

ACCESS TO JUSTICE OR THE ILLUSION OF REPRESENTATION?

Veronica J. Finkelstein*

Generative artificial intelligence (“GAI”) is increasingly used by pro se litigants who lack access to counsel, particularly in high-volume urban legal systems defined by routine self-representation and profound informational asymmetries. Large language models (“LLMs”) powered by GAI can solicit facts, apply jurisdiction-specific law, and draft legal filings in interactive formats that closely resemble professional consultation. Although these LLMs are neither lawyers nor regulated professionals, they increasingly function as legal advisors in ways that shape legal outcomes. Current views of the unauthorized practice of law doctrine have failed to adapt to this technology, remaining oriented toward human actors and professional status.

This Article argues that GAI creates an illusion of representation: the impression that users are receiving individualized, competent legal assistance. Yet the use of GAI by pro se litigants lacks the institutional safeguards traditionally associated with legal representation. The resulting risks arise not because machines practice law, but because they create the appearance of legal representation without the accountability that traditionally accompanies it. Drawing on doctrine and comparative regulatory approaches from the European Union, the Article contends that responsibility should flow upstream to those who design, deploy, and profit from GAI systems capable of inducing reliance by pro se litigants. Existing professional responsibility principles already contain the doctrinal tools necessary to assign responsibility to lawyers who materially participate in the design, deployment, or supervision of GAI systems, even when those

* Ms. Finkelstein is an Associate Professor at the Widener University Delaware Law School. This Article was inspired by issues the Author explored in courses taught by Columbia Law Professors Anu Bradford and Hillel I. Parness. The Author is grateful to Professor Zachary L. Catanzaro for his useful comments, insightful suggestions, and generous engagement with this project. The Author also thanks Jonnie Comfort, Senior Articles Editor of the *Fordham Urban Law Journal*, and the *Journal*’s editorial team for their careful work and thoughtful contributions in bringing this Article to fruition.

lawyers never represent the pro se litigants who ultimately rely on them. Reframed in functional and consumer-protective terms, unauthorized practice doctrine can adapt to GAI-mediated legal advice without treating machines as professionals or jeopardizing access to justice.

Introduction	148
I. Unauthorized Practice of Law Doctrine and Its Historical Application to Technology-Mediated Legal Assistance	155
II. Why GAI Poses Distinct Challenges	159
A. The Misplaced Focus of Current Ethics Guidance and Resulting Regulatory Gap	165
B. Heightened GAI Concerns Given the Urban Access-to- Justice Crisis.....	167
III. Lessons Learned from Europe	175
IV. Reallocating Responsibility Through ABA Model Rules of Professional Conduct 5.1 Through 5.5.....	187
Conclusion.....	205

INTRODUCTION

The legal profession has long relied on the unauthorized practice of law doctrine to establish the boundary between what nonlawyers can and cannot do.¹ For most of the doctrine's history, it existed in a world where the practice of law was entirely performed by human beings.² A foundational assumption of the doctrine was that practicing law, whether authorized or not, was a uniquely human activity.³

Generative artificial intelligence ("GAI") unsettles this assumption.⁴ GAI-powered large language models ("LLMs") can now generate human-

1. See Bruce A. Green, *Why State Courts Should Authorize Nonlawyers to Practice Law*, 91 FORDHAM L. REV. 1249, 1250–52 (2023).

2. See, e.g., Deborah L. Rhode, Kevin Eaton & Anna Porto, *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1, 19–20 (2018) (applying the unauthorized practice of law doctrine to various tasks performed by nonlawyer human actors).

3. See W. Bradley Wendel, *The Promise and Limitations of Artificial Intelligence in the Practice of Law*, 72 OKLA. L. REV. 21, 48–49 (2019).

4. Indeed, some scholars advocate for endowing GAI with personhood as a legal fiction. See, e.g., Linda Halsey, *Why Idaho Should Revisit Its Prohibition of Personhood for AI*, 60 IDAHO L. REV. 63, 65 (2024); Hannah Quicksell, *When AI Takes Responsibility for Its Actions*, 28 U.S.F. INTELL. PROP. & TECH. L.J. 1, 19 (2023); Tanner W. Mathison, *Recognizing Right: The Status of Artificial Intelligence*, 19 J. BUS. & TECH. L. 105, 153 (2023).

sounding responses to legal questions.⁵ LLMs can solicit facts, reference jurisdiction-specific law, propose strategies, and draft court filings.⁶ LLMs can engage users in an interactive format that hews closer to a legal consultation than a fill-in-the-blank form or reference guide.⁷ These LLMs are neither lawyers nor human beings, but they increasingly perform functions that users associate with lawyering.⁸

This creates a distinct regulatory problem.⁹ LLMs often produce incorrect, incomplete, fabricated, or biased legal information.¹⁰ Relying on

5. See Hadar Y. Jabotinsky & Michal Lavi, *AI in the Courtroom: The Boundaries of RoboLawyers and RoboJudges*, 35 FORDHAM INTELL. PROP., MEDIA & ENT. L.J. 286, 297 (2025); Xavier Rodriguez, *Artificial Intelligence (AI) and the Practice of Law in Texas*, 63 S. TEX. L. REV. 1, 6–7 (2023).

6. See John Villasenor, *Generative Artificial Intelligence and the Practice of Law: Impact, Opportunities, and Risks*, 25 MINN. J.L. SCI. & TECH. 25, 28–35 (2024).

7. See Villasenor, *supra* note 6, at 36–37.

8. See Nikola L. Datzov, *AI Jurisprudence: Toward Automated Justice*, 23 NW. J. TECH. & INTELL. PROP. 1, 19 (2025); E. Kenneth Wright, Jr., *AI and Civil Small Claims Matters*, 37 CBA RECORD 22, 23 (2023); Susan Saab Fortney, *Online Legal Document Providers and the Public Interest: Using a Certification Approach to Balance Access to Justice and Public Protection*, 72 OKLA. L. REV. 91, 93 (2019).

9. See Lilythe Eighmy, Comment, *The Role of AI in Custody and Parenting Time Decisions*, 38 J. AM. ACAD. MATRIM. LAWS. 239, 263 (2025).

10. See Colleen V. Chien & Miriam Kim, *Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap*, 57 LOY. L.A. L. REV. 903, 917–18 (2025); Amy J. Schmitz & John Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, 23 COLUM. SCI. & TECH. L. REV. 1, 10 (2022). Although often described colloquially as “hallucinations,” the errors made by LLMs are not merely accidental glitches. LLMs generate text by predicting and selecting subsequent tokens based on the preceding context, a process that can produce coherent and apparently meaningful language without requiring the model to possess an independent, human-like understanding of the subject matter. See Murray Shanahan, *Talking About Large Language Models*, 67 COMM’NS ACM 68, 68–71 (2024). This process is optimized to produce statistically plausible continuations, not independently to verify the factual or legal accuracy of the resulting text. See *id.* As a result, LLMs may produce outputs that are linguistically coherent and highly persuasive even when those outputs are legally or factually incorrect. See Zachary L. Catanzaro, *The Dead Law Theory: The Perils of Simulated Interpretation*, FLA. L. REV. (forthcoming 2027) (manuscript at 16–20), <https://ssrn.com/abstract=6164388> (on file with the *Fordham Urban Law Journal*). The emergence of retrieval-augmented generation (“RAG”) has reduced some of these concerns in certain commercial legal research products. Rather than relying solely on an LLM’s internal parameters, RAG systems retrieve documents from curated legal databases and ground responses in those materials, substantially improving citation accuracy and reducing hallucinations. Even assuming these systems mitigate many of the technical shortcomings discussed above, they do not eliminate the regulatory concerns addressed in this Article. Commercial RAG-enabled platforms such as Westlaw Precision AI, Lexis+ AI, and similar enterprise products are designed primarily for lawyers and other institutional users with access to proprietary legal databases. Most self-represented litigants instead rely on freely available consumer-facing LLMs that lack comparable retrieval capabilities or access to curated legal sources. See Varun Magesh et al., *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, 22 J. EMPIRICAL LEGAL STUD. 216, 219–34 (2025).

this information can have significant consequences.¹¹ If a human being provided similar information, that human being could be held accountable by a bar association or other regulatory authority.¹² Yet as currently applied, the doctrine offers no obvious path for accountability by the entities responsible for the LLM when that LLM provides faulty information.¹³ The LLM itself cannot be disciplined or sanctioned.¹⁴ Bar authorities lack jurisdiction over the technology companies responsible for LLMs.¹⁵ Courts also face restraints.¹⁶ Judges cannot sanction an LLM, even when that LLM is used to draft frivolous or unmeritorious court filings.¹⁷ The result is a mismatch between risk and regulation.¹⁸ LLMs are increasingly used in a legal setting, but the tools designed to address incompetent or unauthorized lawyering are not always effectively applied.¹⁹

This mismatch is especially acute in urban legal systems, where high-volume, low-representation dockets amplify both the attraction and the risk of GAI-mediated legal assistance.²⁰ In city housing courts, immigration

11. See Michael Simon et al., *Lola v. Skadden and the Automation of the Legal Profession*, 20 YALE J.L. & TECH. 234, 300–02 (2018).

12. See Mark R. Parthemer, *Department: The Last Word: Let's Be Careful Out There! Words to Live by When It Comes to Generative AI*, 39 PROB. & PROP. 64, 64 (2025).

13. See Michael Hatfield, *Professionally Responsible Artificial Intelligence*, 51 ARIZ. ST. L.J. 1057, 1062 n.10 (2019) (identifying the challenge in regulating GAI under existing ethics rules).

14. See Colin E. Moriarty, *The Legal Ethics of Generative AI Part 3*, 52 COLO. LAW. 30, 35 (2023).

15. See Joseph J. Avery, Patricia Sánchez Abril & Alissa del Riego, *ChatGPT, Esq.: Recasting Unauthorized Practice of Law in the Era of Generative AI*, 26 YALE J.L. & TECH. 64, 104–07 (2023) [hereinafter Avery, Abril & del Riego, *ChatGPT, Esq.*].

16. See Jonathan Bick, *Improving Solutions to AI-Related Difficulties*, 50 RUTGERS COMPUT. & TECH. L.J. 159, 177 (2024). Courts have sanctioned pro se litigants who relied on filings containing fabricated authorities or other misrepresentations caused by the use of GAI. See, e.g., *Julien v. Arthur*, 260 N.Y.S.3d 344, 349–51 (N.Y. App. Div. 2026) (collecting cases).

17. See Bick, *supra* note 16, at 202. Courts can address these concerns by referring suspected instances of unauthorized practice to state bar authorities. That mechanism, however, remains inherently reactive. It depends upon a disputed legal matter reaching a tribunal, a judge recognizing the issue, and a referral being effective under the specific factual circumstances.

18. Bick, *supra* note 16, at 202–03.

19. Bick, *supra* note 16, at 177–93.

20. See Court Statistics Project, *Is GenAI Revolutionizing Court Filings?*, NAT'L CTR. FOR STATE CTS. (June 24, 2025), <https://www.ncsc.org/resources-courts/genai-revolutionizing-court-filings> [https://perma.cc/4FPH-BS5C] (examining civil-filing trends in data from various jurisdictions including Los Angeles County, California); Josh Marcus, *The New Public Defender: Some Are Turning to ChatGPT to Offer Legal Advice and Win Small Claims Cases*, INDEPENDENT (Oct. 8, 2025), <https://www.independent.co.uk/news/world/americas/chatgpt-ai-legal-advice-lawyer-b2841930.html> [https://perma.cc/B9CE-7LEQ] (reporting on AI-assisted self-representation and AI-related filing problems involving litigants and courts in California, such as Long

proceedings, municipal violations cases, and benefits hearings, litigants regularly proceed without counsel and increasingly turn to GAI tools for guidance.²¹ These settings magnify the consumer-protection concerns animating unauthorized practice doctrine, as erroneous or misleading advice can result in eviction, deportation, loss of benefits, or cascading financial penalties.²² The risks of using GAI in such a setting are real.²³ But effective management of that risk has lagged.

This is not for lack of attention on GAI. Bar associations have begun issuing ethics opinions addressing how lawyers use GAI.²⁴ Federal regulators have turned their attention to marketing and consumer deception

Beach, and New York City, including Staten Island). Although the full scope of structural, economic, technological, and demographic challenges facing rural legal systems is beyond the ambit of this Article, these additional challenges heighten the unmet demand for affordable legal assistance that increasingly drives pro se litigants toward GAI. *See, e.g.*, Jared Perlo & Angela Yang, *These People Ditched Lawyers for ChatGPT in Court*, NBC NEWS (Oct. 8, 2025), <https://www.nbcnews.com/tech/innovation/ai-chatgpt-court-law-legal-lawyer-self-represent-pro-se-attorney-rcna230401> [<https://perma.cc/VN3D-6RDK>] (illustrating the types of pro se litigants using LLMs). *See generally* Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219 (2010).

21. *See* Mostafa Soliman, *Pro Se Advocacy in the AI Era: Benefits, Challenges, and Ethical Implications*, N.Y. STATE BAR ASS'N (Feb. 10, 2026), <https://nysba.org/pro-se-advocacy-in-the-ai-era-benefits-challenges-and-ethical-implications/> [<https://perma.cc/H4UC-CQVB>]; Marcus, *supra* note 20; Julia Saltzman, *Legal Information Programs: A Possible Way to Reduce Harm for Unrepresented Noncitizens in Immigration Proceedings*, ACCESS TO JUST. LAB (July 7, 2025), <https://a2jlab.org/legal-information-programs-a-possible-way-to-reduce-harm-for-unrepresented-noncitizens-in-immigration-proceedings/> [<https://perma.cc/9ZJV-RVND>].

22. *See* Marcus, *supra* note 20; Perlo & Yang, *supra* note 20; Ed Walters, *Re-Regulating UPL in an Age of AI*, 8 GEO. L. TECH. REV. 316, 328 (2024) (explaining that UPL regulation of generative-AI legal assistance implicates consumer-protection concerns regarding inaccurate or misleading guidance); *see also* Paul Calfo, Larisa Nesimovic & Shannon Peters, *AI-Assisted Pro Se Litigation: Who Pays the Price?*, HUSCH BLACKWELL: PROD. PERSP.: COMPLEX TORT & PROD. L. (Apr. 8, 2026), <https://www.productlawperspective.com/2026/04/ai-assisted-pro-se-litigation-who-pays-the-price/> [<https://perma.cc/DBZ9-SUJS>] (describing the risks posed by self-represented litigants' reliance on GAI for legal advice and court filings, including hallucinated authority, procedural errors, and the absence of professional accountability mechanisms applicable to licensed attorneys).

23. This Article focuses on publicly available, general-purpose GAI systems used directly by pro se litigants, such as ChatGPT, Claude, Gemini, and similar consumer-facing LLMs. It does not address enterprise legal AI products developed for use by licensed attorneys, such as Harvey, Legora AI, Lexis+ AI, Westlaw Precision AI, or CoCounsel.

24. *See* Andrea Bucher, Comment, *Navigating the Power of Artificial Intelligence in the Legal Field*, 62 HOU. L. REV. 819, 839 (2025) (summarizing developments by bar associations).

claims.²⁵ Courts have sanctioned lawyers for unethical use of AI.²⁶ Unfortunately, these responses only target a portion of the problem. These responses address the use of GAI by lawyers but ignore the use of GAI by pro se litigants—the very population most likely to rely on GAI as a substitute for professional legal assistance.

This use deserves attention.²⁷ GAI creates exactly the kind of consumer reliance that unauthorized practice doctrine is meant to prevent, yet the interpretation and application of the doctrine have not fully evolved.²⁸ GAI systems can create what this Article terms an “illusion of representation”—the impression that a user is receiving individualized, competent legal assistance when, in fact, no accountable legal professional is involved. This illusion is produced through a combination of factors, including interactive engagement, tailored procedural or strategic guidance, and the displacement of meaningful human supervision. The illusion concerns institutional accountability rather than subjective belief. A user need not actually believe the LLM is a licensed lawyer; it is enough that the system functionally reproduces the experience and reliance traditionally associated with legal representation. Recent litigation confirms that the issue is no longer academic. Real people are mistaking the output of LLMs for competent legal advice.

Cases such as *Nippon Life Insurance Co. of America v. OpenAI*²⁹ illustrate the growing entanglement between GAI systems and legal decision-making caused by nonlawyers relying on the output of LLMs.³⁰ In a separate case,

25. See Avery, Abril & del Riego, *ChatGPT, Esq.*, *supra* note 15, at 124.

26. See Raymond H. Brescia, *Robots vs. Predators: Can Generative Artificial Intelligence Help to Address the Justice Gap in Consumer Debt Litigation?*, 51 FORDHAM URB. L.J. 1553, 1575–76 (2024) (describing cases in which courts sanctioned attorneys for submitting filings containing fictitious cases or other AI-generated legal authorities); see also Joseph J. Avery, Patricia Sánchez Abril & Alissa del Riego, *Attributing AI Authorship: Towards a System of Icons for Legal and Ethical Disclosure*, 22 NW. J. TECH. & INTELL. PROP. 1, 9–10 (2024) [hereinafter Avery, Abril & del Riego, *Attributing AI Authorship*] (discussing the ethical and professional-responsibility concerns raised by attorneys’ undisclosed or insufficiently disclosed use of generative AI); Carol M. Bast, *Artificial Intelligence and Ethics*, 50 RUTGERS COMPUT. & TECH. L.J. 283, 304–17 (2024) (discussing attorneys’ ethical duties when using artificial intelligence, including the need for technological competence, supervision, and verification of AI-generated work).

27. See Barbara Glesner Fines, *AI, UPL, & A2J—Generative AI’s Disruptions in the Delivery of Legal Services to Low-Income Individuals*, 77 WASH. U. J.L. & POL’Y 126, 126–27 (2025).

28. See Chien & Kim, *supra* note 10, at 918–21.

29. *Nippon Life Ins. Co. of Am. v. OpenAI Found. & OpenAI Grp.* PBC, No. 26-cv-02448 (N.D. Ill. filed Mar. 4, 2026).

30. See Brooke Lively, *When ChatGPT Becomes Co-Counsel: A Cautionary Tale About AI and the Unauthorized Practice of Law*, ATTORNEY AT WORK (Mar. 26, 2026), <https://www.attorneyatwork.com/ai-unauthorized-practice-of-law/> [https://perma.cc/N5C4-3F9C]; Frances M. Green & Bryan Hahm, *The Case Was Settled, But ChatGPT Thought*

Nippon was sued by a disability claimant alleging that Nippon wrongfully denied her insurance benefits.³¹ At the time she litigated this claim, the claimant was represented by counsel.³² With counsel's assistance, the litigation was resolved through a settlement with prejudice, resulting in a final judgment that extinguished the claimant's right to further litigate the claim.³³

Following the conclusion of that case, the former claimant began to question the adequacy of her counsel's representation in connection with the settlement.³⁴ She allegedly used ChatGPT to evaluate her counsel's advice regarding the settlement's terms and the legal finality of the dismissal.³⁵ Based on ChatGPT's responses, she concluded that her counsel had provided erroneous guidance.³⁶ She terminated the attorney-client relationship and proceeded to litigate against Nippon without counsel.³⁷ Relying on advice generated by ChatGPT, she filed dozens of motions in the original action attempting to reopen or relitigate the settled claims, despite the with-prejudice disposition.³⁸

Nippon subsequently sued OpenAI, the company responsible for ChatGPT.³⁹ Nippon alleged that ChatGPT had crossed the line between providing general legal information and engaging in fact-specific legal counseling by analyzing the claimant's individual circumstances and assisting in the drafting of court filings tailored toward reopening the closed case.⁴⁰ On that basis, Nippon asserted that OpenAI had facilitated, or itself engaged in, the unauthorized practice of law. The case remains pending.⁴¹

Otherwise: A Dispute Poised to Define AI Legal Liability, EPSTEIN BECKER GREEN, P.C. (Mar. 17, 2026), <https://www.ebglaw.com/commercial-litigation-update/the-case-was-settled-but-chatgpt-thought-otherwise-a-dispute-poised-to-define-ai-legal-liability> [https://perma.cc/KDX2-WLNC]; Kaitlyn E. Stone & William M. Carlucci, *Lawsuit Alleges AI Chatbot Engages in Unauthorized Practice of Law*, NAT'L L. REV. (Mar. 10, 2026), <https://natlawreview.com/article/lawsuit-alleges-ai-chatbot-engages-unauthorized-practice-law> [https://perma.cc/SY93-XMRX].

