



PROGRAM MATERIALS

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Artificial Intelligence: Positives and Pitfalls

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Artificial Intelligence: Positives and Pitfalls.

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Celesq CLE

Disclaimer

The information is not meant to constitute legal advice or establish an attorney-client relationship.

The information presented is not meant to constitute legal advice. Given the dynamic nature of the subject matter, participants are encouraged to review the latest information on state bar websites, case law, government websites and other reputable websites.

Overview

- GenAI Explanation and Government Standards
- Cybercriminal Attacks and Defenses Involving AI
- BREAK
- ABA Advisory Opinion & What Different Courts are Requiring
- Professional Responsibility Considerations and Different State Examples

GenAI Explanation & Government Standards

NOTE: With the change in Administration came a change in AI Policy through Executive Orders.

Standards & Regulations to Know

- NIST
- FIPS
- ISO
- Industry Laws and Regulations (HIPAA, FTC Act Section 5, GDPR, EU AI Act)



NIST CSF 2.0

NIST DEFINITION(S) of Artificial Intelligence

- “A branch of computer science devoted to developing data processing systems that performs functions normally associated with human intelligence, such as reasoning, learning, and self improvement.”
- “The capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement.”

See American National Standard Dictionary of Information Technology (ANSDIT) - ANSI INCITS 172-220 (R2007).

NIST DEFINITION OF ALGORITHM

A clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.

- Sources: NIST SP 800-107 Rev.



— The U.S. Department of Commerce’s National Institute of Standards and Technology (NIST) has released its *Artificial Intelligence Risk Management Framework (AI RMF 1.0)*, a guidance document for voluntary use by organizations designing, developing, deploying or using AI systems to help manage the many risks of AI technologies.

NIST AI
Framework

ISO Definition – Generative AI

“[G]enerative AI, which differs from traditional AI in its capabilities and application. While **traditional AI** systems are primarily used to analyse data and make predictions, **generative AI** goes a step further by creating new data similar to its training data.”

www.iso.org

Trusted AI (TAI) Model



ISO AI Framework

Blueprint for an AI Bill of Rights

- Five Principles
 - (1) Safety and effectiveness
 - (2) *Algorithmic discrimination protections*
 - (3) *Data privacy*
 - (4) Notice and explanation
 - (5) Human alternatives, consideration and feedback

<https://bidenwhitehouse.archives.gov/ostp/ai-bill-of-rights/#:~:text=To%20advance%20President%20Biden's%20vision,or%20access%20to%20critical%20needs>. (last visited February 6, 2025)

What is Data Scraping?

- Data scraping, which may be legal or illegal, is the process of utilizing software to extract swaths of valuable data, usually from a website or across multiple websites.

DATA Monetization

- Data monetization is a business capability where an organization can create and realize value from data and artificial intelligence (AI) assets. A value exchange system built on data products can drive business growth for your organization and gain competitive advantage. This growth could be internal cost effectiveness, stronger risk compliance, increasing the economic value of a partner ecosystem, or through new revenue streams. Advanced data management software and generative AI can accelerate the creation of a platform capability for scalable delivery of enterprise ready data and AI products.
- Source: IBM

AI -

<https://www.techtarget.com/searchenterpriseai/feature/Attributes-of-open-vs-closed-AI-explained>

- | | |
|--|---|
| <ul style="list-style-type: none">• Open Source• In an open AI approach, the code is made publicly available, often as open source software. | <ul style="list-style-type: none">• Legal/Proprietary/Closed AI• In a closed AI approach, the code is kept private. |
|--|---|

Open versus Closed AI Explained

Comparing open and closed AI

	Open AI	Closed AI
MODELS	Publicly available, architecture shared	Kept private, protects proprietary information
DATA	Transparent training, data sharing	Training data specifics often kept secret
CODE	Publicly available, open source code	Closed source code, not publicly disclosed
DEVELOPMENT CYCLES	Slower due to scrutiny and collaboration	Faster development cycles, improved security
EASE OF USE	Has potentially less support services and infrastructure	Infrastructure and support services provided
CONTROL	Community collaboration, innovation	More internal control over systems
COMMERCIAL BENEFITS	Shared innovation	Maintains competitive edge, commercial benefits
SCRUTINY	Broader community identification of problems	Limited to internal resources for identification
RECRUITMENT	Attracts innovative developers	May attract developers seeking proprietary work
BIAS IDENTIFICATION	Transparency in training sources	Difficult to identify bias due to lack of transparency
SCALABILITY IMPROVEMENTS	Collective innovation accelerates scalability	Closed models may need to rely on internal efforts

What is ChatGPT?

