DENTONS



Operationalizing Responsible Al: From Theory to Practice

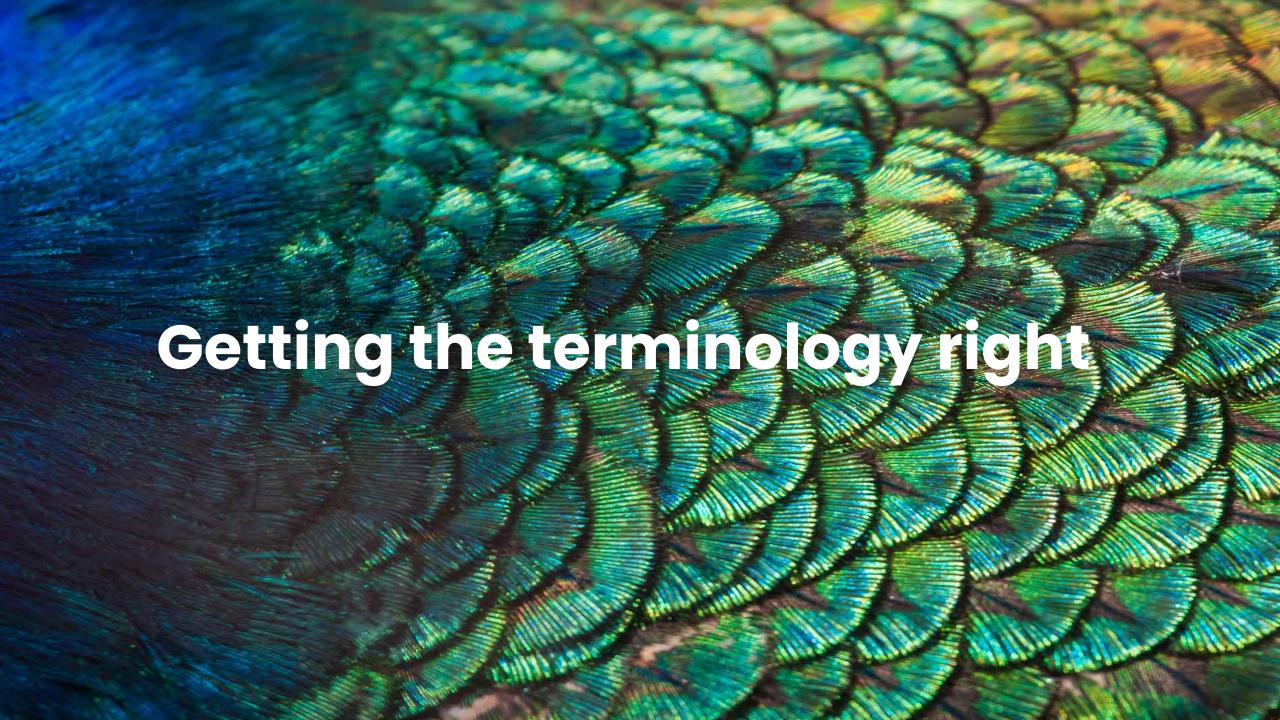
Peter Stockburger
Dentons
San Diego Managing Partner
Lead US Al Advisory Team
peter.stockburger@dentons.com
619.595.8018

Grow | Protect | Operate | Finance

Discussion

- Getting the terminology right.
- Is today's Al old wine in a new bottle?
- What is the promise and peril of AI?
- What is the US and global legal landscape governing AI?
- ❖ What is "responsible" or "trustworthy" AI?
- How do you operationalize "responsible" AI?
- Questions throughout.





What is Al?

A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.

White House Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (2023)

What is machine learning?

A set of techniques that can be used to train AI algorithms to improve performance at a task based on data (e.g., looking for relationships and patterns).

White House Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (2023)

What is deep learning?

A subset of machine learning that uses multi-layered neural networks, called deep neural networks, to simulate the complex decision-making power of the human brain.

