WELCOME!

AI Is Here to stay | **How legal departments can prepare**

HOUSEKEEPING ITEMS

- Questions are encouraged!
- If you didn't provide your IL ARDC number email ChicagoSupport@accglobal.com
- If your attendance time meets the rules set by the Illinois MCLE Board, ACC Chicago will send your certificate by email next week
- Watch for the survey/feedback link sent to your email after the program

A REMINDER ON THE BENEFITS OF ACC MEMBERSHIP…

- Free CLE, Roundtables, DEI & Professional Development Programs
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- ACC Docket Magazine & Newsstand (searchable legal news feed)
- ACC Survey Portal, Resource Library, Contracts Portal & Legal Ops Section
- E-Groups and Committees on Substantive Practice Areas

TODAY'S SPEAKERS

SHAWN HELMS
Head of Technology and Outsourcing
McDermott Will & Emery
Dallas, Texas

CATE HOWE
Partner, Technology and Outsourcing
McDermott Will & Emery
Dallas, Texas

EVELYN GALINDO
Assistant General Counsel
Crowe LLP
Chicago, IL

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HERE WITH YOU TODAY

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MCDERMOTT'S TECHNOLOGY PRACTICE

AI & Big Data	**Blockchain**	**Cloud Computing (XaaS)**
Mobile Apps	**IoT**	**Technology Development & Customization**
Social Media	**e-commerce**	**Data Security & Privacy**

WHAT'S NEXT

Revolutionary Information Technologies

HISTORY OF INFORMATION TECHNOLOGY

Modern Information Age

1440 - 1973

Early Information Technology Milestones

- Printing Press (1440)
- Telegraph (1844)
- Telephone (1876)
- Radio (1895)
- TV (1927)
- Fax machine (1964)
- Mobile phone (1973)

1981

Personal computer

IBM launched its personal computer in August 1981. While IBM's PC was not the first, its version became incredibly popular and for many it set the standards of what a PC should be.

1984

Apple's Macintosh

Steve Jobs launched the first Macintosh in January 1984.

1985

Microsoft launches Windows

Windows 1.0 was launched to market in November 1985 as an operating system with a graphical interface. Today, the latest versions of Windows are used by millions of people worldwide.

1989

The World Wide Web

In 1989 British computer scientist Tim Berners-Lee submitted a proposal for a "distributed information system" at CERN, the European Organization for Nuclear Research, near Geneva, Switzerland. A year later, the world's first website and server went live at CERN.

1993

First Smartphone

IBM Simon was a mobile phone, pager, fax machine and PDA, all rolled into one.

It included a calendar, address book, clock, calculator, notepad, email, gamers and a touchscreen with QWERTY keyboard.

2000s

Broadband Internet

The 21st century has seen the mass adoption of broadband internet across the developed world. Dial-up connections have become a relic of the past with users now accustomed to high-speed downloads, super-fast browsing, high-resolution streaming and a great deal more.

THE INTERNET CHANGED EVERYTHING

WHAT WILL CHANGE LIFE LIKE THE INTERNET?

