

AGENDA



AI Background



Legal Landscape & Risks



Best Practices in AI Governance



WHAT IS AI?

“In its simplest form, artificial intelligence is a field that combines computer science and robust datasets to enable problem-solving.”

– IBM.com



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TWO TYPES OF USE CASES

Publicly available generative AI

- Use of generative AI by employees to assist in job functions

AI-based applications, programs, solutions

- Using/developing AI-based solutions in order to address business-specific problems or creating such solutions for sale

PUBLICLY AVAILABLE AI

- ▶ Chat GPT-4
- ▶ Google Bard
- ▶ The new Bing
- ▶ DALLE
- ▶ Perplexity AI
- ▶ Jasper
- ▶ You Chat
- ▶ Chatsonic by Writesonic

AI SOFTWARE

- ▶ Jasper - copywriting
- ▶ Murf – voice generator
- ▶ Fireflies – record and transcribe meetings
- ▶ Speechify – text to speech
- ▶ Enterprise-embedded products: Microsoft Azure AI; IBM Watson



- Developed by OpenAI in partnership with Microsoft
- **Creates** a response to a natural language prompt
- Does not search for a response on the internet like Google, Alexa or Siri

REWARDS

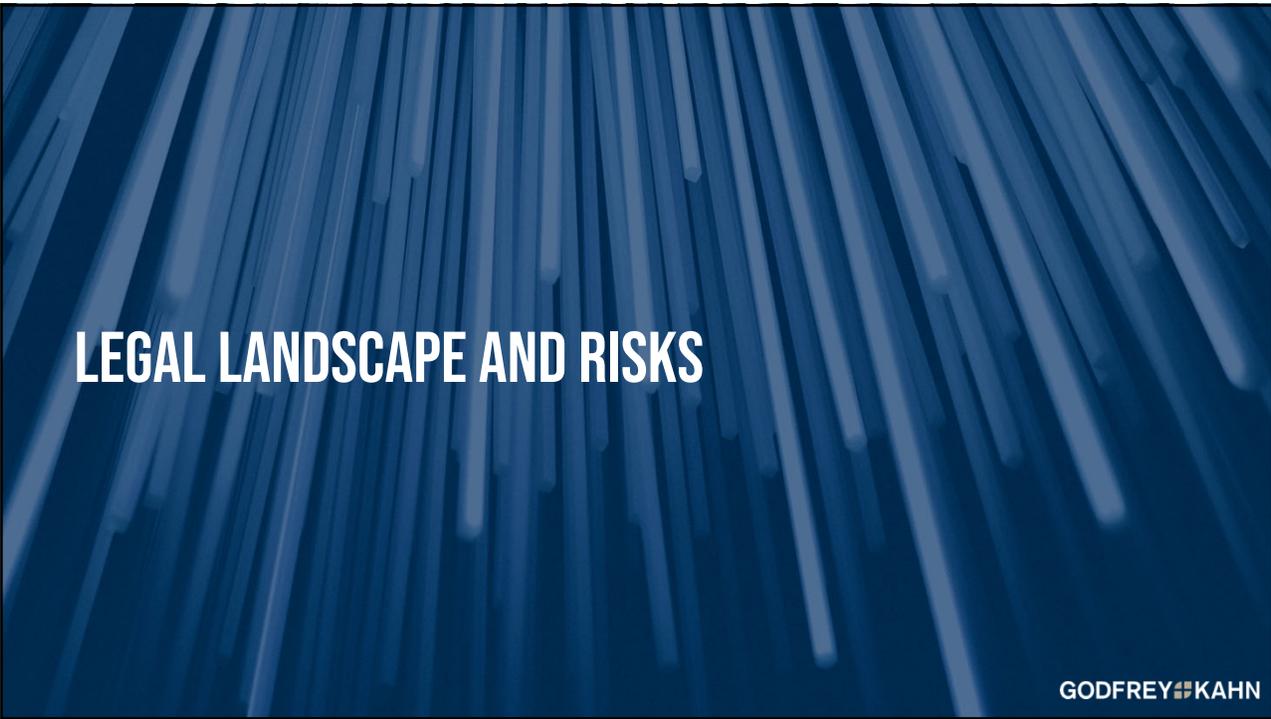
Efficiency and faster results

Reduction in human error

Ability to perform tasks with voice commands

Ability to track, analyze and understand behavior

Assuming routine tasks and creating time for other work



LEGAL CONSIDERATIONS

- Privacy & Security Laws
- Intellectual Property Laws – Copyright, Trademark, Trade Secrets
- Terms of Use Restrictions
- Non-Disclosure Obligations – Statutory or Contractual
- Anti-Discrimination Laws and use within the HR space

PRIVACY

- How was input data collected?
- How are you allowed to use it?
- How is input and output regulated?
- Is the model able to comply with regulations?
- Are you aware of cybersecurity risks?

