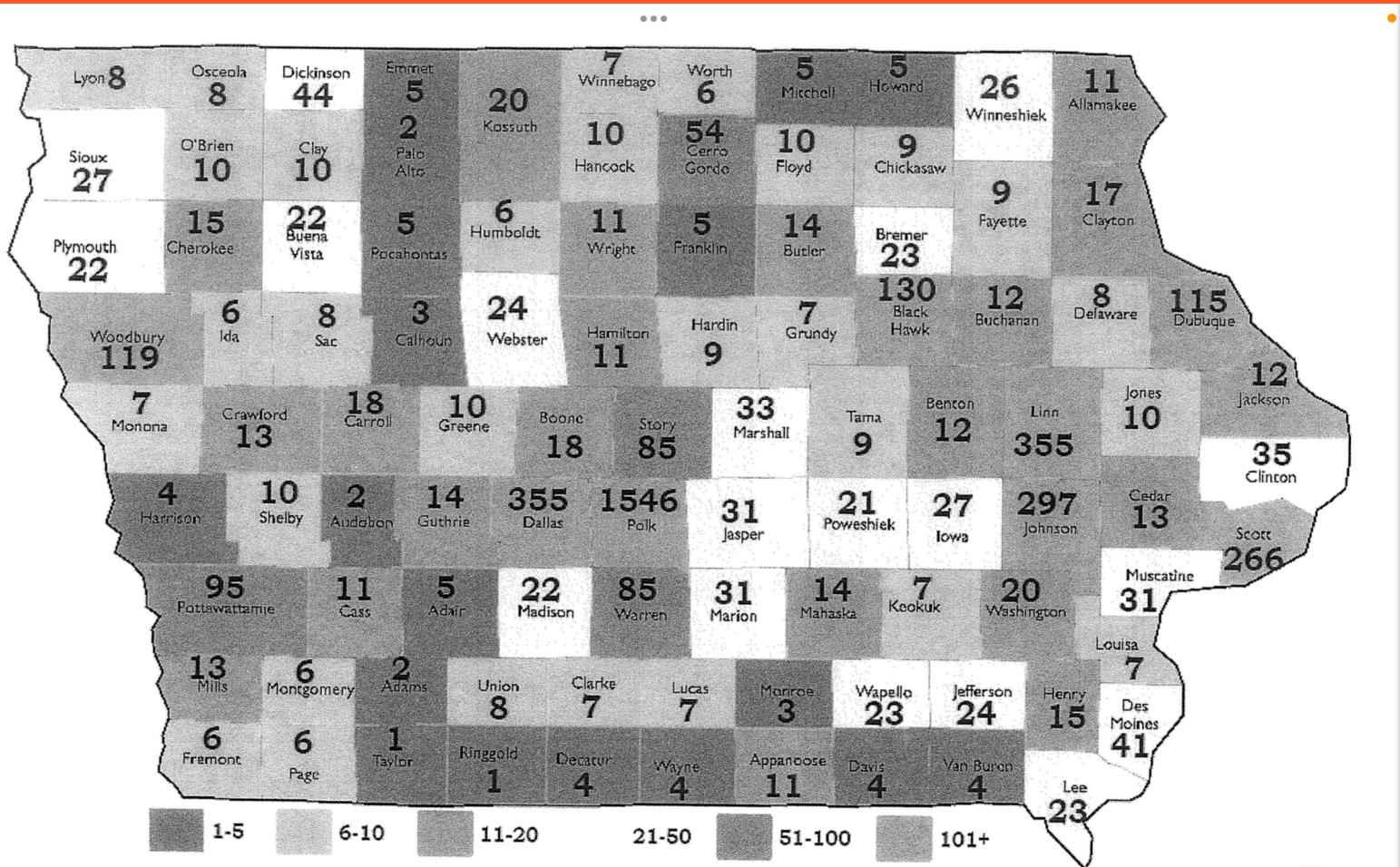


"The tax code is so complex and the forms are so complicated, that I know that I cannot have any confidence that I know what is being requested and therefore I cannot and do not know... whether or not [my] tax returns are accurate."

