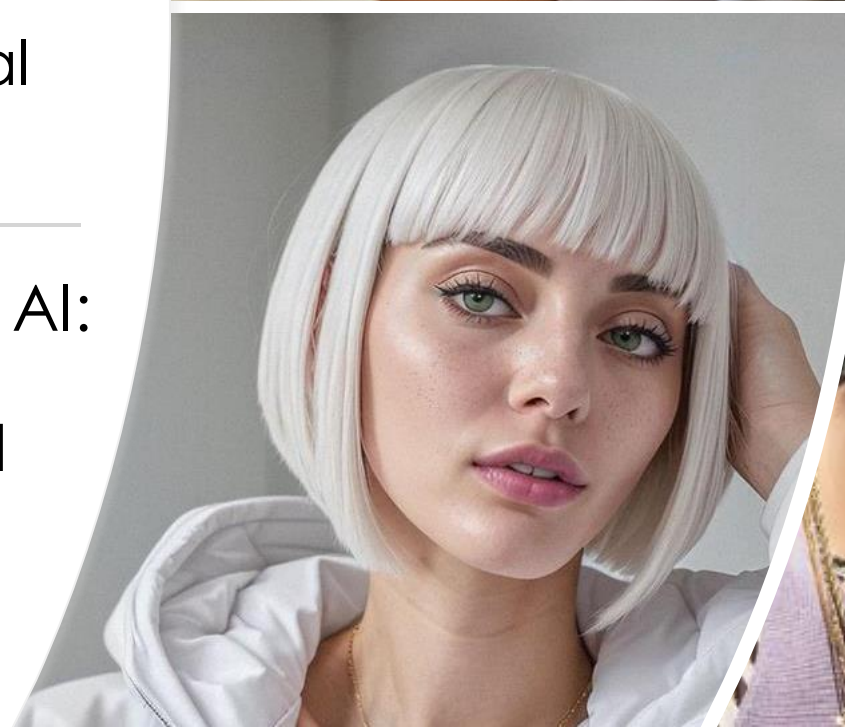


Influencers Virtuales en la era de la IA:

Desafíos legales, de propiedad intelectual y éticos de los nuevos protagonistas del marketing digital

Virtual Influencers in the age of AI:

Legal, intellectual property and ethical challenges of the new players in digital marketing.





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AROCHI & LINDNER

ABOGADOS | ATTORNEYS AT LAW | EST. 1994



Introduction of AI and Advertising

AI:

- Scientific discipline that creates computer programs to perform operations comparable to those performed by the human mind.
- Machines mimicking human intelligence.
- Algorithms to solve problems and make decisions based on logical reasoning.

Advertising

- Practice of promoting products, services, or ideas to a target audience through various media channels.
- AI-related strategies to promote brands.
- Aims to influence audience's actions.



