Privacy + AI: What In-House Counsel Need to Know

ACC NCR Nonprofit Conference
July 17, 2024

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Discussion Topics

- Defining “Artificial Intelligence”
- Privacy Considerations
- Potential Risks
- Practical Strategies + Recommendations

Defining Artificial Intelligence

What is AI?

AI

Basics:

Computerized ability to perform tasks commonly associated with human intelligence – reasoning, discovering patterns, etc.

Machine Learning:

Algorithms improve through experience

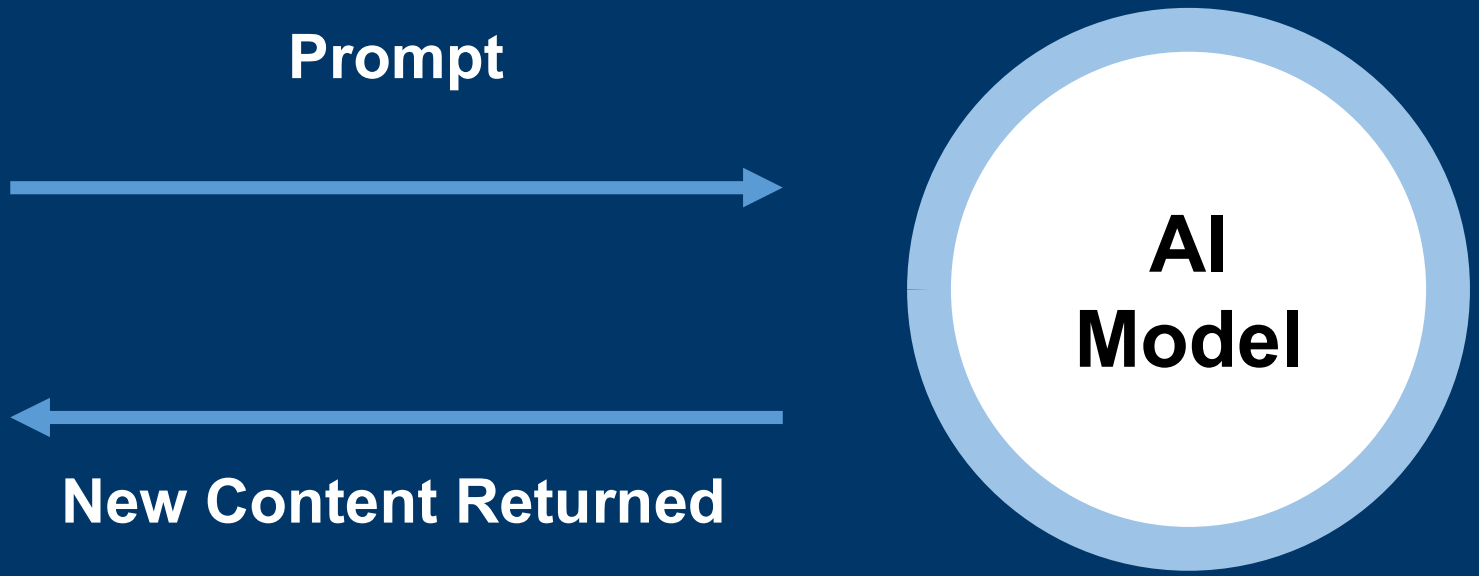
Generative AI:

AI techniques that train models on existing data and then generate new content

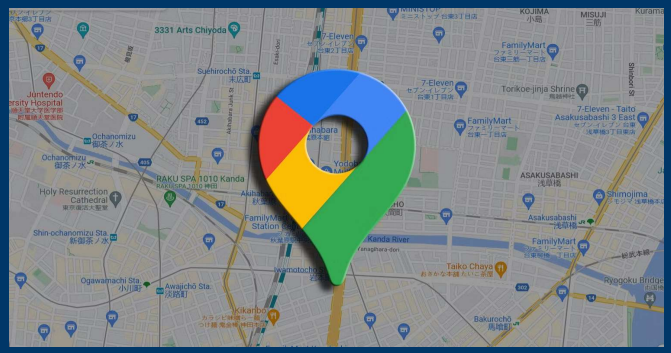
Neural Networks and Deep Learning:

AI techniques that teach computers to process data in a way inspired by the human brain

How Does Generative AI Work?

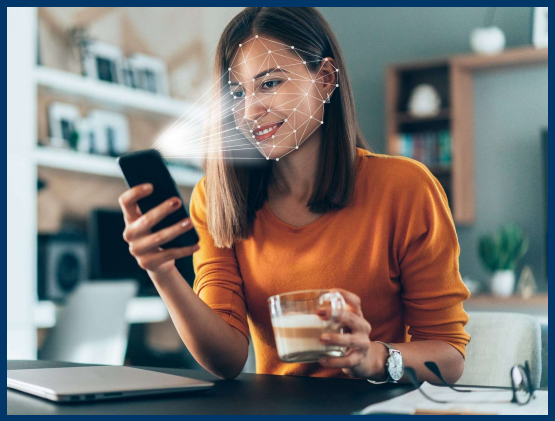


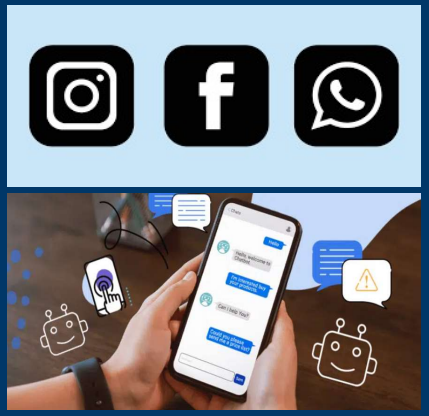
Everyday Examples of Artificial Intelligence From 2020