PRIVACY REGULATIONS AFFECTING AI

			
State Privacy Laws	GDPR	EU AI Act	Section 5 of the FTC Act

STATE PRIVACY LAWS

- ▶ Govern Data Collection and Use
- ▶ Comply with Data Rights
- ▶ Conduct Risk Assessments
- ▶ Draft Regulations in Progress



GDPR

- ▶ Regulations on Automated Decision-Making
 - ▷ Human Involvement
 - ▷ Consent
 - ▷ Performance of a Contract
 - ▷ Authorized by Law
- ▶ Transparency and Explainability



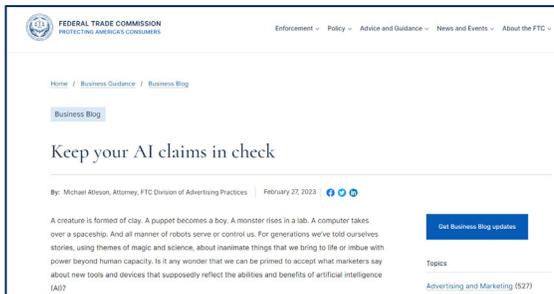
EU AI ACT

- ▶ Main elements:
 - ▷ Bans certain uses of AI
 - ▷ Requirements for high-risk AI
 - ▷ Post-market monitoring for high-risk AI
 - ▷ Obligations for limited-risk AI
 - ▷ Creates a European AI Board
- ▶ Extraterritorial applicability



SECTION 5 OF THE FTC ACT

- ▶ Prohibits “unfair or deceptive acts or practices in or affecting commerce.”



POTENTIAL CONSEQUENCES OF NON-COMPLIANCE

- ▶ Algorithmic disgorgement and data deletion

1	UNITED STATES DISTRICT COURT	
2	NORTHERN DISTRICT OF CALIFORNIA	
3		
4	UNITED STATES OF AMERICA,	
5	Plaintiff,	Case No: 3:22-cv-00946-TSH
6	v.	PROPOSED STIPULATED ORDER FOR
7	KURBO INC., a corporation,	PERMANENT INJUNCTION, CIVIL
8	and	PENALTY JUDGMENT, AND OTHER
9	WW INTERNATIONAL, INC., a corporation,	RELIEF
10	Defendants.	

PRESIDENT BIDEN'S EXECUTIVE ORDER ON AI

- ▶ Consensus Industry Standards
- ▶ Intellectual Property Guidance
- ▶ AI for Small Business
- ▶ Employer Best Practices
- ▶ Civil Rights Enforcement
- ▶ Prompt Agency Action
- ▶ Government Agency Compliance

INTELLECTUAL PROPERTY



COPYRIGHT



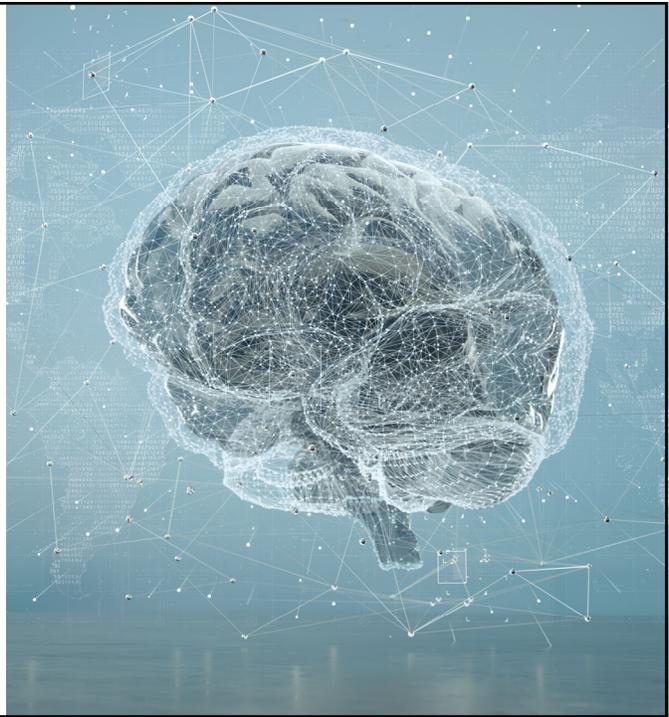
PATENT



**TRADEMARK &
ADVERTISING**



TRADE SECRET



TERMS OF USE AND NON-DISCLOSURE LEGAL CONSIDERATIONS

- ▶ Terms of Service may allow information and data shared with online AI tools to be:
 - ▷ Used by the AI provider to improve its AI services
 - ▷ Disclosed to others using the AI tool
 - ▶ Shared by the AI provider and/or its partners for a variety of purposes
- ▶ Is it legal to use or share data in this manner?
 - ▷ Exs.: PII, borrower's, client's or vendor's data

