

TECHNOLOGY & OUTSOURCING

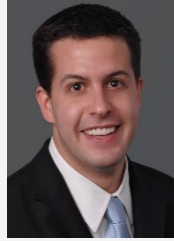
NEGOTIATING TECHNOLOGY DEALS

MAY 24, 2023

TODAY'S SPEAKERS



Marina Aronchik
Partner, Chicago



Joe Pennell
Partner, Chicago



Brad Peterson
Partner, Chicago

OUR PRACTICE

- **More than 50 lawyers** around the world are focused on helping clients **develop and manage relationships with suppliers** of critical services and technology
- Experience in **outsourcing deals** with a **total contract value exceeding \$250 billion**, including data, digital, outsourcing and software transactions
- Experience in **outsourcing, cloud and digital transformation**, including the use of emerging technologies such as **artificial intelligence, robotic process automation, customer-facing platforms, SaaS, big data** and **blockchain**, among others
- Extensive library of **tools, templates** and **best practices** for completing the legal side of technology and outsourcing transactions effectively

MARKET RECOGNITION

Chambers & Partners – Top Ranking in Technology and Business Process Outsourcing category for 17 consecutive years. In 2021 and 2022, Chambers USA ranked Mayer Brown as “band 1” in the Technology category.

The Legal 500 – Top Ranking in US Outsourcing for as long as it has ranked outsourcing lawyers and previously named us “Team of the Year.”

International Association of Outsourcing Professionals – Ranked as one of the top law firms on The World’s Best Outsourcing Advisors list for The Global Outsourcing 100™ for 10 years. In 2019, Mayer Brown was recognized in the “Top Customer References,” “Multiple Appearances” and “10 Year Club.”

Law360 – Named “Technology Practice Group of the Year” in 2016 and “Law Firm of the Year” in 2016 thru 2020.

AGENDA

1

Custom Deals

2

Cloud Deals

3

Artificial
Intelligence



FOCUS TODAY

- *Information* technology supporting a company's business
- Company's perspective as buyer, not seller
- Companies large and prosperous enough to have an ACC lawyer

CUSTOM TECHNOLOGY DEALS

TYPES

Outsourcing

- Information technology infrastructure
- Applications / Software Maintenance
- Finance operations
- Human resources operations
- Procurement operations
- Facilities management
- Industry-specific functions

Systems Integration

- Systems implementation
- Custom software development
- Data lakes / AI & analytics engines
- Product development
- Connected device integration

BENEFITS AND CHALLENGES

Typical Benefits to Secure

- Faster
- Better
- Cheaper
- Safer
- Easier

Typical Challenges to Address

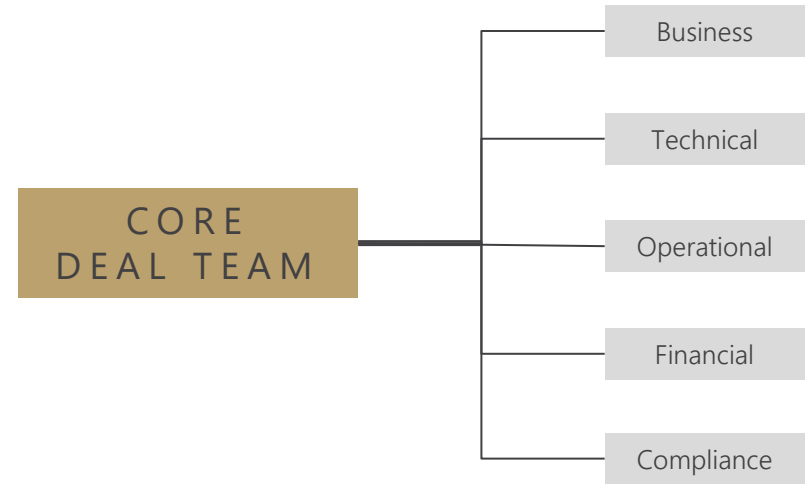
- Uncertainty
- Complexity
- Loss of control
- Managing change
- Exit



