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***A.I. NATION:
THE LEAGUE OF JUSTICE
FOR THE DIGITAL FRONTIER***

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/ OVERVIEW

- Regulatory guidance, including the Colorado AI Act
- Privacy and cybersecurity issues
- Intellectual property issues
- Ethical considerations for in-house counsel
- AI Policy Basics

GENERATIVE ARTIFICIAL INTELLIGENCE

- Deep machine learning models that can generate high-quality text, images and other content based on the data they were trained on.
- Early forms of AI include things like predictive text, Siri and Alexa and customer service chat bots.
- Generative AI is being used in business for drafting, creating visuals, financial analysis, HR functions like reviewing resumes and processing employee data, customer service and more.
- Generative AI can provide huge efficiencies but also presents risks.



REGULATORY GUIDANCE

No comprehensive federal AI statute, but there is regulatory guidance including White House Executive Orders and statements from the SEC, EEOC, NLRB, USPTO, USCO, and numerous other agencies.

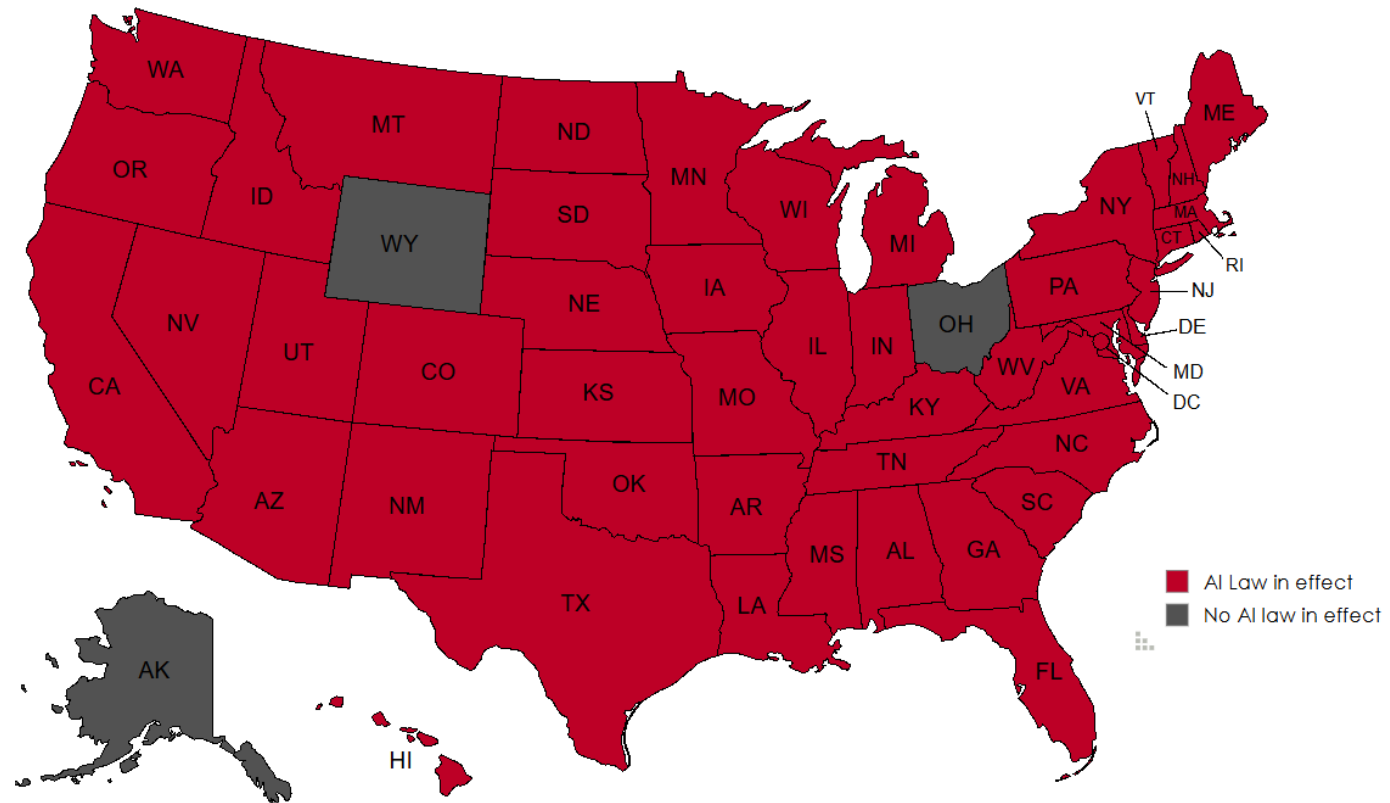
Themes of guidance:

- Encouraging innovation while limiting downsides
- Potential for Algorithmic Bias
- Impact on the workforce (reduction in the number of people in the workforce or significant retraining needs?)
- Minimizing hallucinations, deepfakes and other inaccurate information without limiting First Amendment Rights
- Existing laws apply to AI
- Recourse and review by real people

STATE REGULATIONS

160 AI-specific laws enacted through 2025... and counting!

- 40% target AI images / deepfakes
- 25% targeting government / political campaign use
- 20 automated decision-making laws
- 9 AI transparency-related laws
- 2 comprehensive AI laws (CO and TX)



REGULATORY GUIDANCE - COLORADO AI ACT

- Goes into effect June 30, 2026, unless amended during the next legislative session
- Will be subject to additional rules promulgated by the Attorney General's Office
- No private right of action
- Places disclosure obligations on Developers and Deployers of High-Risk Artificial Intelligence Systems to protect Consumers from Algorithmic Discrimination in connection with Consequential Decisions.

REGULATORY GUIDANCE - COLORADO AI ACT

- Consequential Decision: a decision that has a material legal or similarly significant effect on the provision or denial to any consumer of, or the cost or terms of: (a) education enrollment or an education opportunity; (b) employment or employment opportunity; (c) financial or lending service; (d) essential government service; (e) health-care services; (f) housing; (g) insurance or (h) a legal service
- No scienter is required for violations, so discriminatory conduct does not have to be intentional. There is concern that this could have a chilling effect on the continued development of AI technology.
- The scope of the law will likely be addressed through amendments to the Colorado AI Act and the rulemaking process.

REGULATORY GUIDANCE: UTAH'S ARTIFICIAL INTELLIGENCE POLICY ACT

Requires disclosures to individuals regarding their interactions with generative AI:

- If a business uses Gen AI to interact with an individual, the business must only disclose that the interaction includes AI if the person asks.
- With respect to regulated occupations (those required a license or state certification, like financial advisors, doctors, dentists, nurses, etc.), the individual must receive a clear disclosure at the start of the communication that Gen AI is involved.
- Civil penalty of up to \$2500 for each violation.



PRIVACY AND CYBERSECURITY CONCERNS

- Any inputs to public generative AI systems like Chat GPT become part of the machine learning.
- These inputs can be extracted, so you should never supply confidential information to these systems.
- If AI has access to your entire system, it may make it easier to breach.
- Phishing, deep fakes and other security breaches are easier to accomplish through AI.



INTELLECTUAL PROPERTY ISSUES

Common types of AI litigation:

- Infringement, use issues and copyright issues concerning the use of text, images, sounds, videos and other copywritten materials in machine learning without any license or royalty are frequent litigation areas. The scope of “Fair Use” is being evaluated in multiple cases.
- There is litigation alleging that generative AI may hallucinate or misrepresent information from trusted sources.
- There are also cases evaluating whether AI can be considered an “inventor” or “creator” for patent, trademark or copyright purposes (AI alone cannot be an inventor or creator, but it is unclear whether inventions by humans with the assistance of AI would qualify).

If your organization uses AI to draft content, consider whether the drafting prompts are focused on specific material subject to a copyright (i.e. draft an essay in the style of a specific author).

ETHICAL CONSIDERATIONS FOR IN-HOUSE COUNSEL

- Confidentiality and Attorney-Client Privilege
- Competent Representation
- Cases where AI created cases and misstated case holdings (hallucinations)
- Candor toward the tribunal
- False evidence-deepfakes and fake cases
- Technical Competence
- Supervision

SHOULD YOUR ORGANIZATION HAVE AN AI POLICY?

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/ AI POLICY

- Usage Policy
- Ethical Considerations
 - Fairness and bias
 - Privacy and data protection
 - Accountability and governance
- AI Policy Approval Process
- Use of Generated Content
- Prohibited Uses
- Monitoring and Accountability

AI POLICY CONSIDERATIONS

- Develop internal team with stakeholders from multiple internal departments, including legal, IT, decision support, finance, HR and other operational groups.
- Evaluate any AI software products or functions currently being used by the organization.
- Develop a policy that sets procedures for vetting AI applications to ensure they are reliable and preserve confidentiality and security. Consider adopting training protocols for employees to ensure they understand procedures and risks.
- Consider “bias audit” software.