- “ChatGPT is an AI chatbot with natural language processing (NLP) that allows you to have human-like conversations to complete various tasks. The generative AI tool can answer questions and assist you with composing emails, essays, code, and much more.”
- WSJ, “The release of OpenAI’s ChatGPT late November triggered a new global race in artificial intelligence. In March, the company’s AI model, GPT-4, which it used to update ChatGPT’s capabilities.”

OpenAI's ChatGPT-4.

- “GPT-4 is more creative and collaborative than ever before. It can generate, edit, and iterate with users on creative and technical writing tasks, such as composing songs, writing screenplays, or learning a user’s writing style.”

Common Instructions GPT-3.5 versus GPT-4.0

- GPT-3.5

- **Input**

- Andrew is free from 11 am to 3 pm, Joanne is free from noon to 2 pm and then 3:30 pm to 5 pm. Hannah is available at noon for half an hour, and then 4 pm to 6 pm. What are some options for start times for a 30 minute meeting for Andrew, Hannah, and Joanne?

- **Output**

- Here is a list of their availability: - Andrew: 11 am to 3 pm - Joanne: noon to 2 pm, and 3:30 pm to 5 pm - Hannah: noon to 12:30 pm, and 4 pm to 6 pm Based on their availability, there is a 30-minute window where all three of them are available, which is from 4 pm to 4:30 pm. So, the meeting can be scheduled at 4 pm. (Source: <https://openai.com/index/gpt-4/>)

- GPT-4

- **Input**

- Andrew is free from 11 am to 3 pm, Joanne is free from noon to 2 pm and then 3:30 pm to 5 pm. Hannah is available at noon for half an hour, and then 4 pm to 6 pm. What are some options for start times for a 30 minute meeting for Andrew, Hannah, and Joanne?

- **Output**

- Andrew: 11 am - 3 pm
- Joanne: 12 pm - 2 pm, 3:30 pm - 5 pm
- Hannah: 12 pm - 12:30 pm, 4 pm - 6 pm
- Common availability for a 30-minute meeting: 12 pm - 12:30 pm

Custom instructions for ChatGPT

- We're introducing custom instructions so that you can tailor ChatGPT to better meet your needs. This feature will be available in beta starting with the Plus plan today, expanding to all users in the coming weeks. Custom instructions allow you to add preferences or requirements that you'd like ChatGPT to consider when generating its responses.
- We've heard your feedback about the friction of starting each ChatGPT conversation afresh. Through our conversations with [users across 22 countries](#), we've deepened our understanding of the essential role steerability plays in enabling our models to effectively reflect the diverse contexts and unique needs of each person.
- ChatGPT will consider your custom instructions for every conversation going forward. The model will consider the instructions every time it responds, so you won't have to repeat your preferences or information in every conversation.
- For example, a teacher crafting a lesson plan no longer has to repeat that they're teaching 3rd grade science. A developer preferring efficient code in a language that's not Python – they can say it once, and it's understood. Grocery shopping for a big family becomes easier, with the model accounting for 6 servings in the grocery list. (Source: <https://openai.com/index/custom-instructions-for-chatgpt/>)

Samples

- What would you like ChatGPT to know about you to provide better responses? I work on science education programs for third-grade students.
- How would you like ChatGPT to respond? When discussing potential solutions for work-related items, present the information in a table format, outlining the pros and cons of each option—allowing for easier comparison and decision-making.
-

Biden Administration AI Executive Orders

- On October 30, 2023, the Biden Administration released Executive Order (E.O.) 14110 on *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*. It establishes government-wide effort to guide responsible artificial intelligence (AI) development and deployment through federal agency leadership, regulation of industry, and engagement with international partners.
- Subsequently, Executive Order 14141, Advancing United States Leadership in Artificial Intelligence Infrastructure, which included ensuring the development of domestic AI infrastructure was issued.