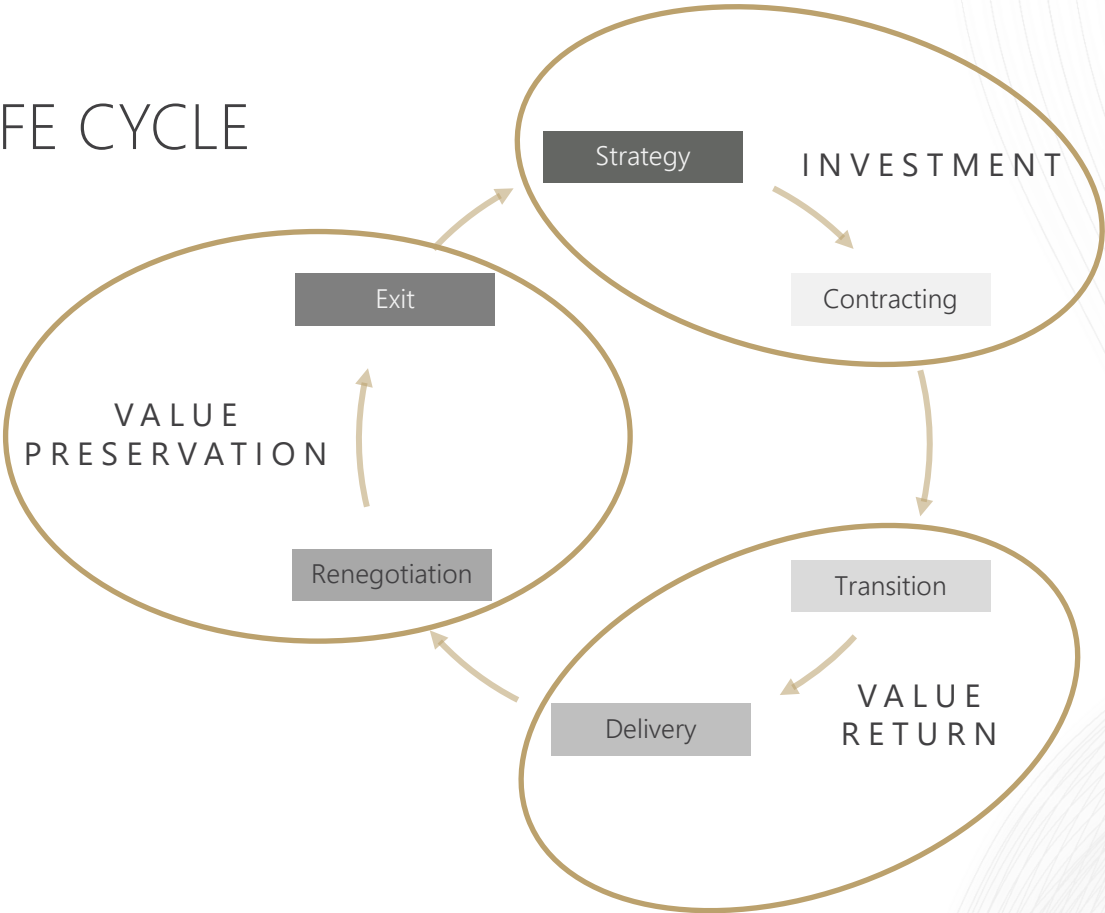
CONTRACTING

- Commonly on customer-form agreements
- Often in a competitive / collaborative (“negotiauction”) process
- Complexity, care and customization as needed to solve the underlying business problem