grammarly
Your best writing-assitant online

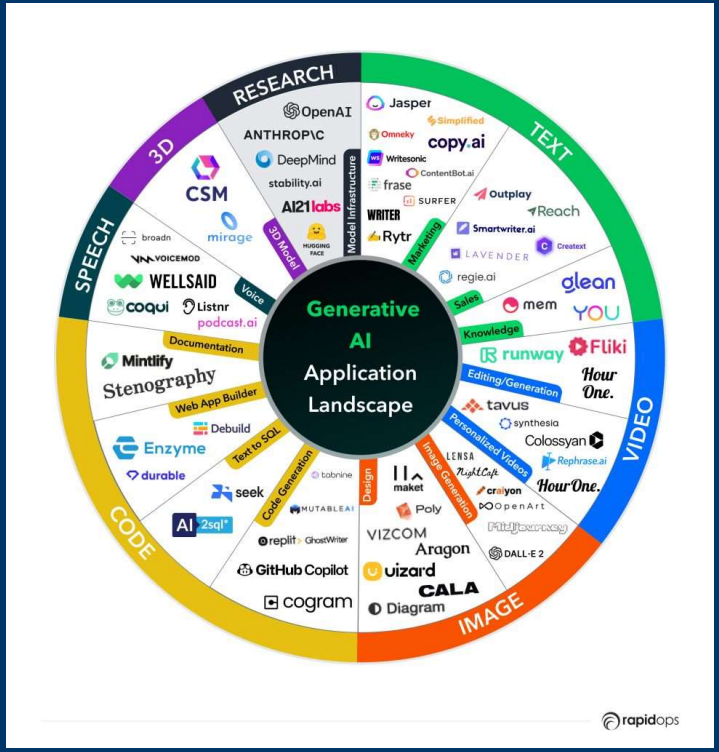
alexa





Zelle®

What Does AI Look Like Today?