Trump Administration AI Executive Orders

- **Leaves** Executive Order Executive Order 14141 intact.
- **Rescinds** Executive Order 14110.
- **Issued** “Removing Barriers to American Leadership in Artificial Intelligence”
 - For the purposes of this order, “artificial intelligence” or “AI” has the meaning set forth in 15 U.S.C. 9401(3).

Cybercriminal Attacks and Defenses Involving AI.

Cybercriminal Attacks

UK's National Cyber Security Centre - Being able to trust what we consume online is a problem that's been exacerbated by the growth of artificial intelligence (AI).

Whilst AI systems have the potential to bring many benefits to society, the widespread availability of AI and machine learning tools – including generative models and deepfake technologies – means anyone can create or modify data (so text, images, voice or video) with minimal effort, low cost, and increased realism.

Cybercriminal Attacks

- Our US Colleagues in the National Security Agency (NSA) are today publishing [introductory guidance on Content Credentials](#), which we and other international cyber security partners endorse. This is an important, but embryonic, topic.
- The proliferation of generative AI tools is already being used to impersonate, clone and deceive people and systems. The implications could be wide ranging, such as amplifying the lack of trust in data and media, reputational damage, or helping criminals to create more convincing spear-phishing cyber attacks. In December 2024, the [FBI warned](#) of the use of AI by cyber criminals using generative AI to create documents and images to share with victims in private communications that they were speaking to a real person, rather than a criminal actor.

Cybercriminal Defenses – CISA's AI Roadmap

- CISA will use AI-enabled software tools to strengthen cyber defense and support its critical infrastructure mission.
- CISA will assess and assist secure by design, AI-based software adoption across a diverse array of stakeholders.
- CISA will assess and recommend mitigation of AI threats facing our nation's critical infrastructure in partnership with other government.
- CISA will contribute to DHS-led and interagency processes on AI-enabled software.
- CISA will continue to educate our workforce on AI software systems and techniques.

QUESTION: How does this relate to attorneys, their clients and the adoption and deployment of AI?

BREAK

ABA Advisory Opinion & What Different Courts are Requiring.

ABA Advisory Opinion 501 (April 2022)

- Provides guidance on client solicitation and the meaning of "solicitation" in the Rules of Professional Conduct:
- [Formal Opinion 501](#) addresses Rule 7.3(b), as amended in 2018, which defines client solicitation and includes the general prohibition against live, person-to-person solicitation of legal services where a significant motive is "pecuniary gain." The new formal opinion also considers solicitation in the context of Model Rules 8.4(a) and 5.3, which together extend a lawyer's responsibility for solicitation not only to actions carried out by the lawyer directly but also to persons employed by, retained by or associated with the lawyer under certain circumstances.
- In explaining the need for the new guidance, the opinion said that despite changes four years ago to Rule 7.3, "**ambiguity remains concerning a lawyer's ethical responsibility for the lawyer's actions and for the actions of others** who engage in live, person-to-person solicitation with specific individuals."
- "Traditionally, lawyers often have obtained new clients because the firm's existing clients tell their friends, business colleagues or family members about positive lawyer-client experiences. Many of these communications do not fall within the Rule 7.3 definition of 'solicitation.'"

ABA Advisory Opinion 512 (July 29, 2024)

Generative Artificial Intelligence Tools

*To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties **to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.***

Areas Identified in ABA 512

- Competence
- Confidentiality
- Supervision
- Duty of Candor to Courts and Clients Alike
- Reasonable Fees

Q: Does ABA Opn. 512 disapprove of lawyers using GenAI?

A: No, the opposite.

“As GAI tools continue to develop and become more widely available, **it is conceivable** that lawyers **will eventually** have to use them **to competently complete certain tasks** for clients.” (p. 5)

Applying ABA 512's guidance to open and closed AI

Comparing open and closed AI

	Open AI	Closed AI
MODELS	Publicly available, architecture shared	Kept private, protects proprietary information
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DEVELOPMENT CYCLES	Slower due to scrutiny and collaboration	Faster development cycles, improved security
EASE OF USE	Has potentially less support services and infrastructure	Infrastructure and support services provided
CONTROL	Community collaboration, innovation	More internal control over systems
COMMERCIAL BENEFITS	Shared innovation	Maintains competitive edge, commercial benefits
IDENTIFICATION OF PROBLEMS	Broader community identification of problems	Limited to internal resources for identification
ATTRACTING DEVELOPERS	Attracts innovative developers	May attract developers seeking proprietary work
BIAS IDENTIFICATION	Transparency in training sources	Difficult to identify bias due to lack of transparency
SCALABILITY IMPROVEMENTS	Collective innovation accelerates scalability	Closed models may need to rely on internal efforts

Supervision

Client consent

Billing

Verification of output

Train with your/client data

Ethical walls



“May it please the Court . . .”