STAKEHOLDERS



DEAL LIFE CYCLE





THE CONTRACT LAWYER'S TOOLKIT

COMMITMENTS

OPTIONS

INCENTIVES

ALIGNMENT

PRICING APPROACHES

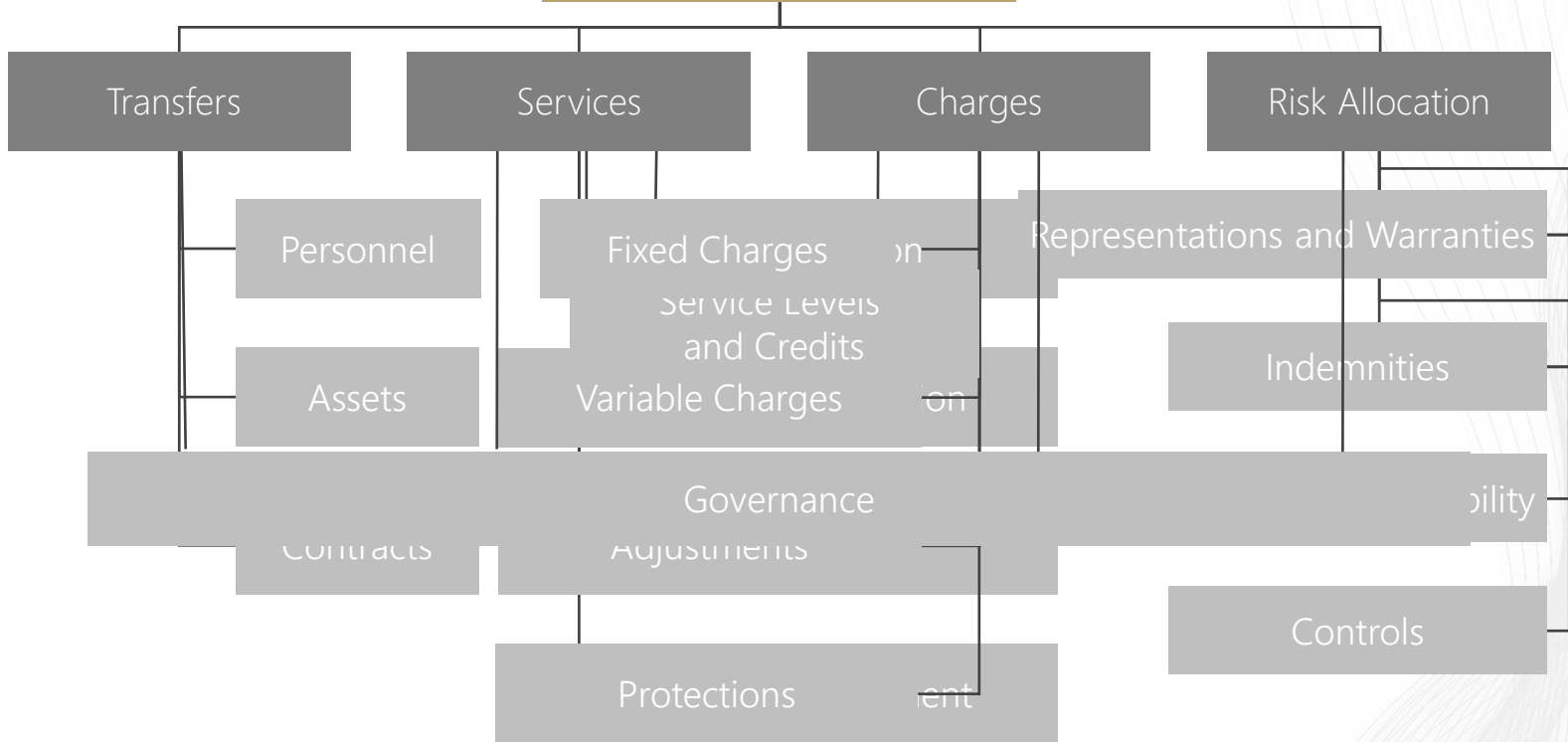
RESOURCES

CAPACITY

OUTPUTS

OUTCOMES

AGREEMENT



CLOUD AND AS A SERVICE (XAAS) DEALS

BENEFITS AND CHALLENGES OF CLOUD/XAAS

Typical Benefits

- Potential for large cost savings
- Scalable
- Exciting new capabilities

Typical Challenges

- Missing critical capabilities
- Reduced Customer control/customization of solution
- Reduced Supplier contracting flexibility