What is generative AI?

A class of AI models that can emulate the structure and characteristics of input data in order to generate synthetic data, including audio, video, pictures, and other digital content.

What is artificial general intelligence?

AGI refer to a future state of AI that possess autonomous self-control, a reasonable degree of self-understanding, a reasonable degree of self-understanding, and the ability to learn new skills.

What is artificial super intelligence?

ASI is a hypothetical software-based AI system with intelligence beyond human intelligence.

Artificial Narrow Intelligence (ANI)

ANI describes Als that are good at a particular task at a level equal or better than a human being.

EXAMPLE

Virtual assistants, such as Siri or Alexa.



Artificial General Intelligence (AGI)

AGI is an AI that can perform any task that a human being can. This is what most of us think of when we think of AI.

EXAMPLE

David, the child-like android from the 2001 movie Artificial Intelligence.



Artificial Super Intelligence (ASI)

This is an intelligence that surpasses anything that humans can do.

EXAMPLE

Marvel's J.A.R.V.I.S. (Just A Rather Very Intelligent System)



A Proposed Path Forward

The Future of Global Al Governance







Al is not new. GenAl is.

The rate of acceleration is also new.

The race toward AGI is happening.

2024 is a year of great competition.



AI Trajectory

Where we are heading

- 2022: GenAl is released to the public and accelerates the trajectory.
- 2023: Explosion of commercially available tools, consolidation of the Al marketplace, and regulators begin to take notice.
- 2024: Significant debates concerning open-source AI, international cooperation, chip manufacturing, scalable AI, and the future of ecosystems of AI agents.

Hype Cycle for Artificial Intelligence, 2023 Smart Robots Generative Al Responsible Al Neuromorphic Computing Prompt Engineering Foundation Models Artificial General Intelligence Synthetic Data Expectations Decision Intelligence ModelOps AI TRISM Operational Al Systems Composite Al Data-Centric Al Computer EdgeAl Al Engineering Al Simulation Causal Al Cloud AI Data Labeling Services Knowledge Graphs and Annotation Neuro-Symbolic Al Multiagent Systems Intelligent Applications Autonomous Vehicles First-Principles Al Automatic Systems Al Maker and Teaching Kits Peak of Inflated Innovation Trough of Slope of Plateau of Trigger **Expectations** Disillusionment **Enlightenment** Productivity **Time** Plateau will be reached: 5 to 10 years more than 10 years less than 2 years 2 to 5 years O obsolete before plateau As of July 2023 gartner.com Gartner. © 2023 Gartner, Inc. and/or its affiliates. All rights reserved. 2079794

GenAl Tools are Booming

There's something for everyone...

Text, Audio, and Visual Generation



Chat GPT

tGPT



Meta

Llama

Anthropic Claude



Microsoft Bing

Enterprise Tools



IBM WatsonX



Bard

Google

Bard

Microsoft Copilot



Adobe Sensei



ChatGPT Enterprise



GitHub Copilot X

07

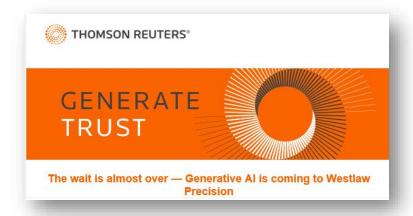
Most CLOs believe that artificial intelligence (AI) will have a positive impact on the profession

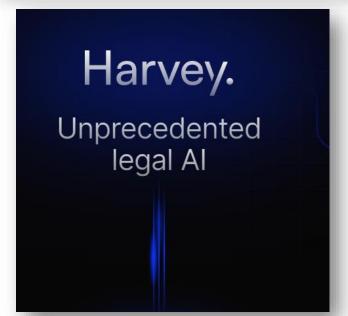
Sixty-seven percent of CLOs believe that AI will have a "mostly positive" or "somewhat positive" impact on the in-house legal profession. The legal applications identified with the most potential to benefit from AI are in document analysis (35 percent) and drafting documents (28 percent). However, sentiment toward AI varies greatly by industry, with 77 percent of CLOs in the IT and professional services industries having a positive outlook, while only 52 percent in the education industry are positive.