Changes in Advertising with AI Integration

Revolutionizes industries

- Significant changes in advertising
- Tailor ads to user data

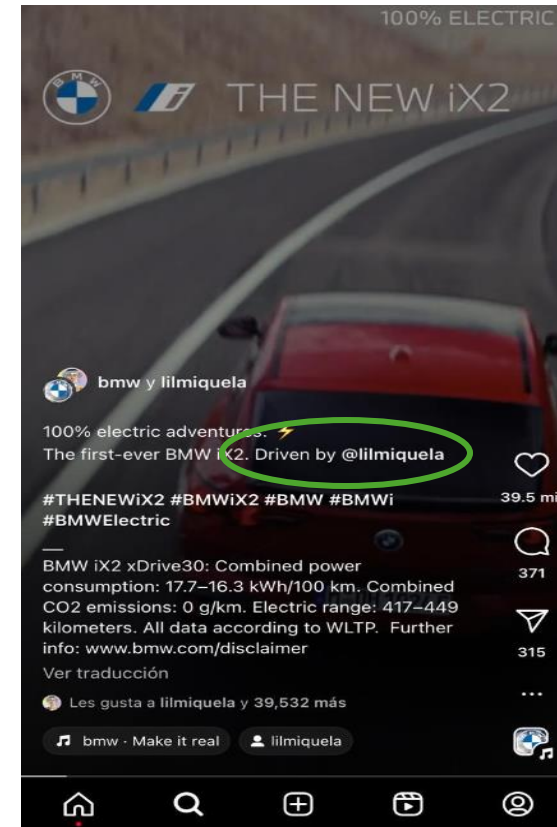
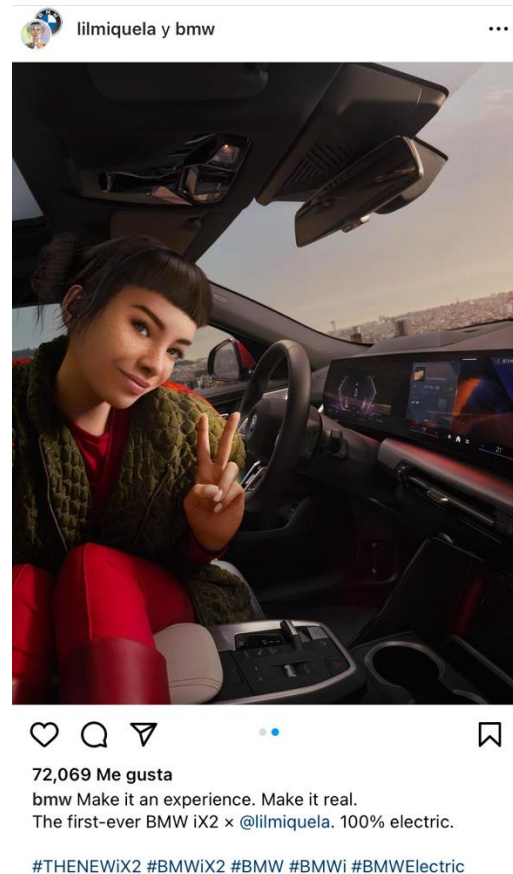
Analyzes data

- Crafts engaging content based on data analysis
- Predictive analytics regarding consumer behavior and trends

Transforms interactions

- Enhances brand-consumer relationships
- Adaptation to advertising campaigns

What happens when a “review” is generated by virtual influencers operated by IA?



What happens when a “review” is generated by virtual influencers operated by IA?

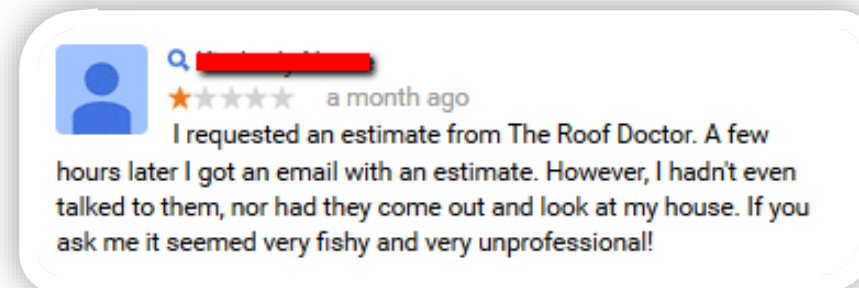
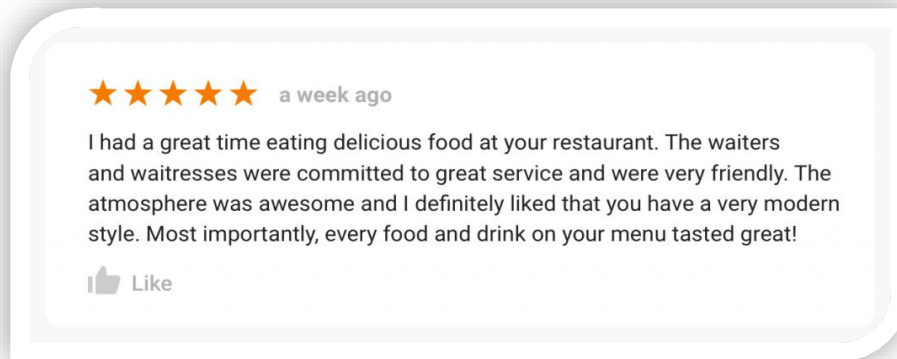
Consumer protection regulations regarding truthfulness and transparency in the promotion of products and/or services, should be extended to *virtual influencers*.