31. Lauren Berg, *OpenAI Practices Law Without a License, Insurer Alleges*, LAW360 (Mar. 5, 2026), <https://www.law360.com/articles/2449612/openai-practices-law-without-a-license-insurer-alleges> (on file with the *Fordham Urban Law Journal*). See generally *Dela Torre v. Nippon Life Ins. Co. of Am.*, No. 22-cv-07059, 2023 WL 2868058 (N.D. Ill. Apr. 10, 2023).

32. Berg, *supra* note 31.

33. Berg, *supra* note 31.

34. Berg, *supra* note 31.

35. Berg, *supra* note 31.

36. Berg, *supra* note 31.

37. Berg, *supra* note 31.

38. Berg, *supra* note 31.

39. Berg, *supra* note 31.

40. Berg, *supra* note 31.

41. Berg, *supra* note 31.

The allegations in *Nippon* frame the broader doctrinal question this Article addresses: whether existing unauthorized-practice-of-law frameworks meaningfully capture the regulatory challenges posed by GAI. The unauthorized practice of law doctrine, as currently interpreted and applied, does not adequately address these challenges. The existing interpretation asks the wrong question, namely “can a machine be regulated like a lawyer?” It should instead ask “who designed, deployed, and profitably marketed a system that can appear to do the work of a lawyer?” Rather than treating GAI as an actor, regulatory attention should shift toward the human beings responsible for the underlying technology.

As argued herein, the solution does not require revising existing professional responsibility rules or inventing an entirely new regulatory scheme. Existing rules governing supervision, responsibility, and unauthorized practice provide a workable framework when thoughtfully applied to GAI.⁴² Comparative regulatory approaches emerging in Europe underscore the feasibility of platform-focused accountability and offer additional support for this shift in American doctrine.

The analysis in this Article proceeds in four parts. Part I examines unauthorized practice of law doctrine and its historical application to technology-mediated legal assistance. Part II explains why generative AI presents distinct challenges, critiques the current ethics guidance directed primarily at lawyers, and demonstrates why those challenges are especially acute in urban legal systems marked by routine self-representation and significant access-to-justice gaps. Part III draws lessons from the European Union, demonstrating how the European Union AI Act’s (“AI Act”) emphasis on provider and deployer responsibility offers a useful conceptual model for reallocating responsibility without treating AI systems as legal actors. Part IV explains how ABA Model Rules of Professional Conduct 5.1 through 5.5 provide a doctrinal framework for assigning professional responsibility to lawyers who materially participate in designing, developing, deploying, supervising, or integrating GAI systems that deliver legal assistance, even when those lawyers have no attorney-client relationship with the pro se litigants who ultimately rely on those systems. Taken together, this Article demonstrates that existing professional responsibility principles already provide the doctrinal tools necessary to adapt unauthorized practice doctrine to the age of generative AI.

42. The constitutional limits on regulating AI-generated legal communications are beyond the scope of this Article. Whether restrictions on such communications implicate the First Amendment’s protections for professional speech, commercial speech, or other forms of expression presents a distinct constitutional inquiry.

I. UNAUTHORIZED PRACTICE OF LAW DOCTRINE AND ITS HISTORICAL APPLICATION TO TECHNOLOGY-MEDIATED LEGAL ASSISTANCE

It is notoriously difficult to define the unauthorized practice of law with precision.⁴³ States vary in their statutory formulations and courts often decline to adopt comprehensive definitions.⁴⁴ Despite this lack of clarity, there is uniform agreement that the practice of law should be regulated.⁴⁵ Regulation preserves the integrity of the judicial process.⁴⁶ Regulation reinforces professional norms.⁴⁷ Most importantly, regulation protects consumers from incompetence and fraud.⁴⁸ Legal errors can result in loss of liberty, property, and family relationships.⁴⁹ Licensure operates as a proxy for competence and accountability.⁵⁰

Historically, unauthorized practice prohibitions developed alongside the professionalization of the bar.⁵¹ As law became a regulated profession, courts and legislatures sought to protect clients from harm caused by untrained individuals.⁵² The doctrine also serves an institutional function. Courts rely on lawyers to uphold procedural norms, ethical duties, and

43. The absence of a uniform definition is a natural consequence of American federalism. Each state possesses primary authority to regulate the practice of law within its borders and to adopt and enforce its own rules governing professional conduct and unauthorized practice. This decentralized approach offers important benefits by preserving state control over the legal profession and allowing regulatory experimentation. At the same time, it necessarily produces variation in how jurisdictions define and enforce the unauthorized practice of law, leaving no comprehensive national definition.

44. See Michael V. Tate, *Using Technology Efficiently, Ethically: AI, Chatbots, Interactive Websites and How Unauthorized Practice of Law (UPL) Rules Guide the Digital Future of Legal Services*, 96 ADVOC. 40, 40 (2021); Brian S. Haney, *Applied Natural Language Processing for Law Practice*, 2020 B.C. INTELL. PROP. & TECH. F. 1, 33–35; Deborah L. Rhode, *White Paper: What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. REV. 429, 431–32 (2016).

45. See Sean Steward, *Are A.I. Lawyers a Legal Product or Legal Service?: Why Current UPL Laws Are Not Up to the Task of Regulating Autonomous A.I. Actors*, 53 HOFSTRA L. REV. 391, 403 (2025).

46. See Avery, Abril & del Riego, *ChatGPT, Esq.*, *supra* note 15, at 90–93.

47. See Jan L. Jacobowitz & Peter R. Jarvis, *Unauthorized Practice or Untenable Prohibitions: Refining and Redefining UPL*, 13 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 283, 300–04 (2023).

48. See David Freeman Engstrom & R.J. Vogt, *The New Judicial Governance: Courts, Data, and the Future of Civil Justice*, 72 DEPAUL L. REV. 171, 228 (2022); Sherley E. Cruz, *Coding for Cultural Competency: Expanding Access to Justice with Technology*, 86 TENN. L. REV. 347, 376–89 (2019).

49. See Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1791–94 (2001).

50. See Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 980–82 (2012).

51. See Steward, *supra* note 45, at 393–94.

52. See Walters, *supra* note 22, at 319–21.

candor obligations.⁵³ Allowing nonlawyers to practice unsupervised erodes those norms.⁵⁴

The traditional view of the unauthorized practice doctrine presumes a human actor with intent and agency.⁵⁵ It assumes that a human who could be licensed chooses to give legal advice without that license.⁵⁶ Remedies and sanctions reflect this assumption. Human beings can be enjoined from future conduct.⁵⁷ They can be fined.⁵⁸ In some cases, they can be criminally prosecuted.⁵⁹ That premise made sense when legal services were delivered by identifiable human actors. It becomes considerably less useful when the conduct capable of producing legal advice emerges from design choices distributed across organizations and time.

This traditional view functioned adequately in a pre-digital environment and even during the early development of legal software. When nonlawyer businesses provided legal services, they typically did so through human employees who interacted directly with clients. If there was unauthorized practice of law, it was done by these humans.

That view becomes strained when applied to GAI, specifically LLMs. LLMs generate responses based on patterns learned from training data and user-provided prompts.⁶⁰ Although LLMs are designed by human beings, LLMs operate autonomously.⁶¹ Humans are involved in LLMs, but they are primarily involved upstream⁶² rather than as the LLM is being used.⁶³ The

53. See Keith Swisher, *The Right to (Human) Counsel: Real Responsibility for Artificial Intelligence*, 74 S.C. L. REV. 823, 832 (2023).

54. See Swisher, *supra* note 53, at 832.

55. See Steward, *supra* note 45, at 394.

56. See Steward, *supra* note 45, at 394.

57. See *Nken v. Holder*, 556 U.S. 418, 428 (2009) (explaining that an injunction “operat[es] *in personam*” because it “is directed at someone, and governs that party’s conduct” (citation omitted)); see also Nicholas R. Parrillo, *The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power*, 131 HARV. L. REV. 685, 757–61 (2018).

58. See Parrillo, *supra* note 57, at 757–63.

59. See Jamie J. Baker, 2018: *A Legal Research Odyssey: Artificial Intelligence as Disruptor*, 110 LAW LIBR. J. 5, 27 (2018).

60. See Harry Surden, *ChatGPT, AI Large Language Models, and Law*, 92 FORDHAM L. REV. 1941, 1968–71 (2024).

61. Bast, *supra* note 26, at 286–87.

62. Throughout this Article, the term “upstream” is used in reference to the design, development, fine-tuning, deployment, marketing, and commercialization decisions that shape how GAI systems function before any individual interaction with a pro se litigant occurs.

63. See Carol A. Needham, *Regulation of the Use of Generative Artificial Intelligence Tools in the Delivery of Legal Services: Verification and Accountability*, 77 WASH. U. J.L. & POL’Y 184, 190 (2025); Baker, *supra* note 59, at 22–23. Lawyers may also participate in the post-training phase of LLM development. Following pre-training, many modern LLMs undergo extensive post-training through supervised fine-tuning, reinforcement learning,

LLM's outputs result from design choices, training data, prompt engineering, and deployment decisions made by humans.⁶⁴ As such, unauthorized practice doctrine must depart from a narrow focus on the giver of advice, which in the case of GAI is a non-human, and instead consider the humans responsible for the existence of these LLMs.

GAI and LLMs create unique challenges for the regulation of the unauthorized practice of law, but this is not the first time courts and regulators have had to grapple with applying the doctrine in the face of new technology. Before GAI, courts and regulators confronted various forms of technology-mediated legal assistance.⁶⁵ These encounters are instructive, not because they directly resolve the current challenges posed by GAI and LLMs, but because they reveal how unauthorized practice doctrine has historically adapted to the uses of technology.

Document automation platforms are the most direct historical example. Software known as LegalZoom enabled users to generate legal documents by answering a standardized series of questions drawn from a structured decision tree.⁶⁶ Users select a document type, such as a will, incorporation papers, or a landlord-tenant form, and complete a questionnaire designed to gather the information needed to populate pre-approved templates.⁶⁷ The software then translates those responses into standardized clauses and assembles a completed form.⁶⁸

preference optimization, evaluation, and safety alignment. See Davide Testuggine, *A Primer on LLM Post-Training*, PYTORCH BLOG (Aug. 26, 2025), <https://pytorch.org/blog/a-primer-on-llm-post-training/> [<https://perma.cc/CW9B-MJUC>]; Hongzhe Du et al., *A Survey of Post-Training Methods for Large Language Models*, ARXIV (Nov. 8, 2025), <https://arxiv.org/html/2504.02904v3> [<https://perma.cc/T6UF-9KUY>]. In legal applications, lawyers may contribute by evaluating legal outputs, identifying inaccuracies, developing legal benchmarks, supplying domain-specific feedback, or helping align models to produce legally appropriate responses. Verónica C. Gonzales, *Fine-Tuning LLMs: Structural Fluency and Augmentation for the Great and Powerful Wizard of AI*, 25 DUKE L. & TECH. REV. 116, 121–23, 165–68 (2025). Their participation in these post-training activities likewise represents a meaningful contribution to the design and deployment of systems capable of providing legal assistance.

64. See Ralph Artigliere & Ralph C. Losey, *The Future Is Now: Why Trial Lawyers and Judges Should Embrace Generative AI Now and How to Do it Safely and Productively*, 48 AM. J. TRIAL ADVOC. 323, 331 (2025).

65. See Derick H. Lindquist & Ylli Dautaj, *AI in International Arbitration: Need for the Human Touch*, 2021 J. DISP. RESOL. 39, 41; Jan L. Jacobowitz & Justin Ortiz, *Happy Birthday Siri! Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers*, 4 TEX. A&M J. PROP. L. 407, 409 (2018).

66. See Caroline Shipman, *Unauthorized Practice of Law Claims Against LegalZoom—Who Do These Lawsuits Protect, and Is the Rule Outdated?*, 32 GEO. J. LEGAL ETHICS 939, 942 (2019).

67. Shipman, *supra* note 66, at 942.

68. Shipman, *supra* note 66, at 942.

Early challenges alleged unauthorized practice against LegalZoom on the ground that the platform was effectively providing legal advice.⁶⁹ State bars and regulators argued that by guiding users through choices, such as selecting clauses or customizing documents, LegalZoom's software was exercising the sort of professional judgment reserved to licensed attorneys.⁷⁰ At the same time, courts and regulators were reluctant to foreclose the use of a tool that expanded access to routine legal services for consumers priced out of traditional representation.⁷¹

Regulators ultimately adopted compromise solutions rather than outright prohibitions.⁷² Software like LegalZoom was permitted so long as it was structured to resemble a self-help tool rather than a substitute for legal counsel.⁷³ This required disclaimers and design limitations.⁷⁴ In some jurisdictions, these safeguards were supplemented by attorney review or referral mechanisms.⁷⁵

A subsequent software known as DoNotPay went further than LegalZoom in testing boundaries.⁷⁶ DoNotPay framed its service as problem-solving for pro se litigants.⁷⁷ Rather than advertise software that populated forms, the service advertised conversational tools that could help users "fight" fines or

69. See Brenda M. Simon, *Artificial Intelligence and the Self-Represented Inventor*, 58 LOY. L.A. L. REV. 169, 199 (2025); Heather Hughes, *Robots, Markets, and the Value of Deal Lawyers*, 49 IOWA J. CORP. L. 833, 843–44 (2024).

70. See Steward, *supra* note 45, at 394, 398.

71. See John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3062–64 (2014) (citing subsequent judicial decisions that, in the Author's opinion, have done little to restrict the use of comparable legal-service technologies).

72. See Illia Roskoshnyi, *Legal-Technological Unemployment in the Age of Artificial Intelligence*, 47 MAN. L.J. 107, 117 (2025).

73. See Julian Moradian, Note, *A New Era of Legal Services: The Elimination of Unauthorized Practice of Law Rules to Accompany the Growth of Legal Software*, 12 WM. & MARY BUS. L. REV. 247, 255 (2020).

74. See Scott B. Garner, *Ethically Speaking: Artificial Intelligence and Its Not-So-Artificial Legal Ethics Implications*, ORANGE CNTY. BAR ASS'N (Sep. 29, 2017), <https://www.ocbar.org/?pg=OCL-Featured-Articles&blAction=showEntry&blogEntry=140408> [https://perma.cc/J8ES-64VN].

75. Alexandra M. Jones, Comment, *Old Days Are Dead and Gone: Estate Planning Must Keep Its Head Above Water with the Changing Tide of Technology*, 11 EST. PLAN. & COMMUNITY PROP. L.J. 161, 171 (2018).

76. See Ashley Krenelka Chase, *Aren't We Exhausted Always Rooting for the Anti-Hero? Publishers, Prisons, and the Practicing Bar*, 56 TEX. TECH L. REV. 525, 554–56 (2024); Drew Simshaw, *Ethical Issues in Robo-Lawyering: The Need for Guidance on Developing and Using Artificial Intelligence in the Practice of Law*, 70 HASTINGS L.J. 173, 174–75 (2018).

77. Lee Walter, Note, *Large Language Models and Ethical Pitfalls: Testing the Legal Limits of "Robolawyer"*, 28 ILL. BUS. L.J. 75, 80 (2023).

defeat bureaucratic processes.⁷⁸ The DoNotPay software generated arguments or scripts for use in interactions with courts or agencies.⁷⁹ DoNotPay overtly marketed its software as a substitute for retaining a lawyer.⁸⁰

State bars and regulators responded to DoNotPay in a fragmented and largely indirect manner, relying on existing unauthorized practice and consumer protection frameworks.⁸¹ Consumers threatened legal action.⁸² DoNotPay was sued in multiple class-action lawsuits alleging unauthorized practice of law and deceptive business practices.⁸³ The most significant regulatory response ultimately came from the Federal Trade Commission (“FTC”), which treated the problem as one of consumer deception rather than professional misconduct; in 2025 the FTC required, *inter alia*, that DoNotPay cease claiming that its software could substitute for a human lawyer.⁸⁴

These earlier examples share an important structural feature—regulators found ways to solve issues created by new technology within existing legal frameworks. They did so not by focusing on the technology alone but by tracing accountability to the human beings responsible for the technology.⁸⁵ GAI, however, poses a distinctly different challenge simply because it can be more difficult to pinpoint the human involvement in the use of GAI.

II. WHY GAI POSES DISTINCT CHALLENGES

The capabilities of GAI far exceed those of earlier legal technologies such as LegalZoom and DoNotPay. LLMs allow users to engage in open-ended

78. See Jessica R. Gunder, *Why Can't I Have a Robot Lawyer? Limits on the Right to Appear Pro Se*, 98 TUL. L. REV. 363, 365 (2024).

79. See Gunder, *supra* note 78, at 365.

80. See *FTC Finalizes Order with DoNotPay That Prohibits Deceptive “AI Lawyer” Claims, Imposes Monetary Relief, and Requires Notice to Past Subscribers*, FED. TRADE COMM’N (Feb. 19, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-finalizes-order-donotpay-prohibits-deceptive-ai-lawyer-claims-imposes-monetary-relief-requires> (on file with the *Fordham Urban Law Journal*) (stating that DoNotPay promoted its service as “the world’s first robot lawyer” and claimed that it was an adequate substitute for the expertise of a human lawyer).

81. See Steward, *supra* note 45, at 402.

82. See Rachel F. Moran, *A Perfect Storm for Legal Education: Privatization, Polarization, and Pedagogy*, 85 U. PITT. L. REV. 331, 337 (2023).

83. See Steward, *supra* note 45, at 398–410.

84. See Stuart Weinstein, *AI Consumer Protection and the Robot Lawyer: Policy Optionality in the FTC’s DoNotPay Case*, 49 J. CONSUMER POL’Y 1, 3 (2026), <https://doi.org/10.1007/s10603-025-09606-0> [<https://perma.cc/9FG4-R6YV>] (discussing the FTC’s 2025 order prohibiting DoNotPay from representing that its service operated like a human lawyer).

85. *But see* Fortney, *supra* note 8, at 91–92 (detailing one instance where legal software was treated like a human lawyer).

exchanges, pose novel questions, and receive tailored, contextually responsive outputs.⁸⁶ These functions were structurally impossible within the rigid, form-based architectures of LegalZoom and DoNotPay. This leap forward in technical capability is significant for unauthorized-practice analysis because it heightens the risks the doctrine is intended to manage, including user reliance, substitution for professional judgment, and the blurring of boundaries between legal information and legal advice.⁸⁷ To the pro se litigant, an LLM might feel more like a lawyer than prior software did.⁸⁸

Generative artificial intelligence does not practice law in any formal sense, nor does it occupy a professional role recognized by existing regulatory regimes. Yet in practice, certain uses of GAI reproduce the experience of legal representation in ways that are materially indistinguishable to consumers from advice delivered by a licensed attorney. This Article refers to that phenomenon as the *illusion of representation*. The illusion of representation arises when legal technology creates consumer reliance by approximating the functions, signals, and authority traditionally associated with lawyering, while simultaneously operating outside the systems of accountability that govern lawyers.

The illusion of representation is a functional condition that triggers the core risks the unauthorized practice of law doctrine was designed to prevent. When present, it undermines the doctrine's consumer protection purpose by inducing individuals to rely on legal advice that appears professional, individualized, and authoritative, but that is not subject to meaningful supervision, discipline, or remedial oversight.

LLMs differ from earlier technology in four primary ways. These differences are what create the illusion of representation argued for herein.

First, unlike static form generators, LLMs engage in conversation.⁸⁹ LLMs ask follow-up questions, adapt answers as the conversation unfolds, and remember prior inputs.⁹⁰ This interactive structure closely mirrors the

86. See Andrew Perlman, *The Implications of ChatGPT for Legal Services and Society*, 30 MICH. TECH. L. REV. 1, 5 (2024) (demonstrating these and other capabilities of ChatGPT).