OpenAI
ChatGPT 4.0

OpenAI
DALL-E

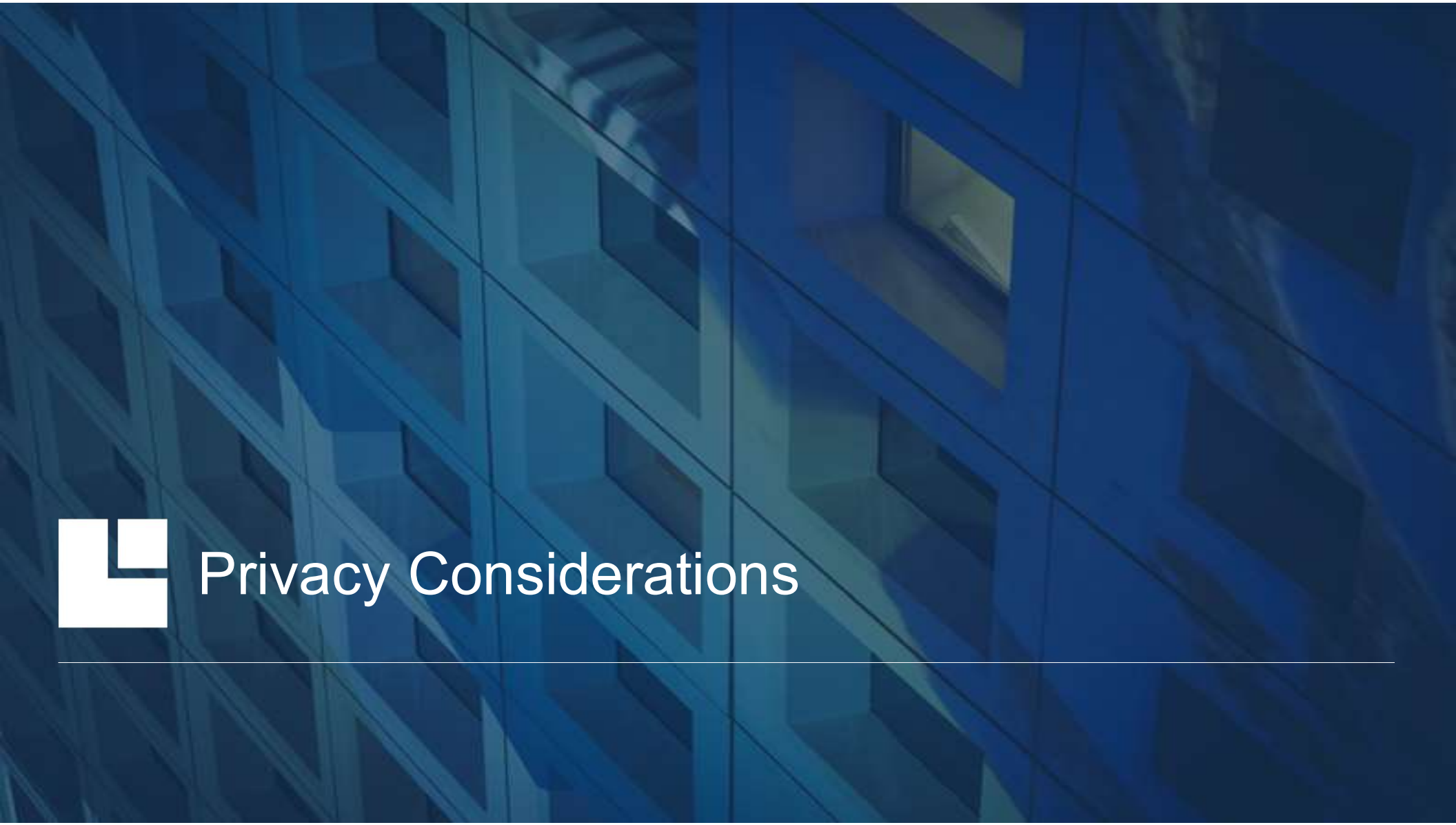
Common Non-Profit AI Uses

Internal

- Applicant screening tools at hiring
- Employee monitoring/productivity and performance assessment
- Writing grant proposals
- Determining donor and giving trends
- Creating messages or campaigns for donors or volunteers
- Take notes at meetings

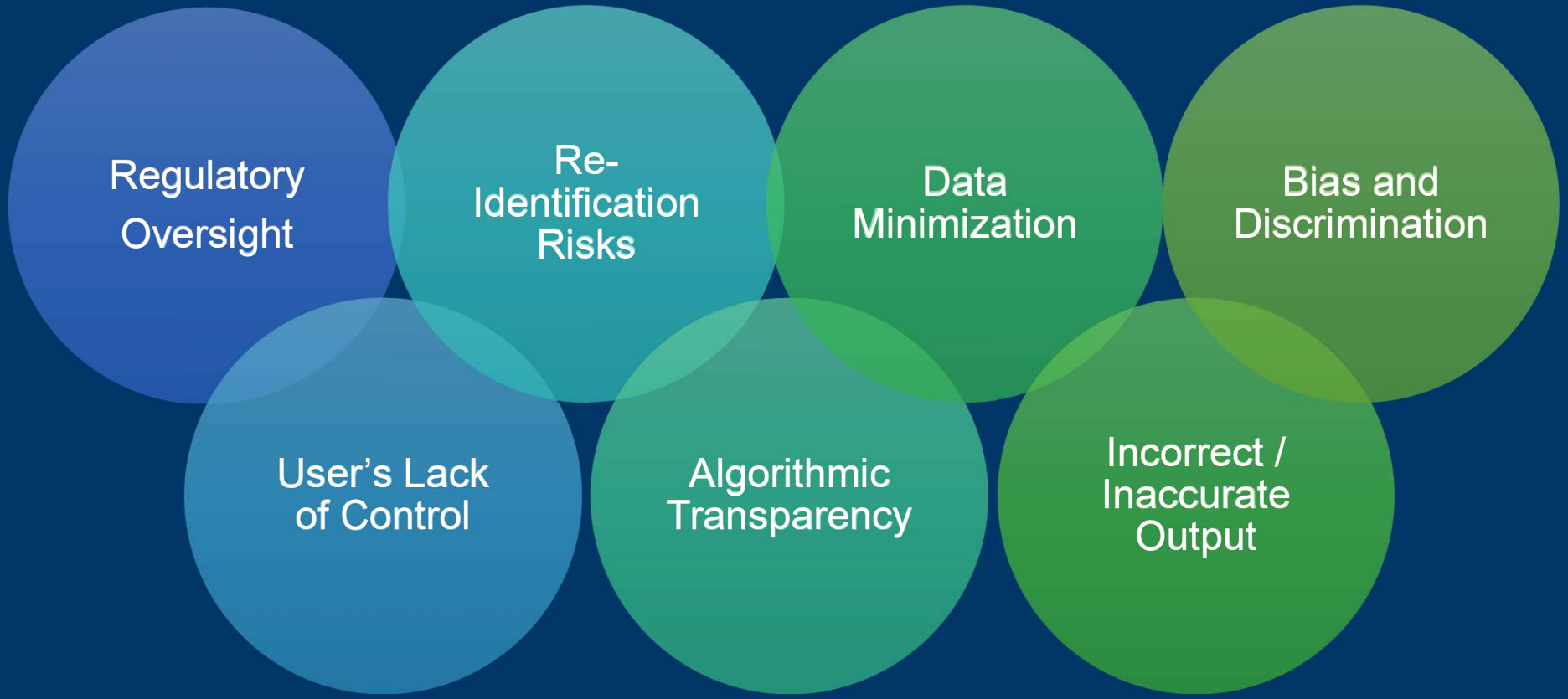
External

- Algorithms to predict donor preferences and create content or campaigns
- Generating ads and marketing
- Chatbots
- Generating job descriptions

