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Dystopian Trademark Revelations

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Essay

Dystopian Trademark Revelations

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Uncovering dystopian technologies is challenging. Nondisclosure agreements, procurement policies, trade secrets, and strategic obfuscation collude to shield the development and deployment of these technologies from public scrutiny until it is too late to combat them with law or policy. But occasionally, exposing dystopian technologies is simple. Corporations choose technology trademarks inspired by dystopian philosophies and novels or similar elements of real life—all warnings that their potential uses are dystopian as well. That pronouncement is not necessarily trumpeted on social media or corporate websites, however. It is revealed in a more surprising place: trademark registrations at the U.S. Patent and Trademark Office (USPTO).

To grant registrations, the USPTO demands detailed disclosures about applied-for trademarks. These include the mark itself as well as information about how the applicant will use the mark, forcing corporations to admit their intent for their technologies. But these details do not always provide the full picture. The public can strategically supplement trademark disclosures with knowledge of the dystopian inspiration for the marks to understand corporations' plans for their products. This Essay uses the marks PALANTIR for big data analytics, PANOPTO for classroom recording systems, and MECHANICAL TURK for on-demand work to illustrate the power of coupling trademark registrations with underlying namesakes to understand technologies' dystopian implementations. Dystopian trademarks signal dystopian technologies, and the public is well-positioned to seek them out and develop strategies to combat their entrenchment.

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AMANDA LEVENDOWSKI [*]

INTRODUCTION

In 2015, former National Security Agency (NSA) contractor Edward Snowden released a trove of documents about NSA surveillance programs,[1] incidentally revealing that someone at the NSA is a fan of the dystopian movie series *The Terminator*. The films feature an artificial intelligence (AI) system called Skynet that gains self-awareness and attacks humanity.[2] Off-screen, the NSA developed an AI system that used bulk data to uncover sensitive information—such as pattern-of-life, social network, and travel behavior—about couriers with relationships to suspected terrorists.[3] Such metadata can be used to inform kill lists.[4] Except the NSA program was inaccurate. It misidentified prominent *Al Jazeera* journalist Ahmad Muaffaq Zaidan as a member of both al-Qaeda and the Muslim Brotherhood when he denied that he belonged to either.[5] The kicker: the NSA called its program

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[1] Cora Currier et al., *U.S. Government Designated Prominent Al Jazeera Journalist as "Member of Al Qaeda,"* INTERCEPT (May 8, 2015, 6:27 AM), https://theintercept.com/2015/05/08/u-s-government-designated-prominent-al-jazeera-journalist-al-qaeda-member-put-watch-list/. The Intercept published the documents on its website. *SKYNET: Courier Detection via Machine Learning*, INTERCEPT (May 8, 2015, 6:26 AM), https://theintercept.com/document/2015/05/08/skynet-courier/; *SKYNET: Applying Advanced Cloud-Based Behavior Analytics*, INTERCEPT (May 8, 2015, 6:26 AM), https://theintercept.com/document/2015/05/08/skynet-applying-advanced-cloud-based-behavior-analytics/.

[2] TERMINATOR 2: JUDGMENT DAY (Carolco Pictures 1991).

[3] *See* sources cited *supra* note 1; Martin Robbins, *Has a Rampaging AI Algorithm Really Killed Thousands in Pakistan?*, GUARDIAN (Feb. 18, 2016, 10:10 AM), https://www.theguardian.com/science/the-lay-scientist/2016/feb/18/has-a-rampaging-ai-algorithm-really-killed-thousands-in-pakistan. "AI" is something of a misnomer—the system used machine-learning algorithms. *Id.*

[4] Lee Ferran, *Ex-NSA Chief: "We Kill People Based on Metadata,"* ABC NEWS (May 12, 2014), https://abcnews.go.com/blogs/headlines/2014/05/ex-nsa-chief-we-kill-people-based-on-metadata/.

[5] *SKYNET: Courier Detection via Machine Learning*, *supra* note 1; Currier et al., *supra* note 1; Ahmad Zaidan, *Al Jazeera's A. Zaidan: I Am a Journalist Not Terrorist*, AL JAZEERA (May 15, 2015), https://www.aljazeera.com/opinions/2015/5/15/al-jazeeras-a-zaidan-i-am-a-journalist-not-terrorist (noting, among other evidence of his innocence, that al-Qaeda and the Muslim Brotherhood "have different sets of ideologies and are sworn enemies"); *see also* Zaidan v. Trump, 317 F. Supp. 3d 8, 18–20 (D.D.C. 2018) (finding Zaidan lacked standing to sue the government for violating the Administrative Procedure Act by putting his name on a kill list because he failed to allege an injury-in-fact). Similarly, SKYNET may have wrongly classified thousands of Pakistanis as terrorists, which journalists speculated could have resulted in their deaths. Christian Grothoff & J.M. Porup, *The NSA's SKYNET Program May Be Killing Thousands of Innocent People*, ARS TECHNICA (Feb. 16, 2016, 3:35 AM), https://arstechnica.com/

SKYNET, signaling a tacit recognition that it could become a dystopian AI system that attacks humanity.[6]

But for the Snowden leaks, SKYNET would have remained classified. Today, corporations developing dystopian technologies, such as those used by governments and public institutions, embrace the NSA's longtime obsession with secrecy by stealthily shielding their products from scrutiny. Catherine Crump, Ira Rubinstein, and Vincent Southerland document how limited jurisdictions have adopted procurement or Community Control Over Police (CCOPS) policies that require public disclosure and discussion of corporate surveillance technologies before deployment.[7] In jurisdictions with and without such oversight policies, Hannah Bloch-Wehba explains, Freedom of Information Act requests that could provide technological transparency are often stalled or denied.[8] Neither method applies to private technologies, and further transparency efforts can be foiled by strategic nondisclosure agreements between corporate developers and government purchasers, as Elizabeth Joh details.[9] And for technologies targeted to private institutions or individuals, the combination of niche use and relative obscurity is obfuscation enough. But corporations do something revealing that the NSA generally does not: they register the names of their dystopian technologies as trademarks.[10]

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information-technology/2016/02/the-nsas-skynet-program-may-be-killing-thousands-of-innocent-people/. *But cf.* Robbins, *supra* note 3 (pushing back on the assessment by Grothoff & Porup, *supra*, that SKYNET metadata was used to develop kill lists). For a discussion of the legal issues raised by the SKYNET program, see Chris Rogers, *How Should International Law Deal with Doubt in the Era of Drones and Big Data?*, JUST SEC. (Feb. 22, 2016), https://www.justsecurity.org/29436/ihl-deal-doubt-era-drones-big-data/.

[6] Utilitarian philosopher John Stuart Mill coined the word "dystopian," meaning "the bad place." HC Deb (12 Mar. 1868) (190) col. 1517 (UK). ("It is, perhaps, too complimentary to call them Utopians, they ought rather to be called dys-topians, or cacotopians. What is commonly called Utopian is something too good to be practicable; but what they appear to favour is too bad to be practicable.").

[7] Catherine Crump, *Surveillance Policy Making by Procurement*, 91 WASH. L. REV. 1595 (2016); Ira S. Rubinstein, *Privacy Localism*, 93 WASH. L. REV. 1961 (2018); Vincent Southerland, *The Master's Tools and a Mission: Using Community Control and Oversight Laws to Resist and Abolish Police Surveillance Technologies*, UCLA L. REV. (forthcoming 2023). These and other transparency citations are discussed in Amanda Levendowski, *Trademarks as Surveillance Transparency*, 36 BERKELEY TECH. L.J. 439 (2021).

[8] Hannah Bloch-Wehba, *Access to Algorithms*, 88 FORDHAM L. REV. 1265, 1296–303 (2020).

[9] Elizabeth E. Joh, *The Undue Influence of Surveillance Technology Companies on Policing*, 92 N.Y.U. L. REV. 19, 23–26 (2017). If such technologies are used in court, Rebecca Wexler and Sonia Katyal caution that corporations can invoke trade secrecy to shield their technologies from disclosure. Rebecca Wexler, *Life, Liberty, and Trade Secrets: Intellectual Property in the Criminal Justice System*, 70 STAN. L. REV. 1343, 1371–72, 1377 (2018); Sonia K. Katyal, *The Paradox of Source Code Secrecy*, 104 CORNELL L. REV. 1183, 1225–29 (2019).

[10] A March 21, 2023, search of the USPTO's Trademark Electronic Search System (TESS) showed only twenty-two live marks owned by either the NSA or "The United States Government as represented by Director, National Security Agency." These include educational services (CRYPTOKIDS, Registration No. 3,207,907), and a recruiting slogan (WHERE INTELLIGENCE GOES TO WORK, Registration No. 3,239,515).