87. See Katherine L.W. Norton, *The Middle Ground: A Meaningful Balance Between the Benefits and Limitations of Artificial Intelligence to Assist with the Justice Gap*, 75 U. MIA. L. REV. 190, 202–03 (2020) [hereinafter Norton, *The Middle Ground*].

88. See Latia Ward, *Access to Justice and Generative AI*, 21 L.J. SOC. JUST. 95, 107–08 (2025).

89. See Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401, 403 (2021); Jacobowitz & Ortiz, *supra* note 65, at 413.

90. See Jack Cordell, Comment, *A New Chapter: Examining How Generative AI Can Improve Access to Justice in Bankruptcy*, 16 WAKE FOREST J.L. & POL'Y 85, 88 (2026); Fines, *supra* note 27, at 161–62.

way lawyers elicit information and refine advice.⁹¹ This format also increases user trust.⁹² A system that asks follow-up questions appears attentive and responsive.⁹³ From a regulatory perspective, conversation matters because it blurs the line between information and advice.⁹⁴ An answer that applies law to facts after several rounds of clarification is far more likely to be understood as tailored guidance than a generic explanation of legal doctrine.

Second, LLMs are capable of producing jurisdiction-specific information at scale.⁹⁵ They can reference case law, statutes, procedural rules, and local practices.⁹⁶ LLMs provide answers with disarming confidence, even when the information provided is wrong.⁹⁷ The capability of tailoring information makes LLMs more useful than general legal information sites, but it also increases the likelihood that users will rely on the information LLMs generate to make decisions. The provision of jurisdiction-specific advice has always been a red flag in unauthorized practice doctrine.⁹⁸ Regulators consistently distinguish between general legal information and advice that is

91. See Jabotinsky & Lavi, *supra* note 5, at 299; Nicole Yamane, *Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands*, 33 GEO. J. LEGAL ETHICS 877, 889 (2020).

92. See Jabotinsky & Lavi, *supra* note 5, at 349–50.

93. See generally Anastasia Panfilova et al., *The AI Interviewer: Multi-Faceted Evaluation of Adaptive Questioning by Large Language Models*, 16 SCI. REP., Apr. 4, 2026, <https://doi.org/10.1038/s41598-026-46517-7> [<https://perma.cc/B4G7-7DXJ>].

94. See Avery, Abril & del Riego, *ChatGPT, Esq.*, *supra* note 15, at 99–100.

95. See Walters, *supra* note 22, at 318–19.

96. See Norton, *The Middle Ground*, *supra* note 87, at 244.

97. See Fines, *supra* note 27, at 169–73; Maria E. Berkenkotter & Lino S. Lipinsky de Orlov, *Can Robot Lawyers Close the Access to Justice Gap? Generative AI, The Unauthorized Practice of Law, and Self-Represented Litigants*, 53 COLO. LAW. 40, 43 (2024). Modern LLMs are trained on enormous corpora consisting largely of publicly available English-language internet text, including websites, news articles, books, code repositories, discussion forums, and reference works. Because the quality and content of those corpora materially influence model behavior, governments, technology companies, and other influential actors increasingly recognize that shaping widely used online knowledge repositories may indirectly shape future AI outputs. See Jason Koebler, *It Is Trivially Easy to Use Reddit to Manipulate AI Search, Research Suggests*, 404 MEDIA (June 15, 2026, 10:19 ET), <https://www.404media.co/it-is-trivially-easy-to-use-reddit-to-manipulate-ai-search-research-suggests/> [<https://perma.cc/YQ3U-FNDF>].

98. See Ryan W. Hopkins, *Will the General Agreement on Trade in Services Necessitate Federal Involvement in Lawyer Regulation? Some Constitutional Implications of Regulating the Global Lawyer*, 66 U. PITT. L. REV. 653, 653–54 (2005) (explaining that an attorney not admitted in California may engage in unauthorized practice by advising a California client on California law even when communicating remotely); see also Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2598–2601 (2014).

more tailored.⁹⁹ GAI collapses that distinction in practice. Everything can be tailored.

Third, and perhaps most significantly, LLMs do not merely describe the law. LLMs recommend actions.¹⁰⁰ They weigh risks.¹⁰¹ They suggest strategies.¹⁰² They frame options in normative terms, sometimes explicitly advising users what they “should” do.¹⁰³ This type of output goes to the core of the type of advice lawyers are trained and licensed to provide.¹⁰⁴ It also goes to the core of what unauthorized practice doctrine seeks to regulate.¹⁰⁵ An LLM that tells a user how to respond to an eviction notice or whether to plead guilty performs a function that begins to overlap with the function of a human lawyer.¹⁰⁶

Fourth, an interaction with an LLM can feel like an interaction with a human.¹⁰⁷ Unauthorized practice doctrine has always been concerned with how interactions are experienced by consumers.¹⁰⁸ Regulators ask whether a reasonable person would believe that he or she is receiving legal advice.¹⁰⁹ LLMs heighten the risk that pro se litigants will perceive that they are receiving legal advice.¹¹⁰ The fluency, confidence, and responsiveness of LLMs create an aura of authority.¹¹¹ Disclaimers, particularly when buried or phrased generically, can be insufficient to counteract that impression.¹¹²

99. Hopkins, *supra* note 98, at 653–54.

100. See Drew Simshaw, *Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services*, 24 YALE J.L. & TECH. 150, 165–66 (2022).

101. See Fines, *supra* note 27, at 169.

102. Simshaw, *supra* note 100, at 169.

103. See Fines, *supra* note 27, at 169.

104. See Baker, *supra* note 59, at 13–16; see also Nancy B. Rapoport & Joseph R. Tiano, Jr., *Fighting the Hypothetical: Why Law Firms Should Rethink the Billable Hour in the Generative AI Era*, 20 WASH. J.L. TECH. & ARTS 41, 62–64 (2025) (explaining that GAI increasingly performs routine legal work traditionally assigned to junior lawyers and other legal professionals and predicting that technological substitution will alter how legal services are structured and delivered).

105. See Steward, *supra* note 45, at 421.

106. See Garret Macko, *Juris Dr. Strangelove or: How I Learned to Stop Worrying and Love the Machines*, 9 BUS. ENTREPRENEURSHIP & TAX L. REV. 151, 156 (2025); Maroussia Lévesque, *Analog Privilege*, 26 N.Y.U. J. LEGIS. & PUB. POL’Y 625, 646 (2024).

107. See Gary E. Marchant & Whitney Stefko Dover, *Law Practice Disruptors: Large Language Models and Artificial Intelligence*, 60 ARIZ. ATT’Y 26, 30 (2023).

108. See Steward, *supra* note 45, at 421.

109. See Steward, *supra* note 45, at 423; Walters, *supra* note 22, at 333.

110. See Cyphert, *supra* note 89, at 416 (noting that LLMs can fool users into believing output is generated by a human being).

111. Surden, *supra* note 60, at 1969–72; Avery, Abril & del Riego, *ChatGPT, Esq.*, *supra* note 15, at 112–16.

112. See Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J. C.R. & C.L. 283, 301–05 (2020) [hereinafter Sandefur, *Legal Advice from Nonlawyers*] (explaining that consumers may have difficulty

This limitation reflects a broader characteristic of human interaction with conversational systems. Users do not evaluate legal advice solely through formal disclaimers. They evaluate it through the interaction itself. An LLM that asks follow-up questions, recalls earlier information, explains legal concepts in natural language, and confidently recommends next steps presents the functional characteristics of professional consultation. Those interactional signals inevitably compete with any disclaimer appearing before or after the exchange.

The inadequacy of disclaimers is particularly significant in the context of pro se litigants. Individuals seeking legal assistance typically consult GAI because they lack sufficient legal knowledge to evaluate competing sources of authority.¹¹³ They therefore rely heavily upon conversational cues that ordinarily signal expertise and trustworthiness.¹¹⁴ Once an interaction progresses beyond the provision of general legal information and begins applying law to individualized facts, the user's perception is shaped primarily by the conversation itself rather than by abstract statements denying attorney-client status.

Accordingly, the question should not be whether an LLM technically informs users that it is "not a lawyer." The more important inquiry is whether the overall design of the interaction nevertheless communicates that the system can perform lawyer-like functions. Unauthorized practice doctrine has always focused upon protecting consumers from precisely this type of reliance. A disclaimer cannot eliminate the illusion of representation when every other aspect of the interaction reinforces it.

Individually, each of these features raises familiar concerns within unauthorized practice doctrine. These features make an interaction with an LLM feel like an interaction with a lawyer to a pro se litigant seeking assistance. Collectively, they produce a more acute regulatory problem. When a system conveys the impression of representation, offers individualized legal guidance, feels like an interaction with a human, and operates without accountable human oversight, it recreates the precise

distinguishing legal information from legal advice and assessing the quality and reliability of assistance provided by nonlawyers, particularly where signals about the provider's role or expertise are unclear).

113. See Berkenkotter & Lipinsky de Orlov, *supra* note 97, at 41 (explaining that free and low-cost generative-AI tools may help people with limited resources obtain legal information, understand their options, and navigate the legal system, including through chatbots and document-assembly tools).

114. See Sandefur, *Legal Advice from Nonlawyers*, *supra* note 112, at 301–05 (explaining that consumers have difficulty distinguishing legal information from legal advice and assessing provider quality and reliability, particularly where signals about the provider's role or expertise are unclear).

risks—consumer deception, reliance, and harm—that underlie unauthorized practice doctrine in the first instance.

Crucially, the illusion of representation does not depend on whether a GAI system is labeled as a lawyer, marketed as legal representation, or accompanied by formal disclaimers. Nor does it turn on whether a machine can be regulated as if it were a lawyer. When the illusion of representation is present, the risk of unauthorized practice and its associated consumer impacts exists. The doctrinal concern is not professional status but consumer protection. The right question to ask is whether a legal service is delivered in a form that invites reliance without the accountability traditionally associated with legal representation.

These distinctions between GAI and earlier technology suggest that the circumstances leading to the *Nippon* case are not anomalous. The *Nippon* case illustrates how conversational interaction, jurisdiction-sensitive reasoning, and normative framing can combine to produce outputs that look and feel like legal advice, even when no human lawyer is directly involved in the generation of those outputs.¹¹⁵ *Nippon* shows the degree to which consumer protection concerns are paramount given the ever-increasing reliance on GAI. GAI's capacity to emulate legal reasoning and relational interaction makes user perception, trust, and reliance more likely.¹¹⁶ Consumers using LLMs in legal contexts require protection, yet current ethics guidance lags behind technology.

Recognizing the illusion of representation as a coherent analytic framework clarifies why existing regulatory responses, focused largely on lawyer conduct during representation, leave a substantial gap. It also reframes unauthorized practice doctrine as a tool for allocating responsibility upstream to the human actors who design, deploy, supervise, and commercially benefit from systems capable of functioning as de facto legal advisors.

The two sections that follow demonstrate both the existence and the significance of this regulatory gap. Part II.A explains why current ethics guidance, although valuable, remains directed almost exclusively at lawyers' own use of GAI and therefore fails to address the growing reliance on GAI by pro se litigants. Part II.B shows why this omission is especially consequential in urban legal systems, where routine self-representation, procedural complexity, and limited access to counsel make reliance on GAI both foreseeable and increasingly unavoidable. Together, these sections demonstrate that the greatest risks posed by GAI arise precisely where

115. See, e.g., Berg, *supra* note 31 (discussing allegations that ChatGPT analyzed individualized circumstances and drafted targeted filings).

116. See Fines, *supra* note 27, at 174.

existing professional responsibility frameworks offer the least protection, underscoring the need to reinterpret unauthorized practice doctrine in a manner that reaches those responsible for designing and deploying these systems.

A. The Misplaced Focus of Current Ethics Guidance and Resulting Regulatory Gap

To date, bar associations and professional responsibility bodies have responded to GAI concerns primarily through guidance directed at lawyers.¹¹⁷ Recent ethics opinions emphasize that lawyers must understand the tools they use, ensure accuracy, protect client confidentiality, and maintain independent judgment. In many ways, GAI is treated as an advanced research assistant.¹¹⁸ Lawyers are warned not to abdicate responsibility to algorithms but to take ultimate responsibility themselves.¹¹⁹ This guidance plays a key role in preventing harm within the attorney-client relationship. It reinforces existing duties rather than creating new ones. It is important, but it fails to address a major use of GAI—the use of this technology by pro se litigants.

117. See generally Heidi L. Frostestad, *Technologically Competent Revisited: Ethical Practice in an AI Age and Considerations for Our Courts in a Burgeoning AI Era*, 12 BELMONT L. REV. 336 (2025) (examining lawyers' professional-responsibility obligations when using generative AI, including duties of technological competence, confidentiality, supervision, and candor); Kevin Frazier, *Practicing Law in the Age of AI: Practice Guide: How to Integrate AI and Emerging Technology Into Your Practice and Comply with Model Rule 3.1*, 25 MINN. J.L. SCI. & TECH. 67, 68 (2024) (providing guidance to lawyers on integrating generative AI into legal practice while complying with existing professional-responsibility obligations).

118. The primary guidance is ABA Formal Opinion 512. A.B.A. Comm. on Ethics & Pro. Resp., Formal Op. 512 (2024). ABA Formal Opinion 512 clarifies that lawyers may use GAI tools, but those lawyers remain fully responsible for competence, confidentiality, supervision, accuracy, and client communication under existing professional-conduct rules. Many jurisdictions have issued their own guidance in the wake of this opinion. See *AI and Attorney Ethics Rules: 50-State Survey*, JUSTIA, <https://www.justia.com/trials-litigation/ai-and-attorney-ethics-rules-50-state-survey/> [<https://perma.cc/4VAK-3QZD>] (last visited Apr. 28, 2026); see also Nancy B. Rapoport, *It's Not You, It's Me: Not Catching Your Opponent's AI Hallucinations Can Cost You (and Your Client)*, 42 AM. BANKR. TR. J. 25, 28 (2026) (explaining that lawyers remain responsible for identifying and verifying AI-generated authorities and identifying numerous professional-conduct rules potentially implicated by a lawyer's failure to do so).

119. Courts have enforced this principle through sanctions against lawyers who failed to verify AI-generated legal authorities before including these authorities in legal filings. See, e.g., *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 466–67 (S.D.N.Y. 2023) (sanctioning attorneys who submitted a brief containing fictitious cases generated by GAI without verifying their existence); *Park v. Kim*, 91 F.4th 610, 613–15 (2d Cir. 2024) (affirming sanctions where counsel relied on AI-generated authorities that included fabricated citations).

GAI is commonly used by nonlawyers seeking assistance with legal issues.¹²⁰ Specifically, LLMs have become a tool routinely used by pro se litigants in their efforts to represent themselves in court.¹²¹ The most rigorous empirical evidence of this use comes from a 2026 working paper by Anand V. Shah and Joshua Y. Levy.¹²² Shah and Levy analyzed U.S. federal civil court filings between 2005 and 2026.¹²³ Drawing on administrative records covering more than 4.5 million non-prisoner cases, they documented a marked increase in self-representation following the public availability of LLMs.¹²⁴ *Pro se* filings, which had remained relatively stable for decades at approximately 11 percent of federal civil cases, rose sharply to 16.8 percent in 2025.¹²⁵ Notably, this growth was concentrated in document-intensive and procedurally standardized categories of litigation—precisely the domains in which unrepresented litigants have historically faced barriers to effective participation.¹²⁶

The study also provided direct evidence of increasing GAI use within federal courts more broadly.¹²⁷ Applying text-analysis and GAI-detection techniques to a randomized sample of complaints, Shah and Levy found that more than 18 percent of federal complaints filed in 2026 exhibited markers consistent with GAI usage, a sharp increase from essentially zero in the pre-2023 period.¹²⁸ This evidence strongly supports the inference that a substantial and growing number of both lawyers and pro se litigants are relying on GAI tools to draft pleadings and other court submissions.¹²⁹ Practitioner accounts corroborate these findings, describing a marked surge in pro se litigants relying on GAI to draft filings.¹³⁰

120. See Raymond H. Brescia, *Training to the Tech: Ethical Adaptation to Emerging Technologies in the Practice of Law*, 94 FORDHAM L. REV. 1279, 1282–83 (2026).

121. See Jack Karp, *Unlawful Law Practice Reforms Needed to Account for AI*, LAW360 (Aug. 20, 2025), <https://www.law360.com/pulse/articles/2379198/unlawful-law-practice-reforms-needed-to-account-for-ai> (on file with the *Fordham Urban Law Journal*); Mia Bonardi & L. Karl Branting, *Certifying Legal AI Assistants for Unrepresented Litigants: A Global Survey of Access to Civil Justice, Unauthorized Practice of Law, and AI*, 26 COLUM. SCI. & TECH. L. REV. 34, 37–38 (2024).

122. See Anand V. Shah & Joshua Y. Levy, *Access to Justice in the Age of AI: Evidence from U.S. Federal Courts* (Apr. 2026) (unpublished manuscript) (on file with the *Fordham Urban Law Journal*).

123. Shah & Levy, *supra* note 122, at 3, 8.

124. Shah & Levy, *supra* note 122, at 3–4, 10–11.

125. Shah & Levy, *supra* note 122, at 3, 10–11.

126. Shah & Levy, *supra* note 122, at 3–4, 16–18.

127. Shah & Levy, *supra* note 122, at 4, 26–29.

128. Shah & Levy, *supra* note 122, at 4, 28–29.

129. Shah & Levy, *supra* note 122, at 4, 28–29, 33.

130. See Roy Strom, *Big Law Grapples With AI-Fueled Pro Se Surge, Rising Legal Costs*, BLOOMBERG L. (Mar. 12, 2026), <https://news.bloomberglaw.com/business-and-practice/big-law-grapples-with-ai-fueled-pro-se-surge-rising-legal-costs> [<https://perma.cc/H5ZG-ETGK>];

Pro se litigants often use GAI not out of choice but out of necessity; for a variety of reasons these litigants have been unable to retain counsel.¹³¹ As a result, the professional responsibility rules applicable to lawyers cannot reach these interactions if those rules are narrowly interpreted. The result is a regulatory gap. Lawyers are constrained from misusing GAI. AI vendors are largely unconstrained by professional regulation. But consumers, especially *pro se* litigants, fall into a liminal space between. These *pro se* litigants are precisely the sort of consumers who deserve protection under unauthorized practice of law doctrine. Extending this protection will require a reinterpretation of existing unauthorized practice of law doctrine. To appreciate the urgency of such a doctrinal shift, it is necessary to examine where these risks are most acutely concentrated.

This regulatory gap matters most in courts and administrative proceedings where people often represent themselves because they cannot obtain legal help. In these settings, people may use GAI not to assist a lawyer, but instead of one. Understanding the practical implications of that substitution therefore requires examining the environments in which reliance on GAI is both most likely and most consequential.

B. Heightened GAI Concerns Given the Urban Access-to-Justice Crisis

The risks posed by reliance on GAI in legal settings are not evenly distributed across jurisdictions or courts.¹³² These risks are most acute in urban legal systems, where longstanding access to justice deficits intersect with high volumes of unrepresented litigants and increasingly complex procedural environments.¹³³ In major metropolitan cities, legal disputes

Lex Machina 2026 Employment Litigation Report: Federal Discrimination and Disability Accommodation Lawsuits Surge, LEXISNEXIS (Mar. 10, 2026), <https://www.globenewswire.com/news-release/2026/03/10/3253143/0/en/lex-machina-2026-employment-litigation-report-federal-discrimination-and-disability-accommodation-lawsuits-surge.html> [https://perma.cc/Q9ZN-BTKM].

131. See C. Scott Maravilla, *Access to Justice: How AI and Ethics Opinions Approving Limited Scope Representation Support Legal Market Consolidation*, 40 GA. ST. U. L. REV. 957, 961 (2024); Cayley Balser et al., *Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice*, 18 L.J. SOC. JUST. 66, 67–68 (2023); Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49, 51–52 (2019) [hereinafter Sandefur, *Access to What?*]. Some *pro se* litigants proceed without counsel because they cannot afford a lawyer, while others can afford counsel but choose not to incur the expense. For those litigants who choose not to retain counsel, GAI may reinforce the apparent wisdom of that choice by creating the illusion that professional-quality legal assistance can be obtained at little or no cost.