Standing Orders Requiring Disclosure of GenAI Use

- N.D. Tex. – Local Rule 7.2(f) – Disclosure of Use of Generative Artificial Intelligence.
 1. A brief prepared using generative artificial intelligence must disclose this fact on the first page under the heading “Use of Generative Artificial Intelligence.” If the presiding judge so directs, the party filing the brief must disclose the specific parts prepared using generative artificial intelligence.
 2. “Generative Artificial Intelligence” means a computer tool (whether referred to as “Generative Artificial Intelligence” or by another name) that is capable of generating new content (such as images and text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples.
 3. A party who files a brief that does not contain the disclosure required by subsection (f)(1) of this rule certifies that no part of the brief was prepared using generative artificial intelligence.
- W.D.N.C. Standing Order In Re: Use of Artificial Intelligence
- N.D. Cal., Hon. A. Martinez-Olguin
- E.D. Penn Hon. M. Baylson

Standing Orders Barring Use Of GenAI

- S.D. Ohio, Hon. M. Newman

Professional Responsibility Considerations & Different State Examples.

Marketing, billing, supervision, competence, protecting client data.

Ethical Rules

ABA Model Rules of Professional Conduct	Texas Disciplinary Rules of Professional Conduct	
1.1	1.01	Competence
1.4	1.03	Communication
1.6	1.05	Confidentiality
1.15	1.14	Duty to Safeguard Client Property
1.16	1.15	Terminating Representation
4.4	4.04	Respect for the Rights of Third Persons
5.1	5.01	Responsibilities of a Partner or Supervisory Lawyer
5.2	5.02	Responsibilities of a Subordinate Lawyer
5.3	5.03	Responsibilities Regarding Nonlawyer Assistance

Client-Lawyer Relationship

Rule 1.1 Competence

A lawyer shall provide **competent representation** to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the **benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Professional Rules of Responsibility

- Generative AI Practical Guidance – California
- “A lawyer's professional judgment cannot be delegated to generative AI and remains the lawyer's responsibility at all times. A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing.”

AI Considerations

- “When using AI for marketing and client solicitation, professionals, particularly lawyers, must prioritize ethical considerations like transparency, data privacy, and accuracy, ensuring they do not make misleading claims or engage in deceptive practices by utilizing AI tools without proper disclosure to potential clients; **this includes clearly informing clients if they are interacting with an AI system rather than a human representative.**”

New York Report & Recommendations (April 2024)

- The task force report ticks through now-familiar “AI ethics” topics such as the duty of technology competence, confidentiality of data fed into AI technologies, and the need to communicate AI use with clients. Also mentioned are reminders that AI-driven marketing tools cannot be used to deliver deceptive advertising to prospective clients.
- **Attorney competence.** Lawyers have an ethical duty to understand the risks, benefits, and ethical implications associated with the use of artificial intelligence.
- **Scope of representation.** Lawyers should disclose in the client engagement letter that artificial intelligence technologies may be used in representation of the client.
- **Diligence.** Lawyers should consider whether artificial intelligence will, in fact, improve representation of client’s interests.
- **Communication.** Lawyers, when communicating with clients, must not rely solely on content generated by artificial intelligence.
- **Advertising.** Communications with the public must be truthful and non-deceptive – including communications generated by artificial intelligence technologies.
- **Solicitation and recommendations.** Lawyers should not use artificial intelligence technologies to engage in robo-calling or other forms of client solicitation.