The U.S. Patent and Trademark Office (USPTO) grants trademark registrations only after receiving a series of public disclosures about how those marks will be used.[11] Applicants must disclose the mark itself and identify one or more International Classes into which it falls.[12] These classes represent forty-five broad categories in which trademarked products may be used, such as for "computer and scientific services" in Class 42.[13] Applicants must complement the class(es) with detailed descriptions about the product or service features, effectively establishing the scope of a mark's protection.[14] Class identifications and descriptions must be supplemented with specimens, such as packaging, software interfaces, or other displays, demonstrating the mark's use in connection with each class identified in the application.[15] The public has access to all of these disclosures, which are freely searchable and publicly available through the Trademark Electronic Search System (TESS).[16]

As I have discussed previously, the federal trademark register routinely reveals details about harmful technologies, including ones that have been used by law enforcement with minimal public input and oversight.[17] The registration for the STINGRAY mark revealed schematics for Harris Corporation's cell site location information interceptors years before the public was even aware such technology existed.[18] The registration for the VIGILANT SOLUTIONS mark uncovered that Vigilant Solutions, an automated license plate reader company capable of tracking massive amounts of location information, publicly uploaded real geolocation data matched with real license plates for multiple vehicles.[19] And the registration for the PREDPOL mark exposed the predictive policing analytics

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[11] Levendowski, *supra* note 7, at 446–48. As Rebecca Tushnet observes, there is precious little scholarship about the mechanics of trademark registration. Rebecca Tushnet, *Registering Disagreement: Registration in Modern American Trademark Law*, 130 HARV. L. REV. 867, 870–71 (2017).

[12] 37 C.F.R. § 2.32 (2021); TMEP § 1401.02(a) (24th ed. July 2022).

[13] 37 C.F.R. § 6.1; TMEP § 1401.02(a).

[14] 37 C.F.R. § 2.37; TMEP § 1402.01. Some filers use model goods and services descriptions from the Acceptable Identification of Goods and Services Manual (ID Manual), but they are free to draft their own unique description if they so choose. U.S. PAT. & TRADEMARK OFF., TRADEMARK ID MANUAL (2022), https://idm-tmng.uspto.gov; TMEP § 1402.04; *see also Guidance for Users*, U.S. PAT. & TRADEMARK OFF., https://www.uspto.gov/trademarks/guides-and-manuals/guidance-users (last visited Mar. 20, 2023) ("The primary use of the ID Manual's listings . . . is to indicate by analogy and example the kinds of identifications that will be acceptable for goods and services not covered by the existing listings.").

[15] 37 C.F.R. § 2.56; TMEP § 904.03.

[16] *Trademark Electronic Search System* (*TESS)*, U.S. PAT. & TRADEMARK OFF., https://tmsearch.uspto.gov (last visited Mar. 24, 2023). Technically, applications and registrations are viewable through another acronym service, the Trademark Status and Document Retrieval (TSDR) system integrated with TESS. *Trademark Statute & Document Retrieval (TSDR)*, U.S. PAT. & TRADEMARK OFF., https://tsdr.uspto.gov (last visited Mar. 24, 2023). For a detailed description of how to search TESS, see Levendowski, *supra* note 7, at 447.

[17] Levendowski, *supra* note 7, at 441, 443–44.

[18] *Id.* at 453–56.

[19] *Id.* at 457–61, 463.

company's discounted contract for Richmond, California, which had not exactly touted its relationship with PredPol.[20] But unlike these examples, not every trademark disclosure paints a full picture of corporations' awareness of the potential dystopian uses for their technologies. Sometimes, trademark disclosures must be supplemented.

When corporations adopt trademarks inspired by dystopian fantasy novels, philosophical puzzles, and real-life practices, it signals that the underlying technologies are likely to be dystopian as well. This Essay suggests that interrogating those inspirations, coupled with investigating the federal trademark register, can illuminate how companies plan to implement the technologies behind the marks for dystopian purposes.

Perhaps it sounds obvious that marks have meanings connected to their underlying goods and services—Barton Beebe even suggests that this semiotic relationship explains key aspects of trademark law.[21] But strategically using the federal trademark register to uncover that connection is less obvious, perhaps because of its relative obscurity. As the Supreme Court has said, "it is unlikely that more than a tiny fraction of the public has any idea what federal registration of a trademark means."[22] That fraction of the public should be much, much larger.

The federal trademark register can, and should, be used creatively by the public—journalists, civil liberties organizations, activists, and even average people—to discover the real meaning behind corporations' goods and services. This Essay illustrates how in three parts. Part I examines the PALANTIR mark for big data analytics,[23] which draws inspiration from the all-seeing Elvish stone appropriated by evil forces in J.R.R. Tolkien's *The Lord of the Rings* series. Part II explores the PANOPTO mark for classroom recording systems, which draws inspiration from the relentless surveillance pioneered by philosopher Jeremy Bentham. And Part III exposes the AMAZON MECHANICAL TURK mark for outsourced work, which draws inspiration from actual men who hid below mechanized chessboards to trick opponents into believing in a mechanical player.

The dystopian potentials for these technologies are fully revealed by coupling their trademark disclosures with the inspirations behind the marks. This Essay concludes that this approach to investigating dystopian

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[20] *Id.* at 463–65.

[21] *See generally* Barton Beebe, *The Semiotic Analysis of Trademark Law*, 51 UCLA L. REV. 621 (2004). Semiotics is "a domain of investigation that explores the nature and function of signs as well as the systems and processes underlying signification, expression, representation, and communication." *Id.* at 626 (quoting Paul Perron, *Semiotics*, *in* THE JOHNS HOPKINS GUIDE TO LITERARY THEORY & CRITICISM 658 (Michael Groden & Martin Kreisworth eds., 1994)).

[22] Matal v. Tam, 137 S. Ct. 1744, 1759 (2017) (citing *In re* Nat'l Distillers & Chem. Corp., 297 F.2d 941, 949 (1962) (Rich, J., concurring) ("The purchasing public knows no more about trademark registrations than a man walking down the street in a strange city knows about legal title to the land and buildings he passes.")).

[23] This Essay capitalizes corporate or technological names when they are being used as trademarks. Additionally, this Essay cites to marks as they are registered, which may differ from applications.

trademarks can reveal not only the harms of dystopian technologies but the means of combating them as well.

I. ILLUMINATING PALANTIR

During the Third Age of Middle-earth, evil got a glimpse of a ragtag fellowship's sensitive personal information during their journey to destroy a coveted all-powerful ring.[24] Two Elvish seeing stones were corrupted by the force of darkness Sauron and his servant, the wizard Saruman.[25] Unknowingly, the hobbit Peregrin "Pippin" Took came across Saruman's stone, held it, and accidentally permitted Sauron to peek at his identity and his location.[26] While the *palantíri* revealed to their users distant people and events, they were imperfect. One must "possess[] great strength of will and of mind" to control their profound powers—failure to do so could result in muddled visions and misguided conclusions.[27] And Sauron himself made just such a mistake by believing Pippin was the one bearing the One Ring he had long sought.[28]

J.R.R. Tolkien's *The Lord of the Rings* books, which describe the power of a *palantír*, have captured generations of imaginations—mine included. Another was that of mega-billionaire Peter Thiel.[29] The series, which he read repeatedly, was his favorite as a teenager.[30] As an adult, Thiel found inspiration in the series for one of his companies' names: Palantir Technologies.[31]

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[24] *See generally* J.R.R. TOLKIEN, THE FELLOWSHIP OF THE RING (Ballantine Books 1973) (1954).

[25] J.R.R. TOLKIEN, THE TWO TOWERS 258–60 (Ballantine Books 1973) (1954) [hereinafter THE TWO TOWERS]. At least seven *palantíri* were made by the elves of Valinor in the First Age. J.R.R. TOLKIEN, THE SILMARILLION 64, 291–92 (Christopher Tolkien ed., 1977) [hereinafter THE SILMARILLION].

[26] THE TWO TOWERS, *supra* note 25, at 251–54.

[27] THE SILMARILLION, *supra* note 25, at 292.

[28] THE TWO TOWERS, *supra* note 25, at 255. This perception was further obfuscated by Aragorn, son of Arathorn, who uses a *palantír* to fool Sauron and draw his gaze away from the unsuspecting hobbit. J.R.R. TOLKIEN, THE RETURN OF THE KING 62–63 (Ballentine Books 1973) (1955) [hereinafter THE RETURN OF THE KING].

[29] *Peter Thiel*, FORBES, https://www.forbes.com/profile/peter-thiel/ (last visited Mar. 25, 2023) (identifying Thiel's real-time net worth as $4.2 billion).

[30] George Packer, *No Death, No Taxes*, NEW YORKER (Nov. 20, 2011), https://www.newyorker.com/magazine/2011/11/28/no-death-no-taxes.

[31] In Tolkien's lore, *palantír* (plural *palantíri*) takes its name from the Elvish words for "far" and "watch." J.R.R. TOLKIEN, THE LOST ROAD AND OTHER WRITINGS 423, 441 (Christopher Tolkien ed., Del Rey 2020) (1987). According to the wizard Gandalf, the word meant "that which looks far away." THE TWO TOWERS, *supra* note 25, at 258. Thiel's *The Lord of the Rings*-inspired naming conventions did not end with Palantir. He owns four other companies with names inspired by the series: Rivendell One (named for the home of the Elves) and Lembas (a hunger-satiating elvish bread), which both invested in Facebook, as well as Valar Ventures (the ancient spirits of Middle-earth), an investment fund, and Mithril Capital Management (an ultrastrong and lightweight Dwarvish metal), a portfolio of venture capital funds. Facebook Inc., Statement of Changes in Beneficial Ownership (Form 4) (Aug. 20, 2012); *Thiel Capital*, LINKEDIN, https://www.linkedin.com/company/thiel-capital-llc/ (last visited Jan. 20, 2023).

