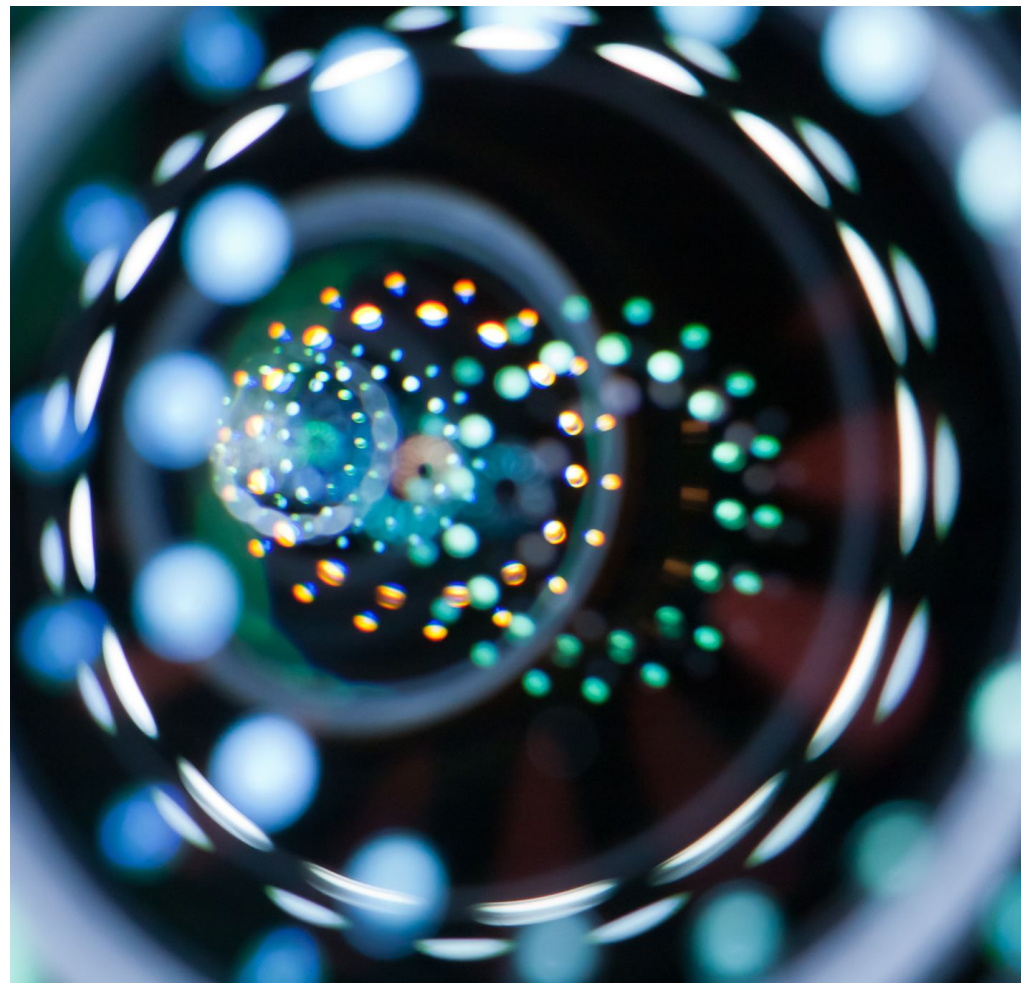**BakerHostetler**

2025 Nutrition Law Symposium

AI in Legal and Regulatory Compliance

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Spotlight on...

Generative AI

A type of AI trained on large data sets

Allows for natural language **inputs** that can generate new **outputs**

Can create content, such as text, code, video, and images, and power chatbots

Agentic AI

Autonomous AI systems used to accomplish specific, multi-step goals or processes with minimal supervision