Al Legal Tools

The Market Is Expanding





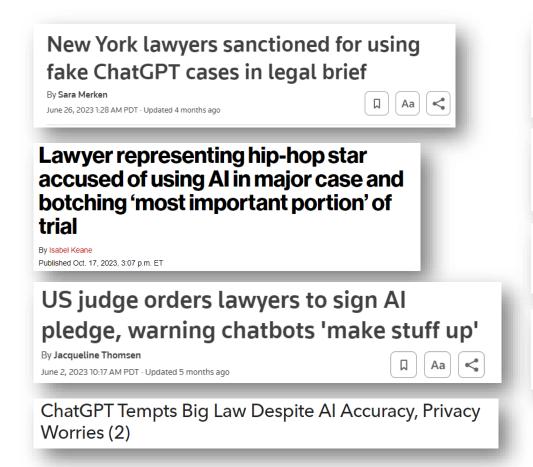




Al that searches, summarizes, and drafts for you using the most trusted, authoritative content from LexisNexis*

AI And Lawyers

In The Headlines



NY Lawmakers Eyeing Rules for Admitting AI-Based Evidence

The proposed rules of the bill state that the Al-based evidence must be supported by something other than artificially created evidence, and the independent evidence must be admissible under the existing rules of evidence. It is still seeking a sponsor in the Senate.

More judges, lawyers confront pitfalls of artificial intelligence

Another US judge says lawyers must disclose AI use

Texas Judge's Mandate on Generative Artificial Intelligence Provides Lawyers Job Security ... For Now

Ethical Responsibilities

ABA Model Rules

Duty of Competence (Model Rule 1.1)

- Lawyers must provide "competent representation" to their clients.
- "Competent representation" includes staying informed and up to date on current technology.
- Comment 8 to Rule 1.1 says lawyers must "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]"

Duty of Communication (Model Rule 1.4)

- Lawyers must "reasonably consult" with the client about the means by which the client's objectives are to be accomplished.
- Lawyers must communicate a decision to use AI, and obtain consent from the client before AI is used.

Duty of Confidentiality (Model Rule 1.6)

- Lawyers must make "reasonable efforts" to prevent the inadvertent or unauthorized disclosure / access to client information.
- Some Al tools share data with third parties, or allow the Al vendor to train.

Duty to Supervise (Model Rule 5.1 and 5.3)

- Lawyers have an obligation to supervise lawyers and nonlawyers who assist in providing client services.
- This includes non-human AI that helps provide legal services. Is the product working? Is it accurate? How do you ensure risk is mitigated?

