

ACC Houston AI + Business Technologies Practice Group

Let's Get Practical: How Your Colleagues Are Using AI Ethically Today

Rich Harper | Scott Nelson
Baker Botts LLP
June 25, 2025 | Houston, TX

Agenda

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What Is Artificial Intelligence ?

“AI is everywhere, but it can be hard to define.” -- Charlotte Hu, Popular Science Magazine (Feb. 5, 2023).

Some definitions of “artificial intelligence” to consider:

“It is the science and engineering of making intelligent machines, especially intelligent computer programs.” -- John McCarthy

– OR –

“The use or study of computer systems or machines that have some of the qualities that the human brain has, such as the ability to interpret and produce language in a way that seems human, organize or create images, solve problems, and learn from data supplied to them.” -- Cambridge English Dictionary

– OR –

“The theory and development of computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.” -- Oxford Reference Dictionary

AI Overview

Artificial Intelligence (“AI”): The field of computer science dedicated to solving cognitive problems commonly associated with human intelligence, such as understanding language, recognizing patterns, and making decisions.

Model: A mathematical or logical representation of a real-world process. It's a way for computers to learn patterns from data. Once trained on this data, the model can make predictions or decisions without being explicitly programmed to perform the task.

Trainable Parameters: Any given model has many “trainable parameters,” which are numbers that can be adjusted during the training process so that the output of the model aligns with expected outputs.

Modern implementations of Artificial Intelligence (“AI”) —at the highest level—consist of:

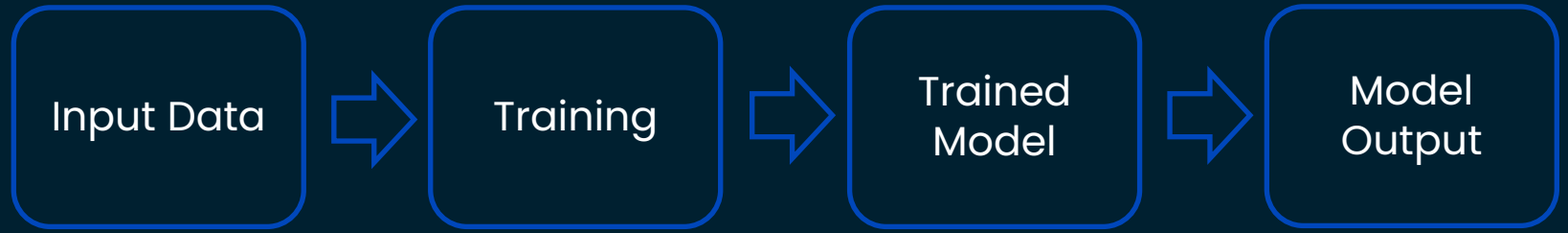
Pattern Recognition

+

Pattern Prediction

Legal Issues generally arise out of what **input data** are being utilized to find patterns and/or how the **output** predictions are used.

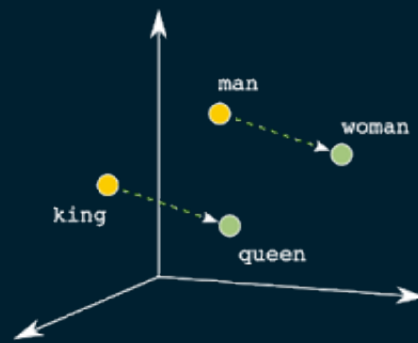
Artificial Intelligence Training Pipeline



Data are provided that contain patterns. These patterns are recognized during the training process.

All learned knowledge encapsulated in a trained model is derived from input data.

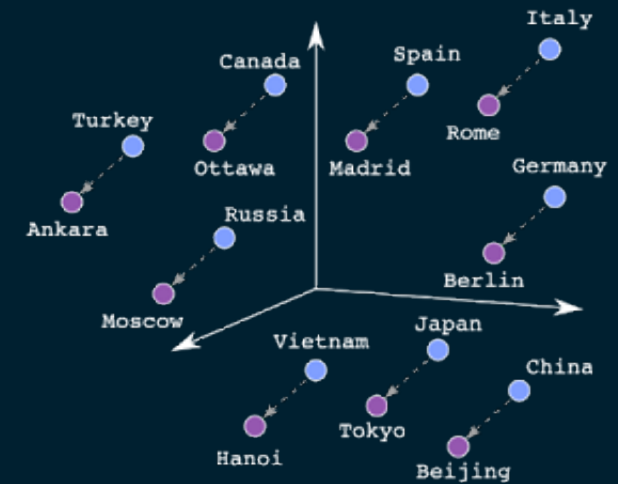
Data are often represented in mathematical vectors which are easily read by a computer and enable the input of varying real-world data types.