New York Report (Part 2)

- **Legal fees.** The use of, or failure to use, artificial intelligence during representation of the client is a factor in determining whether fees charged are reasonable.
- **Confidentiality.** Lawyers should adopt safeguards to protect client information supplied as inputs to artificial intelligence technologies. Lawyers should seek client consent for sharing client confidential information with artificial intelligence technologies. Lawyers should obtain assurances from artificial intelligence technology vendors that their technologies will protect client confidential information.
- **Independent professional judgment.** Lawyers should maintain independent judgment on client matters, and should not rely exclusively on output from artificial intelligence technologies.
- **Unauthorized practice of law.** Artificial intelligence technologies should augment – not replace – lawyer’s independent professional judgment.
- **Conflicts of interest.** Lawyers should identify and address any conflicts of interest that may result from use of artificial intelligence technologies.
- **Supervisory responsibilities.** Supervising lawyers have a duty to ensure that subordinates adhere to ethical rules when using artificial intelligence technologies.
- **Task force report authors remarked that ethical guidance in the report will likely be refined as the legal profession gains greater experience using AI technologies in practice. The recommendations in the [task force report were adopted April 6](#) by the New York State Bar Association’s House of Delegates.**

California – State Bar of California’s Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law

Confidentiality (Rules 1.6 and 1.8.2, Bus.& Prof. Code § 6068)

Competence and Diligence (Rules 1.1 and 1.3)

Duty to Comply with the Law (Rules 1.2.1 and 8.4, Bus.& Prof. Code § 6068)

Supervision of Lawyers and Nonlawyers (Rules 5.1 and 5.3)

Responsibilities of Subordinate Lawyers (Rule 5.2)

Communication/Disclosure to Clients (Rules 1.2 and 1.4)

Billing for GenAI-Assisted Work (Rule 1.5, Bus. & Prof. Code § § 6147-6148)

Candor to Tribunal and Meritorious Claims (Rules 3.1 and 3.3)

Prohibition on Discrimination, Harassment, and Retaliation (Rule 8.4.1)

Professional Responsibilities Owed to Other Jurisdictions (Rule 8.5)

Key Takeaways from Cal. Bar's Practical Guidance

- ❑ Guiding principles rather than “best practices”
- ❑ Anonymize client info before inputting into GenAI tool and ensure that “the provider does not share inputted information with third parties or utilize the information for its own use in any manner, including to train or improve its product.”
- ❑ “A subordinate lawyer must not use generative AI at the direction of a supervisory lawyer in a manner that violates the subordinate lawyer’s professional responsibility and obligations.”
- ❑ Lawyers can charge for actual time spent utilizing GenAI in provision of legal services (examples: “crafting or refining generative AI inputs and prompts” and “reviewing and editing generative AI outputs.”)
- ❑ Ultimately “a lawyer’s professional judgment cannot be delegated to generative AI and remains the lawyer’s responsibility at all times.”

North Carolina – 2024 Formal Ethics Opinion 1: Use of Artificial Intelligence in a Law Practice

“Whether the lawyer is reviewing the results of a legal research program, a keyword search of emails for production during discovery, proposed reconciliations of the lawyer’s trust account prepared by a long-time assistant, or a risk analysis of potential borrowers for a lender-client produced by an AI process, the *lawyer is individually responsible* for reviewing, evaluating, and ultimately relying upon *the work produced by someone—or something—other than the lawyer.*”

N.C. Formal Ethics Opinion 1: Ensuring Client Confidences Are Protected

In-house tools:

- “While an in-house program may seem more secure because the program is maintained and run using local servers, those servers may be as much if not more vulnerable to attack because a lawyer acting independently may not be able to match the security features typically employed by larger companies.”
- Program may nonetheless “be derivative of a single, publicly available AI program; as such, some of these customized programs may continue to send information inputted into the firm-specific program back to the central program for additional use or training.”
- Suggests consulting information technology and/or cybersecurity experts to ensure adequate protection of client data stored on local servers.

Publicly available tools:

- “Generally, and as of the date of this opinion, lawyers should avoid inputting client-specific information into publicly available AI resources.”

AI Applications in Legal Marketing

5 Ways AI is Being Utilized in Legal Marketing

- Content writing
- Image creation
- Law firm videos
- Data analysis and search
- Customer Service

What this [article](#) leaves out – ETHICS and PROFESSIONAL CONSIDERATIONS. What if the content is a hallucination? What if data scraping is involved?