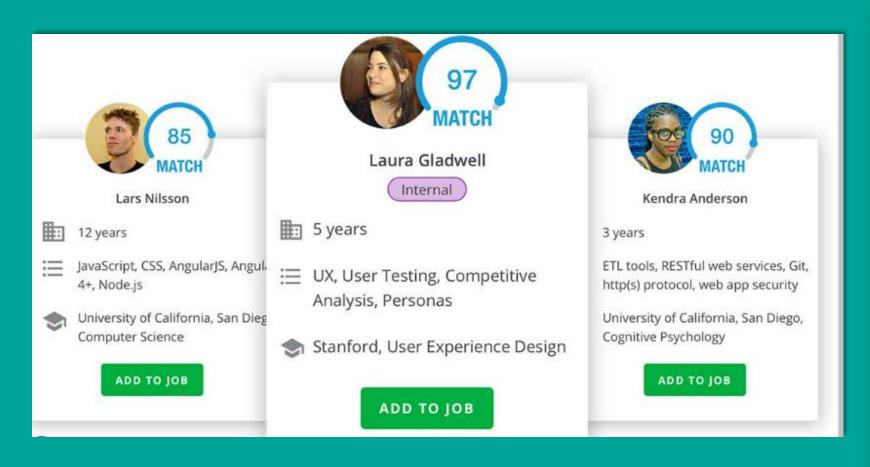


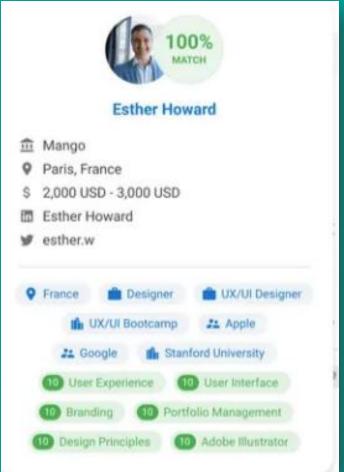
Employment Use Cases

Recent SHRM Survey



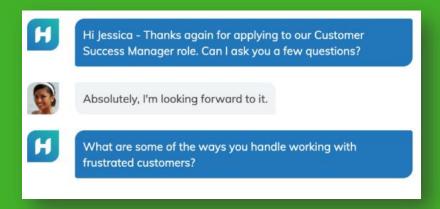
Al and Employment - Recruitment

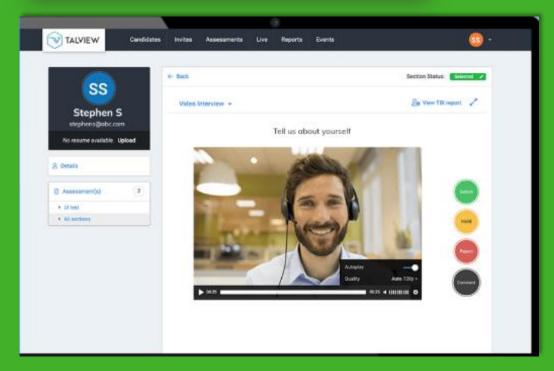




Al and Employment – Hiring







AI Risk

Limitations to Deployment

- Expertise. Lack of trained staff and data scientists can be a significant challenge to deploying Al internally and across the enterprise.
- Cost Recovery. How can the cost of deploying AI, which can be significant depending on the model and deployment, be recovered?
- Data Quality, Access, and Governance. All is only as good as the data being fed into the model. Data governance, classification, and mapping becomes critical. This process can often be overlapped with privacy and cybersecurity efforts.



The Legal Peril

Al Risks

- Lack of Transparency. Most of the generative tools on the market are a black box. You may not know how your data is being processed, or how certain outputs have been generated.
- Lack of Reliability. Current models hallucinate, create false results, and may mislead the user.
 This can present significant risk depending on the application and use.
- Cybersecurity & Privacy Risk. Data poisoning, privacy complications, and notice / consent become challenging.
- **Discrimination Risk**. Customer and HR systems under the microscope.
- Reputational Risk / Loss of Confidence. Trust is the currency of AI. Losing trust can risk significant impact to the reputation of the organization.

- Copyright Infringement. Several legal disputes are pending alleging generative tools violate federal copyright law. Where will the law land?
- Building on a House of Cards. Market consolidation can risk your own tools and strategies if tied to one particular model.
- Loss of Confidentiality, Trade Secret,
 Proprietary Information. Sharing information with
 a third-party tool may result in a loss of legal
 protection.
- Waiving Attorney-Client Privilege. Third-party tools, including Al chat assistants, may risk waiting the attorney-client privilege.



The Global Challenge

- There is a growing consensus globally about the need for coordinated AI regulation. What does that look like? Three current approaches to global AI regulation are forming.
- Risk Based Approach. This is the model being adopted in the EU AI Act, and is being followed by Canada and Brazil.
- <u>Light Touch / Market Driven</u>. This is the approach being followed by the UK and several states in the ASEAN region.
- Central Management. This approach is being driven by China, with various regulations in place that apply to Al.
- **US**. A moving target...