Can act without specific prompting

Can automate work flows, integrate with multiple systems, and power virtual assistants and autonomous cars
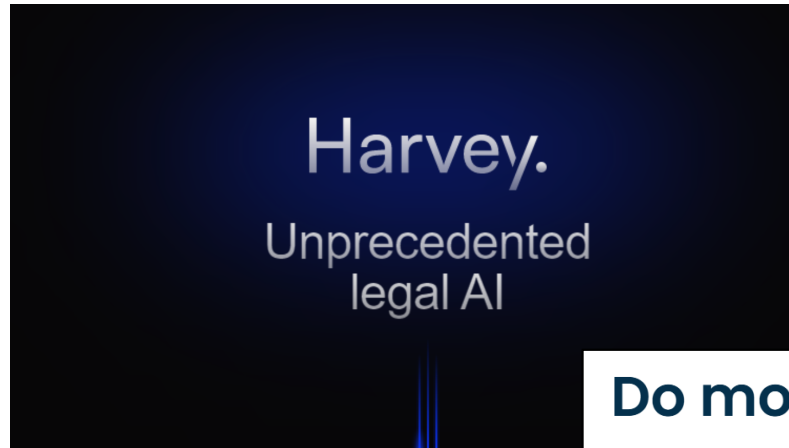
AI Is Everywhere

CoCounsel. The GenAI for professionals.

A trusted generative AI assistant that's with you every step of the way.

Thomson Reuters™

Harvey.
Unprecedented legal AI

LEGAL TECH NEWS

MyCase Launches MyCase IQ, Generative AI for Legal Tech Industry

mycase

Do more with Clio Duo

Transform the way your firm works with Clio Duo—legal AI built into the #1 case management platform.

Ironclad

Work *Smarter and Faster* with Ironclad AI

WESTLAW EDGE WITH AI-ASSISTED RESEARCH

Expedite your most complex legal research tasks

Lexis+ AI™
Transform Your Legal Work

AI Limitations

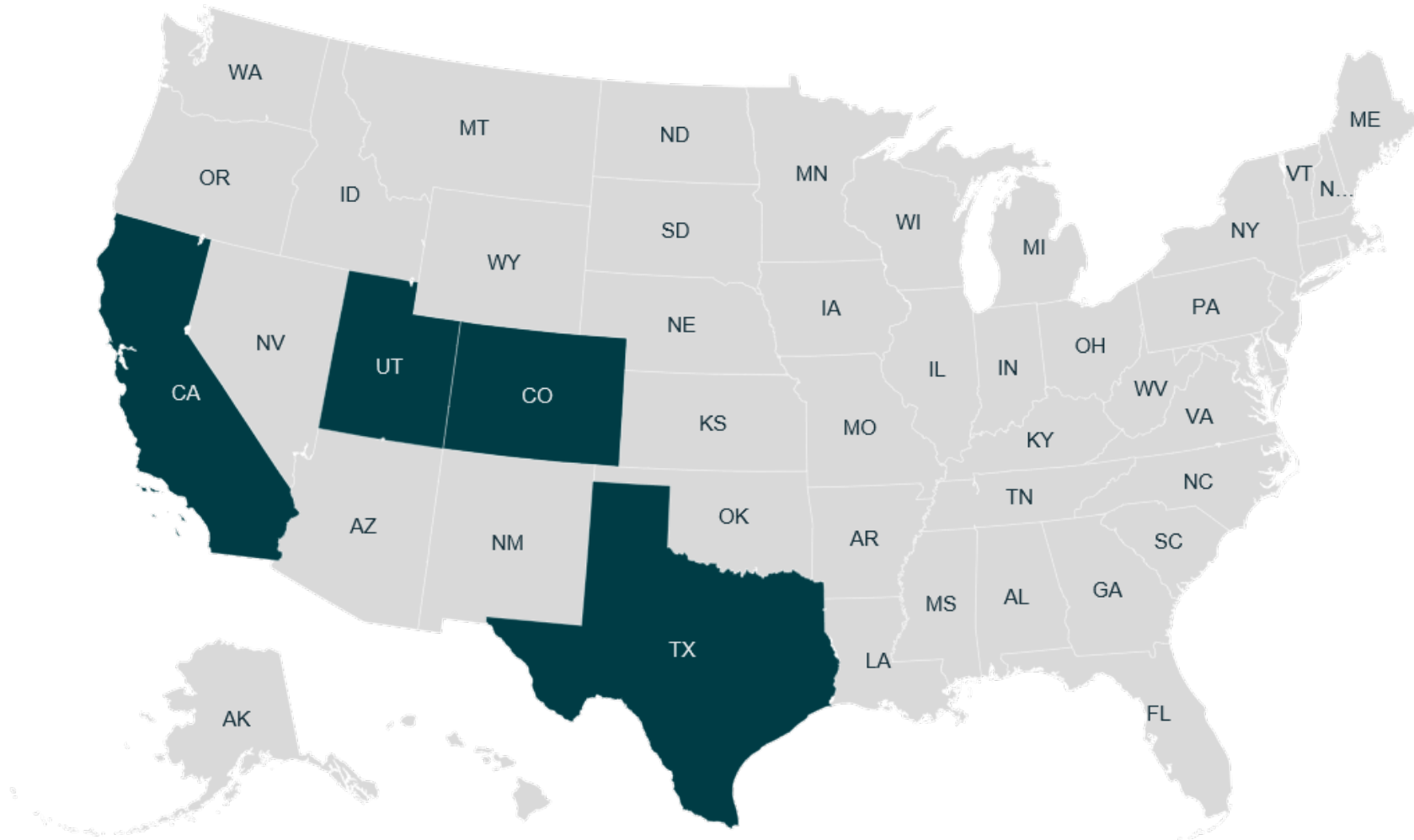|	
Hallucination	• Producing confidently stated but erroneous, false, inaccurate, or nonsensical information as fact
Accuracy & Completeness	• May not output all relevant information
Currency	• Limits data scope of AI
Bias	• Can perpetuate discrimination and undermine fair legal advice
Explainability & Verifiability	• Reasoning is difficult to explain and confirm
AI Washing	• False or exaggerated claims about AI
Ownership of Outputs & Data	• Complex, undecided area of IP law
Vendor Reliance	• Most AI tools are offered by vendors