Male-Female

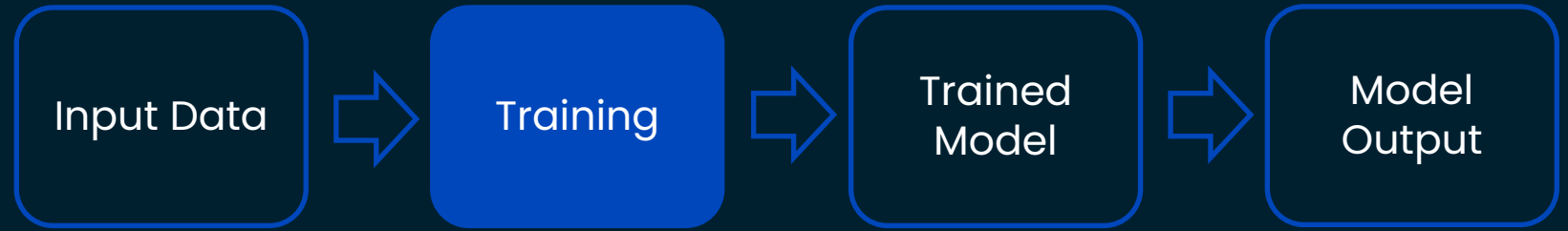


Verb Tense



Country-Capital

Artificial Intelligence Training Pipeline

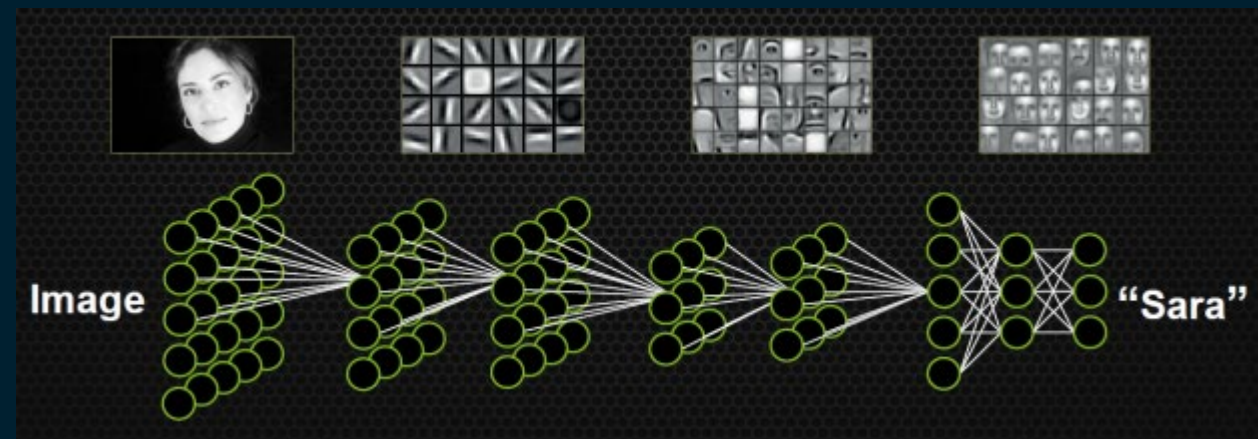


Choosing a Model Architecture

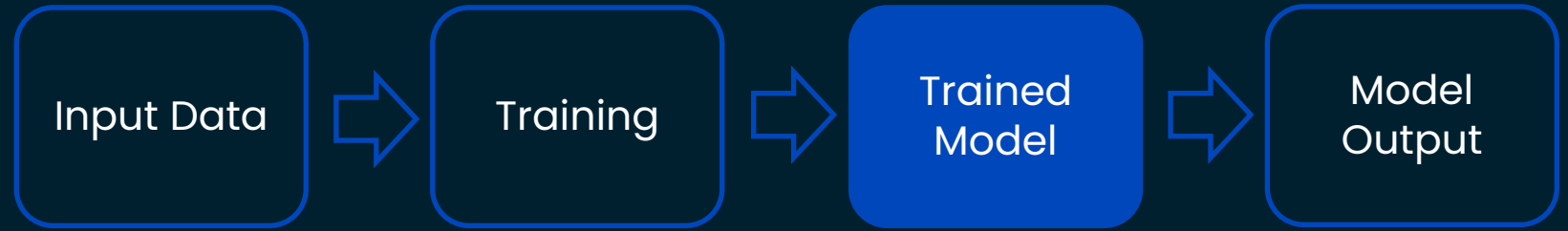
A suitable model architecture is selected based on desired functionality and complexity. Each model has parameters that may be changed in order to change the model's output characteristics and how training data is represented.