Federal & State Approach

Federal Approach

- Legislative. No federal Al law...yet. Senate and House are holding multiple Al hearings and learning sessions. Multiple bills pending in the Senate and House.
- Executive. White House has been leaning in with an AI bill of rights, instruction to federal agencies, and a new Executive Order issued in October 2023. NIST AI Risk Management Framework is driving the conversation. New AI risk consortium is developing strategy.
- <u>Enforcement</u>. FTC, EEOC, DOJ, CFPB are enforcing AI misuse using existing legal structures.

State & Local Approach

- <u>Legislative</u>. Multiple states are introducing rules concerning automated-decision making in sensitive areas like healthcare, employment, and processing personal information.
- **Executive**. Governors and executive agencies are issuing generative AI reports and guidance.
- <u>Enforcement</u>. Lawsuits will begin trickling in around unfair business practices, negligence, misrepresentation, and denial of services.

DRAFT RISK ASSESSMENT and

AUTOMATED DECISIONMAKING TECHNOLOGY REGULATIONS

MARCH 2024

California Example

Al Regs

- ADMT regs:
 - Any "system, software, or process" that processes PI and uses computation in whole or in part to facilitate a decision.
 - Pre-use notice required, explaining the logic used by the ADMT and the decision-making process.
 - Right to opt-out for certain types of processing.
 - Right to access information about processing.



Decoding Responsible Al

- States, regulators, and industry want to see organizations take a "responsible" or "trustworthy" approach to Al.
- OECD, DOE, NIST, White House have adopted "responsibility" or "trustworthy" frameworks.
- The Dentons Responsible Al Framework benchmarks responsibility against five key principles.
- The responsibility principles are not a **checklist** for all Al use, but rather a lens through which you can view Al risk.
- Think of a responsible AI governance framework as "brakes" to a race car.







Developing a Framework

- Strategy v. Execution. What entity will be running All strategy from a market and risk perspective, and what entity will be managing risk?
- Committee Development. Successful organizations identify an AI risk committee to drive AI risk governance processes. Key – ensure committee is cross-functional and has clear decision-making authority.
- Policy Development. Build out a "responsible" Al policy and process framework, along with subpolicies for departments depending on risk. Develop an acceptable use policy in the immediate for generative Al risk. What are the standards for HR when deploying for job applicants? Programmers for coding? Marketing for creative problem solving? IT for operational software?
- Executing on Policy. Develop processes to manage vendor risk, identify use cases, and ensure rapid decision-making.





Step #1: Map

- Understand Existing Uses. Before jumping into any policy development, it's important to understand potential use cases for AI.
- Identify Risk Tolerances. Develop a qualitative understanding of the risk tolerances depending on use cases (e.g., operational v. regulated spaces).
- Identify Areas For Efficiencies.
 Understanding current and future use cases will allow the organization to identify opportunities for efficiencies.
- Identifying New Use Cases. Having a clear pipeline of information gathering allows for continuous insight into the various use cases being proposed (e.g., ticketing system, review / approval process).

Template Responsible AI Policy

Policy Number	Department	Document Owner	Last Review Date	Next Review Date
Reference #	PO Department	PO Full Name	Last Periodic	Next Periodic
			Review Date	Review Date

OBJECTIVE

Artificial intelligence (AI) has the potential to significantly transform how [INSERT] ("Company") delivers [INSERT DESCRIPTION OF PRODUCTS AND SERVICES], enhances the productivity of its workforce, and engages in the marketplace. This Responsible AI Policy ("RAI Policy") outlines the principles upon which the Company will develop and deploy AI systems ("AI Systems").

SCOPE

This Policy applies to all Company employees, contractors, or other stakeholders who are charged with developing or deploying AI Systems within the Company ("AI Actors").