In 2007, attorneys for Palantir filed a trademark application with the USPTO for PALANTIR, covering select computer services.[32] But that application, and two subsequent ones, do not fully reveal that Palantir specializes in invasive visualizations that approach Sauron's use of a *palantír*: seeing other people's sensitive information and weaponizing it for harm. Section A below uses the federal trademark register to uncover how the PALANTIR mark developed at the USPTO through three applications spanning five years, culminating with its self-declaration as a corporation specializing in big data analytics. Part B illuminates those descriptions with Tolkien's *palantír* to reveal that, in practice, PALANTIR is a mark for invasive visualization services.

A. *Investigated as PALANTIR for Big Data Analytics*

The first PALANTIR application was filed on February 20, 2007.[33] The mark was registered in International Class 42, which covers science and technological services, research, and the design and development of computer hardware and software.[34] The single goods and services description for PALANTIR gets more granular—but not by much. The registration describes PALANTIR, in part, as a "computer service, namely, acting as an application service provider in the field of knowledge management to host computer application software for the collection, organizing, modifying, book marking [sic], transmission, storage and sharing of data and information," further qualifying that the product is for "governmental, business, and other institutional customers and not offered in retail stores."[35] Nothing about that description necessarily signals a dystopian corporation—if anything, it is a bit dull.

But a companion specimen filed on August 6, 2019, reveals more.[36] It appears to be a Q&A page about the operations of one of Palantir's products, Gotham.[37] It explains that Gotham works by "start[ing] with data from multiple sources" and integrating and transforming that data into a "single,

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[32] PALANTIR, Registration No. 3,671,386.

[33] *Id*. The application claims that the wording PALANTIR has no meaning in a foreign language, despite its meaning in the Elvish language Quenya (*see supra* note 31)—though it is doubtful that is what the Trademark Office had in mind under that requirement. *See* 37 C.F.R. § 2.32(a)(9) (2021); TMEP § 809 (24th ed. July 2022) ("An application to register a mark that includes non-English wording must include an English translation of that wording.").

[34] TMEP § 1401.02(a).

[35] PALANTIR, Registration No. 3,671,386.

[36] U.S. Trademark Application Serial No. 77/111,698 (specimen supp. filed Aug. 6, 2019) [hereinafter PALANTIR specimen], https://tsdr.uspto.gov/documentviewer?caseId=sn77111698&docId=SPE20190807154333. The specimen describes this process as creating a "human-centric model." *Id*.

[37] Disclosure of a potential GOTHAM mark could fuel further sleuthing beyond the scope of this Essay. But Thiel incidentally enjoys naming Palantir products after iconic locations in the DC and Marvel universes. *See, e.g.*, GOTHAM, Registration No. 5,317,300 (Batman's city); VALHALLA, Registration No. 4,713,104 (Thor's afterlife), and METROPOLIS, Registration No. 4,773,335 (Superman's city).

coherent data asset."[38] There is one sentence that hints at the vastness of the corporation's ambitions, however. "As data flows into the platform," the specimen explains, "it is enriched and mapped into meaningfully defined objects—people, places, things, and events—and the relationships that connect them."[39] In other words, Palantir provides software that connects virtually everything.

Palantir's second PALANTIR mark, filed for on February 15, 2008,[40] foretells its connection to government surveillance. The application was registered in Class 9, which covers a wide range of scientific instruments, including computer software.[41] The mark's services description, in part, identifies "computer software for . . . analysis, viewing, organization . . . and tracking of data and information for use in the financial and intelligence industries."[42] Two of Palantir's specimens for this mark are not revealing.[43] But one depicts a computerized version of the cliched corkboard covered in news clippings and sticky notes connected by red thread: the specimen features multiple nodes, apparently labeled, linked together with a series of lines.[44] It appears to be the interface of one of Palantir's software programs, one focused on visualizing connections.

Palantir's latest filing is its most detailed to date. Filed on June 3, 2022, the application covers a vast amount of territory in familiar Classes 9 and 42, as well as Class 35, which covers advertising and business management.[45] Of the dozens of goods and services descriptions, several stand out. In Class 9, Palantir claims the PALANTIR mark will be used in connection with downloadable software for "data mining," "artificial intelligence," "machine learning," "predictive analytics and business intelligence," "visualization . . . and tracking of data and information," "tracking of geospatial, map and location data and information," and "information for use in scientific and technological research and development in the field of national security," along with a series of other software products for national security.[46] Class 35 specifies where all this data might be coming from, claiming Palantir's consulting services

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[38] PALANTIR specimen, *supra* note 36.

[39] *Id*.

[40] PALANTIR, Registration No. 3,585,690.

[41] *Id.*; *see* TMEP § 1401.02(a) (24th ed. July 2022).

[42] PALANTIR, Registration No. 3,585,690.

[43] U.S. Trademark Application Serial No. 77/398,599 (specimen supp. filed Mar. 5, 2015), https://tsdr.uspto.gov/documentviewer?caseId=sn77398599&docId=SPE20150306145428 (standard log-in screen); U.S. Trademark Application Serial No. 77/398,599 (specimen supp. filed Mar. 4, 2019), https://tsdr.uspto.gov/documentviewer?caseId=sn77398599&docId=SPE20190305180501 (apparent landing page for Gotham software).

[44] U.S. Trademark Application Serial No. 77/398,599 (specimen supp. filed Feb. 15, 2008), https://tsdr.uspto.gov/documentviewer?caseId=sn77398599&docId=SPE20080219095127. The quality is not great, but one of the visualizations forms a perfect pentagram. *Id*.

[45] U.S. Trademark Application Serial No. 97/442,809 (filed June 3, 2022).

[46] *Id*.

"concern[] use of data and information by financial institutions, health institutions, non-profit organizations, legal institutions, commercial entities, and government agencies."[47] And Class 42, the lengthiest of any of Palantir's goods and services descriptions, claims select services including providing "non-downloadable software" for many of the same uses offered in Class 9, a plethora of services "in the field of national security," and "software as a service (SaaS) featuring . . . interactive visual computing."[48]

Pieced together, Palantir's filings reveal a company that specializes in services and software premised on visualizing massive quantities of data, including for intelligence purposes. Unlikely as it may seem, such a description is not so far afield from Tolkien's *palantír* under Sauron's control.

B. *Implemented as PALANTIR for Invasive Visualizations*

As Palantir CEO Alex Karp admitted, his corporation "find[s] people in our country who are undocumented."[49] More specifically, Palantir takes people's sensitive information and visualizes it to assist U.S. Immigration and Customs Enforcement's (ICE's) surveillance, incarceration, and deportation of undocumented immigrants.[50] This decision is not neutral. Bill Ong Hing characterizes U.S. immigration law and policy, including ICE practices, as "dehumaniz[ing], demoniz[ing], and criminaliz[ing] immigrants of color."[51]

The agency's efforts are powered by massive amounts of data from diffuse sources. Regional and local law enforcement provide addresses and identifying physical descriptions unavailable elsewhere.[52] Thomson Reuters, the parent company of legal research service Westlaw, empowers ICE to access cell phone and utility data, specifically "[f]or people who are not easily traceable via traditional sources."[53] An automated license plate

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[47] *Id.*

[48] *Id.*

[49] CNBC, *Watch CNBC's Full Interview with Palantir CEO Alex Karp at Davos*, YOUTUBE (Jan. 23, 2020), https://www.youtube.com/watch?v=MeL4BWVk5-k, at 3:46. The interview was conducted at the 2020 World Economic Forum in Davos, Switzerland. *Id.*

[50] *See generally* MIJENTE, THE WAR AGAINST IMMIGRANTS: TRUMP'S TECH TOOLS POWERED BY PALANTIR (2019), https://mijente.net/wp-content/uploads/2019/08/Mijente-The-War-Against-Immigrants_-Trumps-Tech-Tools-Powered-by-Palantir_.pdf (analyzing and criticizing Palantir's government contracts). PALANTIR also supports policy facilitation, including family separation. *Id.*

[51] Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform*, 44 U.S.F. L. REV. 307, 309 (2009).

[52] George Joseph, *Where ICE Already Has Direct Lines to Law-Enforcement Databases with Immigrant Data*, NPR: CODE SWITCH (May 12, 2017, 1:44 PM), https://www.npr.org/sections/codeswitch/2017/05/12/479070535/where-ice-already-has-direct-lines-to-law-enforcement-databases-with-immigrant-d.

[53] Letter from Kyle Keene, Gov't CLEAR Specialist, Thomson Reuters (Jan. 17, 2018), https://www.prorfx.com/Storage/110S34471_051/ProRFx/Upload/Attachments/General/Sole%20Source%20Letter%20-Thomas%20Reuters.pdf. In case you thought Lexis was any better, think again—its parent company, RELX Group, also helps ICE target undocumented immigrants, which can create ethical

reader (ALPR) surveillance company called Vigilant Solutions lets more than 9,000 ICE officers access over five billion location datapoints.[54] And face surveillance company Clearview AI enables ICE to search billions of facial photographs for matches.[55] As raw data, these many pieces of information are overwhelming. But as Alvaro Bedoya, the former Director of the Center for Privacy and Technology, explains, "A panoply of companies collect the data. Palantir connects the dots."[56] Specifically, Palantir "visualize[s]" connections between those dots.[57]

When those connections are visualized, ICE can more efficiently and effectively target undocumented immigrants. In 2016, Palantir enabled ICE to raid homes, batter doors, and deploy flash-bang grenades in the Bronx, during which action a man fell to his death.[58] In 2018, ICE agents armed with Palantir software on their phones raided nearly a hundred 7-Elevens across the United States.[59] And in 2019, Palantir helped ICE agents arrest 680 people in Mississippi in a single day, including parents on the first day of school—after the biggest raid in American history, children arrived to empty homes.[60] Once arrests are made, ICE detention conditions can be brutal. Also in 2019, the Department of Homeland Security issued a formal report identifying multiple "immediate risks or egregious violations" of ICE detention standards, including solitary confinement for unproven violations, expired food, nooses in detainees' cells, and the denial of contact

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issues for legal researchers. Sarah Lamdan, *When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing*, 43 N.Y.U. REV. L. & SOC. CHANGE 255, 257–60 (2019).

