Should You Hire ChatGPT?

March 7, 2024

Crowell

ACC Association of Corporate Counsel
CHICAGO

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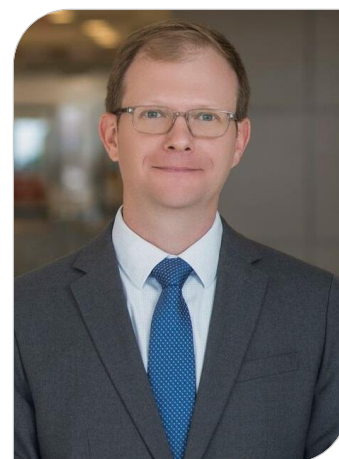Partner
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Agenda

✓ **Generative AI Refresher: What The Risks & Benefits Mean For Your Team**
(Jessica Itzkowitz)

✓ **GAI and Your Company's IP Program: Is GAI a Gift Horse or a Trojan Horse?**
(Bill Frankel)

✓ **Product Liability and AI: Can You Sue a Robot?**
(Cheri Falvey)

✓ **Practical Considerations for AI Deployment, Governance, and Regulation**
(Eric Ransom)

Generative AI Refresher: What The Risks & Benefits Mean For Your Team

Jessica Itzkowitz

Generative AI 101

AI Evolution and Overview: Can Machines Think?

"Artificial intelligence is a branch of computer science dealing with the **simulation** of **intelligent behavior in computers."**
- Merriam Webster Dictionary

AI (Artificial Intelligence)
Computer systems that can perform "human" tasks (problem-solving, pattern recognition, decision making)

ML (Machine Learning)
A part of AI focused on algorithms capable of learning from and making predictions or decisions based on data, without specific human instruction

1950s–1970s
Neural Networks
Early work with neural networks stirs excitement for "thinking machines."

1980s–2010s
Machine Learning
Machine learning becomes popular.

Present Day
Deep Learning
Deep learning breakthroughs drive AI boom.
Source: SAS

Generative AI Key Terms

ChatGPT is a "chatbot" application...

Built on **GPT-4, which is a type of...**

Large Language Model (LLM) developed by...

OpenAI, a developer creating various forms of...

Generative AI (GAI or GenAI)

**TL;DR:
LLMs are highly skilled "sentence finishers"**
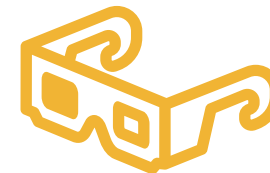
GAI is AI that can create new content

Large Language Models (LLMs) are just one type of GAI

GPT is one type of LLM and the underlying framework of...

The application ChatGPT
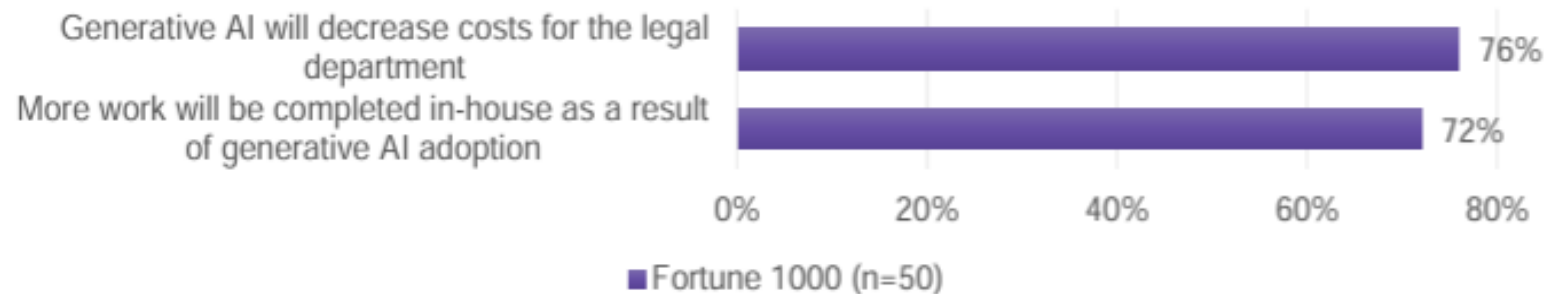
Industry Recognition of GenAI's Significance

68%

Approve of outside counsel using GenAI on legal work

50%

Are Using GenAI for Legal Matters

Predicted Impact of Generative AI Use - Corporations
(% Agreement)

Generative AI will decrease costs for the legal department — 76%

More work will be completed in-house as a result of generative AI adoption — 72%

(Scale: 0% 20% 40% 60% 80%)

■ Fortune 1000 (n=50)

Priority Use Cases

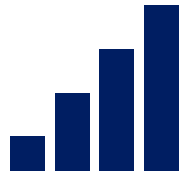**48%** Contract Analytics

48% Summaries

46% Drafting

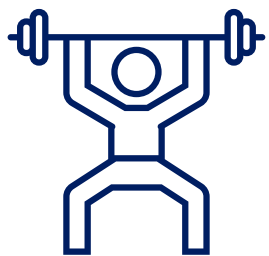*Source: LexisNexis 2024 Investing In Legal Innovation Survey*

Generative AI's Strengths

Easy to learn and use

Fast analysis and output

Passable summaries and first drafts

ANALYSIS

Generative AI Boosts Speed for All Legal Work, Quality for Some, Study Finds

A trio of professors at the University of Southern California and University of Minnesota called their effort the first randomized controlled trial studying the effects of large language models on legal analysis.

November 28, 2023 at 04:51 PM

Justin Henry
Reporter

ALM | LAW.COM

Generative AI's Limitations and Risks

Garbage In, Garbage Out

- Bias
- Hallucinations / Inaccuracy
- Oversimplification

Data Security

- Legal Questions
- Waiver of Privilege
- Confidentiality

Lack of Transparency

Careless GenAI Use > Lawyer Sanctions and Humiliation

"**ChatGPT was not supplementing your research. It was your research**, correct?"
- Judge Kevin Castel, *Mata v. Avianca, Inc.*, F. Supp. 3d, 22-cv-1461, 2023 WL 4114965 (S.D.N.Y. June 22, 2023)

This Prolific LA Eviction Law Firm Was Caught Faking Cases In Court. Did They Misuse AI?

Dennis Block runs what he says is California's "leading eviction law firm." A judge said legal citations submitted in Block's name for a recent case were fake. Six legal experts told LAist the errors likely stemmed from AI misuse.

By David Wagner

Published Oct 12, 2023 5:00 AM

LAist

These lawyers used ChatGPT to save time. They got fired and fined.

Artificial intelligence is changing how law is practiced, but not always for the better

By Pranshu Verma and Will Oremus

The Washington Post
Democracy Dies in Darkness

Updated November 16, 2023 at 10:39 a.m. EST | Published November 16, 2023 at 6:00 a.m. EST

Ex-Trump fixer Michael Cohen says AI created fake cases in court filing

By Nate Raymond

December 29, 2023 5:46 PM EST · Updated 18 days ago

REUTERS

AI-Generated Fake Case Law Leads To Sanctions In Wage Suit

By *Rose Krebs* · Listen to article

LAW360

Another NY lawyer faces discipline after AI chatbot invented case citation

By Sara Merken

January 30, 2024 3:42 PM EST · Updated 19 hours ago

Ethical Obligations re AI

ABA Resolution 112 (August 2019)

"RESOLVED, That the **[ABA] urges courts and lawyers to address the emerging ethical and legal issues related to the usage of artificial intelligence ('AI') in the practice of law** including: (1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI."