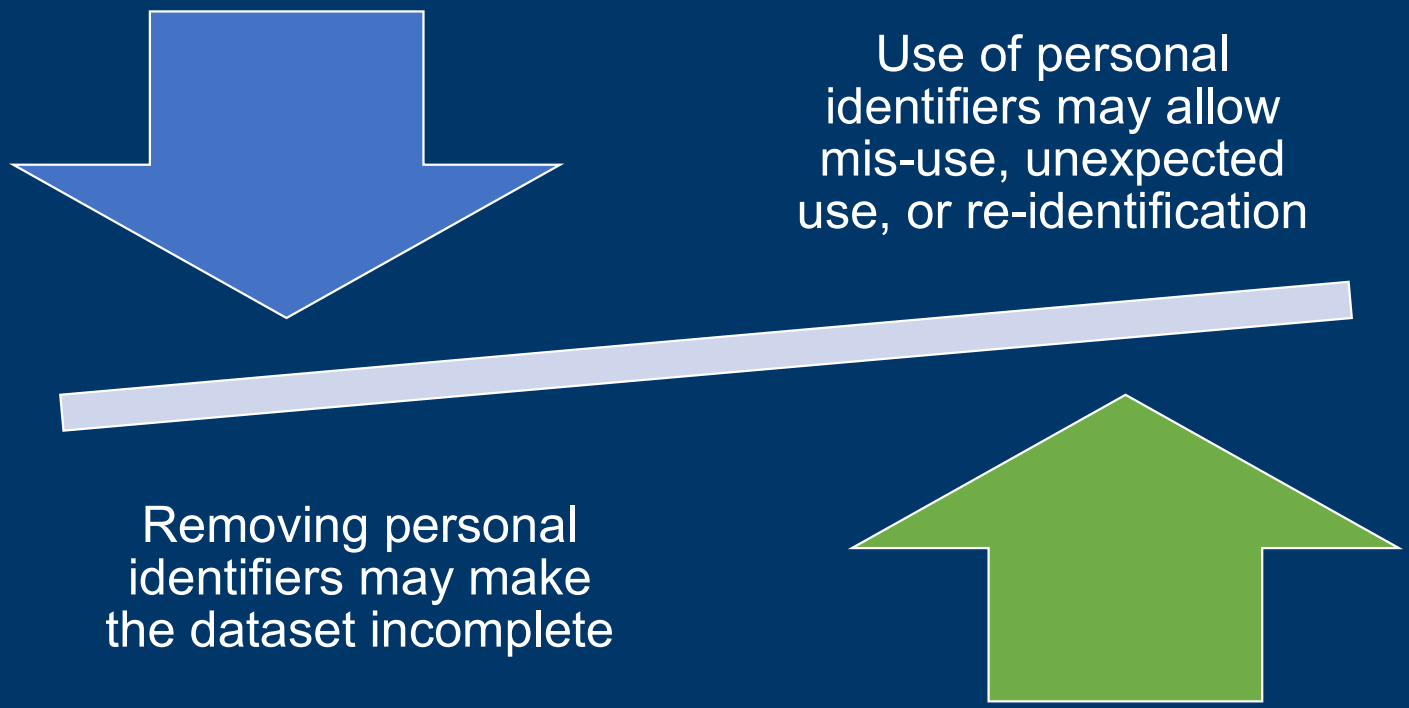


Privacy Considerations

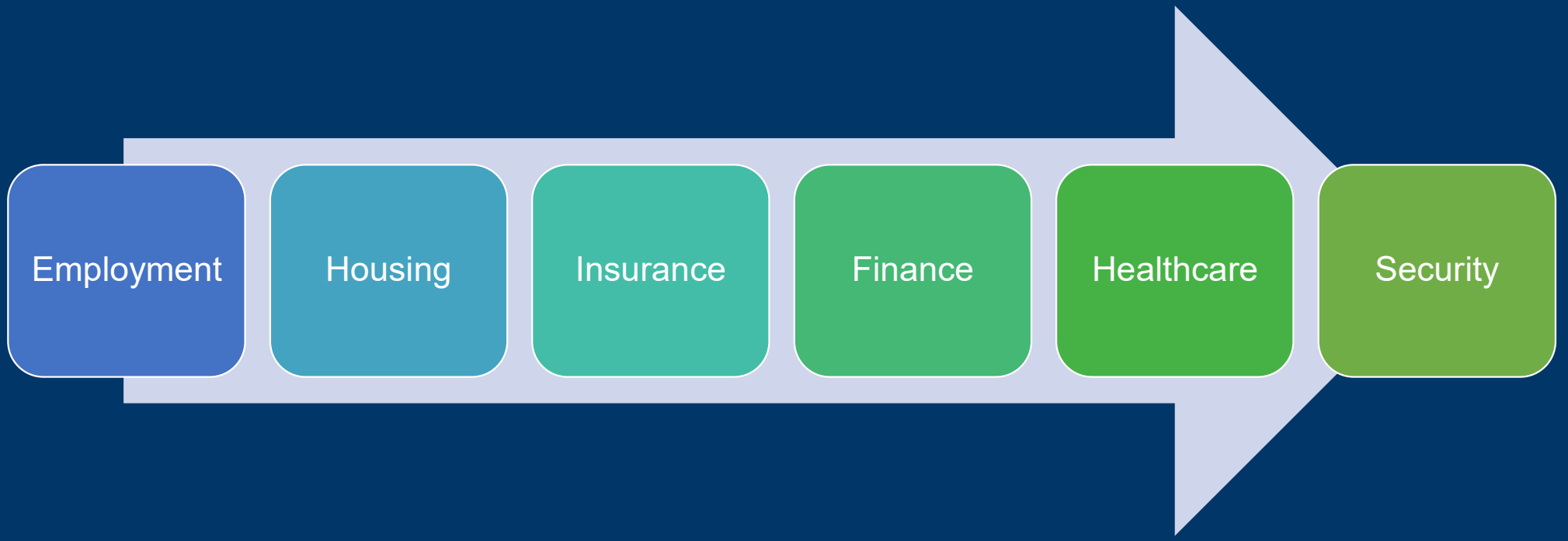
Privacy Challenges When Using AI



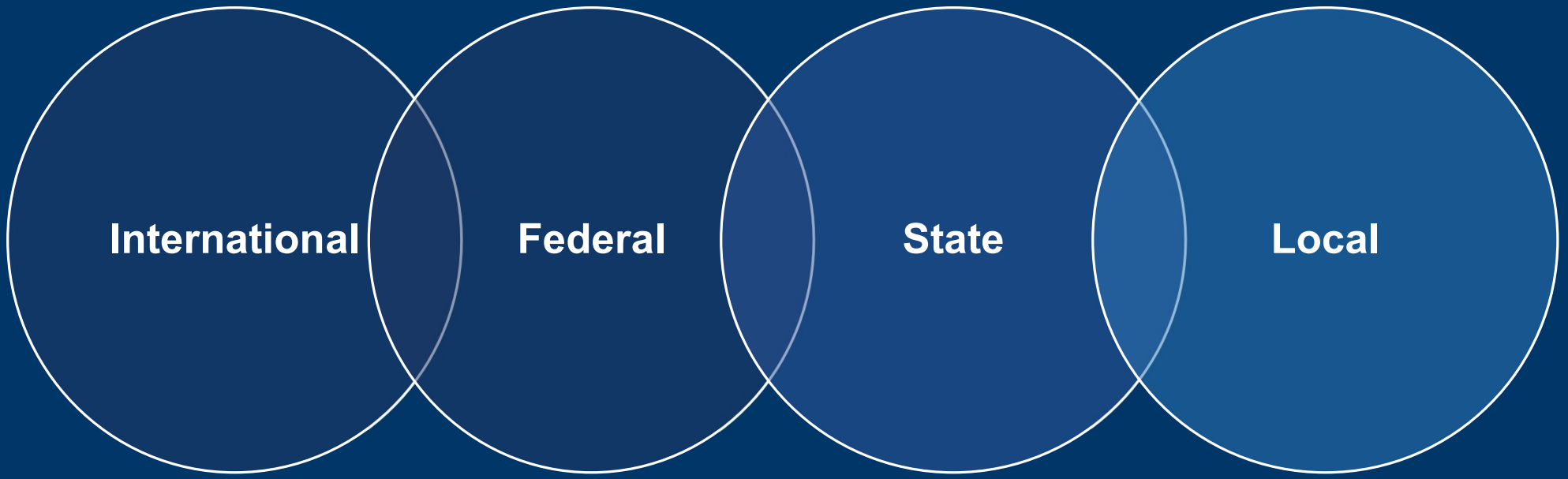
Personal Information in AI Systems



Identifying High-Risk Systems and Applications



What Laws Govern?



Old laws still apply → New laws are coming

Slide 14

0 I would keep this to show that there are a different laws for different purposes governing different things but would not go into much depth about the laws themselves. Keep it operationally focused.

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Prepare for Laws and Regulations

Business Blog

Chatbots, deepfakes, and voice clones: AI deception for sale

By: Michael Atleson, Attorney, FTC Division of Advertising Practices | March 20, 2023