132. Fines, *supra* note 27, at 130–31, 134–35; Gunder, *supra* note 78, at 403–04; Simshaw, *supra* note 100, at 154–57, 171–75; Daryl Lim, *AI, Equity, and the IP Gap*, 75 SMU L. REV. 815, 816–18, 826–27, 830–31 (2022).

133. See Bonardi & Branting, *supra* note 121, at 37–38, 42–43; Claire Johnson Raba, *Low-Income Litigants in the Sandbox: Court Record Data and the Legal Technology A2J Market*, 97 ST. JOHN'S L. REV. 195, 196–200, 223–24 (2023); Simshaw, *supra* note 100, at

involving housing, immigration status, municipal regulation, and public benefits are resolved through high-throughput adjudicatory systems that assume legal knowledge most participants do not possess.¹³⁴ These conditions make urban litigants highly likely to rely on GAI-mediated legal assistance and therefore especially vulnerable to the illusion of representation it can create.¹³⁵

Urban landlord-tenant courts provide a paradigmatic example.¹³⁶ In many cities, eviction proceedings move rapidly, with abbreviated timelines, minimal discovery, and limited judicial discretion.¹³⁷ Tenants frequently appear without counsel, while landlords are often represented by experienced attorneys or professional filing services.¹³⁸ Faced with the prospect of losing their homes, tenants seek guidance wherever it is available.¹³⁹ GAI tools powered by LLMs that purport to explain tenant rights, suggest defenses, or generate responsive pleadings promise clarity and empowerment in an otherwise opaque process.¹⁴⁰ Yet the stakes, including loss of housing, damage to credit, and cascading effects on employment and education, are exceptionally high, rendering inaccurate or misleading guidance particularly harmful.¹⁴¹

158–60, 165–67; see also Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. ONLINE 146, 147 (2024) (describing the prevalence of self-representation as a central feature of the access-to-justice crisis).

134. See Fines, *supra* note 27, at 156–57; Katherine L.W. Norton, *Avoiding the Great Divide: Assuring Court Technology Lightens the Load of Low-Income Litigants Post-COVID-19*, 88 TENN. L. REV. 771, 780–82, 797–800, 813–14 (2021) [hereinafter Norton, *Avoiding the Great Divide*]; Carla L. Reyes & Jeff Ward, *Digging into Algorithms: Legal Ethics and Legal Access*, 21 NEV. L.J. 325, 336–37, 339 (2020); Norton, *The Middle Ground*, *supra* note 87, at 193, 206–07, 217, 239.

135. See Bonardi & Branting, *supra* note 121, at 37–38, 45–46, 75–77; Gunder, *supra* note 78, at 403–04; Simshaw, *supra* note 100, at 171–74; Samuel Dahan & David Liang, *The Case for AI-Powered Legal Aid*, 46 QUEEN'S L.J. 415, 420–23, 433–35 (2021); Norton, *Avoiding the Great Divide*, *supra* note 134, at 781–82, 820–22.

136. See Fines, *supra* note 27, at 144–45.

137. See Katelyn Polk, *Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions*, 15 NW. J.L. & SOC. POL'Y 338, 356 (2020); Victoria V. Kremeski, *The Unauthorized Practice of Law and Landlord-Tenant Cases*, 78 MICH. B.J. 964, 964 (1999).

138. See Villasenor, *supra* note 6, at 35–36; Lois R. Lupica, Tobias A. Franklin & Sage M. Friedman, *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 FORDHAM URB. L.J. 1363, 1366–67, 1379, 1393–94 (2017).

139. See Villasenor, *supra* note 6, at 36–38.

140. See Villasenor, *supra* note 6, at 36–38.

141. See Emily S. Taylor Poppe, *The Future Is Bright Complicated: AI, Apps, & Access to Justice*, 72 OKLA. L. REV. 185, 210–11 (2019).

Immigration dockets present parallel concerns.¹⁴² Urban immigration courts are among the most congested in the country, handling large caseloads involving asylum, removal, and adjustment of status proceedings.¹⁴³ Respondents often appear pro se despite the complexity of immigration law and the severity of potential consequences.¹⁴⁴ LLM-driven GAI systems that offer procedural advice such as how to prepare for a credible fear interview, what forms to file, or when to request continuances appear to fill a gap left by the absence of available counsel. But immigration law is notoriously fact-dependent, jurisdiction-sensitive, and volatile.¹⁴⁵ When a GAI system produces individualized guidance without supervision, it risks inducing reliance in a context where error can result in detention, removal, or permanent family separation.¹⁴⁶

Municipal violations and fines further illustrate how urban legal systems amplify the risks of GAI-mediated assistance.¹⁴⁷ Cities generate large volumes of low-dollar but high-impact cases involving traffic offenses, code violations, licensing requirements, and minor criminal infractions.¹⁴⁸ These proceedings are often handled in municipal courts that prioritize efficiency over individualized explanation.¹⁴⁹ Defendants in these courts typically lack counsel and may view their legal exposure as modest, even when nonpayment can lead to license suspension, arrest warrants, or

142. See Jane Kaplan, *Breaking Down the Barriers: Bringing Legal Technicians into Immigration Law*, 32 GEO. J. LEGAL ETHICS 703, 703–06 (2019).

143. See Ingrid V. Eagly, Steven Shafer & Renee Moulton, *Access to Counsel in Immigration Court, Revisited*, 111 IOWA L. REV. 1, 10, 12–15 (2025).

144. Eagly, Shafer & Moulton, *supra* note 143, at 10, 12–15; see also Matt Adams, *Advancing the “Right” to Counsel in Removal Proceedings*, 9 SEATTLE J. SOC. JUST. 169, 169, 175–76 (2010); Jay Newman, Comment, *Heads You Stay; Tails You Go: Arbitrariness in Asylum Proceedings and How a Slight Procedural Speedbump May Help*, 83 LA. L. REV. 411, 438 (2022).

145. See Claire Boine & David Rolnick, *Why The AI Act Fails to Understand Generative AI*, 26 MINN. J.L. SCI. & TECH. 61, 87 (2025).

146. See Newman, *supra* note 144, at 438 (explaining that errors and lack of representation in immigration proceedings subject individuals to severe consequences, including “family separation, prolonged detention, and deportation”); see also Andrew S. Birrell, *Coercion by Design: Overcriminalization, ICE Raids, and the Erosion of Trial Rights*, 50 CHAMPION 5, 6 (2026) (describing the severe consequences, including detention, removal, and family separation, that can result when individuals navigate immigration proceedings without meaningful procedural protections).

147. See Chien & Kim, *supra* note 10, at 917–18 (discussing generative AI’s potential to expand access to legal assistance while recognizing the need to manage risks associated with its use); Fines, *supra* note 27, at 156–57 (explaining how generative AI tools used by low-income individuals in high-volume, routine matters such as municipal fines and citations risk compounding legal harm in the absence of human oversight).

148. Raba, *supra* note 133, at 196–97, 211–13.

149. See Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 974–78, 985–92 (2021).

incarceration.¹⁵⁰ LLM-powered GAI tools offering advice on contesting citations or navigating court appearances may appear like an appropriate tool to use in navigating these proceedings, but even small errors can trigger escalating penalties that disproportionately burden low-income residents.

Public-benefits appeals present a similar access-to-justice problem, as low-income individuals may turn to GAI when they cannot obtain individualized legal assistance.¹⁵¹ Urban residents frequently rely on administrative systems to obtain housing assistance, disability benefits, unemployment insurance, or food support.¹⁵² When applications are denied or benefits terminated, appeals processes are formal, rule bound, and difficult for pro se litigants to navigate.¹⁵³ GAI systems that generate appeal letters, identify eligibility criteria, or advise on evidentiary submissions appear to promise a solution for individuals unable to secure counsel. Yet these GAI systems may lack access to complete or accurate information about agency practice, evidentiary standards, or local procedural rules, increasing the risk that reliance on LLM-generated output will have negative consequences for pro se litigants.¹⁵⁴

Across these urban legal contexts, three structural features recur: high volume, routine pro se litigation, and pronounced informational asymmetries.¹⁵⁵ Courts and agencies process cases at scale, prioritizing

150. See Natapoff, *supra* note 149, at 974–80, 985–92.

151. See Marco Poggio, *Gen AI Shows Promise—and Peril—for Pro Se Litigants*, LAW360 (May 3, 2024), <https://www.law360.com/articles/1812918/gen-ai-shows-promise-and-peril-for-pro-se-litigants> [<https://perma.cc/P8DB-LQUH>] (reporting that a legal clinic served clients seeking help with government benefits, some of whom had already experimented with ChatGPT, and describing the potential for generative AI to help people navigate welfare-assistance systems); see also Fines, *supra* note 27, at 130–31, 134–35 (discussing how generative AI may expand access to legal assistance for low-income individuals while also creating risks when it substitutes for individualized legal support).

152. See JAMILA MICHENER, *FRAGMENTED DEMOCRACY: MEDICAID, FEDERALISM, AND UNEQUAL POLITICS* 1–8, 24–30 (2018).

153. See AMY WIDMAN, *NONLAWYER ASSISTANCE AND REPRESENTATION: REPORT TO THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES* 15–21, 37–38 (2024).

154. See Ariel Kennan et al., *AI-Powered Rules as Code: Experiments with Public Benefits Policy*, DIGITAL GOV HUB (Mar. 24, 2025), <https://digitalgovernmenthub.org/publications/ai-powered-rules-as-code-experiments-with-public-benefits-policy> [<https://perma.cc/L436-3K2L>] (testing ChatGPT, Gemini, and GPT-4o on state-specific SNAP and Medicaid eligibility questions and finding that chatbot responses were sometimes incomplete, insufficiently current or state-specific, and inaccurate despite being presented in a confident tone).

155. See Samuel Hoy Brown VII, *Bridging the Gap to Every American: How a National Regulatory Sandbox Can Prompt Radical Collaboration to Adopt Legal Artificial Intelligence Tools*, 40 GA. ST. U. L. REV. 889, 892–98 (2024); Gunder, *supra* note 78, at 372, 403–05; Villaseñor, *supra* note 6, at 35–36; Norton, *The Middle Ground*, *supra* note 87, at 193–94, 199–203, 212–13; Lupica, Franklin & Friedman, *supra* note 138, at 1366–67, 1379, 1393–94.

efficiency over explanation.¹⁵⁶ *Pro se* litigants lack the legal knowledge and resources necessary to evaluate the accuracy or adequacy of the guidance they receive from LLMs.¹⁵⁷ Opposing parties or government parties are typically represented by experienced lawyers with institutional expertise. These conditions create strong incentives for *pro se* litigants to rely on GAI, even when its limitations are acknowledged in the abstract.¹⁵⁸

Urban environments also disproportionately expose residents to the marketing and availability of GAI legal tools.¹⁵⁹ Cities are central markets for technology providers seeking large user bases and rapid adoption.¹⁶⁰ Digital access points such as public libraries and smartphones lower the barrier to entry for LLM-based assistance.¹⁶¹ At the same time, urban residents are more likely to encounter legal problems that are urgent, recurring, and for which counsel is unavailable or cost-prohibitive. In these settings, the promise of immediate and tailored legal guidance often outweighs concerns about accuracy or accountability.

These dynamics intensify the illusion of representation. When a GAI system responds to a tenant facing eviction, an immigrant preparing for a hearing, or a benefits recipient appealing a termination, the interaction mirrors legal counsel in form and function. The LLM solicits facts, applies legal rules, and offers procedural or strategic recommendations.

By way of illustration, consider a tenant who receives an eviction complaint alleging nonpayment of rent. Unable to afford counsel, the tenant

156. See David Ames et al., *Due Process and Mass Adjudication: Crisis and Reform*, 72 STAN. L. REV. 1, 4–6, 13–18 (2020) (describing the enormous volume of agency adjudication, the resulting caseload pressures, and the limited time available to adjudicators reviewing individual claims); see also Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 619–24, 630–35 (2014) (describing the high-volume, routinized processing of misdemeanor cases and the institutional pressure to manage criminal dockets efficiently).

157. See Gunder, *supra* note 78, at 373–76, 403–04; Raba, *supra* note 133, at 200–01, 229–30; Norton, *The Middle Ground*, *supra* note 87, at 208–10, 212, 222–23; Poppe, *supra* note 141, at 205–07; Lupica, Franklin & Friedman, *supra* note 138, at 1366, 1393–94.

158. See Fines, *supra* note 27, at 169–75, 176–77; Reyes & Ward, *supra* note 134, at 336–38, 370–71; Lupica, Franklin & Friedman, *supra* note 138, at 1366–67, 1393–95.

159. See Madeleine I.G. Daepp & Scott Counts, *The Emerging Generative Artificial Intelligence Divide in the United States*, 19 PROC. INT’L AAAI CONF. ON WEB & SOC. MEDIA 443, 443–44 (2025), <https://doi.org/10.1609/icwsm.v19i1.35825> [<https://perma.cc/QLH5-ESSG>]; see also Drew Simshaw, *Interoperable Legal AI for Access to Justice*, 134 YALE L.J. F. 795, 798–806 (2025) (noting the risk that low-income users become the default market for automated assistance); Poppe, *supra* note 141, at 195–203.

160. See Sharon Zukin, *Seeing Like a City: How Tech Became Urban*, 49 THEORY & SOC’Y 941, 946–48 (2020) (explaining that cities function as both platforms for developing digital products and markets for purchasing them).

161. See Justin P’ng, *The Resurrection Will Not Be Televised: Legal Remedies for Posthumous Deepfakes*, 8 GEO. L. TECH. REV. 338, 344 (2024); James Ellis Arden, *Hey, ChatGPT, Know Anything About Pro Bono Legal Services?*, 40 GPSOLO 70, 71 (2023).

turns to an LLM and uploads the complaint. Rather than simply explaining landlord-tenant law in general terms, the system asks follow-up questions about the amount of rent allegedly owed, whether repairs were requested, the jurisdiction in which the case is pending, and the date of the scheduled hearing. Based on those responses, it identifies potential defenses, recommends which ones appear strongest, drafts an answer asserting breach of the warranty of habitability, and advises the tenant what evidence to bring to court. To the user, the interaction closely resembles an initial consultation with a landlord-tenant attorney.

The same dynamic arises in immigration proceedings.¹⁶² An asylum applicant preparing for a merits hearing asks an LLM how to proceed. The system requests information regarding the applicant's country of origin, immigration status, dates of entry, prior encounters with immigration authorities, and the basis for the claimed fear of persecution. It then recommends what documentary evidence should be gathered, suggests how the applicant should explain perceived inconsistencies, drafts portions of a declaration, and outlines the arguments most likely to support relief under the governing legal standard. Although no licensed attorney has exercised professional judgment, the interaction replicates the functional hallmarks of legal representation by eliciting individualized facts, applying legal standards to those facts, and generating strategic recommendations upon which a reasonable user would naturally rely.

A similar scenario arises when a recipient of public benefits receives notice that disability or housing assistance has been terminated. Unsure how to appeal the decision, the individual consults an LLM. The system asks why the benefits were denied, whether supporting medical documentation exists, the applicable agency, the filing deadline, and the recipient's state of residence. It then recommends grounds for appeal, identifies additional evidence that should be submitted, drafts an administrative appeal, and suggests how the applicant should respond to anticipated objections at the hearing. Like the landlord-tenant and immigration examples, the system does far more than summarize the law. It gathers individualized facts, applies legal standards to those facts, recommends a course of action, and prepares documents intended for immediate use in a legal proceeding. From the perspective of a reasonable user, the interaction closely resembles legal representation, notwithstanding the absence of any licensed attorney.

The consequences of erroneous GAI-generated advice in these settings can be profound. A tenant who relies on an LLM's incorrect assessment of

162. As an illustration, see Veronica J. Finkelstein, ChatGPT, "I am an asylum applicant preparing for a merits hearing and would like to know how to proceed." (Aug. 9, 2025) (on file with the *Fordham Urban Law Journal*).

available defenses may forfeit valid legal arguments and lose housing. An immigrant who follows inaccurate procedural guidance may miss filing deadlines, fail to present critical evidence, or waive forms of relief, resulting in detention, removal, or permanent separation from family members. A public-benefits recipient who submits an appeal drafted around incorrect legal standards may lose access to disability, housing, or nutritional assistance upon which basic necessities depend. In each instance, the harm extends beyond the immediate legal proceeding. Eviction may trigger homelessness or job loss, removal may permanently alter family and community ties, and the loss of public benefits may produce cascading financial and health consequences.

As these illustrations demonstrate, for users navigating systems that offer little human explanation or assistance, the output may appear authoritative rather than informational.¹⁶³ The resulting reliance by pro se litigants is a foreseeable consequence of how these systems are designed, marketed, and deployed.

At the same time, urban legal systems offer limited avenues for correcting any harm caused by faulty GAI-generated advice.¹⁶⁴ Appellate review is rare in eviction, municipal, and administrative cases, both due to jurisdictional limits and because pro se litigants often lack the resources or knowledge to pursue appeals. When a pro se litigant relies on faulty GAI-generated advice, traditional judicial sanctions directed at attorneys provide no remedy against the source of that advice.¹⁶⁵ Professional discipline rules may be deemed inapplicable because no licensed lawyer provided faulty guidance.¹⁶⁶ Litigants who rely on LLM-mediated advice therefore bear the consequences alone, despite having interacted with a system that functioned as a *de facto* legal advisor.¹⁶⁷

This absence of recourse underscores why unauthorized practice doctrine must be understood as a context-sensitive consumer protection mechanism.

163. See Lim, *supra* note 132, at 825–26, 831–32.

164. See Raba, *supra* note 133, at 215–16, 232.

165. See Michael Loy, *Legal Liability for Artificially Intelligent “Robot Lawyers,”* 26 LEWIS & CLARK L. REV. 951, 957–58, 970–76 (2022) (explaining that attorneys may face malpractice liability for harms caused by supervised, nonautonomous AI tools, while traditional malpractice and other liability doctrines may not readily apply when autonomous AI provides legal services without attorney supervision); see also Gunder, *supra* note 78, at 374–77, 405–08; Simshaw, *supra* note 100, at 216–20.

166. See Simshaw, *supra* note 100, at 173–74.

167. See Kalina Pierga, *GPT, Esquire: How the Nippon Case May Shape the Future of AI in Pro Se Litigation*, GEO. J. LEGAL ETHICS BLOG (Apr. 15, 2026), <https://www.law.georgetown.edu/legal-ethics-journal/blog/gpt-esquire-how-the-nippon-case-may-shape-the-future-of-ai-in-pro-se-litigation/> [https://perma.cc/2NYJ-BH3H]; Katherine L.W. Norton, *Mind the Gap: Technology as a Lifeline for Pro Se Child Custody Appeals*, 58 DUQ. L. REV. 82, 85–86, 91 (2020).

In urban settings, where high-volume dockets frequently include matters involving basic needs and substantial power disparities, routine self-representation can magnify the harms that unauthorized practice doctrine is designed to prevent.¹⁶⁸ The illusion of representation produced by GAI reallocates legal risk downstream onto those least able to shoulder it, while shielding upstream actors from accountability.¹⁶⁹

As argued herein, urban legal systems provide a strong case for reconceptualizing unauthorized practice doctrine in the age of GAI. Where LLM-powered systems create the illusion of representation in environments marked by routine pro se litigation and limited remedial pathways, the doctrine's consumer protection purpose demands an expanded interpretation. The analytic focus must shift away from whether a machine can practice law and toward whether human actors have designed and deployed systems that effectively perform legal functions without accountability in the settings where legal vulnerability is most pronounced.¹⁷⁰

GAI presents a problem unlike those previously addressed by unauthorized practice doctrine. Recognizing the illusion of representation identifies the problem, but it does not by itself explain how responsibility should be reallocated to the human actors who create and deploy these systems. For that, it is useful to look beyond domestic unauthorized practice doctrine. Although the European Union regulates AI through a markedly different legal framework, its emphasis on assigning responsibility to providers and deployers rather than to AI systems themselves offers a valuable conceptual model. The AI Act demonstrates that meaningful regulation of GAI need not depend upon treating AI as a legal actor. Instead, responsibility can be allocated upstream to those best positioned to anticipate, manage, and reduce foreseeable risks. Those principles provide a useful point of comparison for reconsidering the allocation of responsibility under American unauthorized practice doctrine.