[54] Vasudha Talla, *Documents Reveal ICE Using Driver Location Data from Local Police for Deportations*, ACLU (Mar. 13, 2019), https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/documents-reveal-ice-using-driver-location-data. Vigilant Solutions uploaded real geolocation data for actual licenses plates as part of its trademark application. *See* Levendowski, *supra* note 7, at 461–63.

[55] Kim Lyons, *ICE Just Signed a Contract with Facial Recognition Company Clearview AI*, VERGE (Aug. 14, 2020, 3:19 PM), https://www.theverge.com/2020/8/14/21368930/clearview-ai-ice-contract-privacy-immigration. For a deeper dive into Clearview AI and face surveillance technology, see Amanda Levendowski, *Resisting Face Surveillance with Copyright Law*, 100 N.C. L. REV. 1015, 1017–19 (2022).

[56] Alvaro M. Bedoya, *The Cruel New Era of Data-Driven Deportation*, SLATE (Sept. 22, 2020, 1:40 PM), https://slate.com/technology/2020/09/palantir-ice-deportation-immigrant-surveillance-big-data.html.

[57] Amnesty Int'l, *Failing to Do Right: The Urgent Need for Palantir to Respect Human Rights*, AI Index AMR 51/3124/2020 (Sept. 2020), https://www.amnestyusa.org/wp-content/uploads/2020/09/Amnest-International-Palantir-Briefing-Report-092520_Final.pdf.

[58] *See* Simon Davis-Cohen, *New Documentary Reveals Silicon Valley's Role in Notorious Bronx Gang Raid*, APPEAL (May 21, 2020), https://theappeal.org/raided-part-2-documentary-bronx-gang-raid.

[59] George Joseph, *Data Company Directly Powers Immigration Raids in Workplace*, WNYC (July 16, 2019), https://www.wnyc.org/story/palantir-directly-powers-ice-workplace-raids-emails-show.

[60] *See* Marisa Franco, Opinion, *Palantir Filed to Go Public. The Firm's Unethical Technology Should Horrify Us*, GUARDIAN (Sept. 4, 2020, 6:23 AM), https://www.theguardian.com/commentisfree/2020/sep/04/palantir-ipo-ice-immigration-trump-administration; *see also Breaking: Palantir's Technology Used in Mississippi Raids Where 680 Were Arrested*, MIJENTE (Oct. 4, 2019), https://mijente.net/2019/10/palantirpowersraids. Two children were alone for eight days after their parents were both arrested by ICE. Edward Ongweso Jr., *Palantir's CEO Finally Admits to Helping ICE Deport Undocumented Immigrants*, VICE: MOTHERBOARD (Jan. 24, 2020, 4:30 PM), https://www.vice.com/en/article/pkeg99/palantirs-ceo-finally-admits-to-helping-ice-deport-undocumented-immigrants.

visits in centers that could accommodate in-person visitation.[61] In some cases, detention can be deadly. During the Trump administration, more than forty immigrants died in ICE custody.[62] Behind it all, it is Palantir's invasive visualizations that turbocharge ICE surveillance, arrests, and detentions. And often, its deployment is a secret—the public relies on independent investigation, including freedom of information requests, to uncover Palantir records.[63] Drew Millard of The Outline put it bluntly: "Palantir is fucking terrifying."[64]

Not unlike the data visualized by Palantir, Tolkien's *palantír* was a technology put to evil purposes.[65] It allowed Sauron to manipulate Denethor, the last Ruling Steward of Gondor, by only selectively revealing information—and poisoning his mind in the process.[66] And as Pippin experienced, a *palantír* also shared invasive visualizations about its user that could cause harm.[67] So, too, does Palantir. Its invasive visualizations are simultaneously selective. Palantir visualizes sensitive information that helps ICE track undocumented immigrants while obfuscating data that highlights those people's humanity. In turn, its biased visualizations harm thousands of real people.[68] Palantir's close association with evil is more than incidental. As Thiel told a friend, "I'd rather be seen as evil than incompetent."[69]

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[61] OFF. OF INSPECTOR GEN., DEP'T OF HOMELAND SEC., OIG-19-47, CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT FOUR DETENTION FACILITIES 3 (2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf.

[62] Anthony W. Accurso, *More Than 40 Immigrants Have Died in ICE Custody*, PRISON LEGAL NEWS (Apr. 1, 2021), https://www.prisonlegalnews.org/news/2021/apr/1/more-40-immigrants-have-died-ice-custody.

[63] *See, e.g.*, Mark Harris, *How Peter Thiel's Secretive Data Company Pushed into Policing*, WIRED (Aug. 9, 2017, 9:40 AM), https://www.wired.com/story/how-peter-thiels-secretive-data-company-pushed-into-policing; Bill Myers, *D.C. Police Sought a Contract with Palantir, But It Never Materialized*, WASH. CITY PAPER (May 10, 2018), https://washingtoncitypaper.com/article/186058/dc-police-sought-a-contract-with-palantir-but-it-never-materialized; Caroline Haskins, *Revealed: This Is Palantir's Top-Secret User Manual for Cops*, VICE: MOTHERBOARD (July 12, 2019, 11:13 AM), https://www.vice.com/en/article/9kx4z8/revealed-this-is-palantirs-top-secret-user-manual-for-cops.

[64] Drew Millard, *Cambridge Analytica is Bad, but Palantir is Fucking Terrifying*, OUTLINE (Mar. 30, 2018, 2:39 PM), https://theoutline.com/post/3978/peter-thiel-knows-you-ran-that-red-light.

[65] Whether such vast amounts of data should be collected and stored to begin with is a problem beyond the scope of this Essay, but the short answer is no.

[66] THE RETURN OF THE KING, *supra* note 28, at 161.

[67] THE TWO TOWERS, *supra* note 25, at 253; *see also id.* at 259 ("Each *palantír* spoke to each, but at [the capital] they could survey them all together at one time. . . . But alone it could do nothing but see small images of things far off and days remote. Very useful, no doubt, that was to Saruman; yet it seems that he was not content. Further and further abroad he gazed . . . . Then he was caught [by Sauron]!").

[68] What is the alternative? As several scholars have suggested, it is abolishing ICE. *E.g.*, Allison Crennen-Dunlap, Comment, *Abolishing the ICEberg*, 96 DENV. L. REV. ONLINE 148 (2019); Peter L. Markowitz, *Abolish ICE . . . and Then What?*, YALE L.J.F. (2019).

[69] *Peter Thiel, Scourge of Silicon Valley*, ECONOMIST: SCHUMPETER (Sept. 25, 2021), https://www.economist.com/business/2021/09/25/peter-thiel-scourge-of-silicon-valley; *cf.* Stephen M. Bainbridge, *The Economist's Latest Jab at Peter Thiel Goes Awry in Middle-earth Lore*, PROFESSORBAINBRIDGE.COM (Sept. 26, 2021), https://www.professorbainbridge.com/professorbainbridgecom/2021/09/the-economists-latest-jab-at-peter-thiel-goes-awry-in-middle-earth-lore.html (engaging in a deep dive into Middle-earth lore).

By choosing the PALANTIR mark for invasive visualization services, Thiel beat the public to the punch.

There is a coda to the story of Pippin and the *palantír*. Aragorn, heir to the throne of Gondor, used the *palantír* to trick Sauron into believing *he* carried the One Ring, drawing Sauron's attention away from Pippin and the true ringbearer, the hobbit Frodo Baggins, allowing Frodo and Samwise Gamgee to destroy the ring.[70] As much as the PALANTIR mark discloses about the corporation's dystopian technologies, its namesake unintentionally reveals a means of combating them: fool the surveillance tools, fool the forces using them.

II. IMAGINING PANOPTO

Jeremy Bentham was a philosopher and social reformer who may have taken cues for his most famous innovation from slavery.[71] As Simone Browne details, inspiration for Bentham's famed structure designed to promote the sensation of constant surveillance—the panopticon—borrowed from practices for surveilling enslaved people.[72] While traveling by ship in 1785, Bentham wrote about observing eighteen young enslaved women held "under the hatches."[73] The following year, Bentham pioneered the all-seeing panopticon.[74] He envisioned a circular building interrupted by a central tower that could, at any time, be staffed by a watcher looking across and down at subjects without their knowledge.[75] He sought to "extend to the night the security of the day," echoing the sentiment animating racist "lantern laws" that required Black and indigenous people to illuminate their faces when unaccompanied by a white person.[76] Subjects were always watchable, but they could not be certain if the watchtower was staffed. Instead, there was the unavoidable potential of any movement being seen. Bentham imagined that the sensation of complete control could be used for "punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing . . . or training the rising race in the path of

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[70] THE RETURN OF THE KING, *supra* note 28, at 62–63, 275–76. Frodo would be nothing without Sam. *Id.* at 268 ("I can't carry it for you, but I can carry you and it as well.").