Evaluation / Tuning / Optimization

Input data are fed through the initial, untrained model. Outputs of the model are evaluated and model parameters/weights are adjusted until the output converges on a desired outcome. This process is repeated as many times as necessary.



Artificial Intelligence Training Pipeline



Trained Model

The model replicates the patterns found within the data it has been trained on. This model effectively encapsulates the learned knowledge about the data's features.

Model Output

Once trained, the model can generate outputs that are predictive in nature, forecasting possible future patterns or outcomes.

Application to New Data

The true power of an AI model comes from its ability to apply its learned knowledge to new, unseen data. When provided with this fresh data, the model uses its previous training to make informed decisions, each of which is associated with a confidence value that reflects its reliability.

Generative AI

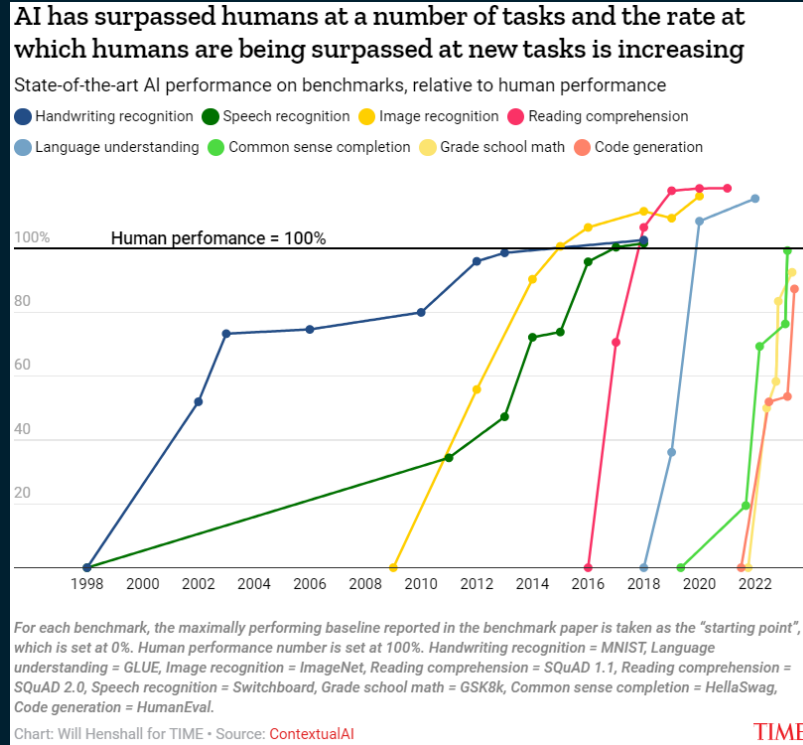
Generative Artificial Intelligence (“GenAI”): Today, “AI” most commonly refers to Generative AI models – machine learning models that are:

- **Pre-Trained** on a large body of data,
- **Fine-Tuned** on examples of specific tasks, like question answering, language translation,
- **Prompted** with a request to perform some task,
- **Provided** with additional contextual information and examples about the request,
- **Answers** the request by generating text, images, video, audio, and others.