CLOUD/XAAS CONTRACTING

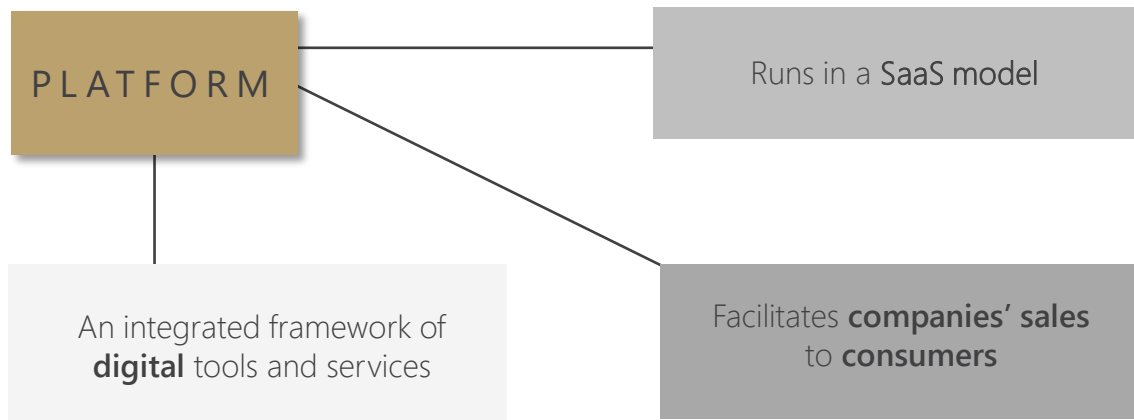
- Likely on Supplier form agreements
- Legal gap analyses against your minimum requirements
- Consider operational approaches to mitigating risk

KEY RISKS AND ISSUES IN NEGOTIATING CLOUD/XAAS AGREEMENTS

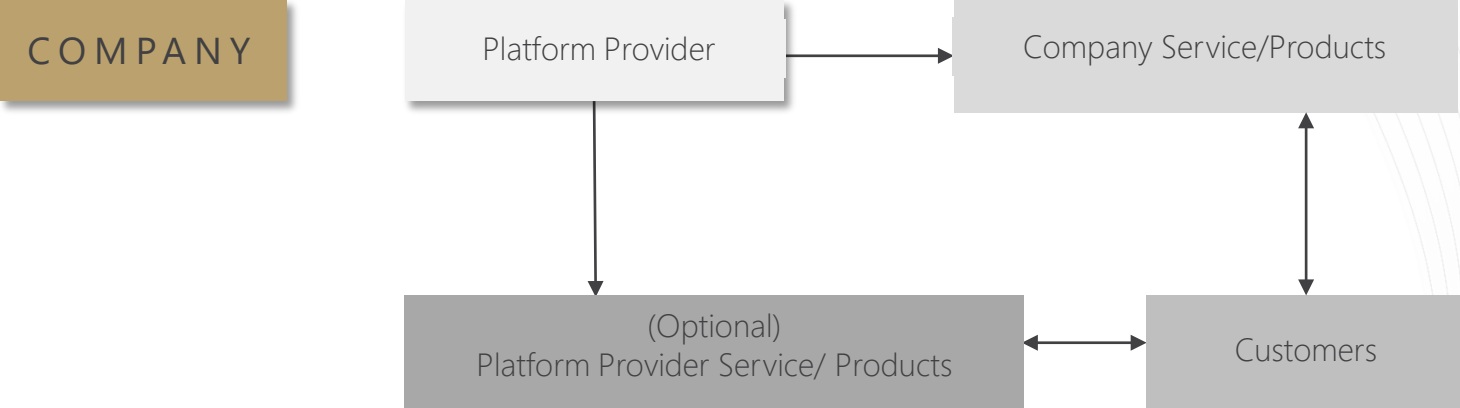
- Changes to the services
- Changing URL T&Cs
- SLAs
- Compliance with laws
- Data rights
- Subcontractors
- Data security and privacy
- Liability
- Supplier financial condition
- Termination rights
- Disengagement services

DIGITAL PLATFORM DEALS

WHAT IS A DIGITAL PLATFORM?



EXAMPLE PLATFORM COLLABORATION AGREEMENT



HOW DO PLATFORM COLLABORATIONS DIFFER FROM TRADITIONAL TECH SERVICES?

- Platform providers perform front-office, revenue-generating, customer-facing functions (not back-office functions).
- Platform services shape customer experiences.
- The customer's use of the platform may create an independent customer-platform provider relationship (deal-dependent).
- Platform providers are more likely to be highly leveraged start-ups.