ABA Article – “Say Yes to Robots: AI in Legal Marketing.” (Oct. 2017)

- Those of us involved in technology marketing strategy and communications are struggling to understand what the true impact of AI will be on our respective companies and clients, and on the technology-based products and services they provide.
- New AI applications in legal research, contracts management or e-discovery may fundamentally change the value proposition.
- For those AI solutions, marketers and communications teams must strive to effectively educate prospects and customers on the nature of artificial intelligence, separating the rumors from facts.
- Marketers of legal technology are able to put AI technology in proper perspective for an audience of legal industry workers concerned that AI technology could eliminate their jobs.

ABA Article – cont.

- **AI in suggestion marketing.** With AI, marketing applications can sift through large volumes of data to determine patterns and trends. For years we have used CRM tools, databases and SQL queries to confirm hunches or to pull targeted lists for cross-selling campaigns. With the help of AI, manual data analysis is greatly reduced or eliminated. AI identifies patterns that categorize target groups by areas of interest, allowing marketing teams to promote personalized solutions, products or programs to highly targeted audience segments. Well-known uses that come to mind here are Amazon’s “Recommendations for You” and “Customers who bought this item also bought...” features. These are examples of data-driven suggestion marketing. Amazon tracks search, browser and shopping cart actions, as well as actual purchases by millions of shoppers. The site analyzes and aggregates customer actions on the site and uses data patterns to make relevant recommendations to a visitor, based on their browsing activity.
- In the legal arena, applications in document management, legal research and litigation management are using AI to help professionals quickly find relevant information, organize it and make decisions about cases, resources and budgeting.

ABA Article (cont.)

- **AI in content recommendation.** Marketing professional services and technology rests on sharing high-quality content with prospective clients. Content recommendation engines help personalize the lead nurturing process, resulting in a natural progression of the user's experience and offering increasingly useful content based on their browsing and download history. Marketing automation platforms like HubSpot and Marketo can accomplish the recommendation process within a site. Tools in this category use machine learning and predictive analytics to identify and tag available content on the website to feed recommendations. For content-heavy sites, and those who seek to push topical content to publishing sites, recommendation engines provide targeting and management of content recommendations that you see on page borders of third-party media and publication websites, often labeled "related articles."
- In legal services or technology, content recommendation systems can find themes and topics of interest for a site visitor; the selection of a paper on multi-language e-discovery, for example, might spur the engine to recommend articles or papers on GDPR, translation or forensic data collection.

Essentials of AI- Powered Content Creation

Google's Gemini AI Vulnerable to Content Manipulation

- Like ChatGPT and other GenAI tools, Gemini is susceptible to attacks that can cause it to divulge system prompts, reveal sensitive information, and execute potentially malicious actions.
- In a new study, researchers at HiddenLayer found they could manipulate Google's AI technology to — among other things — generate election misinformation, explain in detail how to hotwire a car, and cause it to leak system prompts.
- "The attacks outlined in this research currently affect consumers using Gemini Advanced with the Google Workspace due to the risk of indirect injection, companies using the Gemini API due to data leakage attacks ... and governments due to the risk of misinformation spreading about various geopolitical events," the researchers said.

<https://www.darkreading.com/cyber-risk/google-gemini-vulnerable-to-content-manipulation-researchers-say>

Deepfakes could be Arbitration's Next Gen AI Shake-Up

- What if it turns out that the video, which was touted as incontrovertible evidence, is fake and Gen AI generated?
- “Deepfakes — AI-generated videos that create convincing audio and video hoaxes — aren't easily detected by the untrained eye. They can be so convincing that a person's accent, patterns of speech and mannerisms can be perfectly mimicked. And, experts say, the cost to create them is not as high as one might think.
- As of right now, the issue of deepfakes appears to have gotten lost in a deeper morass of how the legal profession should approach other generative AI technologies, like ChatGPT. Although many arbitral institutions have begun providing guidelines on how parties and counsel should approach chatbots like ChatGPT, the specific issue of deepfakes doesn't appear to be on most people's radars.”