Business Blog

For business opportunity sellers, FTC says "AI" stands for "allegedly inaccurate"

By: Lesley Fair | August 22, 2023

Business Blog

Can't lose what you never had: Claims about digital ownership and creation in the age of generative AI

By: Michael Atleson, Staff Attorney, FTC Division of Advertising Practices | August 16, 2023

Amazon.com (Alexa), U.S. v.

Tags: Consumer Protection | Bureau of Consumer Protection | Children's Online Privacy Protection Act (COPPA) | Privacy and Security | Children's Privacy | Consumer Privacy | Artificial Intelligence

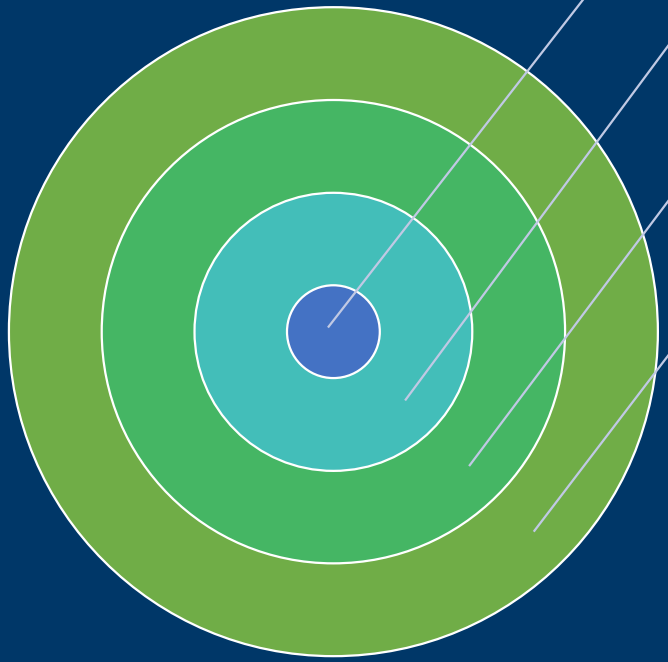
Last Updated: July 21, 2023

Case Status: Pending

Watching the detectives: Suspicious marketing claims for tools that spot AI-generated content