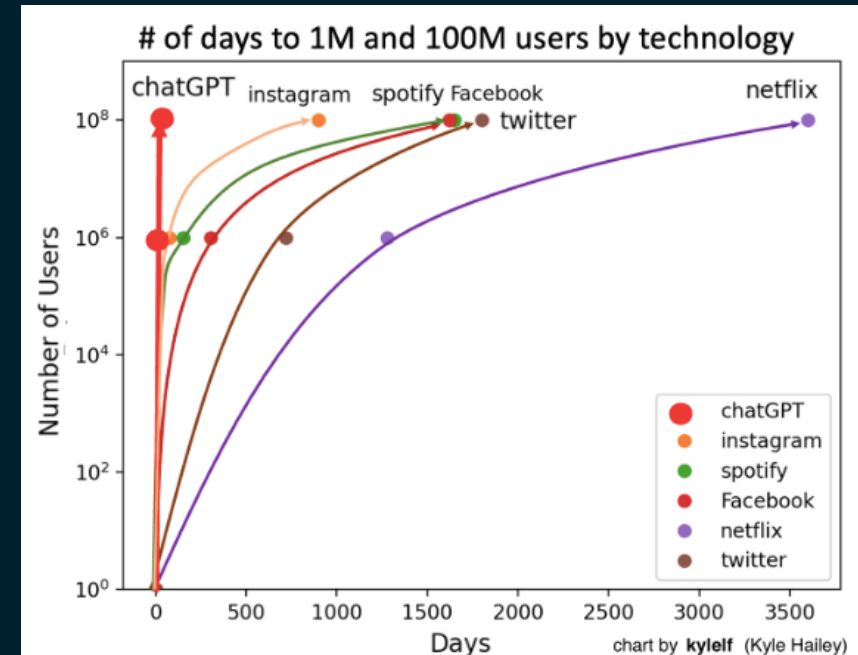
These systems are sometimes referred to as “**Large Language Models**”; however, they are not just applicable to language/text, and may include images, video, and audio.

What is Exciting About AI At This Time?

“AI” is not new, but today’s “AI” is accelerating in its progress.



Performance is Dramatically Increasing



Adoption is Increasing

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An Overview of AI Risks

Transparency of the Model: Inability to understand how the model works or what data it was trained on.

Accuracy / Hallucinations: Providing outputs that are inaccurate.

Bias/Prejudice: Outputs perpetuating stereotypes/prejudice/biases.

Copyright: Outputs that may infringe the copyrights of others.

Privacy: Outputs that compromise the privacy interests of persons.

Disinformation: Outputs used to conduct disinformation campaigns or mass influence operations.

Cybersecurity: Outputs that may be useful to conduct cyber attacks.

Harmful Content: Outputs that encourage self-harm, erotic or violent content, hate speech, or content useful for planning violence or harm.

AND...

Emerging risks, ranging from including weapon proliferation, providing outputs useful in the design or manufacture of conventional, nuclear, biological, or chemical weapons.

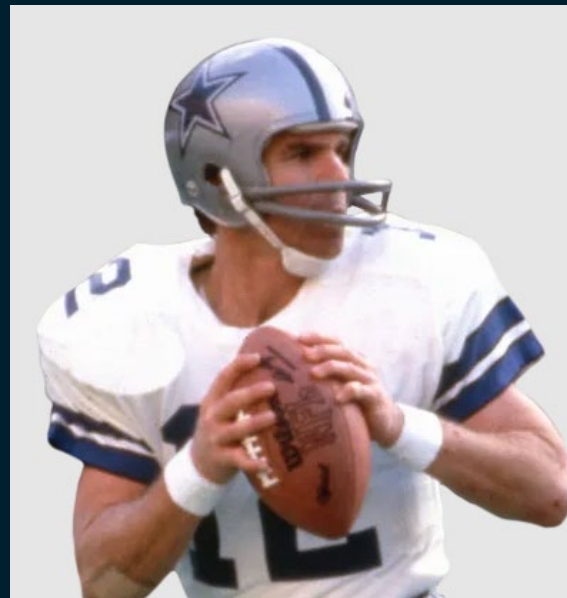
Who is the Best Quarterback in Dallas Cowboys History?



TROY AIKMAN



TONY ROMO



ROGER STAUBACH



DAK PRESCOTT

When Asked the Same Question, Generative AI has a Response.

Generative AI:

The title of the "best quarterback in Dallas Cowboys history" is a subject of debate and personal opinion among football fans. The Cowboys have had several legendary quarterbacks throughout their history. Some of the most notable quarterbacks in Cowboys history include:

- 1. Roger Staubach: Staubach is often regarded as one of the greatest Cowboys quarterbacks and one of the best quarterbacks in NFL history. He led the Cowboys to two Super Bowl victories and was known for his poise, leadership, and clutch performances.*
- 2. Troy Aikman: Aikman was the quarterback during the Cowboys' dominant run in the 1990s, winning three Super Bowl championships. He was known for his accuracy and efficiency as a passer.*
- 3. Tony Romo: Romo had a prolific career with the Cowboys, setting numerous franchise records for passing yards and touchdowns. He was known for his ability to improvise and make plays.*

Ultimately, the choice of the "best" quarterback in Cowboys history may come down to personal preferences and the era in which one became a fan. Each of these quarterbacks left a significant mark on the franchise and has a passionate fanbase.