Using AI-Powered Chatbots and Virtual Assistants for Lead Generation and Client Interaction

Items for Consideration

- First, begin with what are my ethical and legal obligations.
- Second, as this [article](#) indicates:
- AI chatbots differ because there is no human quality control over the chats. An AI chatbot can be given directions, but similar to a human, there is a chance it will not follow them. Even worse, it can decide what to respond with, resulting in made-up or inaccurate information.
- The terminology is easy to mix up because we can say chatbot and refer to a tool like ChatGPT, or we can say chatbot and refer to something like your live chat on your website.
- In one example of AI misbehavior, it tells people to break the law, which you can read more about in the article on [Reuters](#). Now imagine if your law firm used an AI chatbot and it gave out inaccurate legal advice that caused harm to a potential client or a current client. What would the potential repercussions be? Would the state bar take action against your firm? Could it cause damage to your brand or business? Is the risk worth it? We think not at this stage.
- Privacy is the first concern for an AI-powered chat on your website that communicates with potential clients. If the chatbot is not isolated from the company behind it, then the information being put into it could be used to train specific models. If you use the retail version of ChatGPT, it can use anything you input to train the model, which means if a person's private information was entered, it could show up in the wild later.

AI-Powered Data Analytics and Reporting – Explained

AI Generated Analytics

- AI generates analytics by using machine learning and other AI techniques to analyze data and identify patterns, which can then be used to make predictions and inform decision-making:
- **Data collection:** AI tools can ingest data from multiple sources.
- **Data preparation:** AI can clean and organize data for analysis.
- **Pattern identification:** AI models can be trained to identify patterns in data.
- **Prediction:** AI can use historical data to predict future trends and outcomes.
- **Trend interpretation:** AI can help analysts interpret trends and insights.

Automating Routine Marketing Tasks: Key Steps to Take

Items for Consideration

- Is the technology making the particular process more or less efficient?
- When I have a human check the information, is it accurate, are client confidences preserved, and do I understand how the software and algorithm works?
- [Note taking – are you discussing client confidences, settlement strategies?]
- [Other common tools – like automating contract preparation or financial disclosures?]

Understanding the Potential **Challenges - and Dangers -** of Using AI for Legal Marketing

Bias can be negative or positive.

- Example of a positive bias: the smell of apple pie reminds me of my grandma.
- Example of a negative bias: The Clery Act defines a *bias* incident as an incident or act performed based on a negative opinion or attitude toward a group of persons based on race, ethnicity, national origin, gender, gender identity, sexual orientation, religion, and disability.
 - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act, signed in 1990, is a federal statute codified at 20 U.S.C. § 1092, with implementing regulations in the U.S. Code of Federal Regulations at 34 CFR 668.46.
 - The **Clery Act** is a consumer protection law that aims to provide transparency around campus crime policy and statistics.

AI – THE UGLY

- *Doe v. eviCore Healthcare MSI, LLC*, No. 22-530-CV, 2023 WL 2249577 (2d Cir. Feb. 28, 2023). The Second Circuit was faced with the novel legal theory that use of flawed artificial intelligence systems can constitute a “worthless service” for purposes of FCA liability.
- **NEW YORK, June 22 (Reuters)** - A U.S. judge on Thursday imposed sanctions on two New York lawyers who submitted a legal brief that included six fictitious case citations generated by an artificial intelligence chatbot, **ChatGPT**. U.S. District Judge P. Kevin Castel in Manhattan ... found the lawyers acted in bad faith and made "acts of conscious avoidance and false and misleading statements to the court."
- **Jan. 2023** - The Justice Department announced today that it has reached a key milestone in its settlement agreement with Meta Platforms Inc. (Meta), formerly known as Facebook Inc., **requiring Meta to change its advertisement delivery system to prevent discriminatory advertising in violation of the Fair Housing Act (FHA). As required by the [settlement](#) entered on June 27, 2022, resolving a [lawsuit](#) filed in the U.S. District Court for the Southern District of New York, Meta has now built a new system to address algorithmic discrimination.** Today, the parties informed the court that they have reached agreement on the system’s compliance targets. This development ensures that Meta will be subject to court oversight and regular review of its compliance with the settlement through June 27, 2026.

Additional “Uglies”

- Copyright and other IP infringement
- Unlawful use of sensitive data without consumer, patient, or investor consent
- Greater exposure to cyber attacks
- Stored Computer Act and Related Laws Associated with Unauthorized Access of Data.
- Biometrics.

What's on the Horizon? Legal Marketing Trends With AI.

What does the future hold?

- More refinement of the technologies.
- More State Bars providing guidance or updates to existing professional rules.
- Holograms.