168. See Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 42–49, 58–72 (2010); see also Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 748–56, 774–82 (2015) (describing the structural disadvantages faced by self-represented litigants in high-volume civil courts).

169. See Lim, *supra* note 132, at 826–27.

170. See Bonardi & Branting, *supra* note 121, at 84–85, 97–98; Karni A. Chagal-Feferkorn, *How Can I Tell If My Algorithm Was Reasonable?*, 27 MICH. TECH. L. REV. 213, 215–18, 232–33 (2021).

III. LESSONS LEARNED FROM EUROPE

The concept of the illusion of representation occupies a distinct analytical space between misrepresentation and professional substitution. It does not depend on false claims of licensure, explicit assertions of legal authority, or the pretense of human identity. Rather, it arises when a system is designed and deployed in ways that invite users to rely on its guidance as if it were the product of professional judgment, while stripping away the institutional safeguards that traditionally accompany legal representation.

To move this concept from metaphor to doctrine, it is necessary to specify the conditions under which the illusion of representation emerges. Drawing on longstanding concerns embedded in unauthorized practice jurisprudence and consumer protection law, the illusion can be understood as the convergence of five functional elements.

First is epistemic asymmetry. Legal advice is a classic credence good. Its accuracy and completeness cannot be reliably evaluated by lay consumers, even after it is acted upon. GAI systems exacerbate this asymmetry by presenting coherent, confident, and context-specific responses that obscure the system's limitations. The user's inability to assess correctness is not incidental—it is central to the system's utility and to the risk it creates.

Empirical research demonstrates that users frequently perceive anthropomorphic and conversational LLMs as more accurate and less risky than comparable systems, increasing trust and the likelihood of reliance despite persistent concerns regarding accuracy and hallucinations.¹⁷¹ Experimental studies consistently demonstrate that users tend to place substantial trust in conversational LLMs, even when those systems are imperfect.¹⁷² One study found that anthropomorphic features, such as natural conversational exchanges and human-like interaction, significantly increased users' perceptions of an LLM's trustworthiness and reduced their perception of risk.¹⁷³ Another found that users frequently relied on LLM-generated advice despite expressions of uncertainty by the system, indicating that conversational engagement itself encourages reliance.¹⁷⁴ Still another

171. See Michelle Cohn et al., *Believing Anthropomorphism: Examining the Role of Anthropomorphic Cues on Trust in Large Language Models*, in EXTENDED ABSTRACTS OF THE 2024 CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS 1, 7–11 (Ass'n for Computing Mach. 2024), <https://doi.org/10.1145/3613905.3650818> (on file with the Fordham Urban Law Journal).

172. See Sunnie S.Y. Kim et al., *"I'm Not Sure, But . . .": Examining the Impact of Large Language Models' Uncertainty Expression on User Reliance and Trust*, in PROCEEDINGS OF THE 2024 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILITY, AND TRANSPARENCY 822, 823–24 (2024), <https://doi.org/10.1145/3630106.3658941> [<https://perma.cc/P6ET-K7SC>].

173. Cohn et al., *supra* note 171, at 1–15.

174. Kim et al., *supra* note 172, at 823–24.

demonstrated that individuals often overrelied on AI-generated recommendations even when contradictory information was available from other sources.¹⁷⁵

Second is interactional mimicry. GAI systems simulate the conversational dynamics of professional consultation. They ask clarifying questions, tailor responses to individual circumstances, and explain legal concepts in natural language. These interactional cues mirror the practices through which human lawyers establish authority and trust, even when the system disclaims any professional status.

Third is outcome relevance. The illusion of representation becomes legally salient when system outputs meaningfully shape how individuals exercise legal rights, comply with legal obligations, or navigate procedural requirements. Abstract legal information does not create the illusion. Tailored (or seemingly tailored) advice does. What matters is whether the guidance offered is action-guiding in contexts where errors carry legal consequences.

Fourth is guardrail displacement. Unlike licensed attorneys, GAI systems operate without fiduciary duties, confidentiality obligations, malpractice liability, or professional discipline. When automated guidance displaces access to these safeguards, either by substituting for human advice or by presenting itself as a sufficient alternative, the risk profile changes fundamentally.

Fifth is reliance inducement. Crucially, reliance need not be induced through explicit promises or claims of representation. It can be engineered through system design, interface choices, and marketing strategies that emphasize speed, personalization, accessibility, or cost savings. Disclaimers may coexist with, and be overwhelmed by, design features that signal competence and authority.

Taken together, these elements capture the core regulatory concern that animates unauthorized practice doctrine: the provision of legal guidance under conditions that invite reliance without accountability. The illusion of representation does not arise because a system claims to be a lawyer. It arises because it functions like one in the dimensions that matter most to lay users, while remaining insulated from the obligations that make such reliance socially tolerable.

Formalizing the illusion of representation in this way helps explain why traditional doctrinal triggers, such as claims of professional status or direct human involvement, are poor proxies for risk in the GAI context. They focus

175. See Artur Klingbeil, Cassandra Grützner & Philipp Schreck, *Trust and Reliance on AI—An Experimental Study on the Extent and Costs of Overreliance on AI*, 160 COMPUTS. HUM. BEHAV., Nov. 2024, at §§ 4–5.

on form rather than function. By contrast, an effects-based account recognizes that legal authority can be simulated and scaled through design, even when no single actor purports to “practice law.”

This functional understanding also clarifies why responsibility must flow upstream. The elements that give rise to the illusion of representation are not produced by user choice alone. They are the foreseeable outcomes of decisions made by those who train models, design interfaces, integrate systems into legal workflows, and market them as solutions to legal problems. If unauthorized practice doctrine is concerned with preventing consumer harm arising from unaccountable legal guidance, these are the decision points at which regulation must operate.

With this framework in place, the relevance of comparative regulatory regimes comes into sharp focus. Foreign approaches that assign responsibility upstream to those who design and deploy systems—based on their capacity to induce reliance—are addressing a concern that unauthorized practice doctrine has long recognized. What they offer is a more explicit way of applying that concern in a technological context that calls for shifting the focus of regulation. Against this backdrop, regulatory regimes that allocate responsibility upstream, without personifying technology or relying on professional discipline, provide a useful point of comparison for evaluating how unauthorized practice doctrine might evolve.

Regulatory responses emerging in Europe offer a useful point of contrast for evaluating how American unauthorized practice doctrine might be applied in response to GAI.¹⁷⁶ These European regimes do not attempt to treat artificial intelligence systems as lawyers, nor do they rely on professional discipline as the primary mechanism for risk control.¹⁷⁷ Instead, European regulation places greater emphasis on upstream responsibility, imposing risk-management, transparency, documentation, and oversight obligations on providers of certain AI systems.¹⁷⁸ Although grounded in different legal traditions, these approaches implicitly align with the reconceptualization of unauthorized practice advanced in this Article.

The European Union’s Artificial Intelligence Act provides the most comprehensive example of a system oriented toward ex ante risk allocation

176. See Daniel Schwarcz, Tom Baker & Kyle Logue, *Regulating Robo-Advisors in an Age of Generative Artificial Intelligence*, 82 WASH. & LEE L. REV. 775, 780–83 (2025); Miklós Király, *Survival of the Fittest? AI and Its Different Regulatory Models*, 39 EMORY INT’L L. REV. 969, 978–81 (2025); see also ANU BRADFORD, DIGITAL EMPIRES: THE GLOBAL BATTLE TO REGULATE TECHNOLOGY 105–07 (2023).

177. See Schwarcz, Baker & Logue, *supra* note 176, at 799–802.

178. See Schwarcz, Baker & Logue, *supra* note 176, at 799–802; Király, *supra* note 176, at 978–79, 980–81; BRADFORD, *supra* note 176, at 40–42, 107–11.

rather than actor-based discipline.¹⁷⁹ The Act classifies AI systems according to risk, with particular attention to applications that affect access to essential services, legal rights, and procedural fairness.¹⁸⁰ Systems used in the judicial context generally fall within the category of high-risk applications.¹⁸¹ Instead of asking whether such systems are themselves capable of wrongdoing, the AI Act framework focuses on the obligations of those who design, deploy, and commercialize these systems.¹⁸²

The AI Act imposes affirmative obligations on the human and organizational actors that design, develop, place on the market, and deploy high-risk AI systems.¹⁸³ Article 6 identifies which AI systems qualify as high-risk, while Article 9 requires providers of those systems to establish and maintain a continuous risk-management system.¹⁸⁴ Articles 16 and 26 likewise assign specific duties to providers and deployers, respectively, requiring such entities to implement compliance measures, maintain technical documentation, monitor system performance, and ensure appropriate human oversight.¹⁸⁵ The regulatory focus therefore remains on the entities responsible for creating and deploying AI systems rather than on the systems themselves.¹⁸⁶

A particularly beneficial feature of the AI Act is its categorical approach to regulation. By classifying systems according to levels of risk rather than attempting to evaluate each individual output, the AI Act avoids the need for constant, case-by-case determinations about whether specific output crosses

179. See Fabian Teichmann, *Risk, Reasonableness and Residual Harm under the EU AI Act: A Conceptual Framework for Proportional Ex-Ante Controls*, 17 EUR. J. RISK REGUL. 611, 611–13 (2026), <https://doi.org/10.1017/err.2025.10077> [<https://perma.cc/YTW4-P6X5>].

180. See Schwarcz, Baker & Logue, *supra* note 176, at 799–802; Yonathan Arbel et al., *Systemic Regulation of Artificial Intelligence*, 56 ARIZ. ST. L.J. 545, 614 (2024).

181. See Jabotinsky & Lavi, *supra* note 5, at 358–59; see Veronika Fikfak & Laurence R. Helfer, *Automating International Human Rights Adjudication*, 46 MICH. J. INT’L L. 69, 116–17 (2025); see also Lawrence J. Trautman, W. Gregory Voss & Scott J. Shackelford, *How We Learned to Stop Worrying and Love AI: Analyzing the Rapid Evolution of Generative Pre-trained Transformer (GPT) and its Impacts on Law, Business, and Society*, 34 ALB. L.J. SCI. & TECH. 203, 259 (2025) (noting that GAI generally may be classified as high-risk).

182. See Schwarcz, Baker & Logue, *supra* note 176, at 799–802; Barbara Moens & Melissa Heikkilä, *How the EU Botched Its Attempt to Regulate AI*, FIN. TIMES (Nov. 20, 2025), <https://www.ft.com/content/6585fb32-8a86-4ffb-a940-06b17e06345a?syn-25a6b1a6=1> (on file with the *Fordham Urban Law Journal*); see Hans-Wolfgang Micklitz, *The External Dimension of AI Standards in EU Digital Policy Legislation*, 60 TEX. INT’L L.J. 129, 135–37 (2024); Lévesque, *supra* note 106, at 661–69.

183. See Regulation of the European Parliament and of the Council, 2024/1689 of June 13, 2024, Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), arts. 3, 16, 26, 2024 O.J. (L 1689) 1 (EU) [hereinafter AI Act].

184. See *id.* arts. 6, 9.

185. See *id.* arts. 16, 26.

186. See *id.* pmbl. recital 27.

a regulatory threshold. This structure provides clarity *ex ante*, allowing developers and deployers to understand their obligations at the design and deployment stages rather than only after harm occurs. In the context of GAI, where outputs are highly variable and effectively infinite, such categorization is especially valuable. It recognizes that risk inheres not in isolated interactions but in the capabilities and deployment contexts of systems as a whole. As a result, the categorical model facilitates more consistent and administrable oversight while encouraging precautionary design choices that reduce downstream harm.

Under the AI Act, developers and deployers of high-risk systems bear affirmative duties related to training data quality, system design, documentation, human oversight, and post-deployment monitoring.¹⁸⁷ For high-risk systems used in the administration of justice, including systems intended to assist judicial authorities in researching and interpreting facts and law or applying the law to a concrete set of facts, the Act imposes additional safeguards and classifies certain such uses as high-risk.¹⁸⁸ The regulatory concern is functional rather than formal.¹⁸⁹ If a system meaningfully shapes how individuals exercise legal rights or navigate legal procedures, the entities responsible for that system must assume responsibility for foreseeable harms.¹⁹⁰

This approach mirrors the consumer protection logic underlying unauthorized practice doctrine in the United States. Both regimes are concerned with situations in which individuals are induced to rely on authoritative guidance without the safeguards traditionally associated with professional services.¹⁹¹ The AI Act recognizes that reliance can be engineered through system design, interface, and marketing, even in the absence of explicit claims of representation.¹⁹² In doing so, it offers a regulatory vocabulary for addressing the illusion of representation without personifying GAI technology itself.¹⁹³

The European Union's AI Act provides an example of how the regulatory concerns underlying unauthorized practice doctrine can be addressed

187. See Schwarcz, Baker & Logue, *supra* note 176, at 799–802; Király, *supra* note 176, at 979–80; Moens & Heikkilä, *supra* note 182; Andrew G. Lin, *The Frontiers of Artificial Intelligence Regulation: Five Perspectives from the European Union*, 20 N.Y.U. J.L. & BUS. 659, 660 (2024).

188. See Micklitz, *supra* note 182, at 131–32, 137–38; John Hillman, Comment, *Smart Regulation: Lessons from the Artificial Intelligence Act*, 37 EMORY INT'L L. REV. 775, 783–84, 786 (2023).

189. See Micklitz, *supra* note 182, at 131–32, 137–38.

190. See AI Act, *supra* note 183, arts. 9, 13, 26, 27, annex III § 8(a).

191. See Lévesque, *supra* note 106, at 646–47, 661–63.

192. See AI Act, *supra* note 183, arts. 9, 13, 14, 16, 26, 50.

193. See AI Act, *supra* note 183, arts. 9, 13, 14, 16, 26, 50.

without reliance on professional status or system personification. Rather than attempting to define artificial intelligence as a legal actor or substitute professional, the Act focuses squarely on the conditions under which automated systems shape individual outcomes in legally significant ways and on the entities best positioned to mitigate those risks before harm occurs.

At its core, the AI Act adopts an explicitly functional approach. It classifies AI systems based on the risks they pose to fundamental rights, access to essential services, and procedural fairness.¹⁹⁴ This risk-based orientation mirrors the logic of unauthorized practice doctrine as reconceptualized here. In both cases, the regulatory trigger is not whether a system claims professional status, but whether it operates in contexts where individuals are likely to rely on its outputs as authoritative guidance with legal consequences.¹⁹⁵

Systems that provide legal guidance, influence legal decision-making, or structure access to justice fall squarely within the AI Act's category of high-risk applications. Crucially, this classification does not turn on how such systems are described or marketed. A tool framed as "informational support" may still be regulated as high-risk if it meaningfully shapes how individuals exercise legal rights or navigate legal procedures. This reflects a direct rejection of formal distinctions between advice and information in favor of an effects-based assessment.

The obligations imposed on high-risk systems under the AI Act track closely the elements that give rise to the illusion of representation. Requirements related to training data quality, system design, documentation, and human oversight are aimed at constraining epistemic asymmetry and preventing unaccountable reliance. Post-deployment monitoring obligations acknowledge that risk emerges not only at the point of design, but through iterative use, scale, and integration into decision-making workflows.

Equally important is the AI Act's consistent refusal to locate responsibility in the system itself.¹⁹⁶ At no point does the AI Act framework

194. See AI Act, *supra* note 183, arts. 1, 6(2), 27, annex III §§ 5(a), 8(a) (establishing a risk-based framework focused on the protection of fundamental rights and classifying as high-risk certain AI systems used to determine eligibility for essential public benefits or to assist judicial authorities in researching, interpreting, or applying law).

195. See AI Act, *supra* note 183, arts. 6(2), 27, annex III §§ 5(a), 8(a) (classifying certain AI systems according to their intended uses and potential effects on access to essential public services, benefits, and the administration of justice); Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), arts. 22(1)–(2), 35(1), 2016 O.J. (L 119) 1 (EU) [hereinafter GDPR] (regulating automated decisionmaking and profiling based on their legal or similarly significant effects on individuals).

196. See generally AI Act, *supra* note 183, arts.

ask whether a GAI system possesses agency, intent, or professional competence.¹⁹⁷ Responsibility is instead allocated upstream to those who design, deploy, and commercialize the GAI technology.¹⁹⁸ Providers, deployers, and distributors bear affirmative obligations precisely because they possess the capacity to shape system behavior, user expectations, and market conditions.¹⁹⁹ Responsibility follows control.

This allocation choice is not incidental. It reflects a regulatory judgment that reliance on automated systems is not merely a matter of individual choice, but a foreseeable consequence of how those systems are designed and presented. By focusing on organizational and platform-level accountability, the AI Act addresses the structural sources of the illusion of representation without requiring proof of deception, misrepresentation, or professional substitution.

In this respect, the AI Act offers a regulatory vocabulary that unauthorized practice doctrine has historically lacked. American courts confronting automated legal services, from document-assembly platforms to bankruptcy software, have often struggled to explain why certain forms of technologically mediated legal assistance are impermissible absent outright fraud or bad faith.²⁰⁰ The AI Act supplies a language of risk, reliance, and lifecycle accountability. It recognizes that legal authority can be simulated through design, and that such simulation triggers consumer protection concerns regardless of the form it takes.

The General Data Protection Regulation (GDPR) follows a similar approach to the AI Act. Article 22 of the GDPR does not prohibit automated decision-making outright but instead grants individuals important protections against decisions based solely on automated processing that produce legal or similarly significant effects.²⁰¹ GDPR provisions governing profiling and automated processing focus on transparency, explainability, and meaningful human involvement where automated systems produce legal or similarly significant effects.²⁰² Although not specific to legal services, these provisions reflect a broader European commitment to regulating

197. See generally AI Act, *supra* note 183, arts.

198. See AI Act, *supra* note 183, arts. 7–8, 16–27, 51–56, 66.

199. See AI Act, *supra* note 183, arts. 16–17, 25–26, 53–55.

200. See Benjamin H. Barton & Deborah L. Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955, 964–68 (2019) (analyzing courts' and bar regulators' inconsistent doctrinal struggles to distinguish permissible document-assembly software from unauthorized legal advice).

201. See GDPR, *supra* note 195, art. 22.

202. See GDPR, *supra* note 195, arts. 13(2)(f), 14(2)(g), 15(1)(h), 22(1)–(3).

systems that shape individual outcomes rather than focusing exclusively on the intent or status of the actor providing the tool.²⁰³

The GDPR places obligations on data controllers and processors rather than on the automated systems that generate outputs.²⁰⁴ Responsibility attaches to the entities that determine how the system is used, what data it relies upon, and how its outputs are integrated into decision-making processes.²⁰⁵ This aligns closely with the argument advanced in this Article that unauthorized practice doctrine should focus on those who design and profit from GAI systems that function as legal advisors, rather than on the systems themselves.

Although not designed specifically to regulate GAI or legal services, the GDPR reinforces the same upstream, effects-based allocation of responsibility embodied in the AI Act. Its treatment of automated decision-making illustrates how European regulatory frameworks address system-mediated authority without treating technology as an independent actor and without resorting to professional discipline as the primary mechanism of control.

GDPR provisions governing profiling and automated processing focus on the conditions under which automated systems produce legal or similarly significant effects for individuals. The regulatory concern is not whether a system provides advice, but whether automated processes materially shape outcomes that affect rights, obligations, or access to essential services. This orientation parallels the functional trigger articulated in unauthorized practice doctrine: legal salience, not professional form, activates regulatory scrutiny.

Most notably, the GDPR assigns responsibility not to automated systems, but to data controllers and processors—the entities that determine how systems are designed, trained, deployed, and integrated into decision-making processes.²⁰⁶ Responsibility attaches to those who decide what data is used,

203. See Michael Veale & Frederik Zuiderveen Borgesius, *Demystifying the Draft EU Artificial Intelligence Act—Analysing the Good, the Bad, and the Unclear Elements of the Proposed Approach*, 22 COMPUT. L. REV. INT'L 97, 100–03 (2021); see also BRADFORD, *supra* note 176, at 105–11, 130–32; Dane Chapman, Note, *The Ideal Approach to Artificial Intelligence Legislation: A Combination of the United States and European Union*, 78 U. MIAMI L. REV. 265, 281–83, 292–95 (2023); Király, *supra* note 176, at 978–81; Han-Wei Liu & Ching-Fu Lin, *Artificial Intelligence and Global Trade Governance: A Pluralist Agenda*, 61 HARV. INT'L L.J. 407, 471–74, 483–84 (2020).