Prompt:
Pick one.

Generative AI:

It's a subjective question, and opinions on the best quarterback in Dallas Cowboys history can vary. Many fans and experts consider Roger Staubach to be the best due to his impressive accomplishments and impact on the franchise. Staubach's combination of leadership, skill, and success in the 1970s makes him a popular choice for the title of the best Cowboys quarterback.



Malicious AI: What happens when bad actors use AI?

KrebsonSecurity
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Meet the Brains Behind the Malware-Friendly AI Chat Service 'WormGPT'

August 8, 2023 16 Comments

WormGPT, a private new chatbot service advertised as a way to use Artificial Intelligence (AI) to write malicious software without all the pesky prohibitions on such activity enforced by the likes of ChatGPT and Google Bard, has started adding restrictions of its own on how the service can be used. Faced with customers trying to use WormGPT to create ransomware and phishing scams, the 23-year-old Portuguese programmer who created the project now says his service is slowly morphing into "a more controlled environment."

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PoisonGPT

TECHNOLOGY EXECUTIVE COUNCIL

AI tools such as ChatGPT are generating a mammoth increase in malicious phishing emails

PUBLISHED TUE, NOV 28 2023-10:39 AM EST

Bob Violino

SHARE f t in e

KEY POINTS

- Since the fourth quarter of 2022, there's been a 1,265% increase in malicious phishing emails, and a 967% rise in credential phishing in particular, according to a new report by cybersecurity firm SlashNext.
- Cybercriminals are using generative artificial intelligence tools such as ChatGPT to help write sophisticated, targeted business email compromise (BEC) and other phishing messages.
- The report findings highlight just how rapidly AI-based threats are growing, especially in their speed, volume and sophistication.

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TECHNOLOGY

That panicky call from a relative? It could be a thief using a voice clone, FTC warns

MARCH 22, 2023 · 5:18 PM ET
By Joe Hernandez

This Wednesday, April 14, 2016, file photo, shows a push-button landline telephone, in Whitefield, Maine.
Robert F. Bukaty/AP