KEY RISKS AND ISSUES IN NEGOTIATING PLATFORM AGREEMENTS

- Control over the digital platform
- Scope, pricing and service levels
- Customer complaints
- Compliance with laws
- The platform decisioning process
- Antitrust, non-competition and exclusivity
- Trademarks and branding
- Data rights
- Developed IP
- Agency
- Subcontractors
- Data security and privacy
- Liability
- Platform provider financial condition
- Termination rights
- Disengagement services
- Control of the customer relationship

ARTIFICIAL INTELLIGENCE:
NEGOTIATING DEALS WITH AI PROVIDERS

AI AND GENERATIVE AI



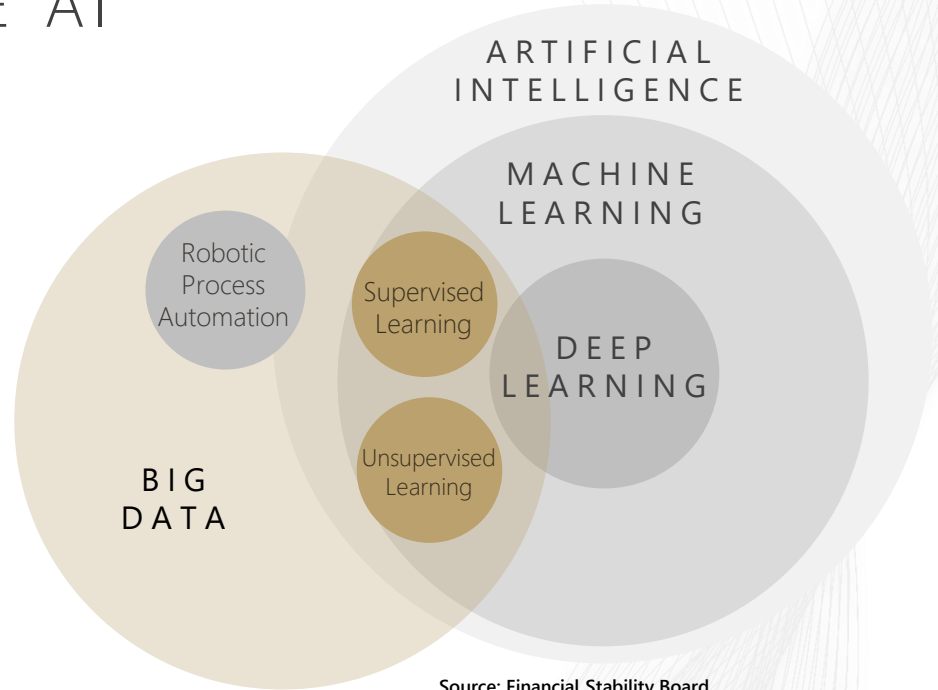
Microsoft announces new A.I.-powered Bing homepage that you can chat with

Microsoft held a press event on Tuesday where it announced new AI-powered updates to its Bing search engine and Edge browser.



The Creator of ChatGPT Thinks AI Should Be Regulated

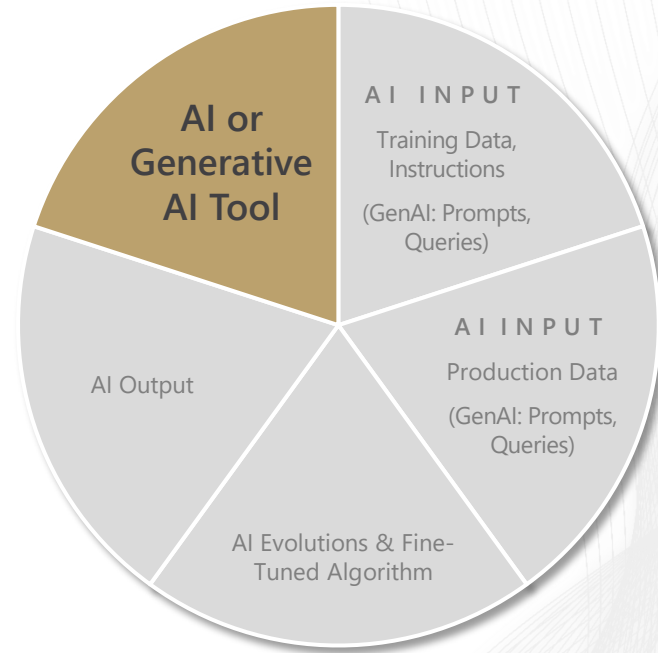
Murati spoke to TIME about ChatGPT's biggest weakness, the software's untapped potential, and why it's time to move toward regulating AI.