Their reviews should point out that they are not based on real events, but rather are fictitious or simulations, and they must be transparent whether it is a paid partnership.



Consumer Reviews

Through social media and the different e-commerce platforms, users express their opinion about products & services, causing a direct impact on the shopping experience of other users.



Dark Patterns

The Mexican Federal Trade Commission (PROFECO) defined it as:

- Tricks used by shopping apps and websites to influence people's behavior so that they will spend more. Which may include the use of particular colors for visual disorientation, fake reviews, confusing language, hidden options, false urgencies, or incomplete information.
- It is known that AI is being used to design deceptive campaigns to manipulate consumer choices.





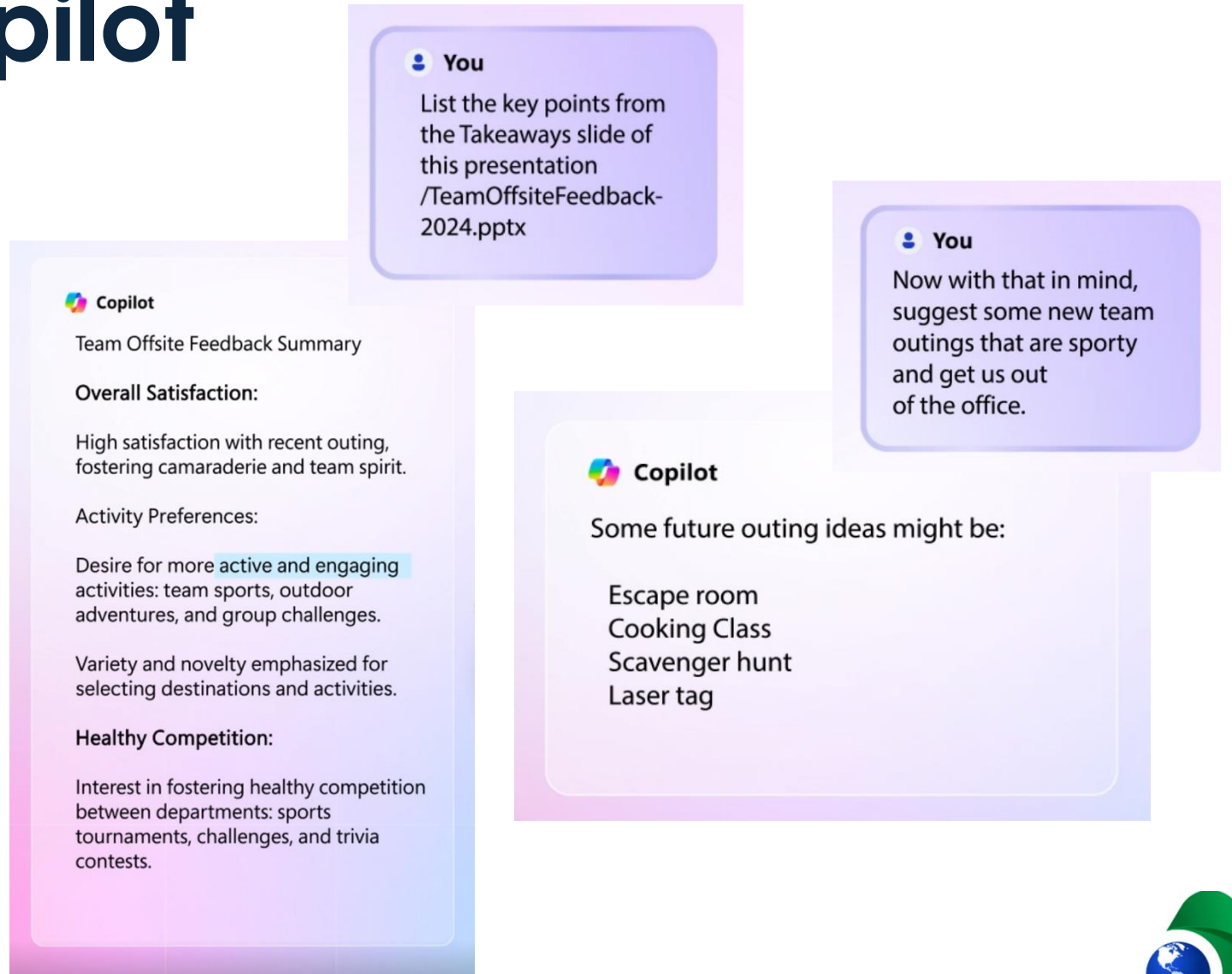
AI can be leveraged in many ways, and the tools are constantly evolving.