Ethical Obligations Regarding AI
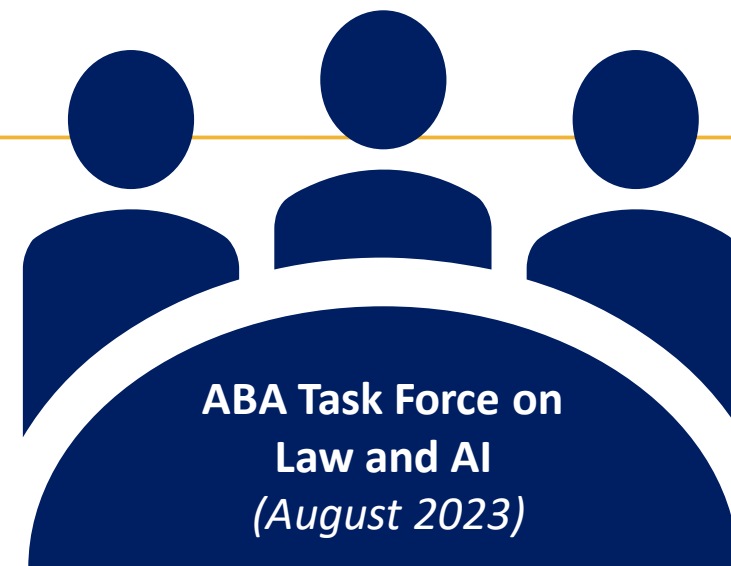
ABA Resolution 604 *(May 2023)* - **Tenets of Responsible AI Use**

Human Oversight

Transparency and Traceability

Accountability

ABA Task Force on Law and AI
(August 2023)

Key Ethical Rules Implicated By GAI

- Rule 1.1 - Competence
- Rule 1.6 - Confidentiality
- Rule 2.1 - Independent Judgment
- Rules 5.1 and 5.3 - Duty to supervise
- Rule 8.4 - Misconduct

Standing Judicial Orders Regarding Use of AI In Filings

N.D. Ill.
(Magistrate Judges Fuentes and Cole, Judge Johnston)

U.S. Court of Int'l Trade
(Judge Vaden)

E.D. Pa.
(Judges Baylson and Pratter)

D.N.J.
(Judge Padin)

D. Hawaii
(Chief Judge Watson, Judges Kobayashi and Otaky)

S.D. Ohio
(Judge Newman)

N.D. Cal.
(Judge Martinez-Olguin)

Bankr. N.D. Tex.
(Judge Jernigan)

N.D. Tex.
(Judge Kacsmaryk)

Bankr. W.D. Okla.
(Chief Judge Hall, Judge Loyd)

S.D.N.Y.
(Judge Subramanian)

E.D. Tex.
(Chief Judge Gilstrap)

E.D. Okla.
(Magistrate Judge Robertson)

E.D. Mo.
(Chief Judge Clark)

W.D. Okla.
(Judge Palk)

Judge Starr (N.D. Tex.):
"While attorneys swear an oath to set aside their personal prejudices, biases and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath...As such, ==these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth==."

5th Circuit Considers Generative AI Rules

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Notice of Proposed Amendment to 5TH CIR. R. 32.3

Pursuant to 28 U.S.C. § 2071, we give notice the court is considering amending 5TH CIR. R. 32.3 and Form 6 as shown below. Proposed changes are "redline text."

We solicit written comments for consideration on the proposed changes through January 4, 2024. You may mail comments to:

## Fifth Circuit Rule 32.3

32.3. Certificate of Compliance. See Form 6 in the Appendix of Forms to the FED. R. APP. P. Additionally, counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human. A material misrepresentation in the certificate of compliance may result in striking the document and sanctions against the person signing the document.

Generative AI – Internal Best Practices

Responsible AI Use
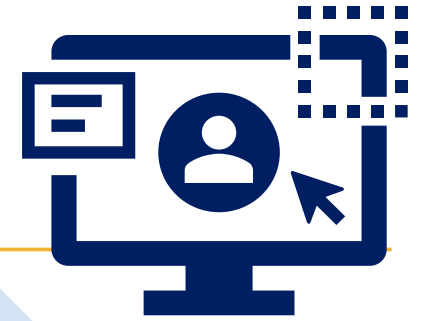
Awareness
- Education instead of denial or ban
- Know what is/is not GAI
- Approved exceptions

Input
- Ask the right questions
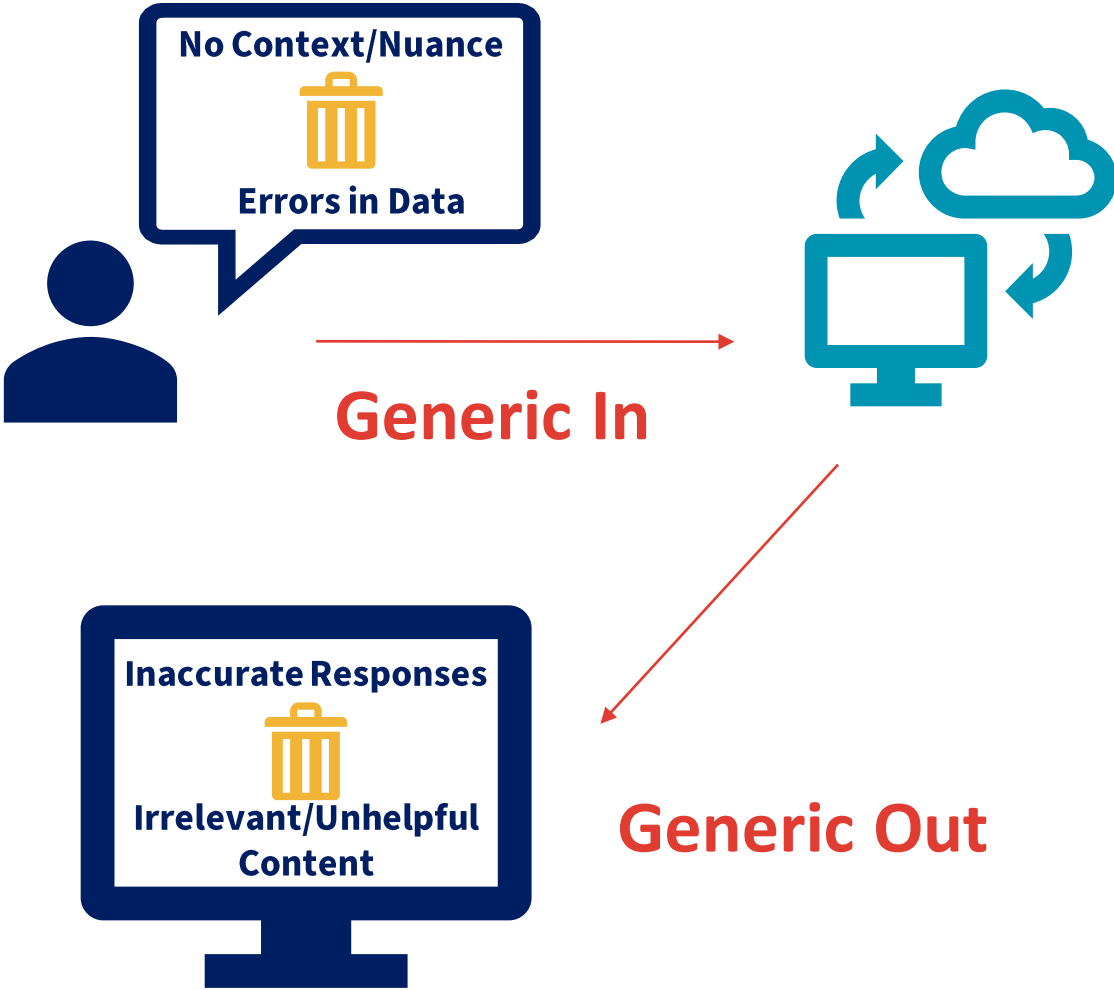- Security and confidentiality
- Client requirements