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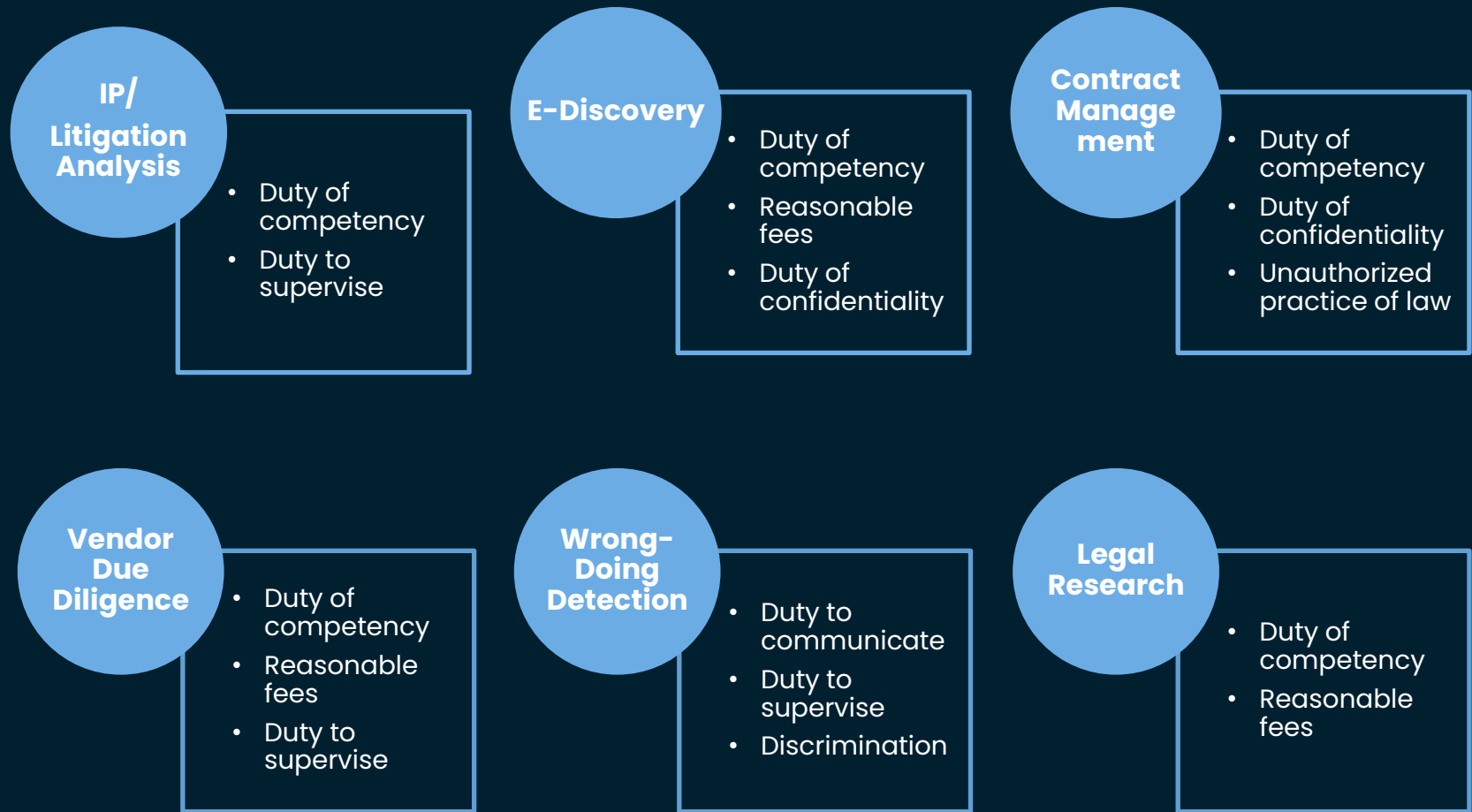
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AI Use Cases and the Ethical Issues Raised



ABA Model Rules of Professional Conduct

- 1.1: Duty of Competency
- 1.4: Duty to Communicate

- 1.5: Reasonable Fees
- 1.6: Duty of Confidentiality

- 5.1, 5.3: Duty to Supervise
- 5.5: Unauthorized Practice of Law
- 8.4(g): Discrimination

The Duty of Competency

MRPC 1.1

ABA Model Rule of Professional Conduct Rule 1.1:

Client-Lawyer Relationship

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

Source:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/

Applying the Duty of Competency to Evolving Technology

Comment 8 to ABA Model Rule of Professional Conduct 1.1:

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.

Source:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/

The Duty to Communicate

MRPC 1.4

ABA Model Rule of Professional Conduct 1.4:

(a)(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/

Comment 3 to Rule 1.4: Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations — depending on both the importance of the action under consideration and the feasibility of consulting with the client — this duty will require consultation prior to taking action.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/comment_on_rule_1_4/

Confidentiality of Information

MRPC 1.6

ABA Model Rule of Professional Conduct 1.6:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by [the remainder of rule to address concerns like preventing bodily harm].

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/

ABA Rule 1.6, Comment 2:

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/comment_on_rule_1_6/

Supervisory Responsibilities

MRPC 5.1 and 5.3

ABA Model Rule of Professional Conduct 5.1

Responsibilities of a Partner or Supervisory Lawyer

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

* * * *

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_1_responsibilities_of_a_partner_or_supervisory_lawyer/

Guidance from the American Bar Association

On July 29, 2024, the ABA Standing Committee on Ethics and Professional Responsibility released its first formal opinion covering generative AI in the practice of law: Formal Opinion 512.

Formal Opinion 512 states that lawyers using generative AI must “fully consider their applicable ethical obligations.”

Formal Opinion 512 discusses the four core duties identified on the slides above (competency; communication; supervision; confidence) and adds two more:

- (1) Duty of candor to the court/tribunal; and,
- (2) Ethical obligations regarding fees.

State and City Bars Have Offered Guidance

State Bar of California, Standing Committee on Professional Responsibility and Conduct, “Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law,” 2023.

Florida Bar Bd. Rev. Comm. on Pro. Ethics, Opinion 24-1, 2024.