Big 3 Information Technologies

Artificial
Intelligence (AI)
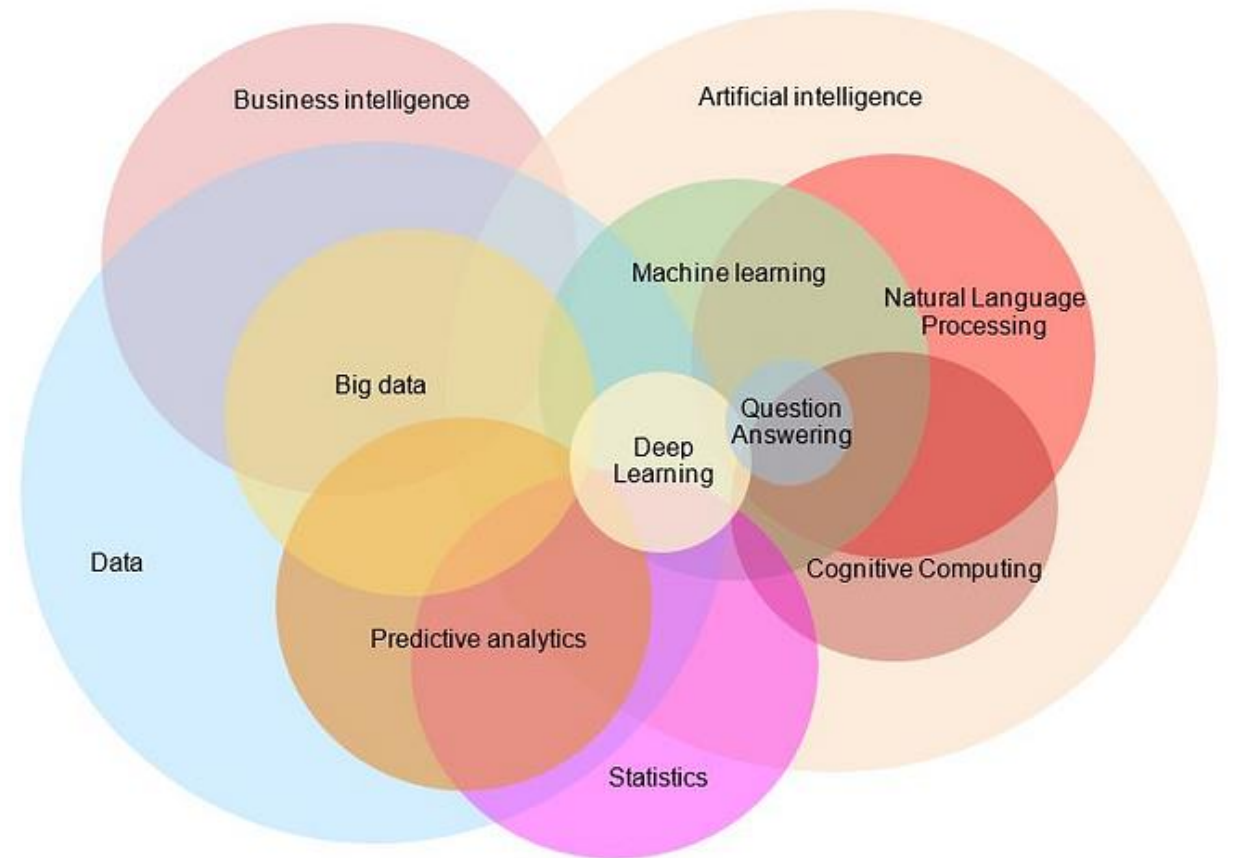
Blockchain
Technologies

Metaverse

ARTIFICIAL INTELLIGENCE

Computers processing information like humans
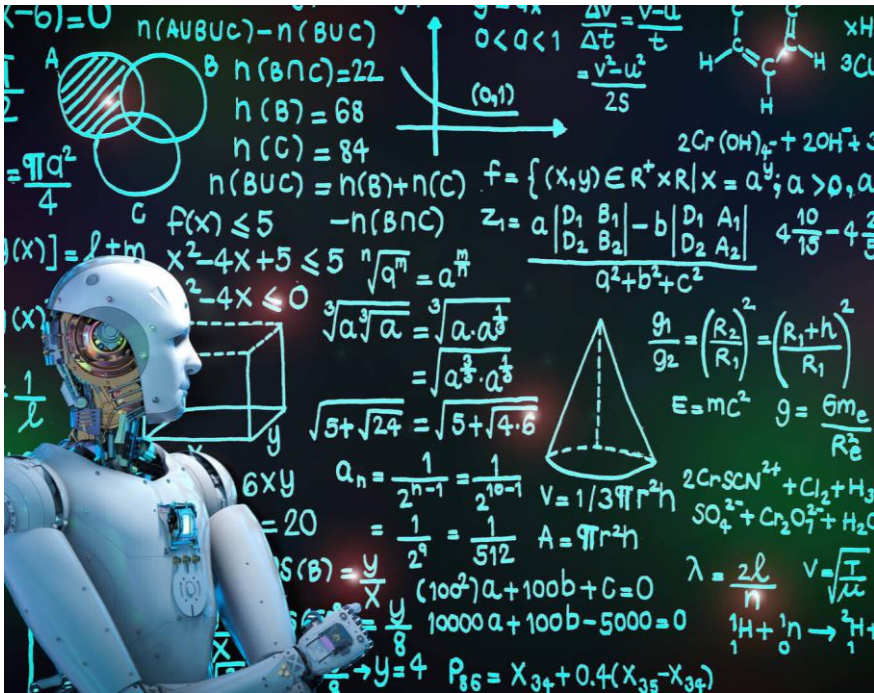
WHAT IS ARTIFICIAL INTELLIGENCE?