Microsoft Copilot

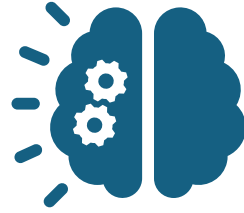
Copilot is used by many functions to enhance productivity of day-to-day tasks:

taking notes, generating action lists & summarizing email chains



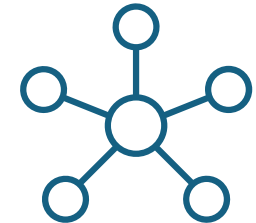
Samantha.AI

AI-powered copywriting assistant that leverages Generative AI technology to help Marketers create high quality written content with efficiency and consistency.



Incorporates a tailor-made taxonomy system called “Brand Brain” to enable marketers to access complex brand elements and audience segmentations to create robust written content

Can be built to scale across brand, category, and language to generate wide range of marketing copy



An internally developed, proprietary tool.

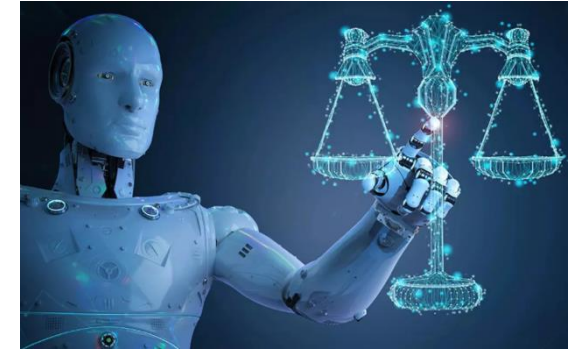
Competent authorities related to advertising in Mexico

- PROFECO (The Mexican Consumer Protection Agency)
- COFEPRIS (Mexican FDA)
- IMPI and INDAUTOR (IP and Copyright Offices)
- FGR (Mexican Attorneys General Office)
- Civil Courts
- COFECE (Antitrust Commission)
- CONAR (Council for Self-Regulation and Advertising Ethics)

Regulatory Frameworks in Latam

- **Overview of AI and Advertising Regulations**

- Latin America is increasingly adopting regulations focus on consumer protection and ethical practices.



- **Relevant Authorities**

- Consumer protection, health protection and intellectual property regulatory bodies
- Self-regulatory entities

- **Regulatory Enforcement**

- Enforcement of advertising standards
- Issuance of recommendations
- In-House compliance
- Importance of adhering to regulatory self-regulatory frameworks
- Consequences of non-compliance



Mexico Influencer Guidelines

- Mexico has no legal or binding provisions related to virtual influencers.
- However, in 2023 PROFECO issued the *Influencer Advertising Guide* to promote regulation in digital media, and in 2024, COFEPRIS also issued the *Influencer Advertising Roles and Responsibilities Guidelines*, related to health products and services and their marketing.
- Recommendations:
 - ❑ Responsibilities of the advertiser, the advertising agency and the media hub (influencers).
 - ❑ Certain type of products must comply with specific and special regulations.
 - ❑ Avoid ambiguous references and abbreviations
> #Ambassador #Partner #IA
 - ❑ Real experiences with the product or service.
 - ❑ Positive and negative anecdotes.