States With Comprehensive AI Governance Laws

State AI Law Takeaways

CA, UT, CO, and TX:

- CA, CO, and TX require affirmative disclosures to consumers when consumers are interacting with AI.

- Utah requires companies to disclose that AI is being used if asked. *E.g.* chatbots

- Regulate, in some manner, the use of consumer data by an AI system.

- Define the use of AI in violation of state law to be a "deceptive trade practice."

State Specific Rules:

- Colorado and Texas require AI decisions be appealable.

- Utah requires regulated professions (i.e. doctors, lawyers, etc.) to prominently disclose AI interaction.

- Colorado focuses on AI involved in "consequential decision making."

- Texas prohibits AI use that restricts an individual's freedom of expression.

- California prohibits using AI to replicate a person's likeness without consent.

NIST AI Risk Management Framework (RMF)

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- Created collaboratively between the public and private sectors.

- Advises organizations on steps that can be taken to properly manage AI risks.
  - Also published an "RMF Playbook" which provides suggested actions.

- Instructive on how federal regulatory agencies have, and will, regulate AI.

AI Risk Management Framework

Map
Context is recognized and risks related to context are identified

Measure
Identified risks are assessed, analyzed, or tracked

Govern
A culture of risk management is cultivated and present

Manage
Risks are prioritized and acted upon based on a projected impact

AI Case Law

- The use of generative AI has primarily been challenged for copyright infringement
  - Using copyrighted works to train AI models without permission.
- Key Cases to Track: *Thomson Reuters v. ROSS; In re: OpenAI, Inc. Copyright Infringement Litigation MDL.*
- BakerHostetler maintains an AI case tracker for updates on key AI litigation.
- What's next?

Case Tracker: Artificial Intelligence, Copyrights and Class Actions

This case tracker monitors key U.S. litigation that raises copyright (and copyright adjacent) issues related to the creation and use of generative AI. These issues can have a significant impact across the AI value chain, from content creators to those providing datasets, models, or AI solutions, and further still to the downstream uses of AI solutions (and AI outputs).

We monitor key copyright issues raised by the proliferation of generative AI technology by tracking key pending litigation. Each case has a page devoted to an overview of the lawsuit, a repository of key filings that address substantive legal issues, and a running summary of these filings.

For questions or feedback, please reach out to our editor, *Theresa M. Weisenberger*, and contributors *Diana C. Milton* and *Harrison A. Enright*.