- AI = using computers to complete tasks that usually require human intelligence.

- AI "learns" by looking at training data, user inputs and outcomes.

- Examples of AI:
  - Voice assistants and spoken language processing
  - Free text, speech and facial recognition
  - Financial data/fraud analysis
  - Customer service chatbots
  - Language to text/image generation
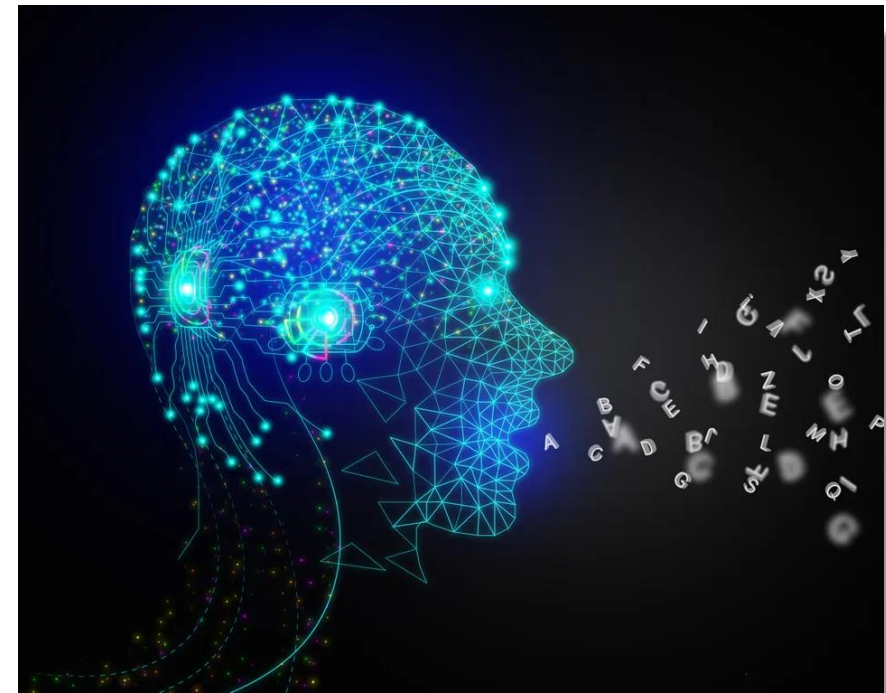 - Combined environment and human system

- *Image Source:* https://medium.datadriveninvestor.com/how-my-computer-copies-a-baby-machine-learning-types-5ffc8add6b31

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TRADITIONAL VS. GENERATIVE AI

Calculations / Predictions

Human-like Output

GENERATIVE AI – DEFINITION

- Generative AI is a type of AI that refers to deep-learning models that can generate high-quality text, images and other content based on the data they were trained on.

- Generative models encode a representation of their training data and create a new works that are similar – mimicking training data.

ChatGPT	Bard	Bing Chat	Chinchilla
Bloom	Replika	Jasper Chat by Jasper	LaMDA (Language Model for Dialog Applications)
Elsa Speak	DialoGPT	YouChat	Perplexity
Character AI	OpenAI playground	Megatron-Turing Natural Language Generation	Socratic by Google

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PREDICTING AI – DID WE GET IT RIGHT?

ARE WE READY FOR WHERE AI WILL TAKE US?

CHATGPT – AMAZING

- What is it?

- Does this change everything?

- The "calculator" for written language?

CHATGPT – AMAZINGLY WRONG

Who are famous people who went to William Jewell College?

