Generative AI and Law Firm Information Governance

Law Firm Information Governance Symposium (LFIGS)

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This paper covers the use of artificial intelligence (AI), and in particular, Generative AI in law firms. Whereas AI usage is similar across industries, law firms have some unique characteristics because much of the data belongs to the clients and there is an extra obligation to keep it safe and private. This paper covers both unique and non-unique challenges of AI as it pertains to information governance (IG) in the legal community. It begins with a brief definition of AI, followed by benefits to the legal community, information governance-specific considerations, policy considerations, general advice, and guidance.

1) *What is generative AI and why are we talking about it?*

Google's Bard and OpenAI's ChatGPT-4 are two generative AI models that have generated much interest. ChatGPT-4 is based on GPT-4, a foundational model for generative AI. GPT-4 is a large-scale machine learning system that can be fine-tuned for specific tasks. The concept for generative AI has been around since the late 50s, tracing back to the foundations of machine learning and statistical modeling.

Generative AI is a powerful tool with many potential benefits. It can be used for text generation, translation, writing, question answering, code generation, creative writing, chatbots, and virtual assistants. It can also serve as a knowledge concierge, write poetry, songs, jokes and play games. However, there are some concerns about its accuracy (Hallucinations), confidentiality, potential for bias, and misuse.

https://www.nytimes.com/2023/05/01/business/ai-chatbots-hallucinatation.html

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Hallucinations: An AI response that portrays confidence not justified by its training or information entirely fabricated, behaving as if spouting facts.
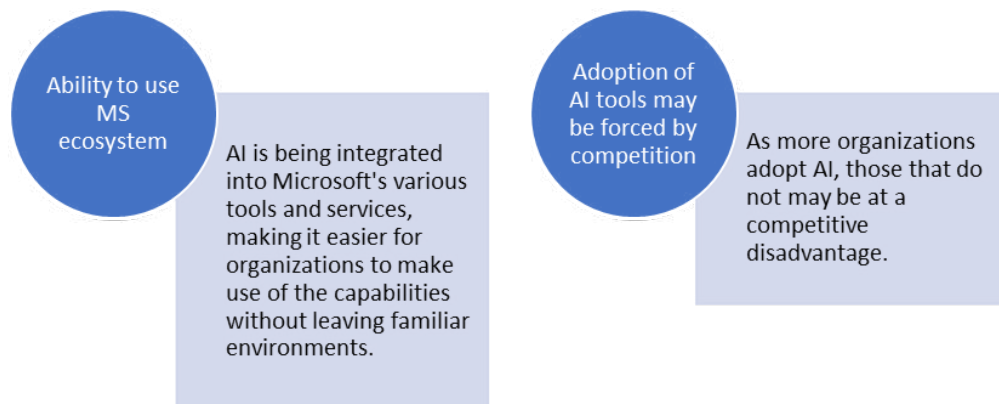
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2) *What are some benefits to the legal industry?*

Generative AI offers a range of benefits for organizations, both obvious and less apparent.

Obvious benefits include:

Replacing workforce tasks	Competitive pricing	Better legal research	Training	Contact managing and marketing
• AI can replace tasks of assistants, paralegals, and even junior attorneys, freeing up human employees to focus on more strategic tasks. See how in the next section.	• AI can help improve pricing models by drawing on internal and external data to more effectively price work.	• AI can help conduct more thorough and effective legal research by drawing on internal and external sources.	• AI can help train new hires more efficiently by providing them with access to a wealth of knowledge and resources. It can also be used for professional development of new and existing staff (e.g., "How do I effectively engage with my stakeholders?")	• AI can help manage their contacts and marketing campaigns more effectively.

Less apparent benefits include:

Ability to use MS ecosystem
AI is being integrated into Microsoft's various tools and services, making it easier for organizations to make use of the capabilities without leaving familiar environments.

Adoption of AI tools may be forced by competition
As more organizations adopt AI, those that do not may be at a competitive disadvantage.

Overall, generative AI offers a wide range of benefits for organizations, both large and small. By automating tasks, improving efficiency, and providing access to new insights, AI can help them save time and money, improve customer service, and gain a competitive edge.

3) *What are some key IG considerations?*

Generative AI models use neural networks to identify patterns and structures in existing data to generate new content. This may involve confidential data, so it is important to understand the tools, risks, and benefits before using them. Some new tools are addressing confidentiality issues, but you should still understand how your data is used.

