

Data Privacy Considerations Amidst the AI Storm

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Introductions



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Agenda

1. Understanding AI
2. Legal & Ethical Issues With AI Use
3. AI Reg Landscape & Emerging Issues
4. Career Opportunities
5. Q&A

Understanding AI

AI:

- Smart computer systems; perform tasks that normally require human intelligence.

Machine Learning (ML):

- Trains models on labeled datasets.

GenAI:

- AI models with capability to generate new content or data that mimic human-like outputs.

Large Language Models (LLMs)

- Designed to understand context, grammar, and nuances in language.

Differences between traditional AI, Generative AI, and General AI

Traditional AI systems may analyze data, make predictions or identify patterns.

Generative AI goes a step further by creating novel outputs based on its training and inputs.

General AI or Artificial General Intelligence (AGI) is a theorized AI that can match or exceed human capabilities in a wide range of cognitive tasks.

Legal Issues With AI Use: Data Privacy

- Data **privacy laws (discussed also below)**:
 - notice,
 - consent,
 - data subject rights
- Biometric data:
 - State **biometric laws** may require express written consent.

Legal Issues With AI Use: Vendor Due Diligence

Vendor Due Diligence is critical to choosing an AI solution.
Best practices include:

- Vendor **questionnaires** and third-party risk assessments
- AI **impact assessment** framework
- Review vendor's **AI policies**
- **Cybersecurity** policies

Legal Issues with AI Use: **M&A Considerations**

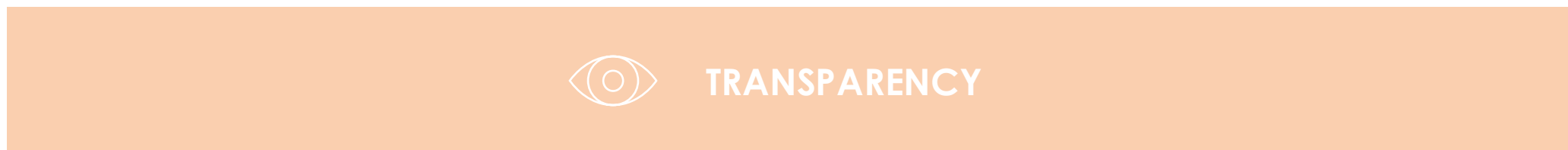
- Representations and warranties
- Indemnifications
- Ownership and licensing
- Data usage
- Liability and insurance
- Compliance with Regulations

Ethical Issues with AI Use: **MRPC**



- ABA Model Rule 1.1: Competence
- ABA Model Rule 1.5: Fees
- ABA Model Rule 1.6: Confidentiality of Information
- ABA Model Rule 5.1 and 5.3: Supervisory Responsibilities, including Regarding Nonlawyer Assistance
- ABA Model Rule 7.1: Communications Concerning a Lawyer's Services
- ABA Opinion 512: The start of ABA's GenAI guidance

Governance – Principles



AI Regulatory Landscape and Emerging Issues

- EU AI Act:
 - Effective by summer **2026**
 - **Broad extraterritorial effect**; applies to the sale and use of AI systems in, or affecting individuals located in, the EU.
 - **Risk-based approach**: prohibited risk AI systems; high risk AI systems; transparency risk AI systems; and general purpose AI systems.

- Colorado AI Law:
 - SB 24-205 would impose risk-based rules on the use of AI.
 - **Not limited to Colorado businesses.**
 - Purpose is to address the risks of algorithmic discrimination.
 - Separate AI notices are a likely consequence.

Emerging AI Regulatory Landscape

➤ Biden's AI Executive Order:

- Establishes new AI standards.
- Directs government entities to take certain actions over a 12-month period.
- Expansion of **O-1A** visas for persons of extraordinary ability.
- Updates on STEM fields on the **J-1** visa for periods of up to 36 months.

Emerging IP Issues

- Brand protection/Right of publicity
 - Deepfakes
 - Sponsorship/endorsement
- Trade secrets
 - Reasonable measures
 - Ease of reverse engineering
 - Improper means
- Copyright
 - Protectability of datasets
 - Protectability of input/outputs
 - Fair use

New Career Opportunities Amidst the AI Storm

- Lawyers should consider how AI will impact their work and job prospects.
- New job families created around legal operations and use of AI; for example: Chief AI Officer, Chief Innovation Officers; or Chief Tech Officers.
- Entrepreneurial opportunities.

Q & A

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