Checklist

Strategies for Navigating Artificial Intelligence (AI) Legal Risks

Contributed by Richik Sarkar, Dinsmore & Shohl

Bloomberg Law

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Generative artificial intelligence (AI) and machine learning can revolutionize how businesses operate. AI can undoubtedly enhance decision-making, boost efficiency, and strengthen aspects of data security. However, moving too quickly without adequate planning can create pitfalls in the face of evolving legal frameworks and operational risks. Companies must carefully balance the benefits of AI integration with proactive management of potential legal complications and uninsured liabilities.

Legal counsel guides responsible AI use in this rapidly evolving AI landscape. Legal professionals empower innovation by staying current on regulations, understanding the technology's potential risks, and collaborating across teams while proactively safeguarding the company from risk. This checklist explores critical AI risk areas, offering practical guidance for legal teams and strategies to promote effective corporate governance.

Understanding AI & the Regulatory Landscape

AI systems often advance faster than existing regulations, making compliance complex. Inconsistent definitions across the US and elsewhere further complicate matters. Proactive attorneys, executives, and boards must consider the following:

☐ **US Landscape**: Monitor **federal guidelines** and any relevant **state-level regulations** specific to the company's areas of operation.

☐ **Global Standards**: Remain aware of influential international regulations like the **EU's AI Act**, particularly for companies with global operations.

☐ **Industry-Specific Regulations**: Proactively research any regulations emerging within the company's specific industry (e.g., finance, healthcare).

Core AI Risks With Legal Implications

Addressing multiple compliance regimes also requires comprehensive **risk management**, as increased regulation generates increased enforcement and litigation. Accordingly, it is essential for companies using AI to be conscious of potential **legal risks**, including:

☐ **Data Privacy & Security**: Mishandling or unauthorized use of data within AI systems can result in severe legal and financial repercussions due to state, international, and other data protection law **violations**. Prioritize robust data security and regular audits to ensure your AI systems are authorized to utilize the data your decisions rely upon.

☐ **Bias & Discrimination**: If AI models reflect ingrained biases, they can lead to discriminatory actions. Developing mechanisms for identifying and mitigating **bias** is crucial, primarily when AI is used in sensitive applications.

☐ **Cybersecurity Vulnerabilities**: AI systems introduce additional potential entry points for cyberattacks. Integrate AI-specific **security measures** within broader cybersecurity strategies.

☐ **Intellectual Property Issues**: Carefully assess **ownership and licensing rights** for AI-generated content or inventions. Consult specialized legal assistance if necessary.

☐ **Contractual & Product Liability**: Ensure **contracts** with AI vendors address risk allocation. Be prepared to handle potential legal challenges related to AI-powered products and services.

The AI 'Goldilocks' Zone

Companies need to find the optimal "just right" level of AI adoption—not too little, not too much. Underutilization means missed opportunities, while overreliance invites unnecessary risk. Legal counsel can aid decision-making by:

- ☐ **Defining Risk Tolerance**: Work with the **board** to establish acceptable risk levels related to AI integration.

- ☐ **Pilot Projects**: Thoroughly evaluate AI applications in controlled environments before wide-scale deployment.

To that end, boards and management—working through counsel to ensure the attorney-client privilege can be appropriately deployed to protect these strategies—should manage AI risks through comprehensive **corporate governance** practices, including:

- ☐ **AI Risk Assessments**: Partner with IT and operations teams for thorough risk assessments combining technical, legal, and ethical considerations.

- ☐ **Education & Training**: Mandate AI awareness training across management and legal teams, specifically outlining risk identification and regulatory updates.

- ☐ **Explainable AI (XAI)**: Promote using XAI models where applicable to enhance **transparency** and support compliance efforts.

- ☐ **Robust AI Policies**: Develop policies and procedures governing AI development, procurement, and deployment. Ensure alignment with overall company policies.

- ☐ **Insurance Review**: Regularly evaluate insurance coverage and identify potential gaps where AI-related liabilities might exist.