LABOR & EMPLOYMENT



Initiatives Announced By Federal & State Agencies



Federal Agency Guidance Documents Published



City and State Laws Taking Lead

OUTPUT RISKS: BIAS AND DISCRIMINATION

Bias Leads to Discrimination

- Human Bias
- Data Sampling Bias

Employers using AI-based products are responsible for discriminatory outcomes of their use

REGULATION OF FINANCIAL SERVICES

- ▶ Limited adoption to specific use cases
- ▶ Increased regulatory interest and scrutiny
 - ▷ Model risk management guidance
 - ▷ Credit discrimination
 - ▷ Collateral valuation models
 - ▷ SEC's conflict of interest rules for advisers and broker-dealers
- ▶ Examples and best practices for non-regulated businesses

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WHAT IS AI GOVERNANCE?

“AI Governance translates espoused ethical principles and good data science practice into repeatable, reliable, repositories of evidence about the risks and benefits of AI.”



KEY ISSUES TO ADDRESS FOR INTERNAL USE OF AI

Bias &
Discrimination

Compliance with
Regulations

Inaccuracy

Loss of
proprietary and
confidential
information

Misuse of others'
proprietary and
confidential
information

Inferior work
product

BEST PRACTICES FOR INTERNAL USE POLICIES



Understand if AI is being used, how, when, where, and why



Develop internal policies governing use, including consideration of use-specific risks and benefits



Partner with procurement, IT, HR and IP teams to identify risks, review vendor agreements, request audits, and explore alternatives



Train employees on AI risks and company policies

KEY ISSUES TO ADDRESS FOR DEVELOPMENT OF AI

Bias &
Discrimination

Compliance
with
Regulations

Inaccuracy

IP Ownership

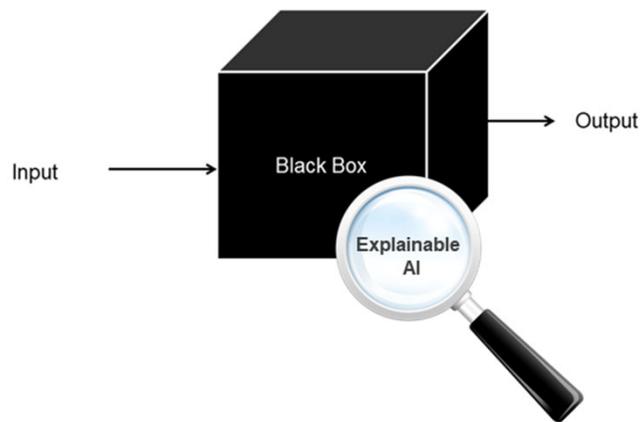
Transparency,
Explainability
and Provability

Ethical Use

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Transparency, Explainability, Provability

- ▶ Understand how the AI model makes decisions
- ▶ Understand the reasoning behind the decisions
- ▶ Confirm the decisions are mathematically provable



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BEST PRACTICES FOR AI GOVERNANCE IN PRODUCT DEVELOPMENT



Align all stakeholders from data scientists, business teams, legal and privacy teams from the beginning on strategy, risk tolerance, and desired outcomes



Identify guiding principles and standards at the outset



Understand data sources and data flows and analyze various legal risks



Measure and monitor AI outcomes, maintaining documentation throughout

RESOURCES ON AI GOVERNANCE

▶ NIST AI Risk Management Framework and Playbook

NIST AI RMF Playbook

The Playbook provides suggested actions for achieving the outcomes laid out in the AI Risk Management Framework (AI RMF) Core (Tables 1–4 in AI RMF 1.0). Suggestions are aligned to each sub-category within the four AI RMF functions (Govern, Map, Measure, Manage).

The Playbook is neither a checklist nor set of steps to be followed in its entirety. Playbook suggestions are voluntary. Organizations may utilize this information by borrowing as many—or as few—suggestions as apply to their industry use case or interests.

AI Risk Management Framework

Govern **Map** **Measure** **Manage**

Download the NIST AI RMF Playbook

[Playbook CSV](#) [Playbook Excel](#) [Playbook JSON](#)

Community feedback

The playbook is a living resource and is expected to evolve as AI technology advances — Individuals are encouraged to provide feedback about the content of the Playbook by emailing AI.framework@nist.gov. Playbook updates will be released approximately twice per year.



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