By: Michael Atleson, Attorney, FTC Division of Advertising Practices | July 6, 2023

Impact of US State Privacy Laws



Potential Risks

Understanding the Risk of Bias

- Superficially ‘neutral’ AI can produce and reinforce discrimination on the basis of protected characteristics like race, religion, or sex.
- If a data set is missing information from particular populations, using that data to build an AI model may yield results that are unfair or inequitable to legally protected groups.
- Nonprofit AI tools can also use data that inadvertently captures systemic racism, adding to existing inequities in health care access and status.

What Questions Should We Ask to Mitigate Bias?

- How big and representative is the training database?
- What is the source of the data?
- How were the data sets labeled?
- What type of quality controls are in place to govern the tagging process?
- How diverse is the team developing the algorithms?
- Do the outcomes match the objectives?
- Is this tool treating people differently based on a protected class?

Lack of Transparency

TECH DRIVERS

Zoom can now train its A.I. using some customer data, according to updated terms

PUBLISHED MON, AUG 7 2023•11:50 AM EDT | UPDATED MON, AUG 7 2023•1:25 PM EDT

Chat GPT Terms & Conditions Are Scary

How much Legal Trouble could Open Ai get you into?

MONEYWATCH ›

Zoom's terms of service changes spark worries over AI uses. Here's what to know.

MONEY WATCH

BY ELIZABETH NAPOLITANO

AUGUST 9, 2023 / 3:59 PM / MONEYWATCH

HOME › MONEY

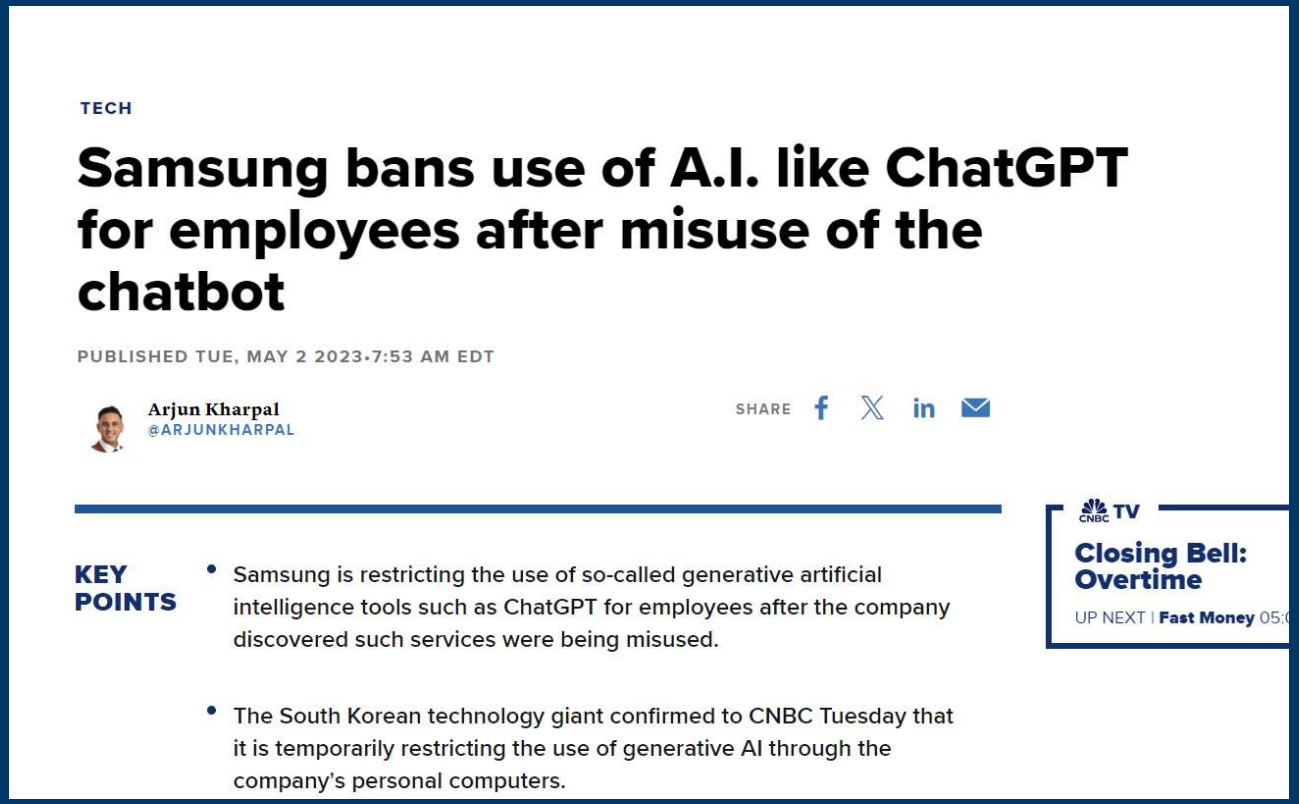
ChatGPT Users Should Read the Terms of Service —or It Could Cost You

We're worried about the output, but what about the input?