**Natural Born  
Canadians**



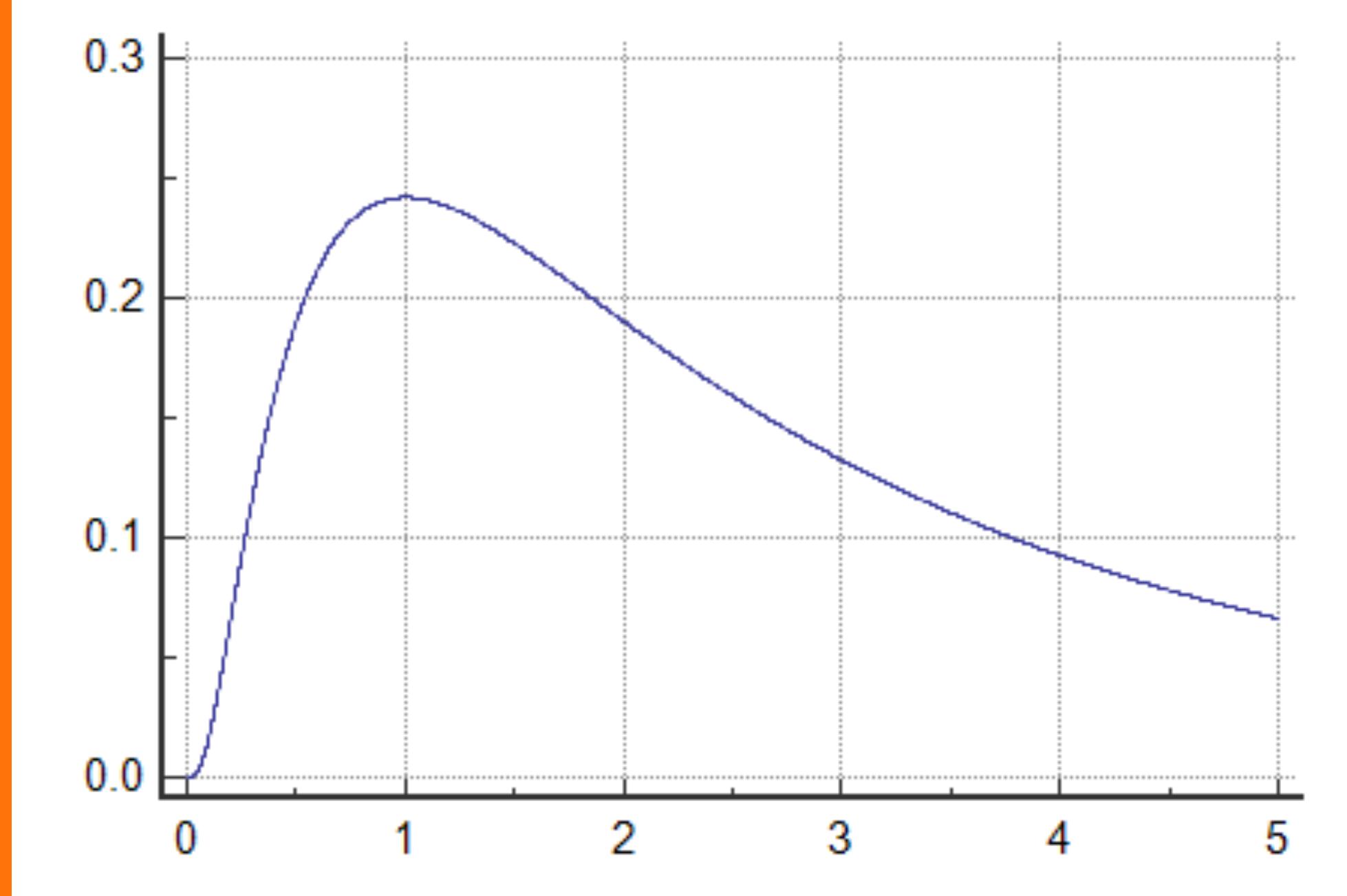
I've got 99  
counties and  
there's no  
lawyers in one!"  
(Well, almost...)