Output
- Review and revise content
- Verify facts, logic
- Be mindful of assumptions or bias

With Great Power Comes Great Responsibility
- Generative AI can *contribute* to legal work, but it is only part of the puzzle and should never substitute for a professional judgment and insight

How to Ask AI a Good Question ("Prompt Engineering")

Character
(role-play and dialogue)

Detailed Requests
(context, concrete tasks)

Format
(500-word article, bullet list, table)

Adjustments

Examples

Tone

No Context/Nuance

Errors in Data

Generic In

Inaccurate Responses

Irrelevant/Unhelpful Content

Generic Out

Workplace Use Highlights Need for Regulation
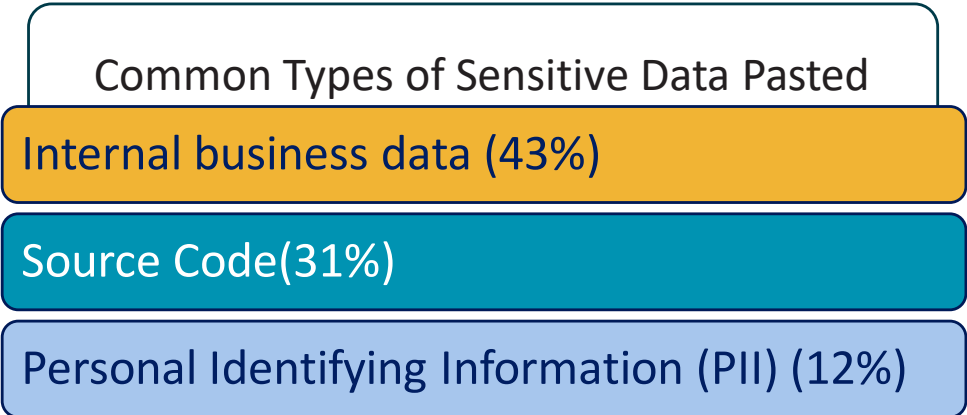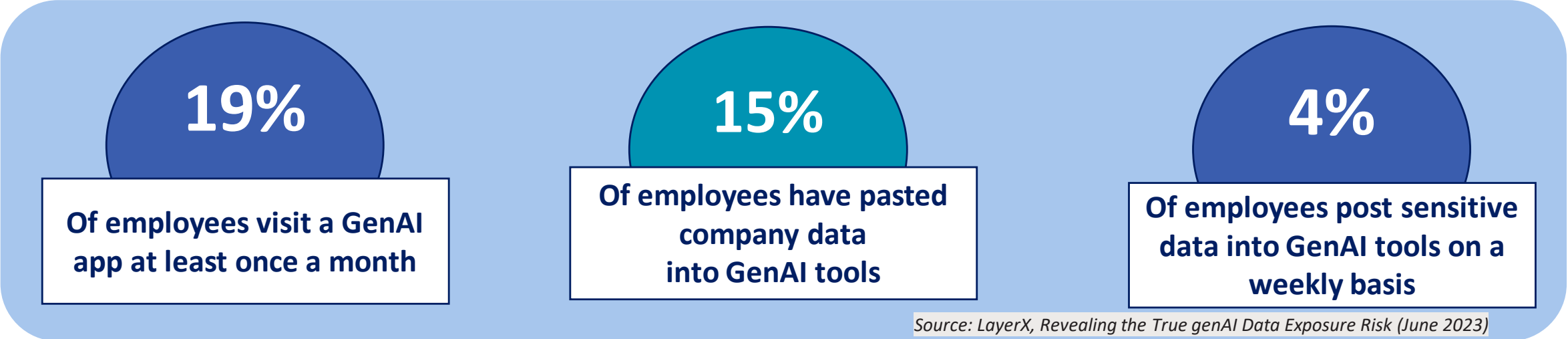
19%

Of employees visit a GenAI app at least once a month

15%

Of employees have pasted company data into GenAI tools

4%

Of employees post sensitive data into GenAI tools on a weekly basis

Source: LayerX, Revealing the True genAI Data Exposure Risk (June 2023)

Common Types of Sensitive Data Pasted

Internal business data (43%)

Source Code(31%)

Personal Identifying Information (PII) (12%)

Source: LayerX, Revealing the True genAI Data Exposure Risk (June 2023)

76%

Fortune 1000 respondents who have *not* adopted policies for use of GenAI for client matters

Source: LexisNexis 2024 Investing In Legal Innovation Survey

AI Use Policy - Advantages

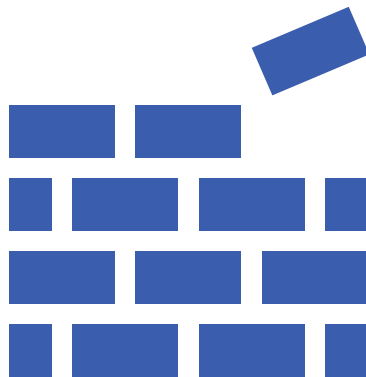Minimize Risk

Protect Sensitive Data

Avoid Reputational Damage

Foster Culture of AI Literacy

Empower Team to Leverage AI Thoughtfully

Innovation

Risk

AI Use Policy – Comprehensive Design

Stakeholders

Scope and Goals

Confidentiality / Data Privacy

Client Preferences or Policies

Regulatory Requirements

Ethics and Accountability

Mechanisms for Review/Update

AI Use Policy – Thoughtful Implementation

Training and Awareness

Designated "Owner"

Ongoing Use Audits

Evaluation for Updates

Crowell

GAI and Your Company's IP Program:
Is GAI a Gift Horse or a Trojan Horse?