Intersection between consumers, influencers and IA

Given the lack of a legal provision that explicitly regulates the reviews generated by virtual influencers, it is necessary to establish parameters and criteria for regulatory purposes for:

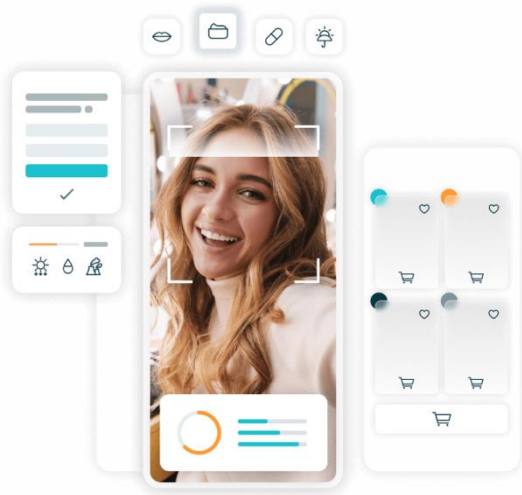
- Prevent fake reviews (Generated by IA users)
- Justify the review-quality relationship
- Create a sanction regime
- Prohibit the use of *bots* to write reviews
- Prohibit writing false or biased reviews to affect competitors
- Avoid Dark Patterns
- Prevent manipulation of reviews (Share only positive opinions)
- Establish ethical boundaries



The Beauty Industry is an early adopter

Prose Skincare

Personalized skincare
line



L'Oreal

"Coloright"

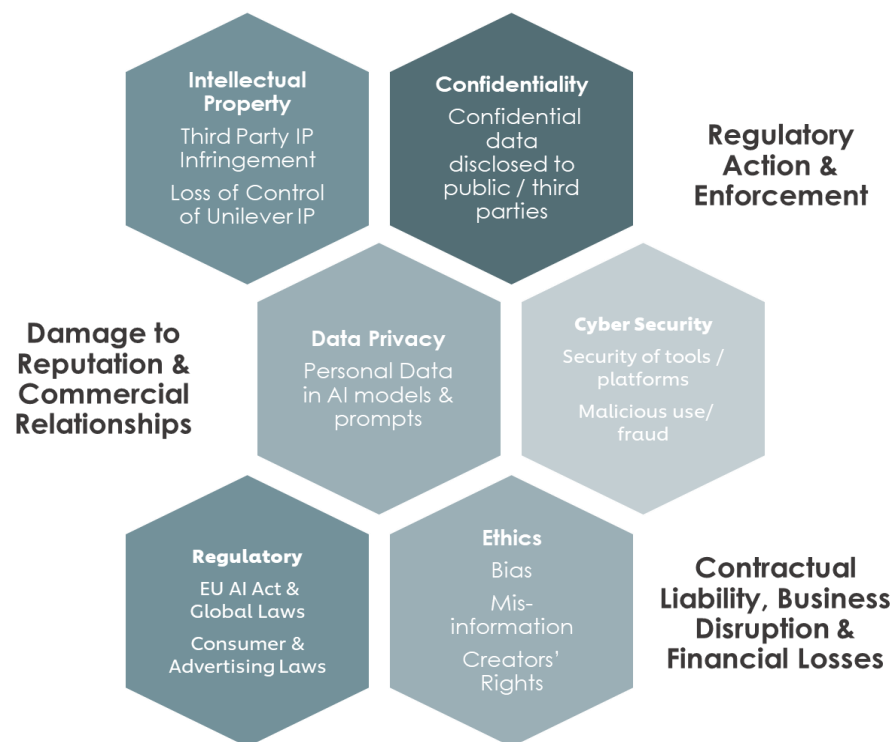


BOOST LAB

Personalized Skin Analysis



Latest AI technology comes along with a broad range of business and legal risks (that continue to evolve).



Governance is critical to both protect your business AND unlock the true potential of AI. A few considerations:



Can dynamic compliance processes be created to quickly adjust to evolving regulations around the world?