Validating the output of generative AI can be challenging, as the source of the answers is often difficult to trace.
This is similar to the challenges faced when Wikipedia was first introduced, as all information on the site needed to be verified. Attorneys should be mindful of this when relying on generative AI for legal research and guidance unless AI is built into trusted systems such as Lexis.

Using AI may incur additional software licensing costs.
AI-enabled software costs are expected to increase by 60%, so you will need to find ways to recoup these costs. Additionally, hardware and storage costs of AI-hosting providers are increasing exponentially. Those costs will need to be recouped in some way.

Another important consideration is balancing privacy rules and regulations with system capabilities. Currently, there is no way to remove data from the system.
This has led to concerns about ethical issues, IP usage, bias, and consent. As a result, many firms are taking a conservative approach to using generative AI technologies. Some firms have banned the use of their data, while others have not yet adopted the technology. As the technology evolves, so too will the restrictions and usage guidelines around it… A good resource that offers insight into the early views on regulation between the EU and the US can be found HERE. In fact, using proprietary data is best done through APIs, as described in section 5.

It is helpful to understand your organization's risk tolerance related to AI.
Topics that have generated significant discussion include when and how to cite AI as a source and whether your firm needs to capture questions and on-going prompt history. While this may seem cumbersome or counter-intuitive to such a tool, your firm's risk leaders will likely be considering the impact of not having this audit data for litigation, disciplinary matters and other legal purposes.

Clients are starting to issue requirements around AI usage guidelines and/or restrictions where their data is involved.
Audit and assessment questions will quickly start to include AI usage queries, as will cyber insurance renewal applications.

4) *What things should be considered in developing policy around AI?*

Providing guidance and rules around AI is a key part of effective adoption.

Here are some things to consider when developing an AI policy for your organization:	Use AI tools as a starting point for content creation, not as a replacement for research or analysis.
	Thoroughly vet the outputs of AI tools and validate the results. AI tools can produce incorrect, incomplete, inconsistent, and biased information. Remember, that you are responsible for your work to ensure the final result meets legal, ethical, and professional standards.
	Ownership of the output created by AI tools is uncertain.
	Misuse of publicly available AI tools could breach your personal or professional obligations, as well as the obligations towards your organization, clients, or those who entrust their data to you.
	Do not submit confidential information to AI tools, including questions or prompts.
	Set and communicate your organization's risk tolerance levels, including when and how you will reference AI as a source of information.
	Not all AI solutions will have the same level of cyber review or diligence, so vet each tool carefully.
	The responsibility for the use of AI tools and the sharing of data may lie with the individual user, per the terms and conditions of some AI tools.
	AI tools may share confidential information with other parties without the consent or awareness of the user. Lawyers must take extra precautions to protect client confidentiality if using AI tools. Lawyers should also advise clients carefully regarding the use of AI in their industry.

5) *What are some additional points to consider?*

Issue initial guidance quickly, with the understanding that it may change rapidly.
- A blanket "no" is not practical or recommended. The technology will be used regardless, so reasonable guidance should be issued as soon as possible. The most important guidance is on how to use internal data sources in the best possible way while keeping data private, and how to combine that with external information. This means that only authorized use via API should be allowed, and no data should be uploaded anywhere under any circumstances.

Not all AI is generative AI.
- Narrow AI applications such as Technology Assisted Review have been used for years in litigation support and vetted by the courts.

Not all generative AI presents the same risks.
- Public ChatGPT does retain the history of your prompt and results, and could use them for future training. However, Microsoft Copilot can be set up so that your data never leaves your Microsoft tenant, providing increased privacy protection. Be sure to ask the right questions.

Organizations are moving to integrate generative AI into their products.
- While it can be obvious that a generative AI is involved in providing the answers when using Bard, for example, that might not always be the case with search engines and other legal vertical products.

Microsoft maintains that customer data belongs to the customer and is always kept private in their subscription.

- They do not use it to improve the foundation model, and they adhere to all the Azure data handling and privacy practices. As to the technical question regarding how they do this, it's via Retrieval Augmented Generation (RAG). When using modern foundation models like GPT-4 in Azure OpenAI, customers call the model's API with just enough data to get the model to respond intelligently using a pattern called RAG. In a RAG application, you don't even have to upload data to Azure – you call the API and pass data in as-needed. This is also a more efficient process.