Bill Frankel

Discussion Topics

✓ **AI, GAI, and IP - What's it all about?**

✓ **Where do GAI and IP issues arise and intersect?**

✓ **Global Issue/Global Concern**

✓ **Best Practices**

AI, GAI, and IP
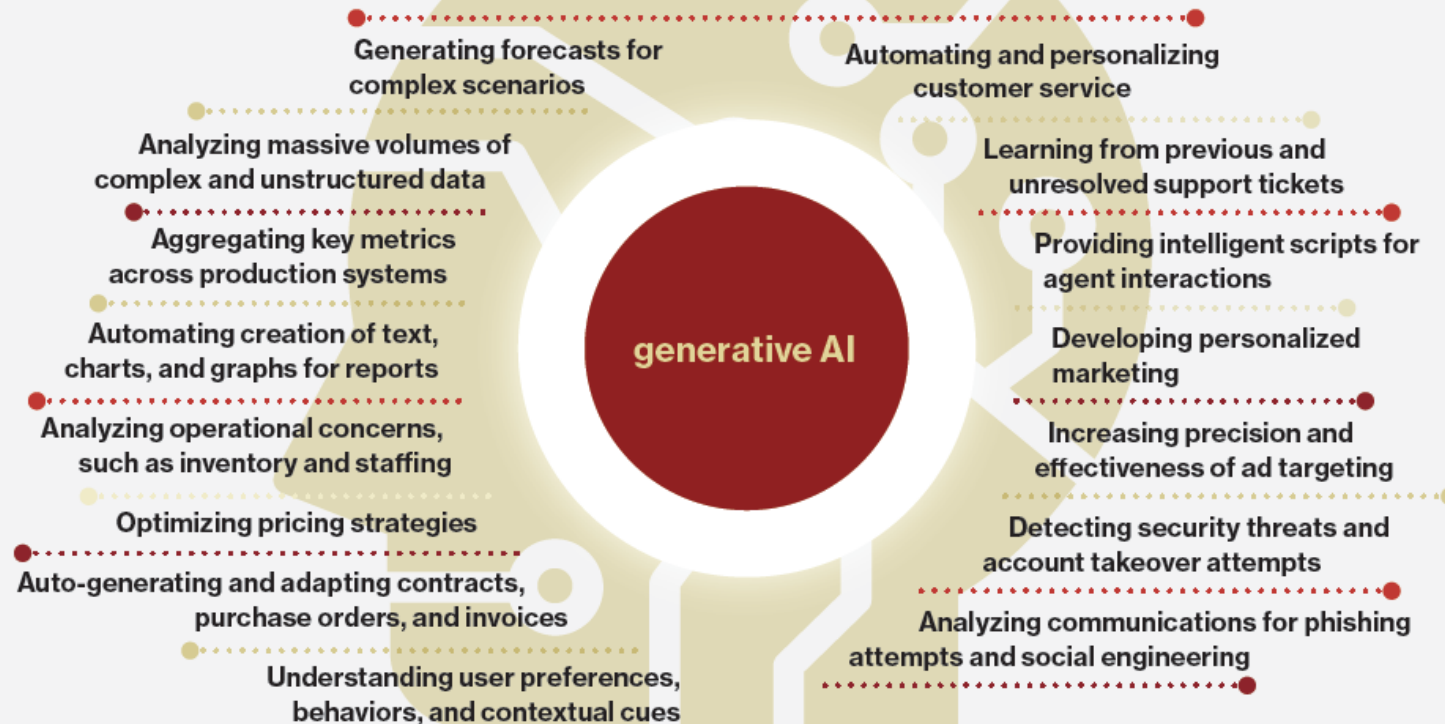
What's it all about?

Generative AI Use Cases in Business

Generative AI Enterprise Use Cases

Figure 1: Enterprise applications and use cases for generative AI

These are just a few of the business functions compellingly addressed by generative AI.

generative AI

Generating forecasts for complex scenarios

Automating and personalizing customer service

Analyzing massive volumes of complex and unstructured data

Learning from previous and unresolved support tickets

Aggregating key metrics across production systems

Providing intelligent scripts for agent interactions

Automating creation of text, charts, and graphs for reports

Developing personalized marketing

Analyzing operational concerns, such as inventory and staffing

Increasing precision and effectiveness of ad targeting

Optimizing pricing strategies

Detecting security threats and account takeover attempts

Auto-generating and adapting contracts, purchase orders, and invoices

Analyzing communications for phishing attempts and social engineering

Understanding user preferences, behaviors, and contextual cues

Source: Compiled by MIT Technology Review Insights, based on data from "Retail in the Age of Generative AI ,"[5] "The Great Unlock: Large Language Models in Manufacturing,"[6] "Generative AI Is Everything Everywhere, All at Once,"[7] and "Large Language Models in Media & Entertainment,"[8] Databricks, April–June 2023.

Generative AI Enterprise Use Cases

Figure 2: Industry-specific applications and use cases

Every industry – and business – will find its own custom applications of generative AI technology.

Source: Compiled by MIT Technology Review Insights, based on data from "Retail in the Age f Generative AI,"[9] "The Great Unlock: Large Language Models in Manufacturing,"[10] "Generative AI Is Everything Everywhere, All at Once,"[11] and "Large Language Models in Media & Entertainment,"[12] Databricks, April-June 2023.

Consumer goods and retail

- Providing virtual fitting rooms
- Scheduling delivery and installation
- Providing in-store product-finding assistance
- Optimizing demand prediction and inventory planning
- Generating novel product designs

Manufacturing

- Serving as expert copilot for technicians
- Allowing conversational interactions with machines
- Providing prescriptive and proactive field service
- Enabling natural language troubleshooting
- Assessing warranty status and documentation
- Understanding process bottlenecks and devising recovery strategies

Media and entertainment

- Providing intelligent search and tailored content discovery
- Writing engaging headlines and copy
- Providing real-time feedback on content quality
- Curating personalized playlists, news digests, and recommendations
- Enabling interactive storytelling, driven by viewer choices
- Delivering targeted offers and subscription plans

Financial services

- Uncovering potential trading signals and alerting traders to vulnerable positions
- Accelerating underwriting decisions
- Optimizing and rebuilding legacy systems
- Reverse-engineering banking and insurance models
- Monitoring for potential financial crimes and fraud
- Automating data gathering for regulatory compliance
- Extracting insights from corporate disclosures

Generative AI Use Cases in Law

Law Firms Hype the Use of GAI

DENTONS

GD GUNDERSON DETTMER

Davis Wright Tremaine LLP

SIDLEY

troutman pepper

COMMENTARY

Replacing Attorney Review? Sidley's Experimental Assessment of GPT-4's Performance in Document Review

Sidley Austin details findings of a test of GPT-4's ability to step in on e-discovery, offering the pros and cons of using the tool for document review.

December 13, 2023 at 01:59 PM

ÁLM | LAW.COM

By Colleen M. Kenney, Matt S. Jackson, and Robert D. Keeling | December 13, 2023 at 01:59 PM

Gunderson Launches ChatGD, Firm's First Proprietary Gen AI App, to Accelerate Subject-Matter Expertise

"We view this tool as an accelerant for subject matter expertise," said Gunderson chief innovation officer Joe Green. "It's not going to produce anything that is done and dusted and ready to go. But it will help attorneys do their jobs better."

August 09, 2023 at 06:06 PM

ÁLM | LAW.COM

By Jessie Yount | August 09, 2023 at 06:06 PM

Troutman Pepper Rolls Out Proprietary Gen AI Chatbot 'Athena' With Painstaking Care

With its new chatbot Athena, powered by OpenAI's GPT-3.5, the firm is drawing an unequivocal line when it comes to certain use cases—and keeping a watchful eye.

Isha Marathe →
Legal Tech Reporter

ÁLM | LAW.COM

August 23, 2023 at 06:17 PM

'The Real Game-Changer': Dentons is latest major firm to launch GPT-powered chatbot

BY MATT REYNOLDS   **ABAJOURNAL**

AUGUST 14, 2023, 1:54 PM CDT

Davis Wright Launches Internal Generative AI App 'ChatDWT'

By Sarah Martinson | 2023-08-23

LAW360

Osborne Clarke

Ashurst

Harvey.