DANNI BUTTON • APR 10, 2023 10:56 AM EDT

Snapchat Faces Heat From UK Regulator Over AI Chat Feature

Loss of Control



TECH

Samsung bans use of A.I. like ChatGPT for employees after misuse of the chatbot

PUBLISHED TUE, MAY 2 2023•7:53 AM EDT

Arjun Kharpal
@ARJUNKHARPAL

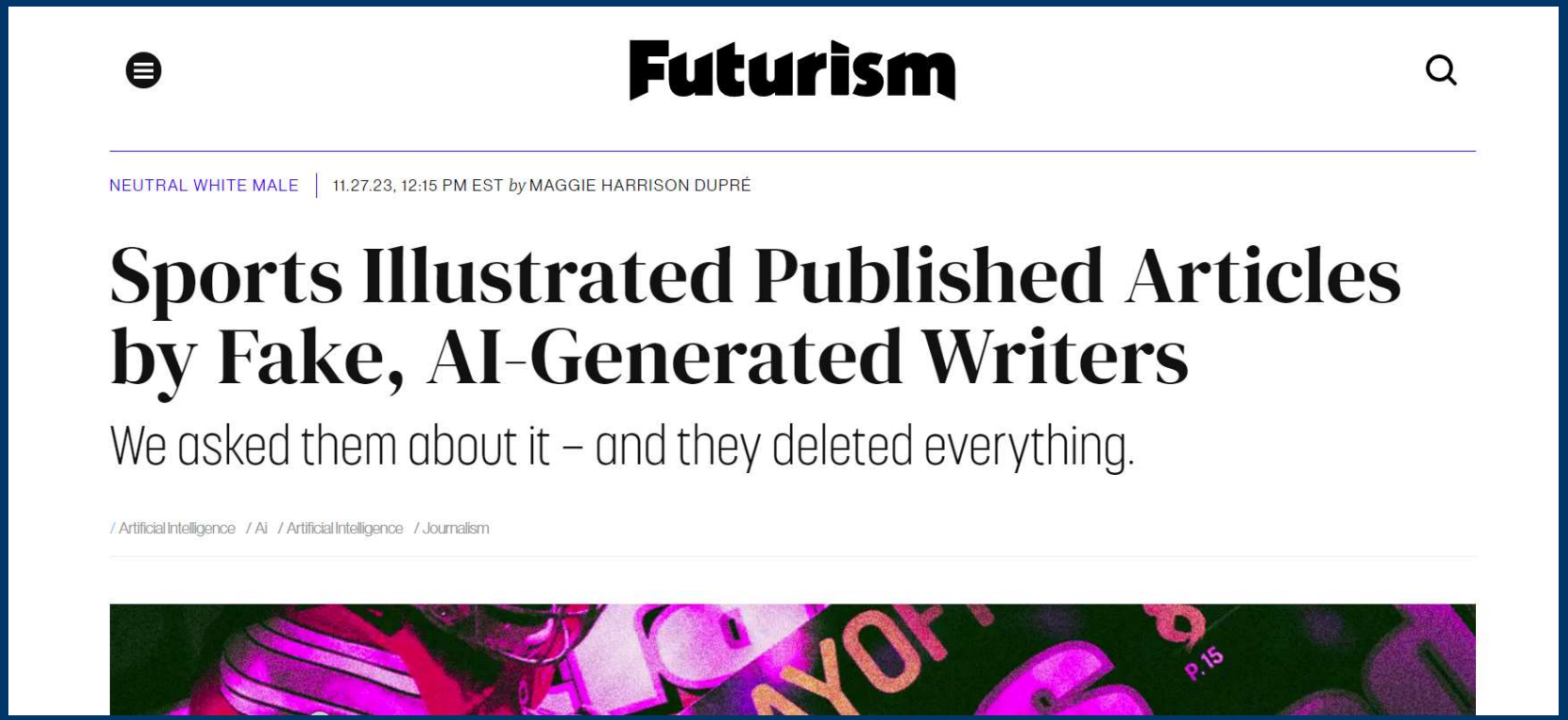
SHARE

KEY POINTS

- Samsung is restricting the use of so-called generative artificial intelligence tools such as ChatGPT for employees after the company discovered such services were being misused.
- The South Korean technology giant confirmed to CNBC Tuesday that it is temporarily restricting the use of generative AI through the company's personal computers.

CNBC TV
Closing Bell: Overtime
UP NEXT | Fast Money 05:

IP + Ownership Concerns



Futurism

NEUTRAL WHITE MALE | 11.27.23, 12:15 PM EST *by* MAGGIE HARRISON DUPRÉ

Sports Illustrated Published Articles by Fake, AI-Generated Writers

We asked them about it – and they deleted everything.