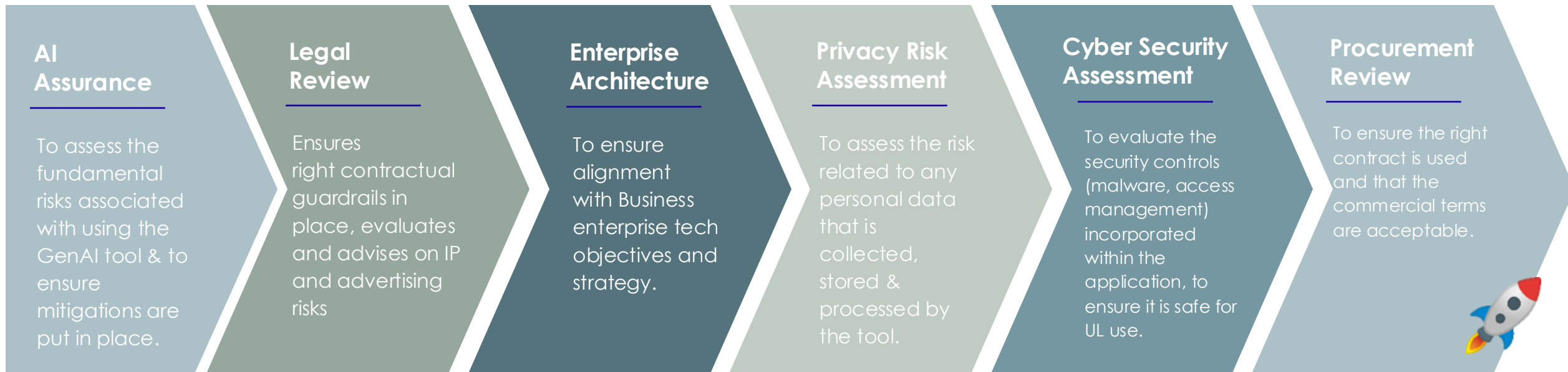
Does your Governance Council/ Team have representation from all key functions and the necessary subject matter expertise?



Does your on-boarding and monitoring program enable continuous assessment and mitigation of risk?

Onboarding & Responsible use of AI

Ensure your organization is supported by clear AI Assurance protocols and processes for ALL uses of AI (even POCs & pilots), with the right functional partners embedded.



1-3 months

AI and Advertising: U.S. Regulatory Considerations



Key Bodies in the U.S.:

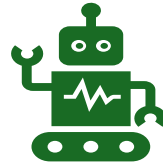
Federal Trade Commission

51 Attorneys General (states + Washington DC)

- Enforce laws prohibiting unfair or deceptive marketing practices, including misleading advertising

BBB National Programs:

- National Advertising Division (NAD), resolves complaints regarding misleading advertising
- Children's Advertising Review Unit (CARU): enforces guidelines for responsible advertising to children



Truth-in-Advertising Concerns

Generative AI can hallucinate: If using gen AI to create copy, make sure claims are supported, not exaggerated.

Ensure that AI-generated pictures don't misrepresent product's characteristics or qualities.

Labeling an ad as created with AI is not a defense if ad is misleading.



FTC Actions

Operation AI Comply: 5 cases targeting 3 categories of AI-related issues:

- Claims about AI tools that were one part of a deceptive marketing scheme
- Claims overstating AI tool's capabilities
- Using AI to generate deceptive marketing content.

Federal Trade Commission



- Five cases:
- DoNotPay: AI-powered "world's first robot lawyer"
- Ryter: AI writing assistant to create testimonials and reviews
- Ascend Ecom: "cutting edge AI tools" to earn \$ in business opportunity
- Ecommerce Empire Builders: "AI-powered Ecommerce Empire"
- FBA Machine: guaranteed income thru online storefronts using AI-powered software

AI in Advertising to Children

BBB National Programs Issues Compliance Warning for Use of AI in Child-Directed Advertising and Data Collection

- Brands should avoid AI uses that:
- Mislead children about a product or service
- Exploit a child's difficulty in distinguishing real from fanciful
- Mislead a child into believing AI characters are real
- Mislead as to whether a celebrity has endorsed a product
- **Goal:** Develop and release AI Guardrails addressing advertising and privacy