[71] Prior to his journey, Bentham wrote about the harms of slavery. *See generally* JEREMY BENTHAM, SELECTED WRITINGS (Stephen G. Engelmann ed., 2011); SIMONE BROWNE, DARK MATTERS: ON THE SURVEILLANCE OF BLACKNESS 31 (2015).

[72] BROWNE, *supra* note 71, at 32, 34–35.

[73] *Id.* at 32.

[74] JEREMY BENTHAM, *Panopticon, or the Inspection-House*, *in* 4 THE WORKS OF JEREMY BENTHAM 37, 40 (photo. reprt. 2008) (John Bowring ed., 1843). His vision is indebted to his engineer and architect brother, Samuel. BROWNE, *supra* note 71, at 33.

[75] BROWNE, *supra* note 71, at 33–35.

[76] *Id.* at 24–25 (quoting BENTHAM, *supra* note 74, at 41).

education."[77] Bentham's dystopian panopticon was put into practice in real prisons in England, France, and elsewhere.[78]

In 2010, attorneys for a company called Panopto filed trademark applications with the USPTO for the PANOPTO mark in connection with classroom recording systems.[79] But Panopto's registrations do not fully reveal that the company creates learning environments characterized by relentless surveillance. Section A below uses the federal trademark register to uncover how the PANOPTO mark developed over the corporation's two trademark applications. And Part B combines those descriptions with information about the powers of Jeremey Bentham's panopticon to reveal that PANOPTO is a mark for relentless surveillance.

A. *Investigated as PANOPTO for Classroom Recording Systems*

The first PANOPTO applications were filed on March 10, 2010, and registered in Classes 9, 41, and 42.[80] Notably, Class 41 covers services related to education, training, and entertainment.[81] Panopto's goods description for Class 9 is straightforward, covering "[d]ownloadable computer software for the capture, recording, and distribution of multimedia content via a computer network to personal computers, PDAs[,] and cell phones."[82] The services description for Class 41 discusses, in part, "[p]roviding computer software training," and the description for Class 42, notes, in part, "[p]roviding installation of software and technical support services."[83] While the goods and services descriptions communicate that the PANOPTO mark will be used for recordings and attendant support services, the descriptions do not specify how the technology will be used in educational settings.[84] That information is also not disclosed by the

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[77] BENTHAM, *supra* note 74, at 40. Fellow philosopher Michel Foucault compared the panopticon to "cages" in which "each actor is alone, perfectly individualized and constantly visible." MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 200 (Alan Sheridan trans., Vintage Books 1995) (1975). Furthermore, Foucault noted that the panopticon is a "multiplier" that is "an intensifier of power within a series of institutions." Michel Foucault, Lecture at the Collège de France (Nov. 14, 1973), *in* PSYCHIATRIC POWER 74 (Graham Burchell trans., Picador 2006) (Jacques Lagrange ed., 2003) [hereinafter Foucault, PSYCHIATRIC POWER].

[78] Foucault, PSYCHIATRIC POWER, *supra* note 77, at 73.

[79] PANOPTO, Registration No. 3,980,091.

[80] *Id.* In addition to applying for the word mark, the company filed two design mark applications for logos on the same day. PANOPTO, Registration No. 3,980,091; PANOPTO, Registration No. 4,092,753. Rather than renewing the registrations for these marks, Panopto allowed them to expire in 2018, at which time Panopto filed a new word mark application with identical class descriptions on February 12, 2018. PANOPTO, Registration No. 5,513,873.

[81] TMEP § 1401.02(a) (24th ed. July 2022). It also, less relevantly, covers sporting and cultural activities. *Id.*

[82] PANOPTO, Registration No. 5,513,873.

[83] *Id.*

[84] *Id.*

specimen, which refers to Panopto's services as a "presentation capture solution," rather than a pervasive surveillance system.[85]

In 2021, Panopto secured another version of the PANOPTO mark, this time in Classes 9, 38 (covering telecommunications services), and 42.[86] The expanded registration covers more goods and services—more than a dozen descriptions across all three classes.[87] Rather than merely recording, the "computer software and downloadable mobile applications" in Class 9 can be used for "livestreaming and for capturing, uploading, editing, showing, displaying, storing, managing, monitoring, analyzing, and searching" not only videos but also "audiovisual and other media content."[88] This time, however, the registration clarifies that the software and apps will be used "in the fields of education, distance learning, e-learning, interactive remote learning, recorded lectures, [and] collaborative learning."[89] This new information is echoed in the descriptions for Classes 38 and 42, though the former concerns educational use for a constellation of telecommunications services, and the latter applies to "[p]roviding temporary use of non-downloadable computer software" and "[c]loud storage services."[90] Class 42 clarifies that Panopto's provision of software is for "capturing, . . . displaying, . . . monitoring, [and] analyzing . . . videos, audiovisual and other media content."[91]

These filings paint the picture of Panopto as a product that records educational lectures for later monitoring, presumably by faculty and students. Panopto may seem far afield from the all-seeing panopticon, but it is not. Faculty and students are not necessarily the ones monitoring the Panopto recordings—in practice, Panopto recordings can always monitor *them*. Faculty and students will never be certain whether they are being monitored or how that monitoring might be weaponized against them. And that constant wariness is at the core of Bentham's panopticon.

B. *Implemented as PANOPTO for Relentless Surveillance*

While the panopticon relies on its central tower being hypervisible, Panopto attempts the opposite tact. According to the company's website, "The best kind of education technology is the kind you don't even realize is there. So we've worked with academic technology teams, faculty, and staff

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[85] U.S. Trademark Application Serial No. 77/955,634 (specimen supp. filed Mar. 10, 2010), https://tsdr.uspto.gov/documentviewer?caseId=sn77955634&docId=SPE20100313073925.

[86] PANOPTO, Registration No. 6,447,844; TMEP § 1401.02(a).

[87] PANOPTO, Registration No. 6,447,844.

[88] *Id.* It also covers a series of software and mobile applications for teleconferencing and similar support. *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

to build a lecture capture system that fades into the background."[92] Instead, students have become hyperaware of being watched, just as Bentham's panopticon intended.[93]

After recent high-profile incidents featuring leaked classroom recordings,[94] students know that their every question and comment is captured, displayed, and monitored by recording software like Panopto, their professors, and their peers.[95] As Panopto also advertises on its website, "There's nothing you can't show."[96] That includes, for example, recordings capturing racist remarks.

In 2021, a Zoom recording of a Georgetown Law adjunct professor, Sandra Sellers, showed her and a colleague after class lamenting that "Blacks" were consistently among their lowest-performing students.[97] The conversation and its aftermath were written about multiple times by

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[92] *Lecture Capture Software*, PANOPTO, https://www.panopto.com/panopto-for-education/lecture-capture (last visited Jan. 13, 2023).

[93] Classroom recording can also create legal issues, as well as privacy and security issues. Alexis Anderson, *Classroom Taping Under Legal Scrutiny—A Road Map for a Law School Policy*, 66 J. LEGAL EDUC. 372, 372 (2017) (detailing legal issues); Shaanan Cohney et al., *Virtual Classrooms and Real Harms: Remote Learning at U.S. Universities*, 17 USENIX SYMP. ON USABLE PRIV. & SEC. 653 (2021), https://www.usenix.org/system/files/soups2021-cohney.pdf (outlining privacy and security challenges). One legal issue beyond the scope of this Essay is that Panopto recordings may raise copyright issues about faculty lectures and materials. In 2021, I supervised Georgetown Intellectual Property and Information Policy student attorneys Harry Levin and Elise Widerlite in drafting a series of FAQs about faculty ownership in online course materials. AUTHORS ALL., FAQ: COPYRIGHT OWNERSHIP & ONLINE COURSE MATERIALS (2021), https://www.authorsalliance.org/wp-content/uploads/2021/06/20210622_OnlineCourseAgreementsFAQ.pdf.

[94] *E.g.*, Susan Svrluga, *Students at Georgetown Law Call for Changes After Professor Used Slur in Class*, WASH. POST (Feb. 17, 2022 8:51 PM), https://wapo.st/3sJlFzU (describing a leaked Panopto recording that revealed a professor using an anti-Asian racist slur toward a student).

[95] Anjali Chakradhar, *Invasive Remote Learning Tech Scans My Retina, Records Voiceprints and Gobbles Up My Data*, USA TODAY, https://www.usatoday.com/story/opinion/voices/2021/03/02/virtual-learning-data-privacy-students-rights-column/6871758002/ (Mar. 4, 2021, 7:12 PM) ("The popular lecture streaming software Panopto stores minute-by-minute metrics on engagement of individual students."). *See generally* Jason Kelley, *Students Are Pushing Back Against Proctoring Surveillance Apps*, ELEC. FRONTIER. FOUND. (Sept. 25, 2020), https://www.eff.org/deeplinks/2020/09/students-are-pushing-back-against-proctoring-surveillance-apps.

[96] *Lecture Capture Software*, *supra* note 92.