204. See GDPR, *supra* note 195, arts. 4(7)–(8), 5(2), 24, 28 (defining “controller” and “processor,” making controllers responsible for demonstrating compliance with the Regulation’s data-processing principles, and imposing compliance obligations on controllers and processors).

205. See GDPR, *supra* note 195, arts. 4(7)–(8), 5(2), 24, 28.

206. See GDPR, *supra* note 195, arts. 4(7)–(8), 24, 28 (defining “controller” and “processor” and assigning responsibility for compliance to those entities).

how outputs are generated, and how those outputs are acted upon. Automated tools are treated as instruments within a broader organizational ecosystem. These tools are not viewed as standalone decision-makers.

This allocation choice maps closely onto the upstream responsibility framework advanced here. Just as unauthorized practice doctrine is ultimately concerned with who creates conditions of unprotected reliance, the GDPR focuses on who structures automated processes in ways that affect individuals' legal rights. The GDPR does not delve into the intent of developers or the cognitive capacities of LLMs. Instead, it requires responsible entities to provide transparency and, where Article 22 applies, meaningful safeguards—including human intervention and the opportunity to contest certain solely automated decisions.²⁰⁷

Significantly, the GDPR rejects formal distinctions between informational tools and decision-making systems. An automated process may trigger regulatory obligations even when human actors remain nominally involved so long as that involvement is perfunctory or lacks substantive oversight. This reflects a recognition that responsibility cannot be avoided through semantic disclaimers or superficial human checks when automated systems meaningfully shape outcomes.

For purposes of legal-services regulation, the GDPR framework offers two important insights. First, it demonstrates that system-level responsibility can be imposed without identifying a discrete moment of wrongdoing or a single culpable actor. Second, it shows that reliance and harm can be regulated *ex ante* by focusing on system architecture and governance rather than *ex post* through individual sanctions.

In this respect, the GDPR supplies a missing doctrinal analog for unauthorized practice analysis in the United States. Where American courts have tended to search for individualized acts of advice dispensed by identifiable persons, the GDPR approach recognizes that modern systems distribute decision-making across organizational and technical layers.²⁰⁸

207. See GDPR, *supra* note 195, arts. 4(7)–(8), 5(1)(a), 12–15, 22(1)–(3), 24–25, 35 (assigning responsibility to controllers and processors; requiring transparent processing and specified information; regulating decisions based solely on automated processing that produce legal or similarly significant effects; requiring suitable safeguards including human intervention and the opportunity to contest certain decisions; and requiring organizational measures addressing risks to individuals' rights and freedoms).

208. Compare *In re Reynoso*, 477 F.3d 1117, 1125–27 (9th Cir. 2007) (holding that software provider engaged in the unauthorized practice of law by providing individualized legal advice through bankruptcy software), and *Unauthorized Practice of Law Comm. v. Parsons Tech., Inc.*, 179 F.3d 956, 957–58 (5th Cir. 1999) (describing challenge to software that allegedly engaged in the unauthorized practice of law by providing individualized legal guidance), with *Case C-634/21, OQ v. Land Hessen*, ECLI:EU:C:2023:957, ¶¶ 60–63 (Dec. 7, 2023).

Responsibility follows from the capacity to shape those layers, not from occupying a traditional role as a lawyer.²⁰⁹

The AI Act has only recently begun taking effect, and many of its substantive obligations remain subject to phased implementation.²¹⁰ By contrast, courts have already developed a growing body of case law applying the GDPR to automated decision-making, offering a useful illustration of the European Union's broader approach to allocating responsibility for AI-enabled systems.²¹¹

The Court of Justice of the European Union's decision in *SCHUFA Holding (Scoring)* illustrates how this regulatory framework operates in practice. There, the Court considered whether Article 22 of the GDPR applied to an automated credit-scoring system whose output was transmitted to third parties and relied upon in making lending decisions.²¹² Rejecting a purely formal distinction between the automated score and the subsequent human decision, the Court held that Article 22(1) may apply when the score plays a determining role in the grant of credit, even if the third party formally makes the final decision.²¹³ In doing so, the Court focused its analysis not on the algorithm itself but on the company responsible for developing, maintaining, and operating the scoring system.²¹⁴ The decision therefore illustrates how the GDPR can treat an upstream automated output as legally significant when it substantially influences a later decision affecting an individual.

The AI Act and GDPR highlight three important themes of EU regulation that can be instructive for American regulators. First, responsibility is assigned upstream to those with control over system design, deployment, and commercialization. Second, accountability operates at the platform or organizational level rather than through case-by-case discipline of individuals. Third, regulation is oriented toward preventing consumer harm rather than policing professional boundary violations in the abstract.

209. See *OQ*, ECLI:EU:C:2023:957, ¶¶ 60–63.

210. See *AI Act*, EUR. COMM'N, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> [<https://perma.cc/WB48-VUQ7>] (last updated Aug. 23, 2026) (explaining that the AI Act entered into force on August 1, 2024, and becomes fully applicable through a phased implementation schedule); *Timeline for the Implementation of the EU AI Act*, EUR. COMM'N AI ACT SERV. DESK, <https://ai-act-service-desk.ec.europa.eu/en/ai-act/eu-ai-act-implementation-timeline> [<https://perma.cc/Y5DG-4LYA>] (last visited July 22, 2026) (identifying the dates on which different substantive obligations under the AI Act become applicable).

211. See *OQ*, ECLI:EU:C:2023:957, ¶¶ 46–58.

212. See *id.* ¶¶ 48–50.

213. See *id.*

214. See *id.*

These three themes align closely with the proposed reconceptualization of unauthorized practice doctrine developed in this Article. The illusion of representation arises not because GAI systems claim professional status, but because they are designed and marketed in ways that invite reliance while displacing human oversight. As argued herein, European regulatory frameworks recognize this dynamic explicitly and embed it in their allocation of responsibility, even though they emerge from different doctrinal starting points.²¹⁵

The combined effect of the AI Act and GDPR is instructive. Together, they establish a regulatory tradition that treats automated systems as sources of risk rather than as actors, and that allocates responsibility to those upstream entities best positioned to mitigate that risk. This tradition aligns closely with the reconceptualization of unauthorized practice suggested in this Article: one that emphasizes consumer reliance, functional legal impact, and institutional accountability over professional status or technological anthropomorphism.

At the same time, these comparative examples do not suggest that American courts or regulators must import foreign law to address GAI-mediated legal assistance. Nor must the United States pass legislation as sweeping as the AI Act or GDPR. Unauthorized practice doctrine already contains the conceptual tools necessary to focus on functional legal activity, consumer reliance, and risk allocation. What is required is not a wholesale regulatory transplant or the passage of new legislation, but a doctrinal recalibration that treats the provision of GAI-generated legal guidance as a regulated activity when it creates the illusion of representation.

Indeed, the comparative perspective underscores that American law is an outlier in its continued emphasis on professional status rather than system-level effects.²¹⁶ By shifting attention toward those who design, supervise, and profit from GAI-powered legal tools, American doctrine can evolve organically, using familiar concepts of supervision, responsibility, and unauthorized practice. The result would not be foreign regulation by another name, but a continuity of purpose achieved through doctrinal adaptation.²¹⁷

215. See GDPR, *supra* note 195, arts. 4(7)–(8), 5(1)(a), 22(1)–(3), 24–25, 35 (defining controllers and processors, requiring transparent processing, regulating solely automated decisions producing legal or similarly significant effects, and imposing organizational, technical, and impact-assessment obligations); AI Act, *supra* note 183, arts. 9, 13–14, 16, 26, 50 (assigning risk-management, transparency, human-oversight, provider, deployer, and disclosure obligations according to the system’s intended use and effects).

216. See BRADFORD, *supra* note 176, at 105–07; Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 STAN. L. REV. 1689, 1694–95 (2008).

217. See generally AI Act, *supra* note 183, arts. 9, 13–14, 16, 26 (allocating risk-management, transparency, human-oversight, provider, and deployer obligations without

Viewed in this light, these two European approaches to regulating GAI illuminate the possibility of better utilizing existing unauthorized practice doctrine. They demonstrate that regulating legal technologies does not require treating machines as professionals, nor does it require abandoning innovation. What it requires is a clear recognition that when systems function as legal advisors, consumer protection concerns are triggered regardless of the form those systems take.²¹⁸ That insight provides the final comparative support for reallocating responsibility in the age of GAI.

The comparative analysis does not suggest that American jurisdictions should adopt the AI Act wholesale. Rather, it demonstrates that modern AI governance has already begun shifting responsibility away from the outputs of AI systems and toward the human actors responsible for their design, deployment, and oversight. The remaining question is whether American professional responsibility doctrine already contains the tools necessary to accomplish a similar reallocation. This Article argues that it does. Properly understood, ABA Model Rules of Professional Conduct 5.1 through 5.5 provide a coherent framework for assigning responsibility to lawyers who materially participate in the design, deployment, or supervision of GAI systems capable of producing the illusion of representation.²¹⁹ This allocation of responsibility reflects the unique fiduciary role lawyers occupy within the legal system.

Imposing responsibility on lawyers does not rest solely on their possession of a law license. It rests on the fiduciary obligations that accompany the privilege of practicing law. Lawyers occupy a position of trust that carries duties of loyalty, competence, confidentiality, independent professional judgment, and fidelity to the interests of those they serve.²²⁰ Those obligations distinguish lawyers from software engineers, data scientists, paralegals, legal assistants, and other participants who may contribute to the development or operation of GAI systems but who do not undertake comparable professional responsibilities.

treating AI systems as legal actors); MODEL RULES OF PRO. CONDUCT rr. 5.1–5.5 (A.B.A. 2020) (providing existing rules concerning supervisory responsibility, nonlawyer assistance, and assisting unauthorized practice).

218. See Schwarcz, Baker & Logue, *supra* note 176, at 780–83.

219. Model Rule 1.2 reinforces this conclusion by recognizing that lawyers may define and limit the scope of the legal services they undertake without relinquishing the professional obligations that accompany those services. See MODEL RULES OF PRO. CONDUCT r. 1.2(a), (c), (d) (A.B.A. 2020). Whether legal assistance is delivered through traditional one-on-one representation, limited-scope representation, or a technology-enabled platform, the lawyer remains responsible for the professional judgment reflected in the service provided. A lawyer therefore cannot avoid professional responsibility merely because legal guidance reaches a user through an intermediary GAI system rather than through direct communication.

220. See *id.* pmbl. ¶¶ 2, 5–9, rr. 1.1, 1.6, 1.7, 2.1.

The fiduciary character of the lawyer-client relationship also explains why the Model Rules appropriately impose supervisory obligations on lawyers that they do not impose on laypersons. Lawyers routinely remain responsible for the work performed by associates, paralegals, investigators, expert witnesses, translators, e-discovery vendors, and other third parties whose work contributes to the delivery of legal services.²²¹ The fact that another person performs part of the work does not relieve the lawyer of responsibility for ensuring that the representation complies with professional obligations.²²² GAI systems should be understood as another category of professional assistance rather than as an exception to this longstanding principle.

This distinction is particularly important because many individuals involved in developing legal AI systems are not lawyers and therefore cannot be disciplined under the Model Rules. Lawyers voluntarily accept a separate set of fiduciary and ethical obligations as a condition of entering the profession. When lawyers materially participate in designing, deploying, supervising, or integrating GAI into the delivery of legal services, those professional obligations provide an established doctrinal basis for assigning responsibility. This Article therefore does not argue that lawyers should be responsible merely because they possess legal training; rather, they are responsible because they have assumed fiduciary duties that accompany the privilege of practicing law. The remaining question is how existing professional responsibility rules allocate responsibility when lawyers participate in the creation, deployment, or supervision of GAI systems.

IV. REALLOCATING RESPONSIBILITY THROUGH ABA MODEL RULES OF PROFESSIONAL CONDUCT 5.1 THROUGH 5.5

Unauthorized practice doctrine should be applied not to GAI systems themselves, but to the human actors who design, deploy, and profit from systems that produce advice-like legal output. This includes both lawyers and nonlawyers responsible for LLMs.²²³

221. *See id.* rr. 5.1–5.3; *id.* r. 5.3 cmt. 3.

222. *See id.* rr. 5.1–5.3.

223. The consequences of that reallocation differ depending on the actor's role within the legal system. Lawyers who materially participate in the design, deployment, supervision, or integration of GAI systems may be subject to professional discipline under the Model Rules of Professional Conduct. Nonlawyers, by contrast, are not governed by the Model Rules, but they are not beyond the reach of unauthorized practice doctrine. Every jurisdiction prohibits the unauthorized practice of law, and many states treat knowing violations as criminal offenses punishable by fines, imprisonment, or both. *See, e.g.,* FLA. STAT. § 454.23 (2025); N.Y. JUD. LAW §§ 478, 485 (McKinney 2025).

One of the persistent obstacles to meaningful regulation of GAI-mediated legal guidance is the tendency to treat responsibility as binary: either the system itself is conceptualized as an independent actor, or responsibility is displaced onto the individual users who rely on its outputs. The concept of upstream responsibility advocated for in this Article rejects both framings. Instead, this view of responsibility recognizes that contemporary legal technologies are the product of deliberate design, deployment, and commercialization choices that cumulatively structure how legal guidance is generated, presented, and relied upon. Put another way, it is no accident that pro se litigants fall prey to the illusion of representation—LLMs are meant to foster that illusion.²²⁴

This upstream framing also better aligns unauthorized practice doctrine with the distinctive scale and replication dynamics of LLMs. Unlike traditional actors, GAI systems can generate advice-like outputs continuously, at negligible marginal cost, and across vast user populations. Attempting to locate unauthorized practice at the level of each discrete output would therefore be both administratively unworkable and conceptually incomplete. The relevant regulatory act is not each instance in which an LLM produces legal-sounding guidance, but the prior set of design, training, and deployment decisions that make such output systematically available and predictably relied upon. Focusing on outputs treats each interaction as an isolated event; focusing upstream recognizes that these interactions are the foreseeable product of an engineered system. As a result, directing doctrine toward system-level choices, such as model capabilities, guardrails, interface design, and deployment contexts, offers a more coherent and efficient way to mitigate risk.²²⁵ It targets the point at which intervention can meaningfully shape the distribution of legal guidance at scale, rather than attempting to police an effectively infinite stream of individual responses after the fact.

224. See Shanahan, *supra* note 10, at 68–79.

225. See AI Act, *supra* note 183, arts. 9–26 (imposing ex ante obligations concerning risk management, governance, technical documentation, human oversight, and deployment on providers and deployers of AI systems rather than regulating individual outputs); ELHAM TABASSI, NAT'L INST. OF STANDARDS & TECH., NIST AI 100-1, ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK (AI RMF 1.0), at 1–5 (2023), <https://doi.org/10.6028/NIST.AI.100-1> (on file with the *Fordham Urban Law Journal*) (organizing AI governance around the lifecycle of designing, developing, deploying, and using AI systems, with emphasis on organizational risk management rather than case-by-case evaluation of outputs). See generally Philipp Hacker, Andreas Engel & Marco Mauer, *Regulating ChatGPT and Other Large Generative AI Models*, in ACM CONF. ON FAIRNESS, ACCOUNTABILITY AND TRANSPARENCY 1112, 1118–20 (2023) (arguing that regulation should focus on deployers and concrete high-risk applications and allocate responsibilities along the AI value chain).

To clarify how responsibility should attach in this setting, it is useful to distinguish between several categories of upstream actors.²²⁶ These categories are not mutually exclusive, nor do they map neatly onto existing professional roles. Rather, they reflect functional positions within the ecosystem of GAI-mediated legal assistance.

First are model creators, including the entities that train LLMs and determine their underlying architectures, objectives, and safety constraints.²²⁷ These actors shape the epistemic boundaries of the outputs an LLM can generate, the patterns of reasoning it simulates, and the confidence with which it delivers output. Decisions about scale, fine-tuning, and alignment are not neutral background conditions; they define the range of legal-sounding advice that can plausibly emerge from the system.

Second are platform and interface designers, who determine how end users interact with GAI systems.²²⁸ Choices about conversational format, follow-up prompting, disclaimer placement, and visual presentation play a critical role in encouraging reliance. An LLM that responds in natural language, asks clarifying questions, and mirrors professional reasoning cues invites a different form of trust than a static informational repository, even if both are nominally classified as “informational tools.”

Third are product integrators and legal-tech vendors, who embed general-purpose models into domain-specific applications.²²⁹ These actors decide whether a model will be used to generate generic explanations, jurisdiction-specific legal guidance, or procedural instructions calibrated to particular legal contexts. Integration transforms a general system into a functionally legal one, even when no claim of professional substitution is made.

Fourth are market framers, including those responsible for branding, marketing, and pricing structures. Subscription models, enterprise offerings, and messaging about efficiency or access to justice shape user expectations about reliability and authority. Even careful disclaimers can be overwhelmed by contextual cues that signal legal competence or trustworthiness.

226. Although existing AI governance frameworks generally distinguish among developers, deployers, and downstream users, unauthorized-practice doctrine requires a broader inquiry. Because liability should follow the creation of the illusion of representation, this Article expands the conventional AI value chain to include those who shape user reliance through interface design, marketing, and economic incentives.

227. See Eric Osborn, Note, *The Lifecycle of a Generative AI Model—Where Could Copyright Infringement Occur?*, 22 U. ST. THOMAS L.J. 168, 170–71, 178–84 (2026).

228. See *id.* at 172–75.

229. See *id.* at 177.

Finally, there are economic beneficiaries, encompassing the entities that profit from the widespread adoption of GAI legal tools. Monetization structures influence incentives to expand scope, reduce friction, and minimize human oversight. To the economic beneficiaries, LLMs should be as easy to use as possible.

Any of these upstream actors could be lawyers. Lawyers are increasingly involved in the design, refinement, and governance of LLMs.²³⁰ Contemporary legal AI systems are typically developed by multidisciplinary teams that integrate attorneys, data scientists, and engineers, with legal professionals contributing domain expertise necessary to ensure that outputs reflect doctrinal accuracy, professional norms, and institutional constraints.²³¹ In addition, major law firms, legal departments, and academic centers are directly participating in the development and deployment of these systems, often piloting tools, advising AI companies, or helping define governance frameworks for their use.²³²

Importantly, identifying these upstream roles does not require attributing intentional wrongdoing or professional identity to any particular actor. Unauthorized practice doctrine has long operated without demanding proof of subjective intent or formal status. The doctrine's concern has instead been functional: whether legal guidance is being provided under conditions that expose consumers to unmitigated risk. In the GAI context, that risk is not created by an isolated user's choice to consult an LLM, but by a coordinated set of upstream decisions that determine how convincingly legal authority is simulated and how easily human safeguards are displaced.

By disaggregating upstream responsibility in this way, it becomes clear that regulating GAI-mediated legal assistance does not require treating GAI as a lawyer, nor does it require expanding professional discipline to encompass novel actors. It requires recognizing that responsibility follows control. Where entities have the capacity to shape system behavior, user reliance, and market deployment, these entities are the appropriate targets of regulatory attention—even when no single actor occupies the traditional role of legal advisor.

230. See, e.g., Inyoung Cheong et al., “I Am Not a Lawyer, But . . .”: Engaging Legal Experts Toward Responsible LLM Policies for Legal Advice, in ACM CONF. ON FAIRNESS, ACCOUNTABILITY & TRANSPARENCY 2454, 2456 (2024).

231. See Melissa Koch, *Building a Legal AI Dream Team Means Prioritizing the Human Side*, BLOOMBERG L. (June 30, 2025), <https://news.bloomberglaw.com/ip-law/building-a-legal-ai-dream-team-means-prioritizing-the-human-side> [<https://perma.cc/F379-S778>].