Source: Financial Stability Board

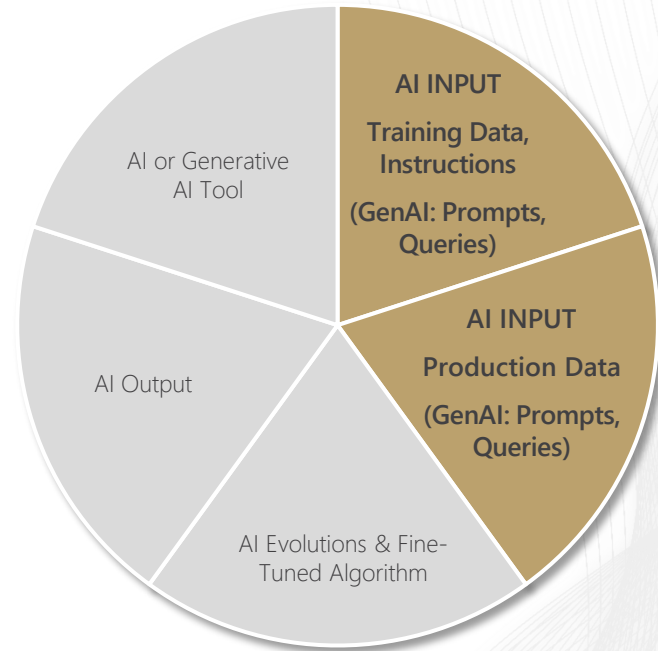
AI TOOL

- Scope of permitted use
- Unique challenges in negotiating compliance with specifications and other representations and warranties
- GenAI:
 - Unique risk of IP infringement based on training data. Potential impact on the AI tool and Output
 - Accuracy / hallucinations

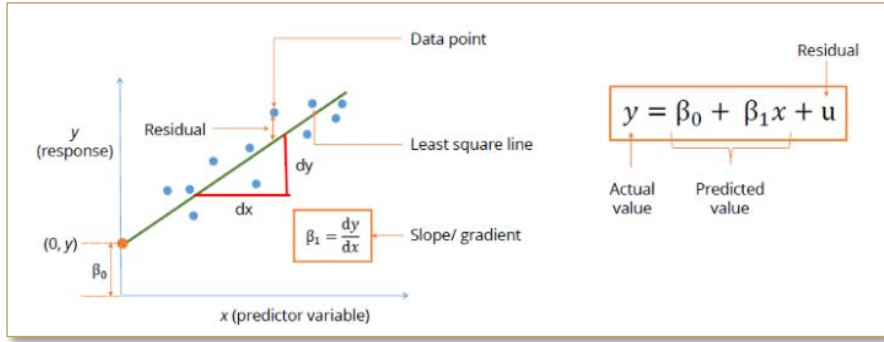


AI INPUT

- The scope of “Customer Data” should include prompts, queries and instructions, in addition to data uploaded to an AI tool
- Allocation of rights between the parties
 - Watch out: Supplier’s right to use input to improve the services (including the AI tool)
- If adding a license or subscription to an AI tool to an existing agreement, existing DPA and cybersecurity terms may not apply.
 - Watch out: Prohibitions against use of PII and PHI



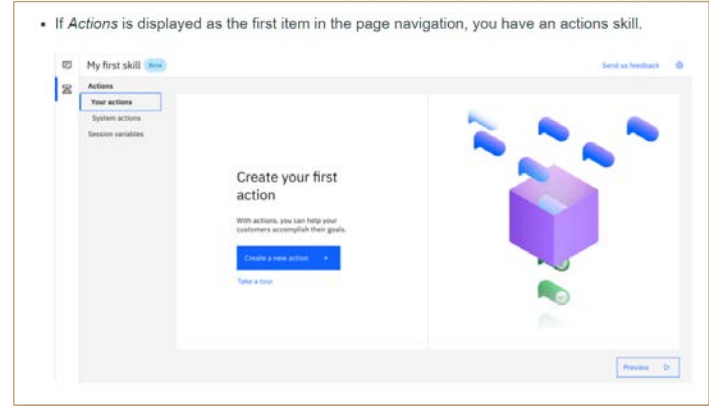
AI EVOLUTION; FINE-TUNED ALGORITHM



Source: <https://towardsdatascience.com/machine-learning-general-process-8f1b510bd8af>