William Jewell College is a private liberal arts college located in Liberty, Missouri, United States. It has produced many successful alumni in various fields. Some of the famous people who attended William Jewell College are:

1. Walt Disney - Animator, entrepreneur, and founder of the Walt Disney Company.
2. Eugene Field - American writer, best known for his children's poetry and humorous essays.
3. Warren E. Hearnes - Former Governor of Missouri.
4. David Cook - Singer-songwriter, winner of the seventh season of American Idol.
5. Robert M. Gates - Former Secretary of Defense under Presidents George W. Bush and Barack Obama.
6. Randall D. Wolfinbarger - NASA astronaut.
7. Annika Sorenstam - Professional golfer, regarded as one of the greatest female golfers of all time.
8. Harry S. Truman - 33rd President of the United States.
9. Robert J. Eaton - Former CEO of Chrysler Corporation.
10. James Cash Penney - Founder of J.C. Penney department stores.

These are just a few of the many successful individuals who attended William Jewell College.

- **Regularly gives incorrect information – with confidence**

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GENERATIVE AI - IMAGES

- Prompt: "Cute blue puppy floating on a cloud of pink cotton candy"

MANAGING GENERATIVE AI

How should companies manage generative AI

WHAT SHOULD COMPANIES DO?

DON'T TRY TO STOP IT

STEER IT

GENERATIVE AI RISKS

- **Content Risk**
- **IP Risk**
  - Output (not copyright protected)
  - Input (potentially a derivative work)
- **Technology Risk**
- **Data Privacy & Security Risk**
- **Legal and Compliance Risk**
- **Reputation Risk**
- **Organizational Risk**

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CONTENT RISKS

Output

- Misinformation

- Discrimination/Bias

- Inappropriate Output

- Reliability

- Consistency

- Explainability and Interpretability

User Perceptions

- Overestimation of Capabilities

- Automation Bias

- Use as a Search Engine

- Perception of AI v. Expert Systems

- Inappropriate Delegation

- Content Moderation Policies

- User Education and Awareness

- Use of AI and Human Moderators

TECHNOLOGY RISKS

Security Vulnerabilities

- Prompt Injection
- Third-party Vulnerabilities
- Man-In-The-Middle
- Outsource or In-house
- Theft of Models (No Moat)
- Poisoning
- Fooling Prediction Models
- Do Security Protocols Work?

Performance

- Scalability
- Costs
- Uptime
- Tech Requirements

Training

- How to benefit from public models?
- Open-source v. closed
- Garbage In Garbage Out
- Small sample size problems
- How to make moderation "take"
- Consistency

GENERAL AI RISKS

Discrimination Questions

Machine Learning algorithm may lead to discriminatory outcome or impact (think underwriting / credit discrimination)

Small Sample Size Problems

AI can be used to make predictions, but when data is sparse, predictions are provided with confidence, but are likely not correct

Subject to Hacking

Can also facilitate bad behavior because hackers can fool prediction models by manipulating data, or introducing false data (prompt injection attacks)

LAWYER RISK UPDATE

Lawyer cites fake cases generated by ChatGPT in legal brief

The high-profile incident in a federal case highlights the need for lawyers to verify the legal insights generated by AI-powered tools.

Published May 30, 2023

Lyle Moran
Reporter

AI – CORPORATE GOVERNANCE

- **What group "owns" AI?**

- **What controls do you want?**
  - Open access
  - Limited access/use

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STRUCTURES FOR GEN AI USE & DEVELOPMENT

- **Generative AI Policy**
  - Basic rules for how generative AI is used
- **AI Governance Framework**
  - Governance framework for managing generative AI
- **Third Party Contracting Considerations**
  - AI, privacy, confidentiality, and IP considerations

GENERATIVE AI POLICY TOPICS

- **Use Case Approval** - Only approved use cases

- **Confidentiality** - No confidential information disclosure to public AI tool

- **Approved Tech** - Only approved generative AI technologies

- **Human Review** - Competent human review of all generative AI output

- **Guardrails** - Use only in accordance with use case qualification and company policies / code of conduct

- **Tagging / Tracking** - "Tag" and track AI generated output

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PROPOSED AI GOVERNANCE PROCESS

- **Intake Form** – Build a brief web-based intake form that employees fill out to request approval for a generative AI use case. The intake form would have the proposed use case, requested technology, and how the output would be used.

- **Governance Review** – This request is then reviewed by a small governance committee that considers the request in light of a "risk rubric" for generative AI.