GenAI, ESI, & E-Discovery

Apply Lessons Learned from TAR*

SHARED CHARACTERISTICS

- Machine learning
- Offers efficiencies and cost-savings when dealing with large quantities of data
 - Vendor and model selection
 - Greater acceptance over time

ACTION ITEMS

- Update ESI protocols and protective orders
- Address data retention and deletion of input (esp. for continual training models)
- Prepare procedures for reviewing and verifying output

* **TAR** = technology assisted review

More Re: Protective Orders

Model Rule 1.6(c) – lawyer’s duty to protect client confidences from unauthorized access or disclosure.

Assess specific models – LLM v. RAG (retrieval-augmented generation)

Consider requiring certification from counsel that all reasonable steps have been taken to scrub your client’s data from system/model at case conclusion.

Keep an eye on court standing orders.

Refs.: Sedona Conference, EDRM (Electronic Discovery Reference Manual)

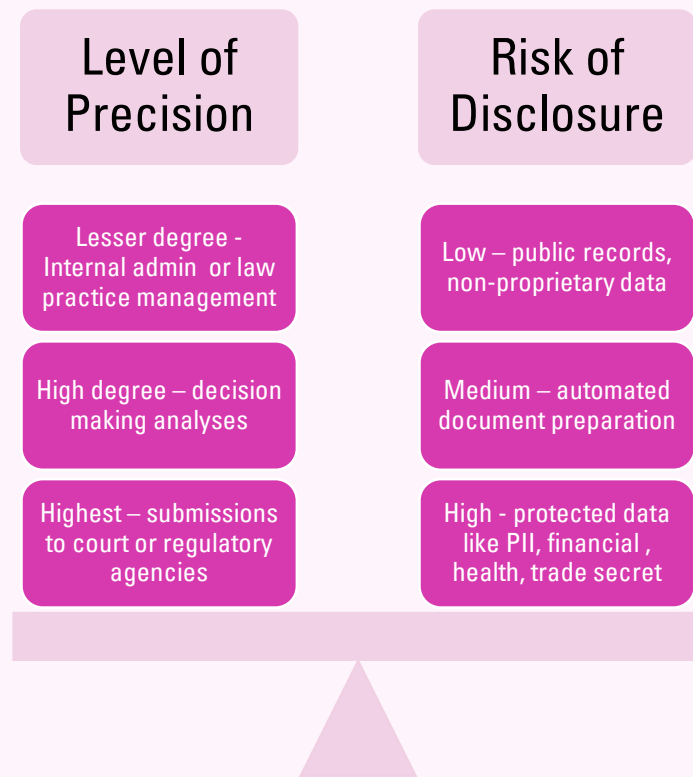
Fees & Other Charges

ABA Opn. 512:

State Bar Guidance re Fees

Jurisdiction	Guidance	Disclosure /Fee Agreement
New Mexico Rule 16-105	If “a task is rendered more efficient by using the Generative AI tool employed, the lawyer must only use the time the lawyer actually spent on the given task to calculate their fee and not include the time saved by the use of the tool. ” State Bar of New Mexico Opn. 2024-004.	<input checked="" type="checkbox"/>
California Rule 1.5, Bus. & Prof. Code, §§ 6147-6148	“A lawyer may use generative AI to more efficiently create work produce and may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs).” State Bar of CA Practical Guidance for Use of GenAI.	<input checked="" type="checkbox"/>
North Carolina Rules 7.1, 8.4(c), and 1.5(a)	“If the use of AI in Lawyer’s practice results I greater efficiencies in providing legal services, Lawyer may enjoy the benefit of those new efficiencies by completing more work for more clients; Lawyer may not inaccurately bill a client based upon the ‘time-value represented’ by the end product should Lawyer not have used AI when providing legal services.” N.C. Bar 2024 Formal Opn. 1.	<input checked="" type="checkbox"/>
Pennsylvania	“AI has tremendous time-saving capabilities. Lawyers must, therefore, ensure that AI-related expenses are reasonable and appropriately disclosed to clients.” Joint Opn. of Pennsylvania Bar Assoc. and Philadelphia 2024-200.	<input checked="" type="checkbox"/>

Weighing Your Options



Conclusion

Concluding Thoughts

- Ethics matter.
- Implement the Five Factors from the BluePrint
- Be mindful of hallucinations and inaccurate information.
- Understand how the application that your firm is using works.
- Double check your insurance policy to confirm whether or not AI liability is covered.

Thank You & Questions

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