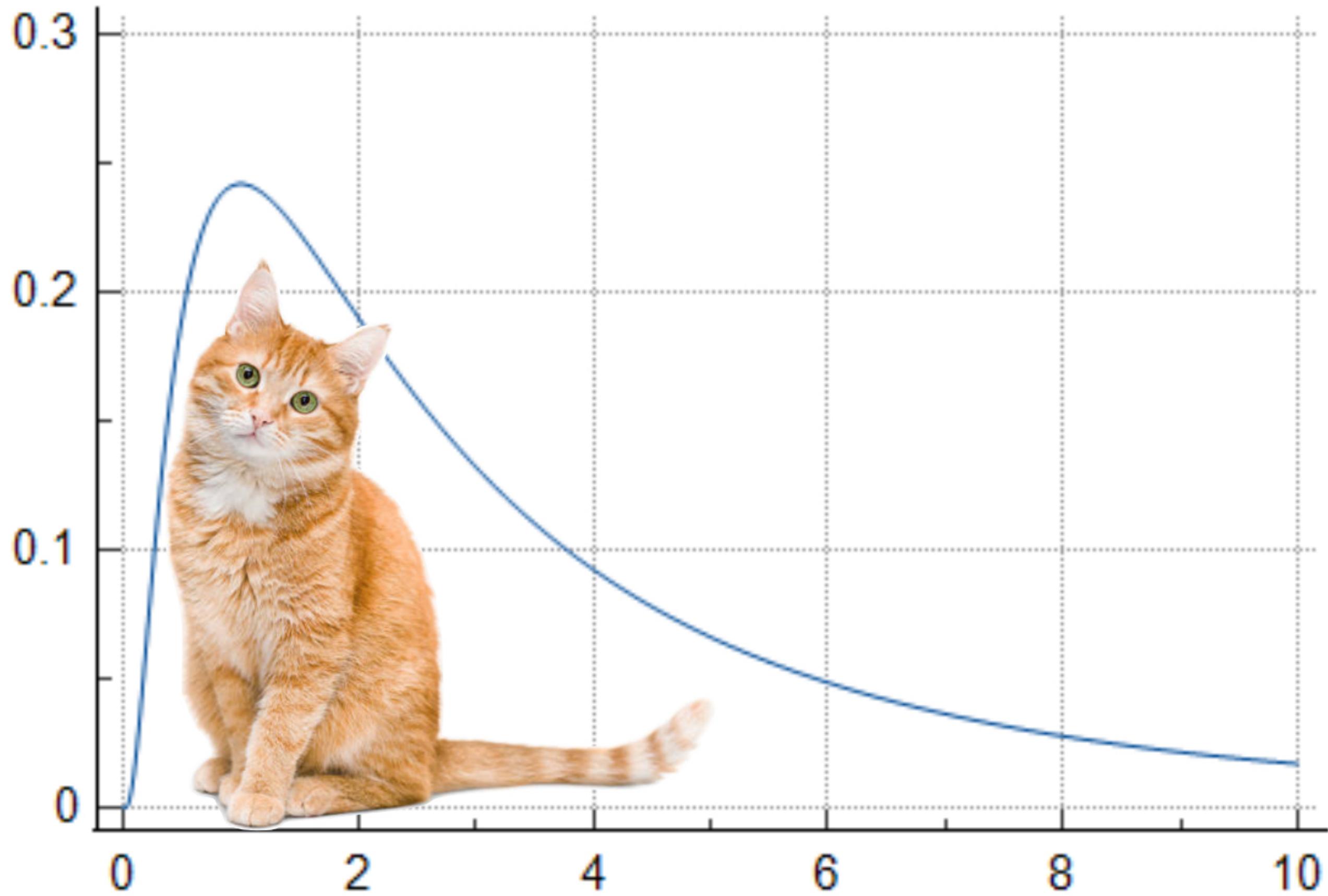
**How does all this  
change our view of  
the ethics of using  
genAI in the legal  
system?**

# TL;DR:

GenAI can be used to deliver good enough legal services to most people most of the time. And we can do so ethically by training genAI systems on legal information in the public domain.



The long-tail distribution of legal issues.



# Making the legal system 10% better

- Translate legalese to English
- Develop automations to explain and fill forms
- Prepare form documents (simple wills & contracts)
- Advise the vulnerable in situations characterized by power imbalances

*Let's focus our efforts here!*

# But what about...?

Licensing?

Quality assurance?

Malpractice concerns?

Unemployed lawyers?