- **Approval Stoplight** – The committee would then approve, conditionally approve or deny the use case (green, yellow, red). A yellow / conditional approval may have mitigation measures that would need to be implemented by the business to allow the use case to move forward.

- **Storage and Access** - The evaluated use cases would then be available for anyone in the company to review (in order to reduce the number of future requests).
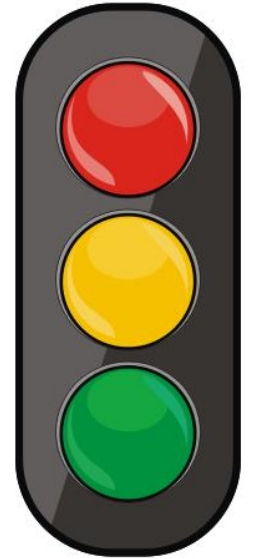
3RD PARTY CONTRACT RESTRICTIONS

- **No AI Without Approval** – Restriction in contracts prohibiting the use of generative AI to create deliverables without express customer approval.

- **Approval Conditions** – With any approval request, Provider must :
  - **Human Review** – have a human review all output/deliverables.
  - **Quality and Accuracy** – ensure the quality and accuracy of the output.
  - **IP Rights** – be able to transfer the IP in the deliverable.
  - **Tag/Track** – be able to identify all parts of deliverables that were created with generative AI.

INTELLECTUAL PROPERTY ISSUES

What should be considered?

INTELLECTUAL PROPERTY ISSUES WITH AI

- **Copyright** – What if a non-human creates intellectual property?
  - Monkey (2015 PETA case)
  - AI (2023 Copyright office)

- **Patent** – What is a "natural person" for the purposes of patent rights?
  - USPTO (2020 decision)


One of the monkey selfies at issue in the dispute

WHERE IS THE LINE FOR COPYRIGHT PROTECTION?

100% AI

50% Human
50% AI

100% Human

Not Protected   Maybe / Likely   Protected
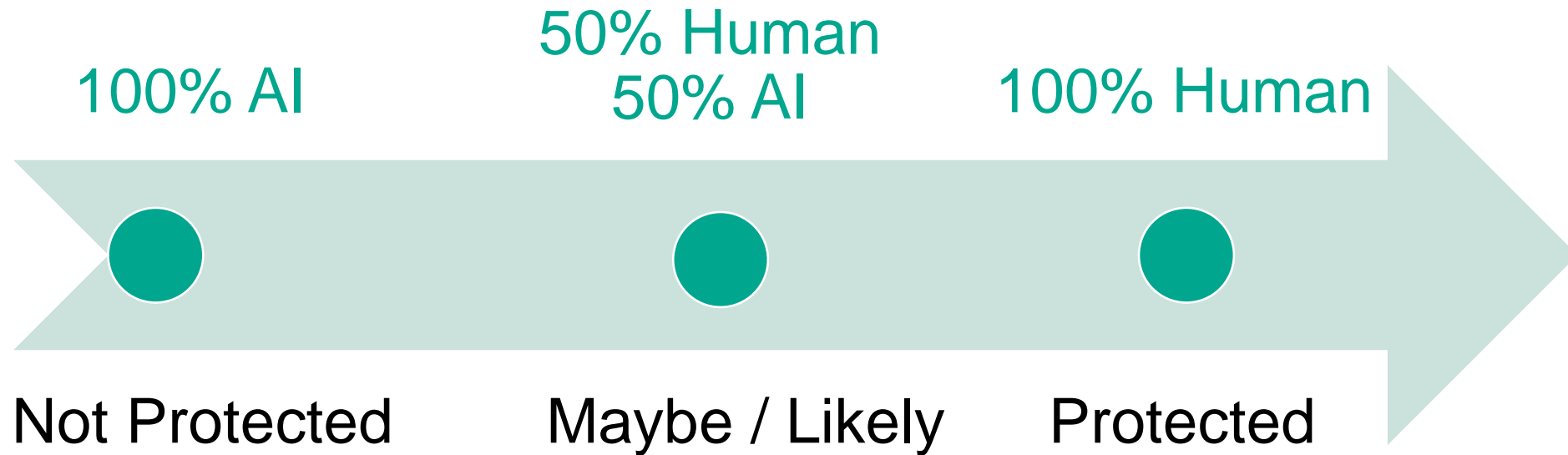
WHO OWNS THE IP IN AN AI DEAL