COMPLIANCE WARNING REGARDING THE USE OF AI IN ADVERTISING AND ONLINE DATA COLLECTION PRACTICES DIRECTED TO CHILDREN

May 1, 2024

SUMMARY

BBB National Programs' Children's Advertising Review Unit ("CARU") issues this Compliance Warning regarding the application of CARU's Self-Regulatory Guidelines for Children's Advertising¹ ("Advertising Guidelines") and CARU's Self-Regulatory Guidelines for Children's Online Privacy Protection² ("Privacy Guidelines") to the use of Artificial Intelligence ("AI") in advertising and data collection practices directed to children.

Specifically, CARU puts advertisers, brands, endorsers, developers, toy manufacturers, and others on notice that CARU's Advertising and Privacy Guidelines apply to the use of AI in advertising to children and the online collection of personal information from children. CARU will strictly enforce its Advertising and Privacy Guidelines.

Advertisers should be particularly cautious to avoid the use of AI in advertising that misleads children: 1) about product characteristics or performance; 2) about the distinction between real and imaginary or fantasy experiences; 3) that they have a personal relationship with a brand or brand character, celebrity, or influencer; and 4) that a celebrity or other person has endorsed a product when they have not. In addition, advertisers should ensure that the use of AI in advertising does not: 1) portray unsafe or inappropriate behaviors, or 2) generate or reflect negative social stereotypes or bias.

With respect to data privacy, companies that integrate AI technology in their products must clearly disclose data collection practices and obtain verifiable parental consent³ before they collect personal information⁴ from children. Transparency regarding data collection and parental consent remain the guiding standards to uphold privacy and safety.

CARU'S ADVERTISING GUIDELINES

CARU monitors and reviews advertising directed to children for compliance with its Advertising Guidelines. CARU seeks change through the voluntary cooperation of companies and, where warranted, public enforcement action.

CARU's Advertising Guidelines apply to all advertising, in any medium, directed to children under age 13, including advertising that uses AI to create or disseminate the ad. The Foundation of the Guidelines sets forth CARU's overarching principles that advertisers should