Key issues:

- Protection of customer data
- Protection of valuable IP and competitive advantage



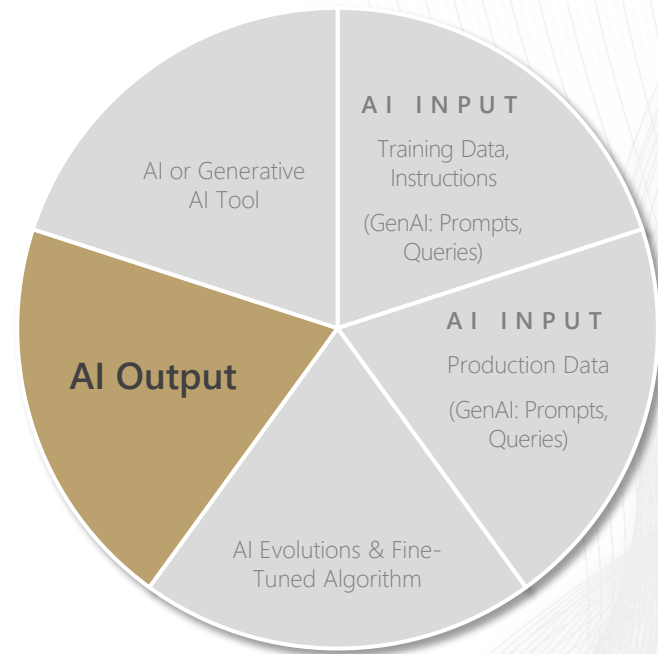
```
saver = tf.train.Saver()
with tf.Session() as sess:
    saver.restore(sess, "/Users/Shiina/summ/model-500000")
    print('weight:', sess.run(w))
    print('bias:', sess.run(b))

weight: -56.0719
bias: 98.3029
```

Source: <https://stackoverflow.com/questions/44901834/tensorflow-in-android-linear-regression>

AI OUTPUT

- IP laws protect results of human (not machine) labor
- AI blurs the lines between creator, tool and creation
- Contractual rights are critical
- Trade-secret protection is key (in lieu of, or in addition to, patents)
- GenAI:
 - Key concern with the allocation of risk for IP infringement.



UNIQUE OPPORTUNITY FOR ACC LAWYERS

PROCUREMENT SUPPORT

- **Review** contractual terms with AI providers
- Diligence and correct vendors' **"background"** use of AI
- Revise **procurement templates** to account for AI

COMMERCIAL/PRODUCT COUNSELING

- Develop **clear guidelines** for use of AI and GenAI
- **Educate** business teams on contractual terms with AI providers
- Revise **product and service agreement templates** to account for AI and GenAI

- Establish **active communication** with regulatory, IP, privacy, and cybersecurity teams
- Develop **training materials** and guidance
- Monitor for **new developments!**

Q&A



Mayer Brown's Tech Talks Podcast is designed to keep you up-to-date on the latest trends happening in data, digital, outsourcing and software. Just 20-30 minutes long, each podcast session provides insight on legal issues relating to technology transactions and touches on relevant and timely topics.



LEARN MORE

Topics Include:

- Generative AI
- Open Source
- Outsourcing Contracts
- Cloud
- Data Licensing



REGISTER HERE!

Date

Thursday, September 14, 2023

Location

Mayer Brown Chicago Office



Brad L. Peterson

Partner, Chicago

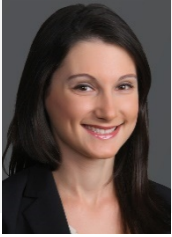
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Overview

Brad Peterson is a partner in Mayer Brown's Chicago office. He leads Mayer Brown's global Technology Transactions practice. Brad's practice focuses on helping clients reduce cost, improve operations, innovate and increase revenue through services and license agreements with technology providers. His experience includes information technology outsourcing (ITO) and business process outsourcing (BPO); cloud services such as IaaS, PaaS, and SaaS; platform and marketplace services; data licensing and data monetization projects; and core systems modernization, ERP and other software licensing, development and integration transactions. Brad's experience includes projects in emerging technologies such as artificial intelligence (AI), robotic process automation (RPA), and blockchain and other distributed ledger technologies (DLTs).