- Customer Data = Customer
- AI Engine = Provider
- Actual Predictions = Customer
- Improvements in AI Engine = ???
  - Is there even "IP" to be owned? Likely not

AI Engine v1

Data

Data

Data

Predictions

AI Engine v2

Data

Data

Data

Better Predictions
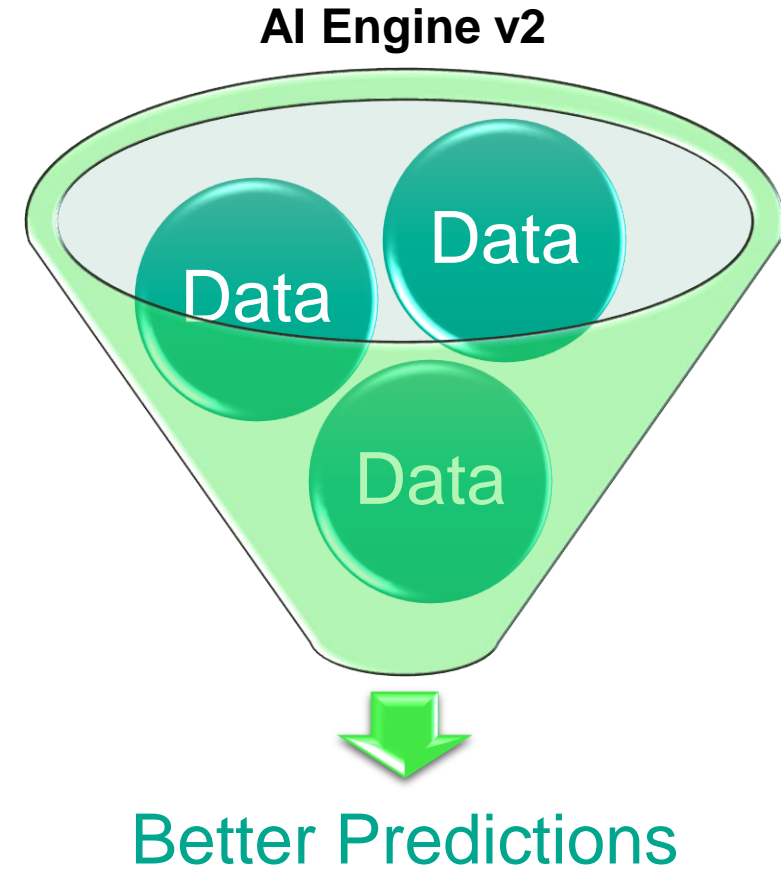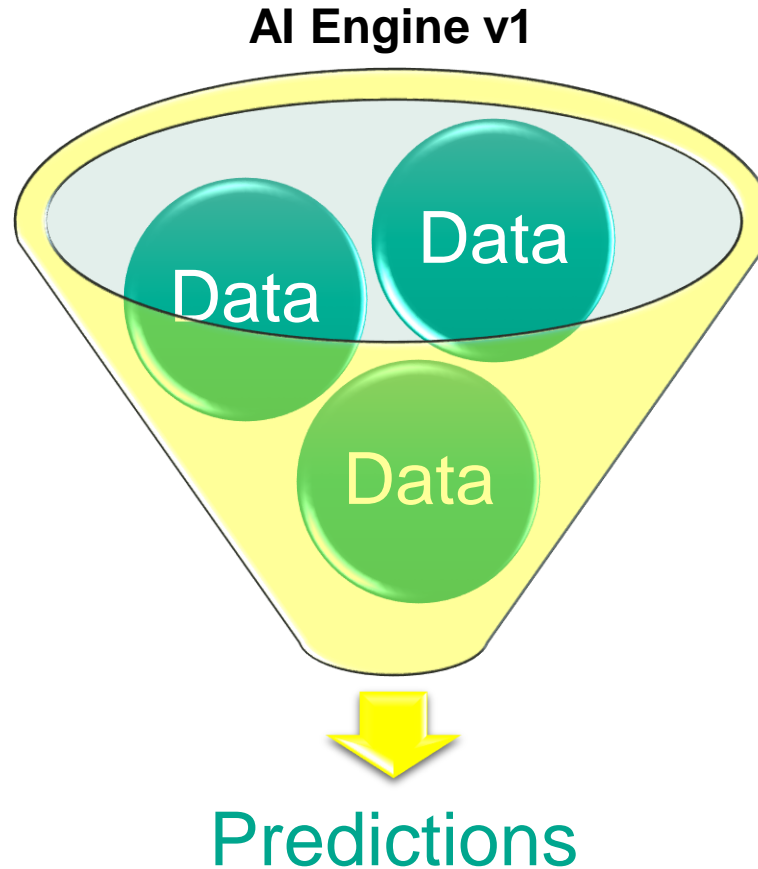
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Insights & Resources   In The News   Policy Initiatives   Get In Touch