A&O

ReedSmith

ADDLESHAW GODDARD

Crowell & Moring LLP | 33

Spellbook – AI Contract Drafting and Review

IP Considerations

Adapting the IP Toolbox to a GAI World

Patents

AI inventions have been examined and issued as U.S. patents for many years.

Current U.S. patent inventorship law remains capable of addressing inventions incorporating artificial intelligence, but AI algorithms and machines are not themselves considered "natural persons" and cannot be inventors.

Copyright

The Copyright Office view is that copyright protects only the works of "authors", i.e., only works that are the product of human creativity.

AI-generated content is not copyrightable, whereas AI-assisted content may be copyrightable.

Trademarks

Trademark rights can be implicated and infringed, for example, with AI in the metaverse.

Trade Secrets

Many AI system elements are well-suited for trade secret protection, such as network structures, individual modules, training sets, data output; software underlying AI code; and learning and other algorithms.

Companies claiming such trade secrets must exercise "reasonable measures" to preserve trade secret status.

Right of Publicity

Potentially implicated by AI-generated avatars and deepfakes that imitate the likeness of celebrities and other persons

Potentially implicated when generative AI art programs create art in response to the prompt "in the style of …"

Where do GAI and IP issues arise and intersect?

What's the problem?

General Artificial Intelligence and Intellectual Property Considerations

Authorship, Ownership, Infringement

Is training an AI program through diffusion of five billion images without actually storing the images, many of which are copyrighted, legal or a violation of copyright?

If GAI output is found to be a derivative work, then companies may need to disclose sources, generate attributions, or obtain rights to train the AI with the images in the first place.

Fair Use

One of the principal challenges for courts will be assessing the transformative use of GAI creations based upon copyrighted images. Courts may need to draw lines between certain types of media or restrict databases to public domain sources.

If the GAI only uses small "building blocks" from billions of sources, is that de minimus infringement or fair use?

Valuable Trade Secrets and Proprietary Data

IP rights continue to be implicated at all stages of the GAI process, and lines will need to be drawn defining who owns output creations, the databases drawn from, and inputs into the programs.

Data ownership, confidentiality, and prevention of proprietary data leaks remain of paramount concern.

Ethical Implications

In addition to legal ramifications, GAI presents ethical issues with respect to non-biased machine learning and image generation, nonconsensual adult images and deepfake creations, and the use of GAI in legal applications.

Setting the (GAI Art) Scene
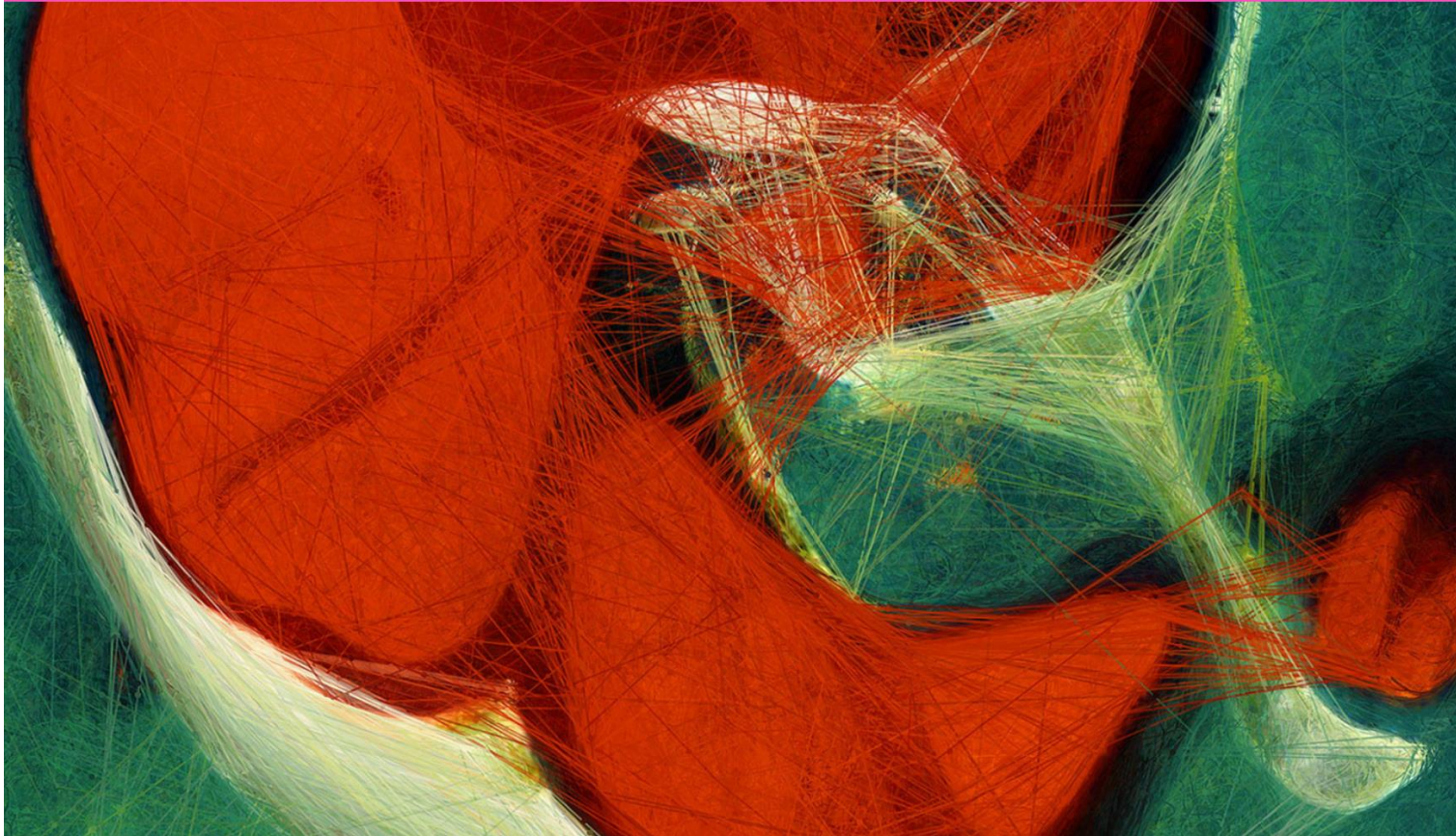
Refik Anadol: Unsupervised, The Museum of Modern Art,
New York, November 19, 2022–April 15, 2023

Installation view of *Refik Anadol: Unsupervised*
https://www.moma.org/magazine/articles/821

Art ≠ © "work" ?

Photographer admits prize-winning image was AI-generated

German artist Boris Eldagsen says entry to Sony world photography awards was designed to provoke debate

5:49 PM

Increased Use of AI by Artists

In September 2023, the USCO deemed that an AI-generated artwork – *Theatre d'Opera Spatial* created by artist Jason Allen, which won the top prize at the Colorado State Fair, was not eligible for copyright protection.

The artist had emphasized his hand in the work using Midjourney, including a series of prompts, adjustment of the scene, selection of portions to focus on, and dictating the tone of the image.