232. *Closing the Justice Gap: The Role of Legal AI, Legal Education, and Lawyers*, THOMSON REUTERS (Apr. 21, 2026), <https://legal.thomsonreuters.com/blog/closing-the-justice-gap-the-role-of-legal-ai-legal-education-and-lawyers/> [<https://perma.cc/S5FQ-Q92B>].

Existing rules of professional conduct already provide a framework for enforcing upstream responsibility. The ABA Model Rules of Professional Conduct, which serve as the basis for jurisdiction-specific professional conduct rules, do not treat responsibility as a metaphysical question about agency or intelligence. Instead, they tie accountability to control, delegation, and foreseeability. When viewed through that lens, GAI does not require an entirely new regulatory paradigm. Instead, it requires a careful application of (and, in some respects, a reimagining of) existing supervisory obligations.

Model Rules 5.1 through 5.3 are particularly instructive.²³³ These rules impose affirmative duties on lawyers with managerial authority to make reasonable efforts to ensure that both subordinate lawyers and nonlawyer assistants comply with professional obligations.²³⁴ The rules are premised on the idea that harm often arises not from direct misconduct, but from insufficient oversight of delegated work.²³⁵ Critically, the rules do not require perfect control.²³⁶ They require reasonable, good-faith efforts to anticipate risks and structure systems accordingly.²³⁷ In that respect, they are well-suited to settings involving complex tools and layered delegation.

GAI systems fit comfortably within this structure once they are understood as tools rather than autonomous actors. Like traditional staff or vendor tools, LLMs perform functions based on programming and design shaped by humans.²³⁸ They are trained on selected data, exposed to particular prompts, embedded within specific interfaces, and marketed with defined claims. Lawyers who participate in designing or overseeing these systems are not passive observers.²³⁹ They exercise meaningful control over how the systems operate and how users are invited to rely on them.²⁴⁰ That control makes the risks of misuse foreseeable and, therefore, assignable.

Translating the “reasonable efforts” standard into the GAI context requires attention to both technical and communicative design choices. Reasonable supervision may include constraining prompts or outputs to prevent the generation of jurisdiction-specific advice, limiting the system’s ability to recommend courses of action in high-stakes contexts, and implementing escalation or referral mechanisms when users describe

233. MODEL RULES OF PRO. CONDUCT rr. 5.1–5.3 (A.B.A. 2020).

234. See John G. Browning, *Real World Ethics in an Artificial Intelligence World*, 49 N. KY. L. REV. 155, 174–75 (2022).

235. See Cyphert, *supra* note 89, at 432.

236. See Cyphert, *supra* note 89, at 432.

237. See Cyphert, *supra* note 89, at 432.

238. See Jabotinsky & Lavi, *supra* note 5, at 320.

239. See Bast, *supra* note 26, at 298–99.

240. See Morris Wilner, Comment, *Artificial Intelligence and Its Usage in the Business and Practice of Law*, 50 W. ST. L. REV. 125, 132–33 (2023).

complex or legally consequential scenarios. It may also require ongoing monitoring of system outputs to identify recurring errors, overconfident framing, or patterns of user reliance that undermine earlier safeguards. Importantly, these obligations do not hinge on whether the system is perfectly accurate; they hinge on whether foreseeable risks are addressed through deliberate design.

Supervision also extends beyond technical architecture to the way GAI systems are presented to users. Interface design, tone, and marketing claims play a central role in shaping user expectations. A system that invites users to describe their legal problems in narrative form, responds with confidence and fluency, and promises solutions rather than information predictably invites reliance. A lawyer who helps build or endorses such a system cannot avoid responsibility by pointing to the presence of a generic disclaimer or the absence of a traditional attorney-client relationship. Under the Model Rules, responsibility attaches to the decision to create and deploy a tool that functions, in practice, as a substitute for legal judgment.

This understanding of supervision naturally informs the interpretation of Model Rule 5.5(a),²⁴¹ which prohibits lawyers from assisting others in the unauthorized practice of law.²⁴² The rule has never been limited to cases in which a nonlawyer falsely claims to be an attorney.²⁴³ Its core concern is preventing the delivery of legal advice by those not subject to professional regulation.²⁴⁴ In the GAI context, the relevant question is not whether a system “is” a lawyer, but whether lawyers are materially assisting in the creation of systems that perform lawyer-like functions in ways that predictably invite user reliance. To the extent they are, those lawyers are responsible for supervising the nonlawyers involved—including coders and marketers.

Read this way, Model Rule 5.5 allocates responsibility to those humans who build and deploy GAI tools that can be used by pro se litigants as unsupervised legal advisors. If a lawyer meaningfully contributes to a system that elicits facts, applies law to those facts, recommends strategies, and presents itself as capable of resolving legal problems, the lawyer has

241. MODEL RULES OF PRO. CONDUCT r. 5.5 (A.B.A. 2020).

242. See Thomas E. Spahn, *Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law?*, 24 RICH. J.L. & TECH. 1, 19–20 (2018).

243. See, e.g., Fla. Bar v. Brumbaugh, 355 So. 2d 1186, 1191–94 (Fla. 1978) (holding that a nonlawyer engaged in the unauthorized practice of law by assisting customers in completing divorce forms and providing individualized legal guidance, despite not claiming to be an attorney); People v. Landlords Pro. Servs., 215 Cal. App. 3d 1599, 1608 (Cal. Ct. App. 1989) (holding that a business committed the unauthorized practice of law by advising landlords and preparing eviction documents, even though it did not hold itself out as a law firm).

244. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 cmt. c (A.L.I. 2000).

assisted in conduct that the rule is designed to prevent. That conclusion does not depend on treating GAI like a human actor.

The most likely objection to extending Model Rules 5.1 through 5.5 to lawyers who participate in the development of GAI is that imposing supervisory duties in this context stretches the rules beyond their intended scope, risks chilling innovation, or unfairly assigns responsibility to lawyers who lack day-to-day control over technical implementation. Indeed, responsibility for the design of LLMs may be diffuse.²⁴⁵ Another objection stems from the reality that the probabilistic nature of LLM outputs makes meaningful supervision impossible, or at least qualitatively different from supervising humans.²⁴⁶

These objections are understandable but ultimately unpersuasive. Application of the Model Rules has never been limited to small, easily managed settings. The rules have long applied in contexts involving outsourcing, vendor relationships, and complex institutional practice, all of which require lawyers to exercise judgment under conditions of partial control and imperfect information.²⁴⁷ The standard is not whether the lawyer had omniscience or total control, but instead whether the lawyer undertook reasonable efforts in light of foreseeable risk.²⁴⁸ Lawyers involved in designing or deploying LLMs are uniquely positioned to anticipate how such systems may be misunderstood or over-relied upon. Lawyers may not write the code, but they can influence the goals, constraints, and interfaces that determine how an LLM functions in practice. Holding lawyers accountable is consistent with, not a departure from, existing doctrine.

This approach does not require rewriting professional conduct rules. Nor would doing so be advantageous. Creating new rules would risk locking in assumptions about technology that are likely to change quickly. Relying on existing rules avoids those problems. The Model Rules are already flexible and technology-neutral. The Model Rules focus on familiar concepts like delegation and supervision. The real challenge raised by GAI is not the lack

245. See Fines, *supra* note 27, at 176.

246. See Bast, *supra* note 26, at 287–88; Neal Feigenson & Brian Carney, *Generative AI as Courtroom Evidence: A Practical Guide*, 52 MITCHELL HAMLINE L. REV. 1, 11 (2025).

247. See Jacobowitz & Jarvis, *supra* note 47, at 293–97; see also Nancy B. Rapoport & Joseph R. Tiano, Jr., *Reimagining “Reasonableness” Under Section 330(a) in a World of Technology, Data, and Artificial Intelligence*, 97 AM. BANKR. L.J. 254, 257–58 (2023) (discussing lawyers’ duty of technological competence and explaining that attorney responsibility for AI tools includes understanding their risks and appropriately monitoring their use).

248. See MODEL RULES OF PRO. CONDUCT r. 5.3 cmts. 2–3 (A.B.A. 2020) (explaining that lawyers must make reasonable efforts to ensure that nonlawyer assistants’ conduct is compatible with the lawyer’s professional obligations, taking into account the circumstances and the scope of the nonlawyer’s responsibilities).

of existing regulatory tools, but the creativity to envision how these tools apply in new settings.

To apply Model Rule 5.5 coherently in the context of GAI, the focus must shift from formal labels to functional risk. Model Rule 5.5 prohibits lawyers from assisting others in the unauthorized practice of law. That prohibition has never depended on whether the relevant actor carries the title of “lawyer,” nor on whether the conduct fits within a rigid definition of practice.²⁴⁹ Instead, the rule has always been concerned with whether legal judgment is being delivered to the public without the protections of licensure, accountability, and professional discipline.

One possible objection is that expanding professional responsibility in this manner could reduce access to justice by discouraging companies from offering legal assistance tools altogether. That concern deserves serious consideration. Yet the proposed framework does not prohibit GAI from providing legal information. Nor does it require lawyer supervision whenever an AI system discusses legal topics. Rather, supervision becomes necessary only when developers intentionally design systems that individualize legal advice, invite reliance, and generate action-ready legal guidance without meaningful human review. General educational tools remain outside the framework.

A second objection is that imposing supervisory responsibilities could discourage innovation. Similar arguments, however, have accompanied virtually every expansion of professional responsibility and product safety regulation. Existing ethics rules have long required lawyers to supervise associates, contract attorneys, investigators, and other nonlawyer assistants despite the costs associated with doing so. Those obligations have not prevented innovation in legal practice. They have instead encouraged innovation that incorporates appropriate safeguards.

A third objection is that this framework could prove difficult to administer because AI systems vary considerably in sophistication. Yet the proposed approach avoids categorical distinctions based upon particular technologies. It instead examines how a reasonable user experiences the system and whether the interaction functionally resembles legal representation. That inquiry mirrors existing unauthorized practice doctrine, which has always evaluated conduct functionally rather than mechanically.

249. See *Fla. Bar v. Brumbaugh*, 355 So. 2d 1186, 1193–94 (Fla. 1978) (holding that a nonlawyer engaged in unauthorized practice by providing individualized legal assistance); *People v. Landlords Pro. Servs.*, 215 Cal. App. 3d 1599, 1608 (Cal. Ct. App. 1989) (holding that unauthorized practice turns on the nature of the services performed); *In re Reynoso*, 477 F.3d 1117, 1125–26 (9th Cir. 2007) (holding that bankruptcy software operators engaged in unauthorized practice by performing legal functions).

Finally, some may contend that responsibility should remain entirely with users who voluntarily choose to rely upon GAI. Such an approach misunderstands both unauthorized practice doctrine and consumer protection more generally. The doctrine has never assumed that consumers possess sufficient expertise to evaluate the quality of legal services before relying upon them. Rather, it recognizes that informational asymmetries justify regulating those who provide legal guidance. GAI magnifies those asymmetries rather than eliminating them. The proposed framework therefore preserves the traditional allocation of responsibility by placing regulatory attention upon those best positioned to prevent foreseeable harm before it reaches consumers.

This Article proposes a three-part framework for reallocating responsibility when GAI systems create the illusion of representation. This framework provides the most principled way to interpret these Model Rules to determine when LLMs operate in a way that requires lawyer supervision. The appropriate question is not whether a GAI system is itself practicing law. The Model Rules do not require that fiction. The relevant question is whether lawyers are materially assisting in the creation of systems that perform legal advisory functions in ways that predictably invite reliance by lay users.²⁵⁰ When that assistance is present, the Model Rules apply, and the humans responsible for the systems should be responsible. A three-part framework can help guide this determination.

The first consideration of the framework asks whether the system individualizes its outputs by applying law to specific facts or jurisdictions. This consideration corresponds directly to Model Rule 5.5's longstanding distinction between general legal information and fact-specific legal advice. Courts and regulators have consistently treated the latter as the practice of law because it involves judgment about how legal rules operate in particular circumstances.²⁵¹

From the perspective of Model Rule 5.5, individualization matters because it is the point at which lawyers are typically required. A system that tells users how a statute applies to their situation in a particular court, city, or procedural posture is not merely educating users; it is doing the work of a lawyer. When lawyers help create LLMs that deliver this kind of

250. See *supra* notes 217–23 and accompanying text.

251. See, e.g., *Brumbaugh*, 355 So. 2d at 1193–94 (holding that individualized legal assistance in completing divorce forms constituted the practice of law); *Landlords Pro. Servs.*, 215 Cal. App. 3d at 1608 (holding that advising clients on specific eviction matters constituted the practice of law); *Reynoso*, 477 F.3d at 1125–26 (holding that software practiced law by applying legal rules to users' particular financial information); *N.J. State Bar Ass'n v. N.J. Ass'n of Realtor Bds.*, 461 A.2d 1112, 1121–22 (N.J. 1983) (recognizing that the practice of law includes applying legal judgment to particular facts).

individualized analysis without supervision, those lawyers assist in activity that the rule is meant to prohibit.

The second consideration of the framework asks how a reasonable user would understand the interaction. Model Rule 5.5 has always been sensitive to consumer perception.²⁵² Unauthorized practice enforcement depends on whether a service appears to offer legal advice.²⁵³ In the GAI context, tone, conversational structure, and presentation are central.

This perceptual element is especially important when lawyers are involved in product design or messaging. Choices about interface, phrasing, and user flow determine whether users experience an LLM as an informational aid or as a substitute for a lawyer. If lawyers help create systems that invite users to describe legal problems and receive seemingly authoritative guidance, Model Rule 5.5 treats that assistance as consequential.

The third consideration of the framework asks whether the system produces action-ready legal output without meaningful human review. This consideration reflects Model Rule 5.5's concern with unregulated delivery of legal services.²⁵⁴ Advice that users can immediately act upon or submit to a court carries higher risk than more general explanations. When LLMs generate pleadings, step-by-step instructions, or strategic recommendations without lawyer oversight, they occupy the same functional space as lawyers.

Model Rule 5.5 does not prohibit all use of technology in legal problem-solving. It prohibits lawyers from enabling legal advice to reach the public without professional accountability. LLM outputs that are not reviewed, contextualized, or approved by lawyers raise concerns. The absence of review concentrates risk on the user and magnifies the importance of lawyer responsibility upstream.

Balanced together, these three considerations provide a workable interpretation of Model Rule 5.5 in the age of GAI. A system that individualizes legal analysis, presents itself in a way that reasonable users would understand as advice, and produces actionable output without human oversight performs the core function of a lawyer. When lawyers assist in building or deploying such a system, those lawyers should be subject to Model Rule 5.5. Model Rule 5.5 is written in functional terms, and its

252. See, e.g., *Brumbaugh*, 355 So. 2d at 1193–94 (holding that a nonlawyer engaged in the unauthorized practice of law because customers relied on her to provide individualized legal assistance, even though she never held herself out as an attorney).

253. See *id.*

254. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 cmt. c (A.L.I. 2000) (explaining that restrictions on the unauthorized practice of law are intended to protect the public from the rendition of legal services by persons who are not subject to the standards, discipline, and obligations governing licensed lawyers).

flexibility is a feature, not a bug. The problem posed by GAI and LLMs demonstrates not that Model Rule 5.5 is obsolete but rather that it has continued efficacy when interpreted broadly.

The proposed framework necessarily depends upon lawyer involvement in the creation, deployment, or supervision of a GAI system. Where no lawyer materially participates in those activities, the Model Rules of Professional Conduct do not apply because there is no lawyer whose professional conduct may be regulated. That limitation does not undermine the framework; rather, it reflects the jurisdictional boundaries of professional responsibility itself. The Model Rules govern lawyers, not technology companies or software developers acting independently of the legal profession.

At the same time, the absence of lawyer involvement does not eliminate the consumer-protection concerns identified throughout this Article. A GAI system capable of creating the illusion of representation presents the same risks regardless of whether lawyers participated in its development. In those circumstances, responsibility must arise from legal regimes outside the Model Rules, including consumer-protection law, unfair or deceptive trade practice statutes, and other regulatory frameworks governing the design and deployment of AI systems. The European Union's AI Act illustrates one such approach by imposing obligations directly on providers and deployers of high-risk AI systems without requiring the involvement of legal professionals. Accordingly, this Article should not be understood as suggesting that professional responsibility rules are the exclusive means of regulating GAI. Rather, it argues that where lawyers materially contribute to the creation or deployment of systems capable of functioning as legal advisors, existing professional responsibility doctrine already provides an appropriate mechanism for assigning responsibility. Where lawyers are absent altogether, other bodies of law must fill the resulting regulatory space.

Emerging regulatory models have recognized that meaningful oversight is best achieved by focusing on the entities responsible for innovative legal services rather than the technology through which those services are delivered.²⁵⁵ State regulatory sandboxes, including the one adopted in Utah, demonstrate the promise of this proposed framework.²⁵⁶ Although these

255. See Blaine Dillingham & Samuel Hammond, *Learning from Utah's AI Regulatory Sandbox*, FOUND. FOR AM. INNOVATION (Mar. 5, 2026), <https://www.thefai.org/posts/learning-from-utah-s-ai-regulatory-sandbox> [https://perma.cc/LH8D-PGYJ].

256. More than a dozen states have adopted regulatory sandboxes, but Utah's sandbox is the only all-inclusive, industry-agnostic program. See *Phase 3 Implementation*, UTAH OFF. OF LEGAL SERVS. INNOVATION (May 2026), <https://utahinnovationoffice.org/phase-3-implementation/> [https://perma.cc/C6AQ-7AZ7]; *Authorized Entities*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/authorized-entities/>

regulatory sandboxes do not directly address GAI or interpret ABA Model Rules 5.1 through 5.5, they illustrate that meaningful oversight of technology-assisted legal services can be achieved by regulating the entities responsible for deploying those services rather than the technology itself.

Utah's regulatory sandbox, established by the Utah Supreme Court in 2020, authorizes approved entities, including technology companies and other nontraditional legal service providers, to deliver specified legal services under continuing regulatory supervision.²⁵⁷ Rather than attempting to regulate nonlawyer entities as though the entity itself was a lawyer or a law firm, Utah requires authorized entities to operate pursuant to individualized authorization orders, comply with consumer-protection requirements, disclose the nature of the services being provided, and remain subject to ongoing monitoring by the Utah Office of Legal Services Innovation.²⁵⁸ Utah's regulatory framework, therefore, focuses not solely on the delivery of legal services, but on those upstream who are responsible for designing, deploying, and supervising those services.²⁵⁹

Utah has admitted several technology-enabled legal service providers into its sandbox. These include 1Law, which delivers legal services through an AI-powered platform integrated with attorney oversight, and Rasa Public Benefit Corp., which uses software to assist individuals seeking criminal record expungements.²⁶⁰ To date, there have been relatively few complaints identified with any sandbox participants, including these providers.²⁶¹ These

[<https://perma.cc/T25T-3CS3>] (last visited July 22, 2026); Sara Merken, *Utah Rethinks Legal Industry Reforms as Arizona Speeds Ahead*, REUTERS (Mar. 3, 2025), <https://www.reuters.com/legal/legalindustry/utah-rethinks-legal-industry-reforms-arizona-speeds-ahead-2025-03-03/> [<https://perma.cc/6ZM6-77NN>].

257. See Matthew Burnett & Rebecca L. Sandefur, *A People-Centered Approach to Designing and Evaluating Community Justice Worker Programs in the United States*, 51 FORDHAM URB. L.J. 1509, 1521–23 (2024); Brown, *supra* note 155, at 905–07; Stephen P. Younger, *The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms*, 132 YALE L.J.F. 259, 264–65 (2022); Brian R. Knight & Trace E. Mitchell, *The Sandbox Paradox: Balancing the Need to Facilitate Innovation with the Risk of Regulatory Privilege*, 72 S.C. L. REV. 445, 452 (2020).

258. See William Tyler Lowman, *Navigating the Changing Tides in the Legal Service Landscape: An Assessment of Alternative Business Structures*, 8 BUS. & FIN. L. REV. 1, 11–13 (2025); Ellen Murphy, *Why We Should Embrace the Regulatory Sandbox*, 38 GPSOLO, July–Aug. 2021, at 36, 36–38.