New Jersey State Bar Ass’n, “Task Force on Artificial Intelligence (AI) and the Law: Report, Requests, Recommendations, and Findings,” 2024.

New York State Bar Ass’n, “Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence,” 2024.

New York City Bar Ass’n Comm. On Prof. Ethics, “Formal Opinion 2024-5: Ethical Obligations of Lawyers and Law Firms Relating to the Use of Generative Artificial Intelligence in the Practice of Law,” 2024.

A State Bar Example: Florida

Florida Bar Ethics Opinion 24-1 (January 19, 2024)

- Lawyers may use generative artificial intelligence (“AI”) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising.
- Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning.
- Lawyers remain responsible for their work product and professional judgment and must develop policies and practices to verify that the use of generative AI is consistent with the lawyer’s ethical obligations. Use of generative AI does not permit a lawyer to engage in improper billing practices such as double-billing.
- Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising and must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm.
- Lawyers should be mindful of the duty to maintain technological competence and educate themselves regarding the risks and benefits of new technology.

A State Bar Example: Texas

Texas Bar Ethics Opinion No. 705 (February 2025)

- In short, lawyers must provide accurate and competent services; not knowingly reveal confidential client information; inform client about risks of AI and obtain consent, if necessary; and avoid improper billing practices.
- Lawyers may (but are not required to) use AI in the practice of law. But, if they do, lawyers must have a reasonable and current understanding of the technology – that is, technological competence. This includes ongoing education, internal training and policies, and review of terms of service.
- Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning. Depending on the situation, lawyers may need client consent or informed consent if lawyers plan to input certain privileged or confidential information into an AI system.
- Lawyers remain responsible for their work product and professional judgment. Lawyers should “always verify the accuracy of any responses received from a generative AI tool.” They also need to be aware of various courts’ local rules or standing orders regarding the use of AI.
- Lawyers must avoid improper billing practices. They may not, for instance, “charge hourly fees for the time that was ‘saved’ by using” AI.

Stephanie Bundage Juvane

Vice President of Data Privacy Deputy Data Privacy Officer | CenterPoint Energy



Stephanie recently rejoined the Legal Department as Vice President of Data Privacy after completing a two-year rotation as Chief Audit Executive of the Audit Committee where she provided Management with independent, objective and relevant assurance of internal controls and processes that assist in meeting strategic and business objectives.

During her 17-year career with CenterPoint Energy, Stephanie's experience has included serving as Associate General Counsel and Director of Data Privacy. In this role, she not only led the corporate response to cybersecurity incident investigations, but also managed a team that counseled the enterprise in data security and privacy, while facilitating compliance across various corporate functions. Prior to this, she completed a two-year regulatory and local relations rotation following several years representing gas and electric business units as Senior Counsel in a variety of administrative matters before the Public Utility Commission, Federal Communications Commission and Railroad Commission of Texas. Stephanie serves on the board of directors of Child Advocates. She previously served as a board member for the City of Houston's Independent Police Oversight Board and as co-chair of CenterPoint Energy's Law Department People and Diversity, Equity and Inclusion (DE&I) Committee. In 2021, this committee was recognized as a recipient of the Texas General Counsel Forum's Magna Stella Award. She is a founding member of the Association of Women Attorney's Foundation's Fellowship Program and a member of the Missouri City Chapter of the Links, Inc.

Education/Honors

- Bachelor's degree in Music from Florida State University
- J.D. from Texas Southern University's Thurgood Marshall School of Law
- Graduate of CenterPoint Energy's Leadership Academy, Class of 2021
- Completed the Idaho Energy Executive Course in 2022

Lisa George

Senior Corporate Counsel, AI Legal | Salesforce



Lisa George is Senior Corporate Counsel, AI Legal at Salesforce, where her practice focuses on counseling the company on all things AI.

Her work includes supporting product & engineering teams developing AI services, reviewing internal uses of AI technology, and leading AI regulatory compliance programs.

Education/Honors

- B.S. in Biochemistry & Molecular Biology, Marquette University (Milwaukee, WI)
- J.D., The University of Texas School of Law (Austin, TX)

Rich Harper

Partner | Partner-in-Charge – New York Office | Baker Botts L.L.P.