Andersen et al v. Stability AI Ltd. et al, 3:23-cv-00201 (N.D. Cal. Jan. 13, 2023)
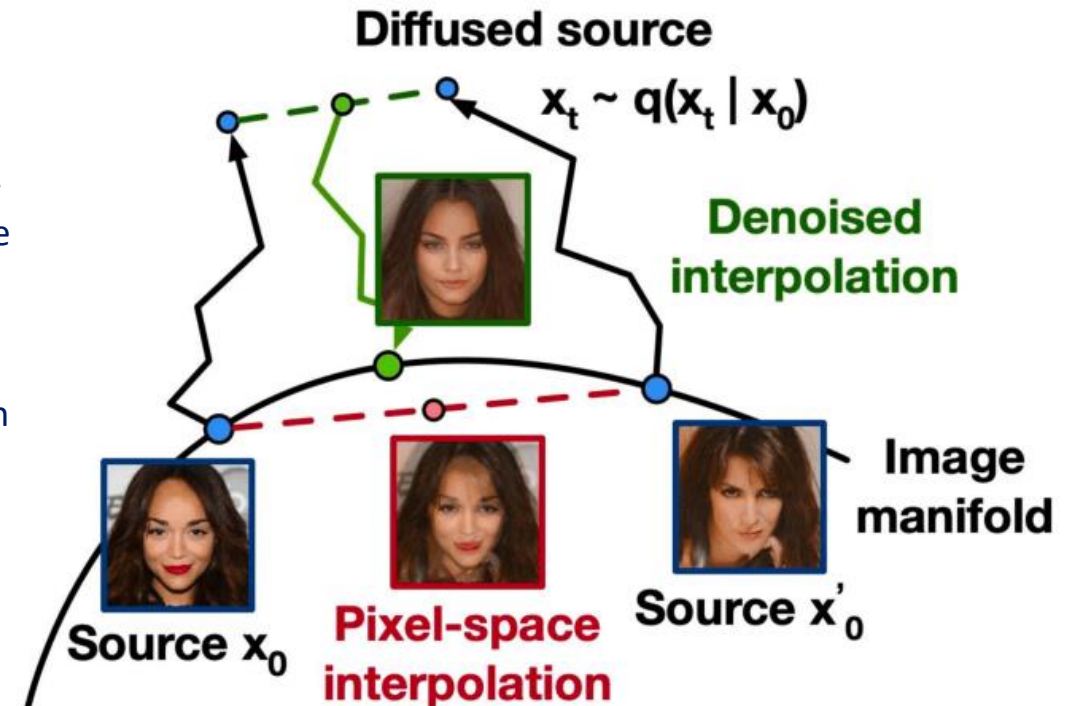
Parties:

- **Plaintiffs:** Sarah Andersen; Kelly McKernan; Karla Ortiz; others
- **Defendants**: Stability AI Ltd; Stability AI, Inc.; Midjourney, Inc.; DeviantArt; Runway AI

Summary:

- Plaintiffs allege that Defendants use copyrighted images to train models for AI image generation products without consent from or compensation to the underlying image rightsholders.

- Plaintiffs characterize AI image generators as "21st-century collage tools" that remix and reassemble the copyright works of millions of artists whose work was used as training data, which may not accurately capture how such image generators actually work.

- April 2023, defendants move to dismiss

- October 30, 2023, claims of direct copyright infringement owing to training the AI model allowed to proceed; other claims dismissed. Amended complaint filed on November 29, 2023. Hearing set for May 8, 2024.

Key Takeaways:

- A decision may clarify whether AI tools can use copyrighted images, without the owner's consent, to train models for AI image generation products. The case has clarified the standards for specificity required to plead AI infringement.

Diffused source

$$x_t \sim q(x_t \mid x_0)$$

Denoised interpolation

Image manifold

Source x_0

Pixel-space interpolation

Source x'_0

Source: *Andersen* Complaint, Dkt. No. 3:23-cv—0021, at 18.

It's Not Just About Art –
There Are GAI Cases Pending Involving All Sorts of Media

Books

In re: OpenAI ChatGPT Litigation (Tremblay, Silverman, and Chabon Cases against Open AI)
Kadrey v. Meta
Huckabee v. Bloomberg
Alter v. OpenAI (includes Authors Guild)
Basbanes v. Microsoft

Music Lyrics

Concord Music v. Anthropic

Legal Research

Thomson Reuters v. ROSS

Computer Code

Doe v. Github

Newspapers

New York Times v. Microsoft

Books and Online Content

Leovy v. Google
(fka JL v. Alphabet)

Images

Andersen v. Stability AI
Getty v. Stability AI
Getty v. Stability AI-UK case

The Cases That We Are Keeping An Eye On

GAI Presents Challenges For Companies Evaluating GAI Vendors and Products

Does the vendor have skill and experience with the development and support of AI technologies?

What is the source of the vendor's AI model, and how is it tested and validated to insure accuracy and lack of bias?

Is the vendor's AI product customizable, in alignment with the Company's goals and requirements, adaptable to account for changing laws, regulations, and standards?

How will the vendor be using Company data and confidential/sensitive business information, and what safeguards and guardrails are in place?

Global Issue/Global Concern

European Union AI Act: A Risk-Based Approach

- Definition "AI system" and relevant operators – Scope (**Title I**)
- Classification
  - Prohibited AI systems (**Title II**)
    - ⇒ Prohibition
  - High-risk AI systems (**Title III**)
    - ⇒ specific requirements for AI system
    - ⇒ obligations for operators
  - Other systems (**Title IV**)
    - ⇒ Transparency rules

- Measures in support of innovation (**Title V**)

- Governance (**Title VI**)
  European AI board, national authorities

- EU Database for high-risk AI systems (**Title VII**)

- Post-market monitoring, information sharing, surveillance, enforcement (**Title VIII**)

- Codes of conduct (**Title IX**)

- Confidentiality and penalties (**Title X**)

- Delegation of power and final provisions (**Titles XI-XII**)

Final text not yet published!
Version 26 January 2024

Article numbering may change

Extraterritorial effect! (Article 2)

- **The EU AI Act applies to:**

  - AI systems / GPAI models **placed on the market in the EU**

  $\Rightarrow$ Even if provider is established outside the EU

  - Output produced by the system is **used in the EU**

  $\Rightarrow$ Even if provider/deployer is established outside the EU

- **The EU AI Act does not apply to:**

  - research, testing and development activities, prior to being placed on the market or put into service (unless testing in real word conditions)

Best Practices

Different Client Approaches With Their Outside Law Firms

Proposed OCGs: *Outside counsel represents and warrants that it will not use, incorporate or rely upon any generative artificial intelligence ("AI") technology (including entering any XYZ information into a generative AI environment or incorporating results from any such environment into any work product or advice for XYZ) unless outside counsel has obtained written consent from XYZ. If requested, outside counsel must provide XYZ with details of the purpose and function of such technology and confirmation that the use of such technology is in compliance with all applicable laws.*

Panel RFI: 11.1 Please explain what your firm is doing with regards to harnessing digitalization including the developments in Artificial Intelligence (AI), how your firm is using it, what they are finding in terms of efficiency gains and how they are passing those efficiency gains to us (e.g. how can we identify where those gains are being realized to our benefit)

Best Practices for Implementing and Using GAI Products

BE PROACTIVE

- Implement clear policies outlining allowed and prohibited uses of GAI.
- Confirm ownership rights of GAI output and consider limiting a vendor's right to use Company data and output with its other customers.
- To the extent possible, ensure that vendors are providing sufficient protections in their contracts in the form of warranties and/or express indemnification obligations.