Cases and Their Developments

Advance Local Media v. Cohere: Conde Nast, The Atlantic, Axel Springer, and other news publishers accuse Cohere of direct and indirect copyright infringement based on the creation and operation of Cohere's AI systems. This case can significantly contribute to fair use jurisprudence, particularly the fourth factor, as the complaint alleges a licensing market for their content for AI developers. Amended pleadings and joinder are due Sept. 15, 2025. 1:25-cv-01305 (S.D.N.Y.)

Andersen v. Stability AI: Visual artist plaintiffs allege direct and induced copyright infringement, DMCA violations, false endorsement and trade dress claims based on the creation and functionality of Stability AI's Stable Diffusion and

AI Risks

What In House Counsel Need to Be Thinking About

Privacy Policies

- State AI laws have included AI generated data in their Data Privacy statutes.

- Training AI models on user data may result in that data being disclosed.

- Using user data collected online (or from another source) may result in higher risks.

  - For example: Texas does not allow AI to use biometric information found online.

- User data created by AI (like a profile) may also be regulated by state law.

- **What AI provisions are needed in your company's Privacy Policy?**

AI and Confidential Information/ Trade Secrets

- Trade secrets lose their protected status if they are disclosed, or if reasonable efforts are not taken to maintain their secrecy. *See Uniform Trade Secrets Act.*

- Self-learning AI tools increase the risk of disclosing information input to the AI.

- **Incorporate policies on the use of company data and trade secrets with AI tools.**

Preventing Misuse Of Data

- Clear policies regarding permissible AI use

- AI training

- Monitoring appropriate use

- AI vendor due diligence and oversight, including the AI tool's security, reliability, policies, and liability limitations

- Understand how the AI tool uses and retains information during and after use of the services

- Know and mitigate potential AI cyber risks

What is Reasonable?

Consider:

- **Sensitivity** of information
- **Likelihood of disclosure**
- **Cost** of using additional safeguards
- **Difficulty** of implementing additional safeguards
- Extent to which safeguards **adversely affect** ability to conduct business

Possible Reasonable Steps:

- Annual risk assessments
- Network security audits
- Written information security program, based on established frameworks and/or standards, such as
  - NIST: https://www.nist.gov/cyberframework
  - ISO: https://www.iso.org/isoiec-27001-information-security.html
- Specific technical safeguards, including for users and vendors
- Secure disposal & data retention
- Regular employee training and awareness
- Vendor supervision and assessments
- Executive reporting and other recordkeeping regarding security program and incidents

AI In Employment Decisions

- States may provide extra requirements or prohibitions on using AI to make hiring or firing decisions (like screening resumes).

  - Colorado's focus on "consequential decision making" includes decisions related to an individual's employment.

  - California restricts employers from using AI to replicate a performer's likeness.

  - Texas requires AI provide "clear and meaningful explanations" for decisions about a user's welfare.

- **Consider how AI may be used in these processes and what policies should be created to limit risk.**

Managing AI Risks

What can be done to limit AI created exposure?

Organizational AI Policy/Policies

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- Create and implement an AI policy for your organization with appropriate stakeholders.

- Consider applicable state law provisions.

- Use the NIST AI RMF as guidance to build an organizational framework.

- Ensure consistency with your Privacy Policy.

Ethical Obligations & Professional Responsibilities Related to AI

AI 'hallucinations' are a growing problem for the legal profession
Los Angeles Times

AI Hallucinations Aren't a Necessary Evil, They're a Failure of Attorney Quality Control
Law.com

Courts Remain Skeptical of Lawyers' Use of ChatGPT in Litigation
Bloomberg Law

Lawyers using AI keep citing fake cases in court. Judges aren't happy.
The Washington Post

High court tells UK lawyers to stop misuse of AI after fake case-law citations
The Guardian

Ruling follows two cases blighted by actual or suspected use of artificial intelligence in legal work

Failing to vet AI output before using it in court documents could violate attorneys' duty to provide competent representation, the American Bar Association has said.

AI is creating fake legal cases and making its way into real courtrooms, with disastrous results
The Conversation

Risk Or Revolution: Will AI Replace Lawyers?
Forbes

Use of AI In Legal Proceedings

From *Tercero v. Sacramento Logistics:*

- Attorney sanctioned for the use of AI in legal filing that cited "nonexistent and erroneous" case law.

- The attorney was required to pay $1,500, disclose the sanction to her client, and have a copy of the sanction order served on the State Bar of California.