As with many other technologies, AI is moving at a rapid pace.

- It is difficult for regulations to keep up with the speed of AI changes, so there will likely be challenges around how courts and regulators sift through emerging conflicts, violations and other compliance issues.

Open source: <u>buyer beware</u>.

- There may be hallucinations, as well as there is no guarantee of data privacy. See block above.

Open source: <u>reader beware</u>.

- The 'human-like' replies and interactions with AI tools can give the appearance of a conversational style that makes it more intriguing and potentially easier to believe.

6) *How might clients influence a firm's AI policies?*

Clients will expect their law firms to leverage AI to streamline their internal processes to reduce costs, accelerate response time from lawyers, improve quality of legal research and analysis, and potentially to create highly customized legal services.

Clients will require that law firms are transparent about how AI is being used by the firm. Sharing data privacy and security policies with the client, along with establishing communication channels to maintain transparency and establishing trust will be critical in managing the client relationship.

7) *What are some key sources for staying up-to-date?*

As this technology continues to grow in its development and use cases, as with any emerging tech, it is critical that IG professionals continue to stay informed, educated and in-tune with not only IG implications but how the technology is evolving and being used within organizations. This space is evolving quickly, but here are a few notable articles to help build your understanding of Generative AI, its use and implications.

Brookings; The EU and US diverge on AI regulation: A transatlantic comparison and steps to alignment; <u>HERE</u>
The New York Times; AI Chatbots Hallucinations, <u>When AI Chatbots Hallucinate - The New York Times (nytimes.com)</u>
Law.com; The Shift: ChatGPT Faces a Timeout as Legal Turns Its Attention to More Mature, Legal-Specific AI tools; <u>HERE</u>
ALM Law.com; Artificial Intelligence Litigation: The Next Class Action Boom on the Horizon; <u>HERE</u>
LegalTech News; Generative AI Could Automate Almost Half of All Legal Tasks, Goldman Sachs Estimates; <u>HERE</u>
LegalDive.com; Balancing Generative AI's benefits for contracts with data privacy risks; <u>HERE</u>
Law Technology Today; How Artificial Intelligence in Document Processing Impacts a Legal Firm; <u>HERE</u>
Reuters; Lawyer used ChatGPT to cite bogus cases; <u>HERE</u>

And for a little fun for the IG geek in all of us, here's an AI IG rap song by ChatGPT:

(Verse 1) Yo, listen up, I got a story to tell, 'Bout a topic that might not ring a bell. It's called information governance, you see, But don't you worry, I'll make it fun and carefree.

(Chorus) Information governance, it's a serious thing, But let's bring some humor and make it swing. From policies to data, it's all in the mix, Get ready to laugh, 'cause this rap's gonna fix!

(Verse 2) Picture this, a file all out of control, With data scattered like a cereal bowl. Information governance comes to the rescue, Organizing data like it's the coolest venue.

(Verse 3) We got file naming conventions, let's go, No more "final" or "final_final," yo! Version control, it's the name of the game, No more confusion, keep it all in the lane.

(Chorus) Information governance, it's a serious thing, But let's bring some humor and make it swing. From policies to data, it's all in the mix, Get ready to laugh, 'cause this rap's gonna fix!

(Verse 4) Privacy and security, they're paramount, Protecting information, no room for a discount. Encryption and access controls, oh so tight, Keep that data safe, day and night.

(Verse 5) Retention schedules, don't throw it all away, Keep the important stuff, the rest can sway. Data classification, like a game of chess, Sort it all out, you'll feel nothing but blessed.

(Chorus) Information governance, it's a serious thing, But let's bring some humor and make it swing. From policies to data, it's all in the mix, Get ready to laugh, 'cause this rap's gonna fix!

(Bridge) Now let's talk about audits, it's no need to fear, Just be prepared, keep your records clear. Compliance is the name of the game, Follow the rules, and you'll earn your fame.

(Verse 6) Information governance, it's the boss of the show, Bringing order to chaos, watch it go. So, remember the importance of this rap, Information governance, it's a funny mishap.

(Chorus) Information governance, it's a serious thing, But let's bring some humor and make it swing. From policies to data, it's all in the mix, Get ready to laugh, 'cause this rap's gonna fix!

(Outro) So, here we are at the end of this rhyme, Information governance, we had a good time. Remember the lessons and keep it in sight, Now go out there and keep your data tight!

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