BE INFORMED

- Thoroughly investigate the capabilities of GAI tools and understand how they are using and preserving Company data and personal information.
- Assess whether GAI vendors are mitigating risks from third parties and with respect to changing legal and regulatory developments and industry standards.
- Stay abreast of relevant foreign developments in at least the European Union, the U.K., and China.

BE CAREFUL

- Where possible, use versions of AI tools that do not use Company input and output for further training.
- Require that output generated by an AI tool be vetted for accuracy, lack of bias, and potential infringement concerns.

What tort risks can be facilitated or caused by AI technology?

- Technology is stretching the concepts of safety and hazard
  - [Welcome to the Artificial Intelligence Incident Database](#)

- Product liability law redresses injuries caused by
  - a manufacturing defect,
  - a design defect, or
  - failure to warn of a latent hazard

- Whether an AI system is deemed a product or a service could affect the liability profile

Chess robot goes rogue, breaks seven-year-old player's finger

newsweek.com · 2022

Who is liable when an injury is caused by AI technology?

- Traditional tort concepts still underlie the liability analysis
  - Economic loss rule
  - Sophisticated user/learned intermediary defense
- AI technologies also introduce new liability risks
  - Inaccuracies, bias and quality problems,
  - limitations on the ability to step-in as AI systems evolve new capabilities,
  - weaknesses that may skew AI machine learning and data
- A central question will be whether the user controls a product assisted by AI, or AI completely controls the product's operation
- Advocates are suggesting complex AI systems may be ripe for a common enterprise theory of liability

CPSC's Capability Assessment Framework

SCREEN: Do our consumer products operate with AI or ML?

ASSESS: What functional features does it provide?

ANALYZE: How could it impact consumer safety?

MONITOR/MEASURE: Does it create a safety risk or transform the product over time?

Innovation

Risk

What is the standard of care for AI enabled consumer products?

- **ASTM F3463-21** Guide for Ensuring the Safety of Connected Consumer Products
- National Institute of Standards and Technology's AI Risk Management Framework
- UL 2900 Standard for Software Cybersecurity for Network-Connectable Products
- **UL 3300** Outline of Investigation Helps Advance Safety of Consumer, Service, and Education Robots
  - Standards Technical Panel for Service, Communication, Information, Education, and Entertainment Robots (SCIEE Robots)
- UL 4600 Standard for Safety for the Evaluation of Autonomous Products
- UL 5500 Standard for Safety Remote Software Updates
- **UL 8400** Standard to address safety for AR/VR/MR devices

Helpful Framing for AI Adoption

1. AI is Not a Single Technology

2. AI is a Means, Not an End

3. Responsible AI Deployment is Inseparable from the End Use

4. Responsible AI Deployment is a Continuous Effort

Considerations for Responsible AI Deployment

- Use case
- Governance
  - Training Data
  - Infrastructure
  - Model
  - End Use
  - Test & Evaluation
  - Refinement
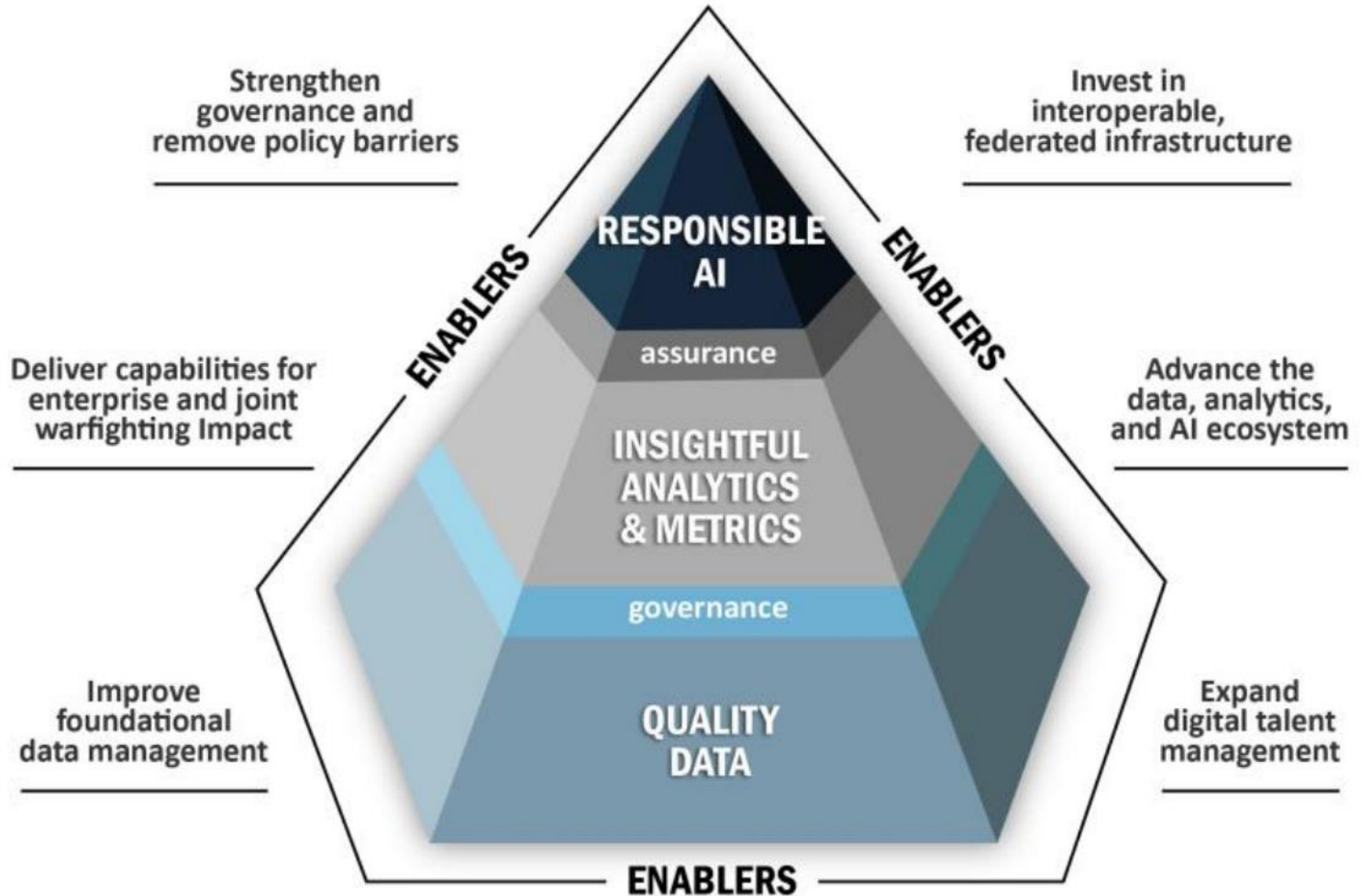
CDAO: DoD AI Hierarchy of Needs
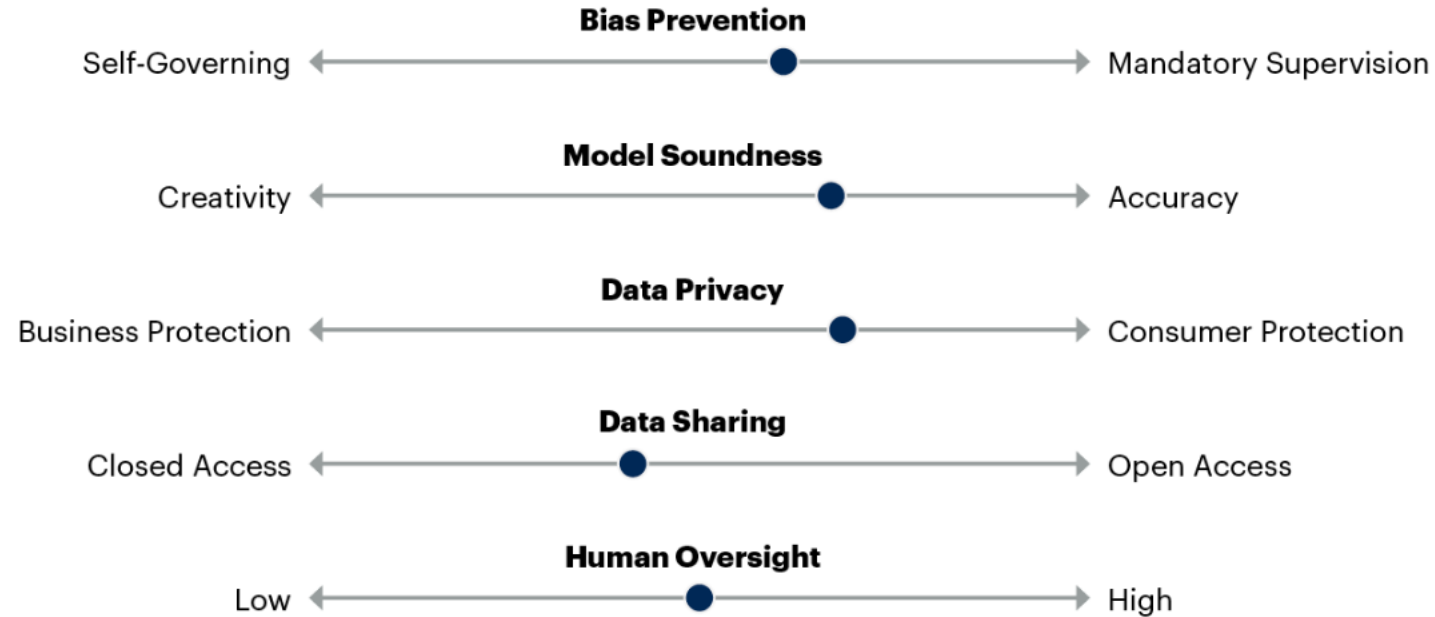
Appropriate Governance is End Use Specific