Rich Harper advises and litigates on behalf of some of the world's most sophisticated technology, media, and entertainment companies. He leads litigation teams in business tort and breach of contract disputes, ranging from trade secret litigation to business defamation claims for clients such as PepsiCo and Formula 1 Racing. Within the business tort field, Rich has built a leading national practice in fiduciary duty and securities litigation, having represented the company and/or directors of Liberty Media, NASCAR, Starz, and Charter Communications.

With a proven track record of success managing complex risk issues, Rich is a trusted advisor to management teams and directors, aligning business and legal strategies to achieve success in high-stakes commercial litigation. As co-chair of the firm's Artificial Intelligence practice group, he helps clients navigate emerging AI-related litigation and regulations. In 2024, he will be teaching a seminar on Artificial Intelligence and the Law at Florida State University Law School. He also advises clients on ESG, joint ventures, and other corporate structuring issues. In addition to leading the AI group, Rich serves as the Partner-in-Charge of Baker Botts' New York office. He previously served as the New York office's Litigation Department Chair and Hiring Partner, as well as on the firm's Executive Committee. For over a decade, Rich has also served as part of the faculty for the Intensive Trial Practice Workshop at the University of Chicago Law School.

Education/Honors

- J.D., University of Chicago Law School (1993)
 - Member, University of Chicago Law Review
- B.A., University of Chicago (1990)
 - Phi Beta Kappa

Tenley Krueger

Vice President, Global Intellectual Property | Technip Energies



Tenley Krueger is the Vice President of Global Intellectual Property at Technip Energies, where she leads the company's worldwide IP strategy and portfolio management. With a career spanning both corporate and legal environments, she brings a global perspective and deep technical insight to the protection and commercialization of innovation.

Tenley joined Technip Energies in 2022, bringing with her a wealth of experience in intellectual property law across multiple industries and jurisdictions. Her career includes leadership roles at Halliburton and Total Petrochemicals, as well as practice at U.S.-based law firms and international assignments in Malaysia. She has also served as an Adjunct Professor supervising the Patent Clinic at South Texas College of Law, and currently sits on the board of Taclov, LLC. In addition to her legal expertise, she is a licensed mediator and Guardian ad Litem for Child Advocates of Fort Bend.

Education/Honors

- J.D., Tulane University
- B.S. in Chemical Engineering and Petroleum Refining, Colorado School of Mines
- Adjunct Professor, South Texas College of Law (Patent Clinic Supervisor)
- Board Manager, Taclov, LLC
- Licensed Mediator & Guardian ad Litem, Child Advocates of Fort Bend

Scott Nelson

Partner | Practice Group Chair – Labor & Employment (Firmwide) | Baker Botts L.L.P.



Scott Nelson advises America's top companies on their employee issues and defends them in court when employees sue. The most valuable asset of a successful business is its people. Clients look to Scott as a seasoned, trusted, and regular advisor who helps them handle their most sensitive people matters in a thoughtful, practical, and strategic manner. He helps clients achieve their business objectives, while complying with ever-changing employment laws. When litigation arises, clients trust Scott to handle everything from day-to-day litigation to mission-critical trial work. Scott has significant experience and has had great success with high profile domestic and international employment matters, as well as complex employment and commercial litigation.

Education/Honors

- J.D., cum laude, Creighton University School of Law (1996)
 - Assistant Editor, Creighton Law Review
 - Secretary, International Moot Court Board
- B.S.B.A. in Finance, Creighton University (1993), magna cum laude

Despite his strong record on summary judgment, Scott is a trial attorney at heart. He is comfortable and compelling in the courtroom, having prevailed for clients in cases ranging from simple labor arbitrations to jury and bench trials with hundreds of millions of dollars in potential liability exposure. With over 25 years of experience, Scott has dealt with most employment law matters companies face. His mastery of the subject matter allows him to get to the heart of the issue quickly and provide sound, practical advice clients can trust. Among his more notable cases, Scott successfully defended multinational chemical companies in one of the largest employee trade secrets cases to go to a jury trial, a case in which plaintiffs sought \$800 million through economic espionage-type trade secrets claims. He also achieved a total bench trial victory for a multinational mining and chemical company in a large ERISA class action in which plaintiffs sought in excess of \$200 million. In arbitration, he recently won more than \$3.2 million, including \$1.2 million in attorneys' fees, for an employer seeking to claw back signing bonuses from energy traders. Scott listens to clients and always thinks creatively to find the best possible strategic and tactical solutions to their problems.

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