DEFINITIONS

- Artificial Intelligence (AI): An engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, or decisions influencing real or virtual environments.
- 2. [ADDITIONAL DEFINITIONS AS APPROPRIATE]

POLICY

Responsible Al Principles

The Company will adhere to the following RAI Principles when developing, deploying, or using AI Systems:

- Principle 1: Validity and Accuracy
- Principle 2: Transparency and Explainability
- Principle 3: Safety and Reliability
- Principle 4: Privacy and Security

Step #2: Responsible Al Policy

- Identify Principles. The purpose of the policy should be to identify the "responsible" or "trustworthy" principles that the enterprise will adopt when developing or deploying AI at any level.
- Explain Organizational Structure. The policy should outline the organizational structure relating to the identification of Al risk, approval of tools and, and other accountability measures.
- Leverage for External Purposes. Adopting a "Responsible Al Policy" can allow for a clear framework to be identified for internal stakeholders, and may also be leveraged for external marketing, partner, and regulatory communications.

Template Generative Artificial Intelligence Acceptable Use Policy

Policy Number	Department	Document Owner	Last Review	Next Review
			Date	Date
Reference #	PO Department	PO Full Name	Last Periodic	Next Periodic
			Review Date	Review Date

OBJECTIVE

The purpose of this Generative Artificial Intelligence ("GenAI") Acceptable Use Policy ("Policy") is to provide an outline of the "Acceptable" and "Unacceptable" uses of GenAI within the Company. The examples and information contained with this Policy are for informational purposes only. If you have any question about whether the use of a GenAI tool is acceptable under this Policy, please contact [INSERT].

BACKGROUND

GenAl is an emerging technology based in artificial intelligence ("Al") that allows users to generate new content (e.g., text, images, music, voice patterns, code, or other types of content) based on prompts and using examples learned from existing data. These types of Al models are trained on large amounts of data from various sources and use deep learning techniques to generate new content that is similar in style and structure to the original data. Common examples of publicly available GenAl tools include but are not limited to ChatGPT, DALL-E, Bing AI, BERT and LaMDA, GPT, Stable Diffusion, Midjourney, Codex, Mostly AI, and Speechify.

POLICY

When using <u>GenAl</u>, you are subject to this policy. It is the Company's policy that the only acceptable use of <u>GenAl</u> is for it to be used for general research and to assist in the preparation of content. It is not to be used to generate images or audio without approval, as a direct replacement for search engines, for output to be used as work product without proper citation, or be used to submit non-public proprietary company confidential information or breach the rights of third parties. In the end, <u>GenAl</u> is most effective when combined with human judgment and oversight. Human involvement ensures the preservation of context, accuracy, and the ability to infuse content with unique perspectives and creativity.

Step #3: Acceptable Use Policy

- Determining Strategy. A significant risk is internal use of AI without approval or guardrails. Decide whether you want to ban the use completely or outline acceptable uses and purposes.
- Be Clear. Is the use prohibited, warned against, deemed a grey area, or something in between? Employees want certainty. Certainty also allows for better training.
- Update and Train. An acceptable use policy is only as good as it is updated and trained against. This prong of a responsible Al governance program is important to identify.

AI SYSTEM IMPACT ASSESSMENT

For questions concerning specific sections within this Impact Assessment, please refer to the Impact Assessment Guide.