[View full profile.](#)



Marina G. Aronchik

Partner, Chicago

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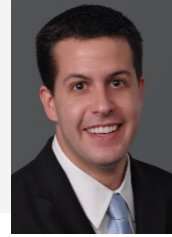
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Overview

Marina Aronchik is a partner in Mayer Brown's Chicago office. She is a member of the Technology Transactions practice.

Marina advises leading companies on critical technology and sourcing agreements. Her practice focuses on data, digital services, outsourcing, and software transactions, with particular emphasis on structuring and negotiating agreements with digital services providers, including SaaS, IaaS, and other "as a Service" deals. Marina's experience includes global IT, business process, and facilities management outsourcing, software development and licensing, ERP, robotic automation (RPA), and artificial intelligence (AI) deals.

[View full profile.](#)



Joe Pennell

Partner, Chicago

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Overview

Joe Pennell is a partner in the Technology Transactions practice. Joe focuses his practice on digital transformation and outsourced services transactions, including with respect to customer-facing digital platforms, hyperscale cloud, SaaS, ERP, blockchain, artificial intelligence (AI), machine learning (ML), robotic process automation (RPA), the Internet of Things (IoT), software licensing and implementation, and the outsourcing of finance and accounting services, IT infrastructure services and support, managed network services, application development and maintenance and facilities management.

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FIRM OVERVIEW

OUR GLOBAL FOOTPRINT

PARTNERS **#** | **#** COUNSEL & ASSOCIATES

1881

Founded in

1,800+

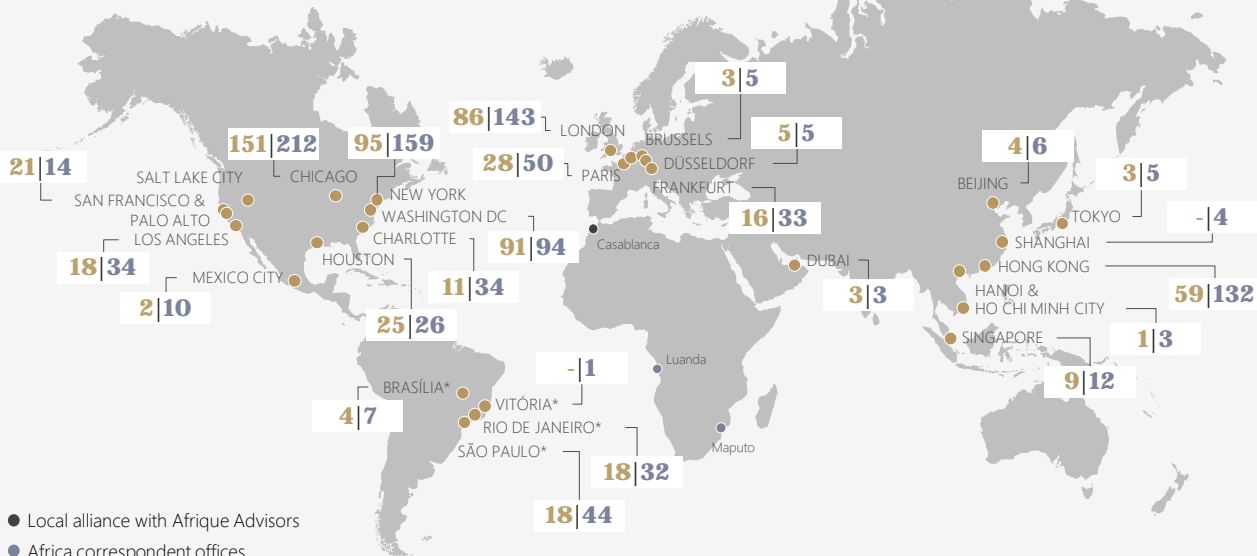
Lawyers

26

Offices Worldwide

38

Languages



With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy.



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