[97] Catherine Thorbecke & Benjamin Siu, *Georgetown Law Professor Terminated After Remarks About Black Students*, ABC NEWS (March 12, 2021, 1:26 PM), https://abcnews.go.com/US/georgetown-law-professor-terminated-remarks-black-students/story?id=76413267; Mark Joseph Stern, *Black Georgetown Law Students Weren't Surprised by a Professor's Racist Remark*, SLATE (Mar. 11, 2021, 5:51 PM), https://slate.com/news-and-politics/2021/03/georgetown-law-professor-racist-remarks-sandra-sellers-black-students.html. While Sandra Sellers and her co-teacher, David Batson, were adjunct faculty, their status does not change that two colleagues at my institution were caught on video making racist remarks about students. The Sellers-Batson recording was caught on Zoom, not Panopto, but the surveillance issues remain consistent across both platforms. All discussion is based on publicly available information.

The New York Times and *The Washington Post*.[98] Neither teacher still works at Georgetown Law.[99]

But not all leaked recordings reveal racism.[100] Some will reveal clumsy conversations, sensitive disclosures, or embarrassing incidents—not just by faculty, but by students as well. What if a big-city student stereotypes the challenges faced by rural farmers in a property class? Or a student shares their own abortion story while the professor covers *Roe* and *Dobbs* in a conservative state? Or, to lower the stakes, what if an unpopular student lets one rip during a lecture? Without Panopto, those students may be ashamed, shunned, or humiliated by their peers, but other students' abilities to spread the word about in-class events are logistically limited. Panopto cannot prevent students who are granted access to recordings from sharing those recordings to amplify students' embarrassment or even endangerment—not just immediately, but indefinitely.[101]

This is not to say that what happens in the classroom must stay in the classroom.[102] Faculty and students can and do discuss incidents like these with other people, but photography is powerful.[103] And unlike dinner conversations, phone calls, or group chats, videos go viral.[104] That risk poses

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[98] Michael Levenson, *Georgetown Law Fires Professor for 'Abhorrent' Remarks About Black Students*, N.Y. TIMES (Mar. 11, 2021), https://www.nytimes.com/2021/03/11/us/georgetown-university-sandra-sellers.html; Lauren Lumpkin, *Georgetown Law Professor Terminated After "Reprehensible" Comments About Black Students*, WASH. POST (Mar. 11, 2021, 6:44 PM), https://wapo.st/3evQJhe; Lauren Lumpkin, *Second Georgetown Law Professor Leaves in Midst of Investigation Over Conversation About Black Students*, WASH. POST (Mar. 12, 2021, 5:38 PM), https://wapo.st/3vkaQF6.

[99] One was fired and one resigned. Levenson, *supra* note 98. Some free speech and academic freedom advocates disagreed with that decision. *E.g.*, Robert Shibley, *One Georgetown Law Professor Fired, One Resigns After Conversation About Black Students' Academic Performance Accidentally Recorded*, FIRE (Mar. 18, 2021), https://www.thefire.org/one-georgetown-law-professor-fired-one-resigns-after-conversation-about-black-students-academic-performance-accidentally-recorded (Foundation for Individual Rights and Expression Executive Director criticizing Sellers's termination and noting other discussions of Georgetown policies and the faculty handbook); John K. Wilson, *In Defense of Sandra Sellers and David Batson*, ACADEME BLOG (Mar. 15, 2021), https://academeblog.org/2021/03/15/in-defense-of-sandra-sellers-and-david-batson/ (scholar and author of *The Myth of Political Correctness* critiquing due process regarding Sellers's firing).

[100] Others will. *See* Svrluga, *supra* note 94.

[101] *Cf.* General Data Protection Regulation, Commission Regulation 2016/679, art. 17, 2016 O.J. (L 119) (EU) (the "right to be forgotten" online privacy regulation available in the European Union); *see* MEG LETA JONES, CTRL+Z: THE RIGHT TO BE FORGOTTEN 1–11 (2016).

[102] However, articulating a generalizable rule governing the excusable external sharing of Panopto recordings is beyond the scope of this Essay. No doubt a worthy task for moral philosophers. *See generally* MICHAEL SCHUR, HOW TO BE PERFECT: THE CORRECT ANSWER TO EVERY MORAL QUESTION (2022).

[103] Taking it up to eleven, Susan Sontag declared, "[t]o photograph people is to violate them, by seeing them as they never see themselves, by having knowledge of them that they can never have . . . . Just as a camera is a sublimation of the gun, to photograph someone is a subliminal murder—a soft murder, appropriate to a sad, frightened time." SUSAN SONTAG, ON PHOTOGRAPHY 14–15 (Picador 2001) (1977).

[104] By the time Sellers was fired, the video had been viewed more than 750,000 times. Levenson, *supra* note 98.

a problem for students. As Jenny Lee contextualizes the issues with Panopto, "schools have long been spaces for free expression, discovery, error-making, and personal growth, [but] surveillant technologies increasingly chill the risk-taking that is beneficial to a learning environment."[105] The presence of Panopto creates conditions for students to suppress their own speech out of concerns that classroom recordings will be weaponized against them. Those fears are not unfounded, particularly in a polarized political climate. Silence becomes students' singular protection.

Unlike Bentham's panopticon, however, Panopto's classroom recordings can be pedagogically useful, particularly to students with disabilities.[106] Aside from providing recordings that can be paused or rewatched, Panopto uses WCAG 2.1, the gold standard for compliance with the Americans with Disabilities Act (ADA), and offers a range of accessibility features, including screen reader support, keyboard access with shortcut keys, and captions.[107] Providing recordings to all students also removes disabled students' need to engage in expensive, exhausting, and even embarrassing accommodation processes around disability disclosure and documentation.[108] During the ongoing COVID-19 pandemic, recordings remain important for students who fall ill. But students' classroom privacy and coursework accessibility should not be positioned as opposing values. The existence of Panopto's relentless surveillance can pose harm to all students. As Ifeoma Ajunwa, Kate Crawford, and Jason Schultz observe, "When we consider privacy invasions only in terms of the harms that accompany them, we neglect the fact that diminished privacy . . . represents a harm in and of itself."[109] Educating faculty members about the tradeoffs of recordings and letting them choose a suitable option for their pedagogies, offering live-streaming as an alternative to recording,[110] supplementing with

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[105] Jenny Lee, What Do the Guards Think? Tracing the Discourse of Employee Surveillance in Academic Institutions 26 (May 11, 2020) (M.A. thesis, Georgetown University), https://repository.library.georgetown.edu/bitstream/handle/10822/1059444/Lee_georgetown_0076M_14690.pdf (thoroughly examining the deployment of Panopto at Georgetown Law).

[106] Clifton Kandler & Melanie Thorley, *Panopto: The Potential Benefits for Disabled Students*, 8 COMPASS: J. LEARNING & TEACHING 97 (2016) (observing "significant immediate and subsequent benefits to students, both disabled and, more widely, non-traditional"). Students who speak English as a second language are also likely to find class recordings valuable. *Id.* at 96.

[107] *Learn About Accessibility Features*, PANOPTO (2022), https://support.panopto.com/s/article/Learn-About-Accessibility-Features. For a deeper dive into WCAG and accessibility, see Blake E. Reid, *Internet Architecture and Disability*, 95 IND. L.J. 591 (2020).

[108] *See* Katherine A. Macfarlane, *Disability Without Documentation*, 90 FORDHAM L. REV. 59, 70 (2021) (describing the burdens that documentation imposes on disabled people seeking accommodations under the ADA); Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Disclosure*, 53 LAW & SOC'Y REV. 1051, 1080, 1083 (2019) (explaining popular perceptions of fraud and fakery associated with disability accommodations that can embarrass students).

[109] Ifeoma Ajunwa et al., *Limitless Worker Surveillance*, 105 CALIF. L. REV. 735, 776 (2017).

[110] While this mitigates some risks of recordings, it does not eliminate them.

human notetakers,[111] and working with a less overtly dystopian-named vendor may mitigate some dangers of always-on classroom recordings.[112]

The PANOPTO mark, coupled with understanding Bentham's panopticon, reveals that something as innocuous as "instructing the willing" with classroom recording software has an insidious side.[113] The technology represents what Woody Hartzog, Evan Selinger, and Johanna Gunawan call "privacy nicks" by normalizing students' surveillance.[114] Schools can subject students to the system's relentless surveillance without providing an opportunity to opt out.[115] Like the prisoners and workers subject to the panopticon, Panopto numbs students to surveillance by creating a constant sensation of being watched that chills their expression. But viewing the PANOPTO mark through the lens of the panopticon provides a clue about how to escape its relentless surveillance. As Anne Brunon-Ernst and Guillaume Tusseau suggest in their reflections on Bentham's panopticon, it can always be challenged with resistance.[116]

III. INTERPRETING MECHANICAL TURK

In 1809, Napoleon Bonaparte lost an unusual chess match.[117] Dressed in a turban and traditionally Turkish clothing, Napoleon's opponent dared to shake his head when the emperor attempted several illegal moves and

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[111] E.L. Tremblay & Ashwin Ramaswami, *AI Transcription Isn't Working for Students with Disabilities. Here's How to Fix It*, GEO. L. TECH. REV. (Nov. 2022), https://georgetownlawtechreview.org/ai-transcription-isnt-working-for-students-with-disabilities-heres-how-to-fix-it/GLTR-11-2022.

[112] John Villasenor, *Why I Won't Let My Classes Be Recorded*, CHRON. OF HIGHER EDUC. (Jan. 10, 2020), https://www.chronicle.com/article/why-i-wont-let-my-classes-be-recorded. While live streams can still be recorded, it creates more friction than an easily available Panopto recording.

[113] BENTHAM, *supra* note 74, at 40.