¹ Advertising Guidelines

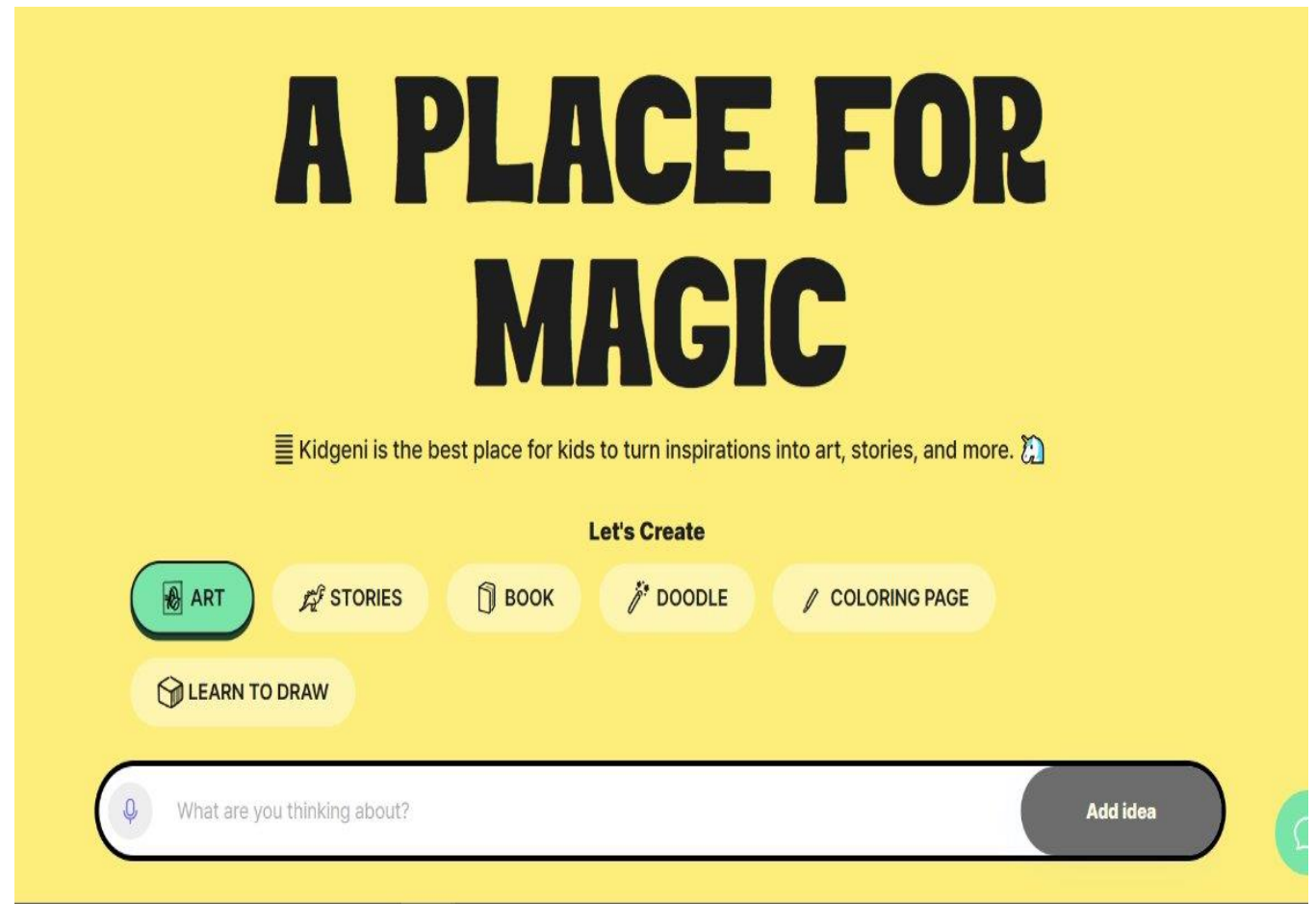
² Privacy Guidelines

³ The definition of "verifiable parental consent" in the Federal Trade Commission's (FTC) Children's Online Privacy Protection Rule applies. See 16 C.F.R. § 312.5.

⁴ Personal information is defined under the Children's Online Privacy Protection Act (COPPA) as individually identifiable information about an individual collected online. 16 C.F.R. § 312.2.



Industry Self-Regulation:
BBB National Programs'
CARU case -
KidGeni website



National Advertising Division Inquiry



- Deceptive demonstration:
- Google promotional video showing generative AI capability of Gemini to create images from verbal prompts was misleading
- Omitted prompts, sped up process

Virtual Influencers 1o1

- Virtual users that may be created with AI tools
- Content created with *machine learning*
- Who's the author of the content? Who's responsible of the content?
- Cheaper and easier than traditional influencers
- Main target: *Gen Z*
- AI analyzes engagement metrics, audience demographics, and content relevance
- Ensures alignment with the target audience for impactful campaigns.
- Tailored content could outperform human influencers
- Ethical concerns
- Use of indicators

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Best practices



Transparency from the "reviewer"



Use of indicators #Ad #3d #IAGenerated #Fiction #Paid #Marketing #Sponsored #Partnership



Certainty in the relationship between the advertiser, the agency and the influencer.



Don't review products, just promote them.



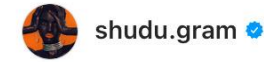
Use AI to prevent unethical practices.



Business Compliance: Adherence to strict guidelines is essential for lawful and honest advertising.



Special focus when using AI technologies.



1,953 Me gusta
shudu.gram Home AI devices just got a lot scarier.

Shudu is partnering with #AFRAIDMovie, where AIA—the revolutionary new home AI assistant— knows your every move and has its own agenda. Watch the terror unfold exclusively in movie theaters August 30th. Are you ready?

#SonyPicsPartner @AfraidMovie #paidpartnership

Ver los 55 comentarios



THANK YOU!

¡GRACIAS!