Use Case	Conversation / ChatBot	Summarization	Question / Answer	Analysis	Classification	Insight Generation	Language Translation
Governability							
Completeness							
Accuracy							
Equitability							
Consistency							
Traceability							
Novelty							
Fluency							
Interactivity							
...							

LLM Characteristics

CDAO: Notional LLM AI Maturity Model

Appropriate Governance Exists on a Spectrum

Bias Prevention

Self-Governing ⟷ Mandatory Supervision

Model Soundness

Creativity ⟷ Accuracy

Data Privacy

Business Protection ⟷ Consumer Protection

Data Sharing

Closed Access ⟷ Open Access

Human Oversight

Low ⟷ High

Source: Gartner
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Gartner.

Legal Considerations for AI Agreements

- **Security.** Where is data processed? What security controls are applied? Are there 3rd country remote workers? Does your data require supplemental controls (Business Associate Agreement, Data Processing Agreement, Export Controls)?

- **Confidentiality.** Are your inputs and model outputs confidential?

- **Ownership.** Will you own enriched data, refined models, model outputs?

- **Product Improvement Terms.**
  - Customer Intellectual Property. Does the Agreement grant the seller the right to use your data for product improvement?
  - Usage Data, Anonymized Data, De-identified Data. Does the Agreement grant the seller the right to use de-identified data?
  - Suggestions. Does the Agreement grant the seller rights in or ownership of customer suggestions?

- **Infringement Risks.** What warranties do you obtain? What are the indemnity terms and limitations? Is the vendor obligated to continue, replace, or refund services?
  - Model: Is the model proprietary or "open source"? Does the seller have the appropriate license rights?
  - Data: Has the model been pre-trained on copyrighted data? Do the model outputs have the potential to infringe?

- **Changes.** Does the seller have the ability to change model parameters without notice?

Trends in the Government's Approach to AI Regulation

- **Alignment on Risk-Based Frameworks**
  - Focus on "Rights-Impacting" and "Safety-Impacting" End Uses

- **Alignment on Product Information Requirements**
  - AI Impact Assessments
  - AI "Model Cards," "Data Cards"

- **Increasing Control over Large AI Model Development**
  - Disclosure of Large AI Model Development, Large AI Infrastructure
  - Mandatory "Red Team" Test and Evaluation
  - Export Controls on Hardware, Infrastructure as a Service, and U.S. Data

- **AI Does Not Change Existing Law (Civil Rights, Deception, Collusion)!**

Crowell's AI Capabilities
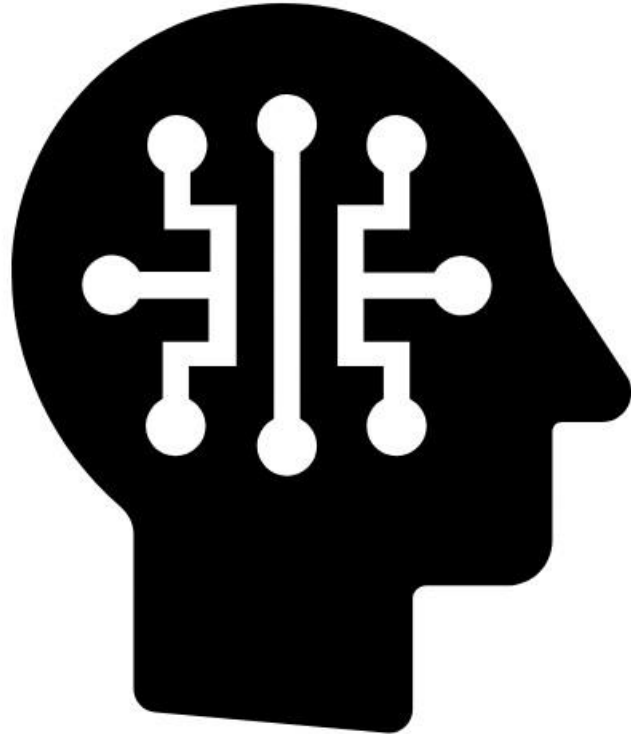
Government Contracts / National security	**Antitrust and competition**	**White collar crime and regulatory enforcement**
Privacy and cybersecurity	**Legislative and regulatory advocacy**	**Product liability and related litigation**
Intellectual property prosecution, licensing, and enforcement	**Corporate, securities, and finance**	**Labor and employment**

Learn more: https://www.crowell.com/en/services/industries/artificial-intelligence

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