SECTION 1. AI SYSTEM INFORMATION

Al System Profile

1.1 COMPLETE THE AI SYSTEM INFORMATION BELOW:

System Name	
Team Name	

TRACK REVISION HISTORY BELOW:

Authors		
Last Updated		

IDENTIFY THE INDIVIDUALS WHO WILL REVIEW THE IMPACT ASSESSMENT WHEN IT IS COMPLETED:

Reviewers

Al System Lifecycle Stage

1.2 INDICATE THE DATES OF PLANNED RELEASES FOR THE AI SYSTEM:

Date	Lifecycle stage
	Planning & Analysis
	Design
	Development
	Testing
	Implementation & Deployment
	Maintenance

Step #4: Al Impact Assessment

- Deploy Early. Using an AI impact assessment process early in any review of an AI system or deployment will provide appropriate visibility into the reviewing committee.
- Customize. The AI impact assessment should be tailored for each department, use case, and stakeholder base.
- Consider Privilege. When conducting Al impact assessments, consider the impact of the attorney-client privilege and other protections.



Responsible Al In Action

Sample Vendor Diligence Questions

These questions could be sent directly as part of an Al risk assessment or tacked on to existing security or privacy questionnaires. Will this questionnaire be made a mandatory part of the procurement processes, in aligned with the responsible Al policy?

- 1. Is Al being used by the vendor as a component of the services being delivered? If so, how?
- 2. What is the underlying technology architecture supporting the vendor's use of AI? Is it powered by another company's AI, built by the vendor, or a hybrid?
- 3. Are the models the vendor is using open source or proprietary?
- 4. What types of data will be processed by the vendor through your Al models? For example, will the vendor be using our sensitive data to train their Al models?
- 5. Does the vendor have processes for identifying and mitigating risk within the AI systems they use to deliver the services?
- 6. How was the AI trained? On what data sets? How does the vendor continue to train and fine tune the AI model used?
- 7. How does the vendor improve its AI over time? How is the AI updated?
- 8. How does the vendor ensure the AI that is being used to provide services does not result in unlawful or discriminatory outcomes?
- 9. How does the vendor ensure the AI does not produce incorrect or misleading results?
- 10. How can the vendor ensure transparency around how the AI generates its outputs? Are there model cards available?
- 11. How does the vendor ensure security and privacy by design within the AI is contemplated?
- 12. Does the vendor have any internal policies, governance procedures, or standards regulating its use of AI? If so, please provide.