259. See Burnett & Sandefur, *supra* note 257, at 1521–22; see also Cristie Ford & Quinn Ashkenaz, *The Legal Innovation Sandbox*, 72 AM. J. COMP. L. 557, 582–94 (2024) (discussing the benefits of a legal sandbox on innovation).

260. See *Authorized Entities*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/authorized-entities/> [<https://perma.cc/T25T-3CS3>] (last visited July 22, 2026).

261. See *Utah Sandbox Evaluation*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (IAALS), <https://iaals.du.edu/projects/unlocking-legal-regulation/utah-evaluation> [<https://perma.cc/M3EV-DAVV>] (last visited Oct. 21, 2026) (reporting that, as of January

examples demonstrate that technology companies can be incorporated into an entity-based regulatory framework when they deploy technology to provide legal services.

Although the Utah regulatory sandbox remains in its early stages, its initial results are encouraging.²⁶² Since implementation, authorized entities have delivered tens of thousands of legal services through technology-assisted platforms and trained nonlawyer providers.²⁶³ Audits have revealed high-quality service delivery and minimal consumer complaints, while innovative programs have expanded legal assistance to underserved populations, including domestic violence survivors, medical debt defendants, and residents of rural legal deserts.²⁶⁴ These early results suggest that carefully supervised innovation can improve access to justice while preserving meaningful consumer protections, even if broader systemic effects will require additional time and scale.²⁶⁵

The Utah sandbox demonstrates that the functional, upstream allocation of responsibility proposed in this Article is not merely theoretical. It provides a concrete example of how regulators can preserve accountability by focusing oversight on the entities responsible for delivering legal services rather than on the means through which those services are delivered. Rather than attempting to regulate the delivery of legal services by nonlawyers itself, Utah regulates the entities responsible for delivering those services.²⁶⁶ The same functional approach can be extended to GAI. Instead of asking whether an LLM has engaged in the unauthorized practice of law, regulators

2024, the sandbox had received fourteen complaints relating to more than 76,000 legal services, only nine of which involved defined consumer harms, and that independent quality audits found no material or substantial consumer harm); Rebecca L. Sandefur & Lucy Ricca, *Outside the Box: How States Are Increasing Access to Justice Through Evidence-Based Regulation of the Practice of Law*, 108 JUDICATURE 28, 31–32 (2024) (reporting that, as of January 2024, the Utah Innovation Office had received fourteen complaints concerning Sandbox services, approximately one complaint per 4,011 services, and had identified nine as raising potential consumer harms, or approximately one harm-related complaint per 8,468 services).

262. See The Hon. Christine Durham, *A Great Experiment: State Supreme Courts, Regulatory Reform in the Legal Profession, and Access to Justice*, 74 RUTGERS U. L. REV. 1393, 1399–1402 (2022); cf. Akshaya Kamalnath & Hitoishi Sarkar, *Regulation of Corporate Activity in the Space Sector*, 62 SANTA CLARA L. REV. 375, 397 (2022) (discussing the regulatory sandbox approach as applied to the space sector).

263. See Durham, *supra* note 262, at 1397–1402.

264. See *id.*

265. See *id.*; Ralph Baxter, *Dereliction of Duty: State-Bar Inaction in Response to America's Access-to-Justice Crisis*, 132 YALE L.J.F. 228, 255–56 (2022).

266. See *Phase 3 Implementation*, UTAH OFF. LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/phase-3-implementation/> [perma] (last visited Oct. 17, 2026) (describing the sandbox's entity-based authorization, consumer-protection requirements, disclosure obligations, and continuing regulatory oversight).

can focus on the identifiable organizations and individuals responsible for placing LLM-enabled legal services into the marketplace and creating the conditions under which pro se litigants rely upon them.

The Utah sandbox differs from the framework proposed in this Article in several important respects. The Utah sandbox is a limited pilot program rather than a comprehensive regulatory regime.²⁶⁷ It relies on individualized applications, ongoing monitoring, and periodic audits.²⁶⁸ It extends far beyond GAI to encompass a broad range of innovative legal service providers.²⁶⁹ Nevertheless, the adoption of this sandbox demonstrates that some American regulators have already embraced the central premise of this Article. These regulators agree that meaningful oversight can be achieved by regulating the entities responsible for delivering legal services rather than the technology through which those services are provided.²⁷⁰

Utah's experience demonstrates that entity-focused oversight is not only administratively feasible but also conceptually sound. That same approach is especially well suited to regulating GAI because it directs accountability to the point where meaningful intervention is possible rather than to the countless individual outputs generated after deployment of an LLM. The focus of accountability matters because GAI differs from earlier forms of legal assistance in one critical respect: scale. By late 2025, ChatGPT reportedly had approximately 800 million weekly users, some of whom turned to the system for legal advice.²⁷¹ This scale fundamentally alters where legal regulation can operate most effectively.

267. See Utah Sup. Ct. Standing Order No. 15, §§ 1, 4.1, 4.3, 5.1, 7–8 [hereinafter Utah Standing Order] (amended June 3, 2021) (establishing a pilot legal regulatory sandbox, requiring individuals and entities to apply for authorization, providing for ongoing supervision and data reporting, and authorizing the Innovation Office to monitor and regulate nontraditional legal-service providers); *Authorized Entities*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/authorized-entities> [<https://perma.cc/6FKV-6BMQ>] (last visited Oct. 22, 2026) (describing the Sandbox as a seven-year regulatory pilot project and listing authorized providers, including nonlawyer providers and technology-based services such as AI); see also Utah Sup. Ct., Letter to the Legal Servs. Innovation Comm. 2–6 (Sep. 5, 2024) (directing the Innovation Office to restart audits and describing pre-launch audits, continuing oversight, and the Sandbox's limited pilot structure).

268. See Utah Standing Order, *supra* note 267, §§ 4.1, 4.6.

269. See Utah Standing Order, *supra* note 267, § 1.

270. See Utah Standing Order, *supra* note 267, §§ 1, 4.1–4.3, 5.1, 7 (establishing a pilot framework under which the Innovation Office authorizes, monitors, and regulates individuals and entities offering nontraditional legal services); UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 267 (identifying authorized companies, organizations, nonlawyer providers, and technology-based services); see also Utah Sup. Ct., Letter to the Utah State Bar 3–4 (Mar. 28, 2023) (describing the Sandbox as a regulated, data-driven experiment that evaluates consumer harm and regulates new business models and service providers).

271. See Ryan Browne, *Lawyer: Gen Z Is Using ChatGPT for Legal Advice—Why That's a Bad Idea*, CNBC (Nov. 7, 2025), <https://www.cnbc.com/2025/11/07/lawyer-gen-z-is-using-chatgpt-for-legal-advicewhy-thats-a-bad-idea.html> [<https://perma.cc/AT85-HLAN>].

Regulating outputs places responsibility at the point furthest removed from meaningful intervention. Every AI-generated response is the product of innumerable design choices regarding training data, reinforcement learning, prompting architecture, interface design, safety guardrails, retrieval mechanisms, and deployment decisions.²⁷² Once a response reaches a user, the choices that produced it have already been made.²⁷³ As argued herein, any attempt to evaluate unauthorized practice one interaction at a time therefore addresses symptoms rather than causes.

An upstream approach instead targets the point at which legal risk is created. The individuals responsible for designing, training, deploying, and marketing GAI systems possess information unavailable to users, courts, or regulators.²⁷⁴ They determine whether legal queries are encouraged or discouraged, whether jurisdiction-specific guidance is generated, whether legal forms are produced automatically, and whether users are warned away from relying on outputs without professional review. These are not incidental design decisions. They define the extent to which an LLM creates the illusion of representation.

This allocation of responsibility also reflects familiar principles of legal risk management. Tort law frequently places responsibility upon actors best positioned to prevent foreseeable harm before it occurs.²⁷⁵ Products liability similarly focuses on manufacturers capable of reducing risk through safer design rather than consumers incapable of evaluating technical defects.²⁷⁶ The same logic applies here. Individual users lack both the technical expertise and the information necessary to evaluate how an LLM was trained, what limitations it possesses, or how reliable its legal outputs may be. Developers and deployers possess that information from the outset.

Moreover, regulating individual outputs becomes increasingly impractical as GAI systems continue to improve and proliferate. Even if every inaccurate legal response could theoretically be identified, no realistic enforcement regime could review millions of individualized interactions occurring

272. See TABASSI, *supra* note 225, at 1–3, 10–15, 24–25 (describing AI systems as sociotechnical systems and recommending risk management throughout the AI system lifecycle).

273. See *id.*

274. See Schwarcz, Baker & Logue, *supra* note 176, at 780–83, 823–30 (discussing generative AI's ability to produce personalized, natural-language interactions and the resulting difficulty for consumers in assessing the system's reliability and expertise).

275. See C.M. Sharkey, *Modern Tort Law: Preventing Harms, Not Recognizing Wrongs*, 134 HARV. L. REV. 1423, 1432–39 (2021) (describing the influence of “cheapest cost avoider” reasoning in tort law, particularly products-liability cases).

276. See Keith N. Hylton, *The Law and Economics of Products Liability*, 88 NOTRE DAME L. REV. 2457, 2491–93 (2013) (explaining that consumers lack sufficient information to evaluate the risks of complicated products and that products-liability rules can induce manufacturers to choose safer designs).

continuously across countless jurisdictions. By contrast, modifying a single system-level design choice may affect millions of future interactions simultaneously. The regulatory leverage therefore lies upstream, where relatively modest interventions can significantly alter downstream legal risk.

Finally, an upstream approach better aligns incentives. If responsibility attaches only after individual users suffer harm, developers have little incentive to invest in robust guardrails before deployment. Allocating responsibility to those who create and commercialize systems that predictably invite reliance encourages investment in safer interfaces, more effective supervision, and clearer limitations before legal injury occurs.²⁷⁷ Rather than discouraging innovation, this framework encourages responsible innovation by rewarding designs that reduce foreseeable consumer harm while preserving beneficial uses of GAI.

A recurring source of confusion in debates over artificial intelligence and legal regulation is the assumption that responsibility must track agency.²⁷⁸ Courts, regulators, and commentators justify according LLMs legal status or legal responsibility by asking whether GAI systems can “reason,” “decide,” or “act” in ways sufficient to justify treating LLMs as legal actors.²⁷⁹ In the context of unauthorized practice doctrine, this manifests as an inquiry into whether generative systems are “practicing law” in any meaningful sense. As this Article suggests, that inquiry is misplaced.

Unauthorized practice doctrine has never depended on a finding of agency or culpability in the ordinary moral sense.²⁸⁰ Although there are sometimes criminal prosecutions relating to unauthorized practice, the doctrine is primarily a consumer-protection doctrine structured around risk allocation.²⁸¹ The doctrine’s core concern is not who intended to provide legal advice, but whether legal guidance is being delivered under conditions

277. See Miriam C. Buiten, *Product Liability for Defective AI*, 57 EUR. J.L. & ECON. 239, 244–45, 252–53, 263–64 (2024).

278. See Ian Ayres & Jack M. Balkin, *The Law of AI Is the Law of Risky Agents Without Intentions*, 91 U. CHI. L. REV. ONLINE, Nov. 2024, at *1, *3–6.

279. See, e.g., *Thaler v. Vidal*, 43 F.4th 1207, 1210 (Fed. Cir. 2022) (considering whether an AI system may qualify as an inventor under the Patent Act); *Thaler v. Perlmutter*, 687 F. Supp. 3d 140, 145–49 (D.D.C. 2023) (considering whether a work generated solely by AI may receive copyright protection absent human authorship); RYAN ABBOTT, *THE REASONABLE ROBOT: ARTIFICIAL INTELLIGENCE AND THE LAW* 3–27 (2020) (examining whether AI systems should be recognized as legal actors capable of bearing legal rights and responsibilities).

280. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 cmt. c (A.L.I. 2000).

281. See Laurel A. Rigertas, *The Legal Profession’s Monopoly: Failing to Protect Consumers*, 82 FORDHAM L. REV. 2683, 2688–90 (2014).

that expose lay consumers to harm without the safeguards traditionally associated with professional services.²⁸²

From this perspective, the push to assess whether GAI systems possess legal agency reflects a category error. GAI systems are neither fiduciaries nor moral subjects, and treating them as such obscures the actual locus of control—the responsible humans upstream. The relevant regulatory question is not whether a GAI system itself exercises legal agency, but who creates the conditions in which its legal guidance is delivered, trusted, and acted upon—and who is best positioned to prevent the resulting harm.

This insight finds close analogues across other regulatory domains that have long imposed responsibility without agency.²⁸³ For example, product liability law does not ask whether a defective product “intended” to cause harm.²⁸⁴ Nor does enterprise liability turn on the subjective mental states of corporate entities.²⁸⁵ Similarly, consumer protection regimes routinely allocate responsibility upstream to manufacturers, distributors, and platforms based on their capacity to prevent foreseeable harms.²⁸⁶ In each of these examples, responsibility follows control, not intent.

Applying unauthorized practice of law doctrine to GAI-mediated legal guidance fits squarely within this tradition.²⁸⁷ The risks associated with LLM-generated legal guidance arise not primarily from autonomous decision-making, but from features that make these systems capable of approximating legal reasoning, tailoring responses to individual users, and delivering that guidance at scale without meaningful human oversight.²⁸⁸ These are not attributes that emerge spontaneously.²⁸⁹ They are the result of design choices, training decisions, interface construction, and market deployment strategies undertaken by identifiable actors operating within organizational and commercial contexts.²⁹⁰

282. See Elizabeth Michelman, *Guiding the Invisible Hand: The Consumer Protection Function of Unauthorized Practice Regulation*, 12 PEPP. L. REV. 1, 3–8 (1984).

283. See generally Gregory C. Keating, *The Theory of Enterprise Liability and Common Law Strict Liability*, 54 VAND. L. REV. 1285, 1286–90, 1331–35 (2001) (explaining strict and enterprise liability as systems for assigning responsibility for accidental harms independently of culpable wrongdoing).

284. See Sharkey, *supra* note 275, at 1439–41.

285. See Keating, *supra* note 283, at 1288–90, 1331–35.

286. See Kathryn E. Spier & Rory Van Loo, *Foundations for Platform Liability*, 100 NOTRE DAME L. REV. 1137, 1158–67, 1185–92 (2025).

287. See Avery, Abril & del Riego, *ChatGPT, Esq.*, *supra* note 15, at 67–70, 99–100.

288. See Brandon Waldon et al., *Large Language Models for Legal Interpretation? Don't Take Their Word for It*, 114 GEO. L.J. 115, 131–39 (2025).

289. See *id.* at 131–39.

290. See *id.*

Focusing on agency also invites a false dilemma between anthropomorphizing technology and exonerating its creators. If GAI systems are not themselves legal actors, the reasoning goes, then responsibility must dissipate entirely. As a result, the only viable alternative is to endow GAI with legal personhood. But this is a false dilemma. There are other ways to allocate responsibility. Responsibility can attach, and frequently does attach, to actors who enable, profit from, or fail to constrain systems that create foreseeable risks, even when those systems operate with a high degree of apparent autonomy.

Indeed, insisting on agency as a prerequisite for regulation risks reproducing precisely the regulatory gap that unauthorized practice doctrine was designed to prevent. As the locus of legal guidance migrates from human advisors to automated systems, focusing on the moment in which seemingly legal advice is given diverts attention to the wrong moment. If unauthorized practice occurred, it occurred much earlier and in a more broad and systemic manner.²⁹¹ It was the upstream entities who created the system who set the unauthorized practice in motion. These upstream actors possess the knowledge, resources, and incentives to structure how legal authority is simulated and distributed.²⁹² They should be in the crosshairs of regulation, not the LLM itself.

By decoupling responsibility from agency, unauthorized practice doctrine can be reconceptualized in a way that is both doctrinally familiar and technologically realistic. It need not ask whether a machine can practice law. It can instead ask whether the provision of GAI-mediated legal guidance, as structured by those who design and deploy it, creates the functional equivalent of legal representation without the institutional safeguards on which consumers have historically relied.

This shift does not expand the scope of unauthorized practice doctrine so much as it clarifies its underlying logic and applies it thoughtfully to the realities of GAI. The doctrine has always operated as a tool of risk governance rather than moral judgment.²⁹³ In the age of GAI, that logic points decisively upstream to those who control the architectures of legal guidance, the conditions of reliance, and the distribution of economic benefits from automated legal assistance. Against this backdrop, regulatory regimes that allocate responsibility upstream, without personifying technology or relying on professional discipline, provide a useful point of

291. See Avery, Abril & del Riego, *ChatGPT, Esq.*, *supra* note 15, at 99–104, 110–13.

292. See Miriam C. Buiten, Alexandre de Streel & Martin Peitz, *The Law and Economics of AI Liability*, 48 COMPUT. L. & SEC. REV. 105794, §§ 4.1–4.2 (2023) (arguing that where multiple actors contribute to AI-related risks, liability should generally target the actors capable of mitigating harm at the lowest cost).

293. See Rhode & Ricca, *supra* note 98, at 2593–95, 2603–04.

comparison for evaluating how unauthorized practice doctrine might evolve.²⁹⁴

CONCLUSION

GAI does not think like a lawyer, but it can function like one in ways that matter.²⁹⁵ In contemporary urban legal systems it increasingly functions as one in ways that directly shape legal outcomes for pro se litigants. This dynamic is particularly visible in large metropolitan courts, where high volumes of housing, benefits, family, and immigration cases intersect with chronic lawyer shortages and pervasive self-representation.²⁹⁶ In these settings LLMs invite reliance by recreating the experience of legal representation without the safeguards that traditionally accompany it.²⁹⁷ Urban legal institutions thus become laboratories for the illusion of representation, as technological substitutes fill gaps created by structural access-to-justice inequities. The resulting harm does not arise because a machine has practiced law, but because legal service-like functions are delivered without accountability.

Unauthorized practice of law doctrine must therefore respond to function rather than form. The relevant question is not whether GAI can be regulated as a lawyer, but whether those who design, deploy, and profit from systems capable of creating an illusion of representation can disclaim responsibility for the risks they generate. Comparative approaches from the EU reinforce this shift by demonstrating a shared regulatory emphasis on upstream responsibility and consumer harm, rather than professional status alone.²⁹⁸

Existing professional responsibility rules already provide the doctrinal resources to address what is likely to be an ever-increasing problem with LLMs being used by pro se litigants.²⁹⁹ What is required is not a new regulatory regime, but a renewed commitment to applying familiar principles of supervision, responsibility, and consumer protection in the contexts where legal vulnerability is most acute. The law need not recognize AI as a lawyer

294. See Spier & Van Loo, *supra* note 286, at 1158–67, 1185–92.

295. See Joseph Anderson, Comment, *AI and the Legal Puzzle: Filling Gaps, but Missing Pieces*, 75 MERCER L. REV. 1521, 1552 (2024); John L. Tripoli, *Feature: The Not-So-Quiet Revolution AI and the Practice of Law*, 45 PA. LAWYER 26, 29–30 (2023).

296. See Sandefur, *Access to What?*, *supra* note 131, at 51–52; Raba, *supra* note 133, at 199–201; Lupica, Franklin & Friedman, *supra* note 138, at 1366–67, 1393–94.

297. See Cohn et al., *supra* note 171, at 7–8.

298. See AI Act, *supra* note 183, arts. 6, 9, 16, 26, 34–35, 41–43, 54–56; GDPR, *supra* note 195, arts. 4(7)–(8), 33, 46–48.

299. See Shah & Levy, *supra* note 122, at 3–11 (documenting increased self-representation following the public availability of LLMs); MODEL RULES OF PRO. CONDUCT rr. 5.1–5.3, 5.5 (A.B.A. 2020) (addressing supervisory responsibility, delegation to nonlawyers, and assisting the unauthorized practice of law).

in order to recognize that lawyers who knowingly build, shape, supervise, and profit from AI-enabled legal services remain responsible for the consequences of those systems. Professional responsibility should attach to lawyers because of their upstream participation in AI systems, even when they have no attorney-client relationship with the eventual user. Responsibility should follow meaningful control, not the illusion that the machine itself is practicing law.