/ Artificial Intelligence / Ai / Artificial Intelligence / Journalism

Practical Strategies + Recommendations

Roadmap for Evaluating and Mitigating Potential AI Risk

- Develop your strategy and goals for using AI
- Implement an AI policy and a process for legal review
- Assess and mitigate risks on the use of AI platforms
- Assess privacy and data implications
- Assess intellectual property implications
- Manage potential for discrimination and bias

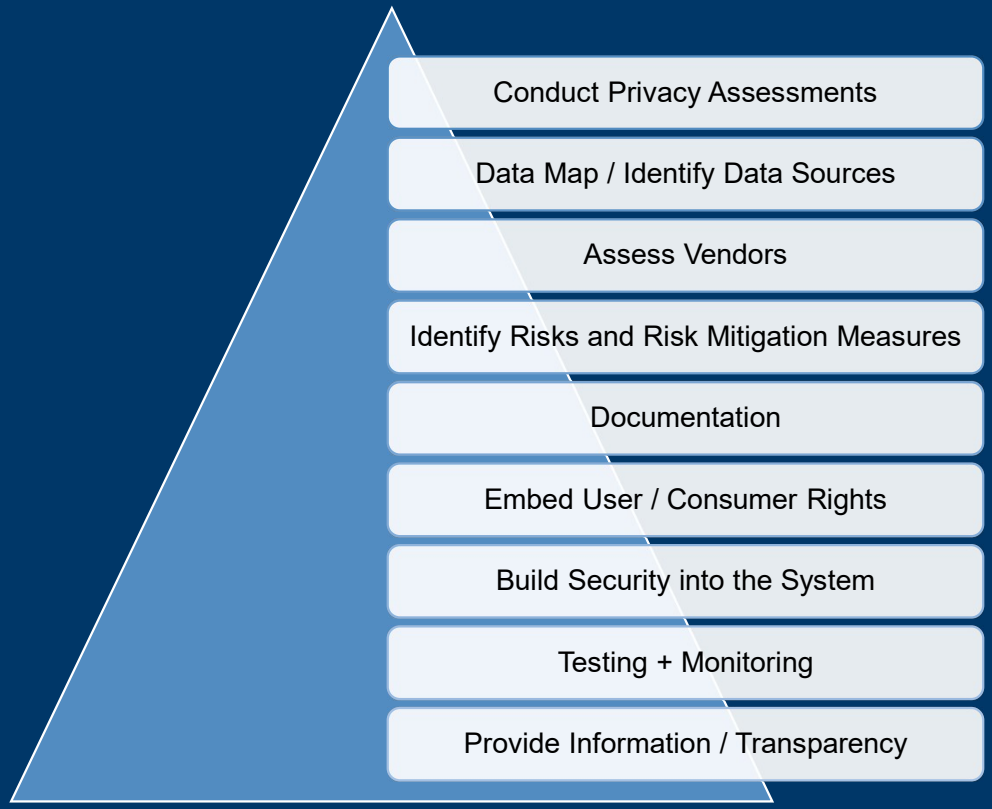
Key Components of an AI Use Policy

- Confidential and Sensitive Information
- Data Preservation
- Data Dissemination
- Tool Approval Process
- Performance Monitoring
- Authorized Tools
- Education
- Supervision and Auditing
- Incident Reporting
- Policy Revisions and Updates
- Communications

What Questions Should You Be Asking When Developing AI?

- What are we using our AI system for?
- Who is the intended audience?
- Which laws apply (e.g., EU, FTC, California, New York)?
- What are our data sources?
- Who are the vendors and what assurances do they provide?
- Who are the individuals whose information will be used?
- What are the unintended consequences?
- Is there a risk of discrimination?
- What data governance tools are available to minimize harms?
- What tools do we have to audit our vendors and our outcomes?

Implementing Privacy by Design into AI Governance



Vetting Your Vendors

What is the vendor's experience and reputation?

What are the potential harms and risk of the AI systems?

What governance controls does the vendor have in place?

What warranties are they willing to offer?

What standards do they adhere to?

What was their system designed for?

What audit rights will they agree to?

What level of explainability will they offer?

Due Diligence Questions for Providers of AI Tools

- ❑ Was this AI tool built by the provider we are contracting with, or is it licensed from a third party?
- ❑ If it's licensed, what AI model is this tool built on?
- ❑ Is this AI tool using our data to train its algorithm or model?
- ❑ Can we opt out of model training?
- ❑ Is this AI tool in our own instance, so our data is separate from others' data?
- ❑ Does this AI tool require access to our confidential data or privileged information as inputs?
- ❑ Does this AI tool require access to personal data as inputs?
- ❑ Will employees of the AI tool provider be able to see our data/inputs/outputs?
- ❑ Do we retain ownership over the inputs?
- ❑ Do we own the output from this AI tool?
- ❑ Who internally at our company will have access to this AI tool and its outputs (e.g., privilege considerations)?
- ❑ Can the provider give us their latest security audit report?
- ❑ What is the provider's policy on retention of data?

What Would You Do?

Here's the situation…

Your Donor Relations team comes to you and asks if they can use an AI tool to better understand donor trends. The team wants to upload personal information about donors and other information that the organization keeps in its CRM.

The team is hoping to better understand during what time of year donors are more likely to give, and what "giving" campaigns are most popular with donors. Once the team is able to identify these trends, they also want to use AI to help create new campaign materials, collateral, and donor outreach communications.

Before you say, "yes" – what questions do you have for your team?