- The attorney stated "she did not know what artificial intelligence was, so she had to look up artificial intelligence on line to understand defendants' accusations."

From *Mata v. Avianca*:

- *In reviewing citations, the lawyer testified, I was "operating under the false perception that this [AI tool] could not possibly be fabricating cases on its own…I just was not thinking that the case could be fabricated…My reaction was, [the AI tool] is finding that case somewhere. Maybe it's unpublished. Maybe it was appealed. Maybe access is difficult to get. I just never thought it could be made up."*

A lawyer should…keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information.
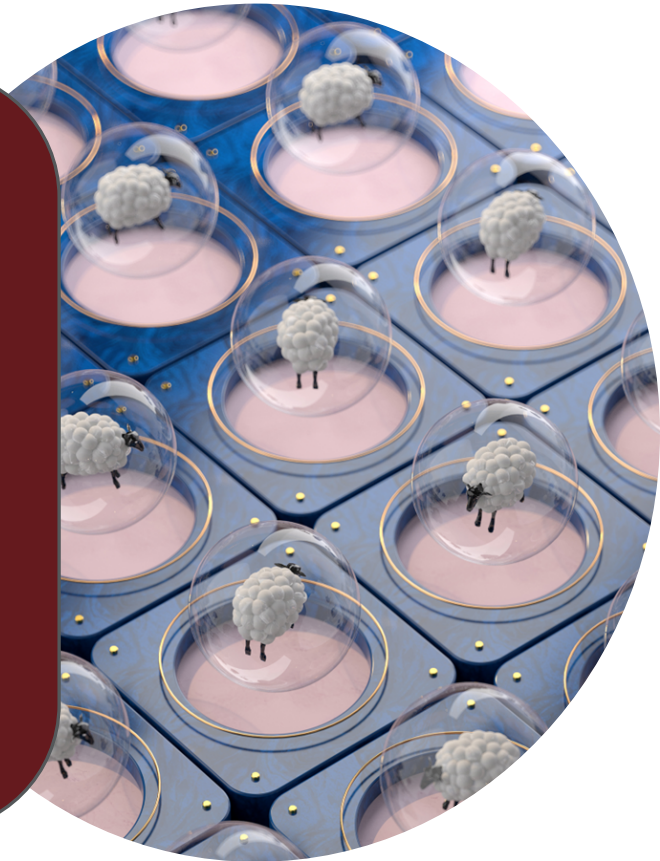
Judicial AI Standing Orders

- Approximately half of the federal district courts have now issued judicial standing orders on AI

- These can require:
  - Confirmed accuracy of the AI-generated information – "it is imperative that attorneys who use AI double (and triple) check AI's work"
  - Disclosure of the AI use
  - Certification that no confidentiality was breached

- A few courts explicitly prohibit the use of AI

"The use of artificial intelligence must be accompanied by the application of actual intelligence"

ABA Resolution 112 (2019)

"RESOLVED, that the American Bar Association 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."

AI & Legal Competence

- Reasonable understanding of the capabilities and limitations of the AI technology used

- Not a static requirement

- Must recognize inherent risks in AI use

- Reliance on or submission of AI output without independent verification/review can violate the duty to provide competent representation

- AI tools cannot replace the judgment and experience necessary for competent legal representation

- Lawyers may not abdicate responsibilities by relying solely on AI to perform task that require professional judgment

Important Takeaways

Is AI the right tool for the task?

Carefully check AI outputs before relying on them

Don't circumvent protections for the sake of efficien... no free AI too...
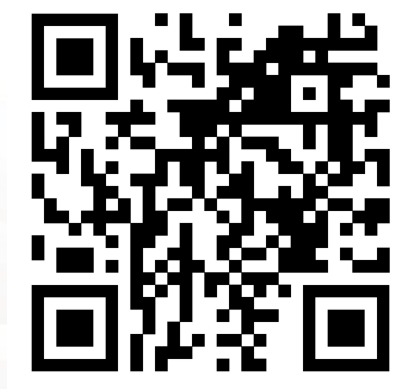
Be transparent about AI use

You control the AI technology and are accountable for its use

Seek help from others with AI experience and share tips with others

Q&A

Questions?

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