[114] Woodrow Hartzog et al., *Privacy Nicks: How the Law Normalizes Surveillance*, 101 WASH. L. REV. (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4384541. Growing accustomed to Panopto's relentless surveillance may normalize other types of academic surveillance, such as remote proctoring software, which is biased against low-income students, trans students, disabled students, and students of color. Lindsey Barrett, *Rejecting Test Surveillance in Higher Education*, 2022 MICH. ST. L. REV. 675, 678–79, 718–19. It is also uniquely invasive; remote proctors often see where students take their exams, and some can access students' desktops or devices. Sarah Craig, Commentary, *Welcome to Surveillance University, Where Privacy No Longer Matters*, GEO. VOICE (Feb. 19, 2022), https://georgetownvoice.com/2022/02/19/welcome-to-surveillance-university-where-privacy-no-longer-matters/.

[115] Diane Klein, *And Now, Charybdis: The Risks of Recording (Especially Synchronous) Classes*, ACADEME BLOG (Mar. 25, 2020), https://academeblog.org/2020/03/25/and-now-charybdis-the-risks-of-recording-especially-synchronous-classes/.

[116] Anne Brunon-Ernst & Guillaume Tusseau, *Epilogue: The Panopticon as a Contemporary Icon?*, *in* BEYOND FOUCAULT: NEW PERSPECTIVES ON BENTHAM'S PANOPTICON 185, 192 (Anne Brunon-Ernst ed., 2012); Rose Harris-Birtill, *"A Row of Screaming Russian Dolls": Escaping the Panopticon in David Mitchell's* number9dream, 44 SUBSTANCE, no. 1, 2015, at 55, 66 (offering a gloss on Brunon-Ernst and Tusseau).

[117] Evan Andrews, *How a Phony 18th Century Chess Robot Fooled the World*, HISTORY, https://www.history.com/news/how-a-phony-18th-century-chess-robot-fooled-the-world (Aug. 22, 2018).

eventually swept the pieces from the board.[118] His opponent was skilled, trouncing most challengers, playing against dignitaries throughout Europe and the United States, and positively befuddling challengers and spectators alike.[119] Why? Because this opponent was not a man—it was a machine. Invented by Wolfgang von Kempelen, the so-called "Mechanical Turk" flummoxed the likes of Catherine the Great, Benjamin Franklin, and even Charles Babbage, who is often attributed with inventing the computer.[120] None could discern how the machine worked.[121] But the real trick was that the Mechanical Turk was not truly a machine. It was secretly fueled by manpower. Hidden inside a cabinet below the chessboard was a real man manipulating chess pieces from within.[122]

In 2012, attorneys for Amazon filed a trademark application for the AMAZON MECHANICAL TURK mark with the USPTO.[123] Amazon uses the mark in connection with a website for directing an on-demand workforce.[124] The service connects requesters with workers willing to perform simple or repetitive tasks, such as data labeling, for pennies per operation.[125] While Amazon's registration hints at its service's dysfunction, it is not obvious that the MECHANICAL TURK mark will be used to erase the tangible presence of human labor and present the false impression that machines do the heavy lifting. Section A below uses the federal trademark register to expose how Amazon did tip its hand about aspects of its Mechanical Turk platform. Section B aligns those disclosures with information about the chess-playing Mechanical Turk to reveal that MECHANICAL TURK is a mark for invisible labor.

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[118] *Id.*; Krešimir Josić, *No: 2765: The Turk*, ENGINES OUR INGENUITY (2011), https://www.uh.edu/engines/epi2765.htm (featuring a photograph of the reconstructed Mechanical Turk); Lincoln Michel, *The Grandmaster Hoax*, PARIS REV. (Mar. 28, 2012), https://www.theparisreview.org/blog/2012/03/28/the-grandmaster-hoax/.

[119] *See* Michel, *supra* note 118.

[120] *Id.* Babbage didn't. While he was an imaginative inventor, it was a woman named Ada Lovelace whose machine-executable algorithm laid the foundations for computer programming. For a deeper dive into Lovelace's contributions, see CLAIRE L. EVANS, BROAD BAND: THE UNTOLD STORY OF THE WOMEN WHO MADE THE INTERNET (2018); Eugene Eric Kim & Betty Alexandra Toole, *Ada and the First Computer*, SCI. AM., May 1999, at 76, *available at* http://www.cs.virginia.edu/~robins/Ada_and_the_First_Computer.pdf.

[121] Von Kempelen was a royal advisor in the court of Empress Maria Theresa of Austria. He was decidedly not Turkish, and still sought to exoticize his machine to appear like an "oriental sorcerer." KATE CRAWFORD, ATLAS OF AI: POWER, POLITICS, AND THE PLANETARY COSTS OF ARTIFICIAL INTELLIGENCE 67 (2021). Yikes. Michel, *supra* note 118. While Edgar Allen Poe did not discern the specific secrets of the Mechanical Turk, he correctly claimed it was a hoax and wrote an essay debunking the machine's secrets. Edgar Allen Poe, *Maelzel's Chess-Player*, 2 S. LITERARY MESSENGER 318 (1836), *available at* https://www.eapoe.org/works/essays/maelzel.htm.

[122] CRAWFORD, *supra* note 121, at 67.

[123] AMAZON MECHANICAL TURK, Registration No. 4,352,731. For the majority of this Essay, I'll simply refer to this mark as MECHANICAL TURK.

[124] *Id.*

[125] *See* AMAZON MECHANICAL TURK, https://www.mturk.com/ (last visited Mar. 26, 2023).

A. *Investigated as MECHANICAL TURK for On-Demand Work*

Attorneys for Amazon filed the lone AMAZON MECHANICAL TURK application on May 31, 2012.[126] The mark is registered in Classes 38, 42, and 45, the last of which covers, in part, social services rendered by others to meet individuals' needs.[127] Amazon's description for Class 38 outlines services that, in part, provide "multiple-user access to computer networks for the electronic transmission of information, documents, visual, audio and audiovisual works, data[,] and images."[128] Class 42 gets to the heart of the Mechanical Turk platform, detailing a website "featuring technology that enables users to obtain work instructions and work assignments directed to an on-demand workforce via the Internet and other computer or communications networks."[129] And Class 45 dials back the detail to cover "[s]ocial networking services provided via the Internet or other computer or communications network" and, importantly, "providing user authentication services for e-commerce transactions."[130]

Amazon's specimens give a peek into the Mechanical Turk interfaces and forums. The first specimen depicts the Mechanical Turk interface for the service in full color.[131] Headings describe each requested task, such as categorizing products on Amazon.com, and identify the requester, Amazon Requester Inc.[132] It provides an expiration date for each task, as well as the time allotted to complete it—for the Amazon task, five minutes.[133] It includes the quantity of available tasks, called Human Intelligence Tasks (HITs)—11,193—as well as the reward: $0.06.[134]

Subsequent specimens echo these disclosures. The second specimen similarly captures the Mechanical Turk interface, this time with different tasks and requesters and only in black and white.[135] A 2018 specimen snaps the specifics of the Mechanical Turk platform into sharp relief. "Get started with Amazon Mechanical Turk," says one screenshot, "Create Tasks" or "Make Money."[136] For those still curious about its mechanics, another

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[126] AMAZON MECHANICAL TURK, Registration No. 4,352,731.

[127] TMEP § 1401.02(a) (24th ed. July 2022). It also covers legal services and security services for the physical protection of tangible property and individuals, a truly odd combination. *Id.*

[128] AMAZON MECHANICAL TURK, Registration No. 4,352,731.

[129] *Id.*

[130] *Id.*

[131] U.S. Trademark Application Serial No. 85/640,270 (specimen supp. filed May 31, 2012) [hereinafter 2012 Amazon Specimen], https://tsdr.uspto.gov/documentviewer?caseId=sn85640270&docId=SPE20120604074737.

[132] *Id.*

[133] *Id.*

[134] *Id.* Additional screenshots included with this specimen feature a Facebook page and Amazon.com login page. *Id.*

[135] U.S. Trademark Application Serial No. 85/640,270 (specimen supp. filed Feb. 5, 2013), https://tsdr.uspto.gov/documentviewer?caseId=sn85640270&docId=SPE20130215164153.

[136] U.S. Trademark Application Serial No. 85/640,270 (specimen supp. filed Sept. 7, 2018), https://tsdr.uspto.gov/documentviewer?caseId=sn85640270&docId=SPE20180908161730.

screenshot boasts that Mechanical Turk is "[h]uman intelligence through an API[.] Access a global, on-demand, 24x7 workforce."[137] But the specimen does not only speak in generalities or platitudes. "Amazon Mechanical Turk (MTurk) operates a marketplace for work that requires human intelligence. . . . While computing technology continues to improve, there are still many things that human beings can do much more effectively than computers . . . ," the specimen explains.[138] "Traditionally," it continues, "tasks like this have been accomplished by hiring a large temporary workforce (which is time-consuming, expensive, and difficult to scale) or have gone undone."[139] Not so with Mechanical Turk, which empowers corporations and individuals "to access thousands of high quality, global, on-demand workers—and then programmatically integrate the results of that work directly into their business processes and systems . . . at a lower cost than was previously possible."[140]

B. *Implemented as MECHANICAL TURK for Invisible Labor*

The Mechanical Turk platform erases the humanity of the people who perform labor on it by getting people to perform like machines and hiding their labor. As Kate Crawford frames it, "On Amazon's platform, real workers remain out of sight in service of an illusion that AI systems are autonomous and magically intelligent."[141] To do that, however, the Mechanical Turk platform operates "as a sort of open technological hoax."[142] Human labor fuels the platform, but workers and their labor are obfuscated from requesters. The Amazon manager who created Mechanical Turk identified it in his patent as "[a] hybrid machine/human computing arrangement which advantageously involves humans,"[143] a description that creates emotional distance between Amazon, requesters, and the platform's "on-demand workforce."[144] Requesters, most often corporations or academics, post tasks to the platform without interacting with the workers

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[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.* Additional screenshots included with this specimen feature Mechanical Turk discussion forums, a Twitter page, and another version of HIT requests formatted differently—and more clearly than prior depictions. *Id.* A 2022 specimen shows an updated interface and service description. U.S. Trademark Application Serial No. 85/640,270 (specimen supp. filed Nov. 1, 2022), https://tsdr.uspto.gov/documentviewer?caseId=sn85640270&docId=SPE20221102174909.