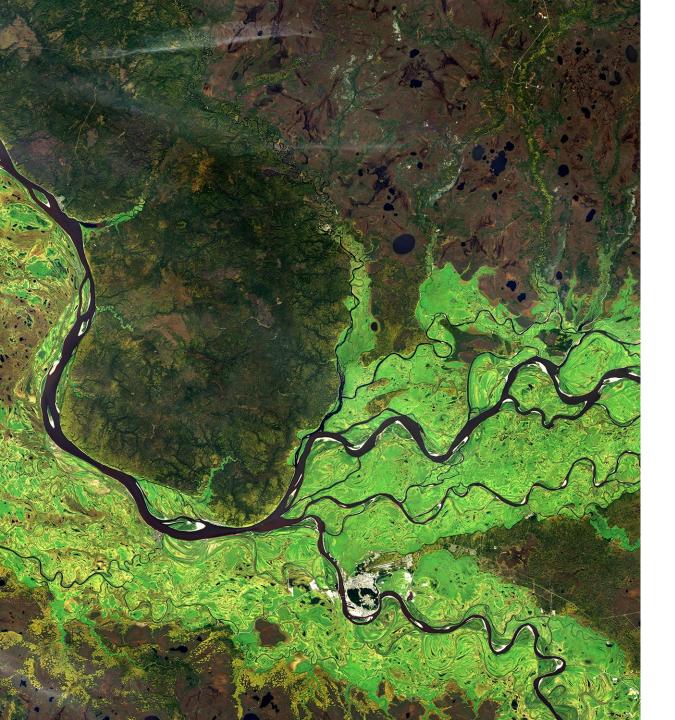


Responsible Al In Action

Sample Vendor Contract Language

- 1. Vendor has established and will maintain standard operating policies and procedures to ensure Vendor's creation, deployment, or use of artificial intelligence (AI) to provide the Services is done so in a commercially responsible and trustworthy manner ("AI Governance Procedures"). Vendor's AI Governance Procedures shall comply with all Applicable Laws, and shall align with industry best practice, including but not limited to the AI Risk Management Framework promulgated by the United States Department of Commerce's National Institute for Standards and Technology, as amended from time to time.
- 2. Vendor's Al Governance Procedures shall include, at a minimum, a repository of written policies and procedures, a formal review and approval process, a revision management process, a change control process, a risk assessment process, testing processes, acceptable tolerances for applicable Al models, decommissioning processes, ongoing monitoring and periodic review of models, and other appropriate components.
- 3. Vendor shall provide Company with appropriate documentation upon request, including where applicable information providing: (1) basic information about how the AI was developed, model date, version, type, and architecture details; (2) basic information about how the AI is trained, parameters used in the AI, and how the AI will be processing Company data; and (3) any other appropriate information to provide Company with sufficient information to analyze the risk associated with such AI.
- 4. Vendor shall not use AI to generate any content, text, audio, visual, or other material for Company without written prior approval.
- 5. Vendor will not: (1) use or disclose any information or data collected regarding Company's use of Vendor's Services to create additional data, datasets and/or use such data to teach, enhance, improve, or add to any algorithm, model, or similar automated tool owned or operated by Vendor, or make any such data available to a third party or be used for a commercial benefit to Vendor without prior written approval of Company.
- 6. Vendor shall ensure any AI used to provide the Services is designed and deployed with capabilities enabling the automatic recording of events ("AI Logs") while the AI is operating. Vendor will provide Company copies of any AI Logs relevant to the Services upon reasonable written request.



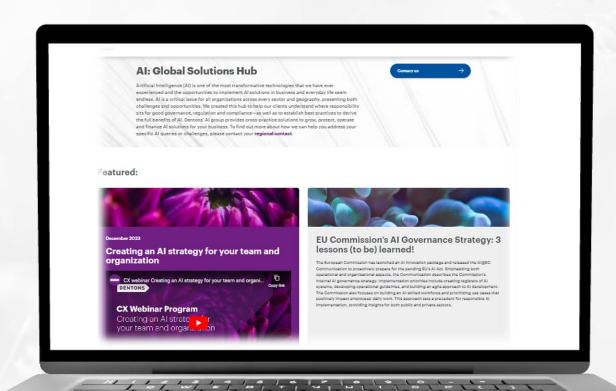


Key Takeaways

- Harness The Promise, Mitigate The Peril. Don't be afraid to leverage AI to drive market share, revenue, efficiencies. Watch out for the peril. Recognize the peril, build in guardrails.
- Map, Manage, Cultivate. The first step in the
 journey is often mapping existing use cases, future
 use cases, and where AI may have the most benefit
 to the organization. From that knowledge base,
 developing guardrails and management of risk is
 paramount. Cultivating a culture of responsible AI
 governance is also critical.
- Mitigate Immediate Risk, Build The "Brakes" For The Racecar. The immediate risks around rogue uses of AI, or tools that don't comport with legal risk should be addressed. But go deeper, and build the brakes for the race car of the future.
- Stay Informed. Commercial tools, terms, and legal standards are constantly shifting. Implementing a responsible framework now will allow you to be nimble in the future for the coming AI storm.

Al Resources - Al Global Solutions Hub

https://www.dentons.com/en/services-and-solutions/digital-solutions/all-knowledge-hubs/ai-hub







Thank you!

Dentons is designed to be different. As the world's largest global law firm with 12,500+ professionals in over 160 locations in more than 80 countries, we can help you grow, protect, operate and finance your business. Our polycentric and purpose-driven approach, together with our commitment to inclusion, diversity, equity and ESG, ensures we challenge the status quo to stay focused on what matters most to you. www.dentons.com.

© 2024 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal advice and you should not take, or refrain from taking, action based on its content. Please see dentons.com for Legal Notices.