Generative AI is any artificial intelligence tool that generates something new from existing data when prompts are given, like an image or text. Recently, generative AI has dominated the news and mainstream consciousness. From AI-generated selfies and DALL-E-created images flooding social media to the skyrocketing popularity of ChatGPT, it seems that generative AI is everywhere.

Given the hype around generative AI and the expectations for it to be widely used, it is important to understand the legal implications of these new technologies. Our cross-practice team is closely monitoring the evolution and continued development of generative AI, including the legal implications and business impacts. This resource center will remain updated with the latest information and insights from our team.

Subscribe now to receive updates, and please get in touch with us to discuss any issues facing your business.

AREAS OF INTEREST
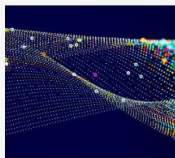
AI in Healthcare

INSIGHTS & RESOURCES

ChatGPT: A GDPR-Ready Path Forward?, April 21, 2023

AI Advertising: The FTC Prepares for Battle, March 7, 2023

IN THE NEWS

Copyright Chaos: Legal Implications of Generative AI, *Bloomberg Law*, March 2023
AI's Regulatory Framework Begins To Take Shape-And None Too Soon, *Forbes*, March 16, 2023
ChatGPT Will Unleash Copyright Chaos, *Barron's*, January 27, 2023

POLICY INITIATIVES

United States

- May 13, 2023, White House, President's Council of Advisors on Science and Technology | Working Group on Generative AI Invites Public Input
  - **Summary:** The President's Council of Advisors on Science and Technology launched a working group on generative AI to help assess key opportunities and risks, and provide input on how best to ensure that these technologies are developed and deployed as equitably, responsibly, and safely as possible. The working group, which will hold its next public meeting on *Friday, May 19, 2023*, invites submissions from the public on how to identify and promote the beneficial deployment of generative AI, and on how best to mitigate risks. The, call for submissions outlines five specific questions for which the working group is seeking responses.

- May 4, 2023 | Fact Sheet: Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety
  - **Summary:** The White House announced new actions to further promote responsible American innovation in AI and protect people's rights and safety. The actions include announcing $140 million in funding to launch seven new National AI Research Institutes, an independent commitment from leading AI developers to participate in a public evaluation of AI systems and draft policy guidance by the Office on Management and Budget on the use of AI systems by the US government for public comment. The White House noted that these steps build on the administration's previous efforts to promote responsible innovation, including the Blueprint for an AI Bill of Rights and related executive actions announced in Fall 2022, as well as the AI Risk Management Framework and a roadmap for standing up a National AI Research Resource released earlier in 2023.

- April 25, 2023, DOJ Civil Rights Division, CFPB, FTC and EEOC Joint Statement on Enforcement
  - **Summary:** The Civil Rights Division of the United States Department of Justice (DOJ), the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC(and the US Equal Employment Opportunity Commission (EEOC) released their "Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems," which reiterates each agency's commitment to applying existing legal authorities to the use of automated systems and innovative new technologies.

- October 2, 2022, White House Office of Science and Technology Policy | Blueprint for an AI Bill or Rights: Making Automated Systems Work for the American People
  - **Summary:** This document establishes five principles and associated practices to support the development of policies and procedures to protect civil rights and promote democratic values in the design, use and deployment of AI systems.

THANK YOU

Questions?

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