[141] CRAWFORD, *supra* note 121, at 68 (2021).

[142] Elizabeth Stephens, *The Mechanical Turk: A Short History of 'Artificial Artificial Intelligence,'* 37 CULTURAL STUD. 65, 65 (2023).

[143] Hybrid Machine/Human Computing Arrangement, U.S. Patent No. 7,197,459, at [57] (filed Oct. 12, 2001) (issued Mar. 27, 2007).

[144] AMAZON MECHANICAL TURK, Registration No. 4,352,731.

who take them on.[145] Within the platform, workers are depersonalized—they are identified as numbers, not names.[146]

The work itself veers into dystopian territory. Tasks can be psychologically brutal, such as viewing photographs of beheadings.[147] Yet workers are paid poorly for their uniquely human abilities. Largely young and college-educated workers complete monotonous, and occasionally dangerous, tasks for significantly less than minimum wage.[148] In 2017, one study discovered that the average Mechanical Turk worker only earns $2 an hour, and fewer than four percent of workers broke $7.25 an hour.[149] Wages are further depressed by Amazon itself, which takes up to fifty percent of each transaction.[150] Further, not all of the workers' time at the computer is compensated. They are not paid for the time they spend identifying tasks, grabbing glasses of water, or visiting the bathroom.[151] Sometimes, requesters deny payment entirely.[152] As one worker named Erica explained, "I've felt so ripped off that I've walked away and cried."[153] Requester problems are so common that workers created an entire website—ironically called "Turkopticon"—as a means of swapping stories and sharing warnings.[154] Despite the psychological and financial drawbacks of Mechanical Turk, more than 100,000 people do work for the platform.[155] And more than 800 scholarly papers based on workers' responses have been published.[156]

In an early interview about Mechanical Turk, Amazon founder Jeff Bezos explained that the platform would be fueled by "artificial artificial intelligence" rather than the obfuscated labor of human beings.[157] Specimens

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[145] PAUL HITLIN, PEW RSCH. CTR., RESEARCH IN THE CROWDSOURCING AGE, A CASE STUDY 16 (2016), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2016/07/PI_2016.07.11_Mechanical-Turk_FINAL.pdf.

[146] Oscar Schwartz, *Untold History of AI: How Amazon's Mechanical Turkers Got Squeezed Inside the Machine*, IEEE SPECTRUM (Apr. 22, 2019), https://spectrum.ieee.org/untold-history-of-ai-mechanical-turk-revisited-tktkt.

[147] Andy Newman, *I Found Work on an Amazon Website. I Made 97 Cents an Hour*, N.Y. TIMES (Nov. 15, 2019), https://www.nytimes.com/interactive/2019/11/15/nyregion/amazon-mechanical-turk.html.

[148] HITLIN, *supra* note 145, at 20–22.

[149] Kotaro Hara et al., *A Data-Driven Analysis of Workers' Earnings on Amazon Mechanical Turk*, 2018 CHI CONF. ON HUM. FACTORS COMPUTING SYS., paper no. 449, at 1–2, https://dl.acm.org/doi/pdf/10.1145/3173574.3174023. Some workers speculate that Amazon's increased fees have further driven down rewards. Alana Semuels, *The Internet is Enabling a New Kind of Poorly Paid Hell*, ATLANTIC (Jan. 23, 2018), https://www.theatlantic.com/business/archive/2018/01/amazon-mechanical-turk/551192/.

[150] *Pricing*, AMAZON MECHANICAL TURK, https://www.mturk.com/pricing (last visited Jan. 21, 2023).

[151] Semuels, *supra* note 149.

[152] Newman, *supra* note 147.

[153] Semuels, *supra* note 149.

[154] *About*, TURKOPTICON, https://turkopticon.net/ (last visited Mar. 27, 2023).

[155] Djellel Difallah et al., *Demographics and Dynamics of Mechanical Turk Workers*, 11 ACM INT'L CONF. ON WEB SEARCH & DATA MINING 135, 135–36 (2018), https://dl.acm.org/doi/pdf/10.1145/3159652.3159661.

[156] HITLIN, *supra* note 145, at 5–6.

[157] Jason Pontin, *Artificial Intelligence, with Help from the Humans*, N.Y. TIMES (Mar. 25, 2007), https://www.nytimes.com/2007/03/25/business/yourmoney/25Stream.html.

for the MECHANICAL TURK mark reveal that the platform briefly embraced Jeff Bezos's dystopian description of its human-driven services by using "artificial artificial intelligence" unironically as a tagline.[158] Bezos's remarks reveal that both the chess-playing Mechanical Turk and its online namesake operationalize the same illusion: make human labor appear not merely mechanical, but invisible.

The original Mechanical Turk is no more. In the mid-1800s, the machine embarked on a final world tour before finding a home in Philadelphia's Chinese Museum.[159] The MECHANICAL TURK mark takes its inspiration from that machine, but its final fate may be more inspiring to those seeking to oppose the normalization of invisible labor. The Mechanical Turk disappeared not because of its hoax-ridden history or racist imagery, but because it was destroyed in a fire.[160]

CONCLUSION

Not all dystopian trademarks are for dystopian technologies. Soylent, a buzzy meal replacement beverage, takes its name from the seventies sci-fi flick *Soylent Green*.[161] The eponymous Soylent Green refers to meal replacement wafers that are made from people.[162] Real-life Soylent, unsurprisingly, is not.[163] But dystopian trademarks are a signal that journalists, civil liberties organizations, researchers, activists, and even everyday people should pay closer attention.

Palantir, Panopto, and Amazon use their technologies to build a more dystopian world—one where people are always tracked, where students are always watched, and where workers are always erased. The clarity of this revelation comes from investigating the federal trademark register and illuminating that information with each mark's dystopian namesake. But trademark goods and services descriptions are carefully drafted, and they do not always provide a complete picture of the underlying technologies. Instead, the public can supplement trademark disclosures with real-world knowledge that puts the marks into context.

This approach provides the public with richer, more realistic goods and services descriptions that proclaim these technologies' true purposes. Examining PALANTIR through Tolkien's *palantír* reveals that the mark is for invasive visualizations. Evaluating PANOPTO through Bentham's panopticon uncovers that the mark is for relentless surveillance. And exploring MECHANICAL TURK through Von Kempelen's Mechanical

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[158] 2012 Amazon Specimen, *supra* note 131.

[159] Andrews, *supra* note 117.

[160] Michel, *supra* note 118.

[161] SOYLENT GREEN (MGM 1973).

[162] *Id.*

[163] *Nutritional Facts*, SOYLENT, https://soylent.com/products/soylent-drink-creamy-chocolate (last visited Jan. 21, 2023).

Turk exposes that the mark is for invisible labor. These richer goods and services descriptions are made possible by thoroughly understanding the dystopian namesakes that inspired these trademarks.

The public can use the federal trademark register to understand dystopian technologies.[164] But the register can, and should, be put to myriad other creative uses—my scholarship provides but two examples.[165] As a powerful public tool, the federal trademark register should be used to promote transparency about marks for invasive, abusive, and provocative goods and services. In this instance, combining trademark disclosures with on-the-ground information reveals deeper details about how those goods and services operate in practice. But this Essay's trio of examples also provides an unexpected playbook for combating dystopian technologies: fool it, resist it, and, if all else fails, destroy it.

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[164] *See* Levendowski, *supra* note 7, at 443–45.

[165] *Id.* at 448. Analyzing colonialist and racist trademarks is another example. When Ethiopia sought to register trademarks for its iconic Sidamo, Harar, and Yirgacheffe coffees, Starbucks discouraged the country from proceeding. Janet Adamy & Roger Thurow, *Ethiopia Battles Starbucks Over Rights to Coffee Names*, WALL ST. J. (Mar. 5, 2007), https://www.wsj.com/articles/SB117287359624625257. Starbucks filed for a SHIRKINA SUN-DRIED SIDAMO trademark but subsequently abandoned its attempt to register the mark. U.S. Trademark Application Serial No. 78/431,410 (filed June 8, 2004). And Jeep's parent company, Chrysler, filed for the CHEROKEE mark in 2011. CHEROKEE, Registration No. 4,518,178. The Cherokee Nation has been a vocal opponent of the name in recent years. Annie White, *Chief of Cherokee Nation Says "It's Time" for Jeep to Stop Using Name*, CAR & DRIVER (Mar. 4, 2021), https://www.caranddriver.com/news/a35568468/cherokee-nation-jeep-stop-using-name/.