

# AI and Municipal Law

Presented on behalf of:

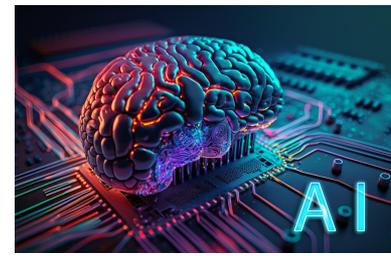


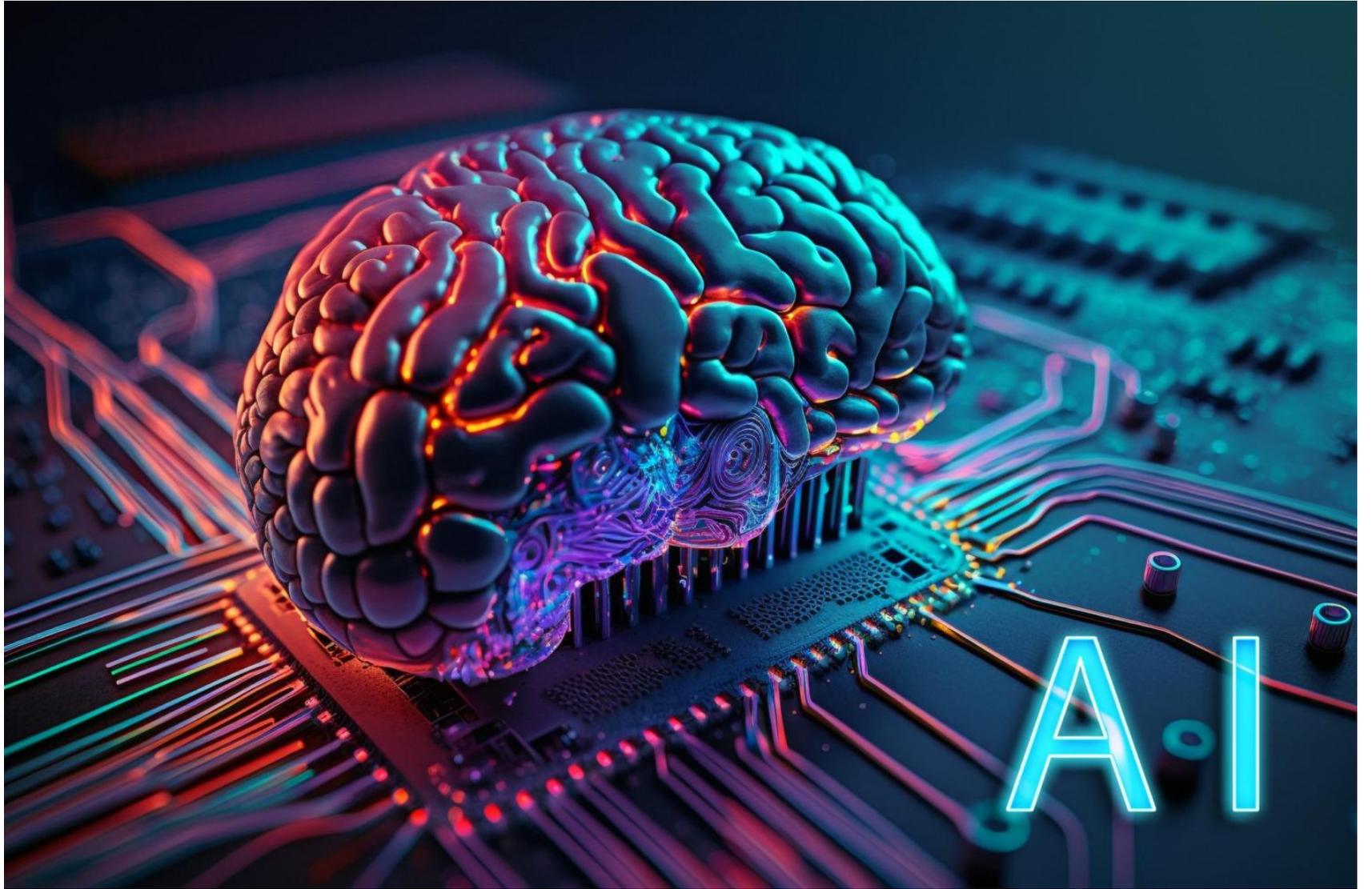
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# AI—The Basics



- Artificial intelligence has been defined as “the capability of a machine to imitate intelligent human behavior.”
- Others have defined it as “cognitive computing” or “machine learning.”
- Although there are many descriptive terms used, AI at its core encompasses tools that are trained rather than programmed.
- It involves teaching computers how to perform tasks that typically require human intelligence such as perception, pattern recognition, and decision-making.



# AI—Definitions



- Algorithm
- A step-by-step procedure or a set of rules followed by a computer to solve a problem or accomplish a task. In the context of AI, algorithms often refer to the methods used to train a machine learning model.
- Example: Google Maps uses an algorithm to calculate the fastest route from one location to another based on factors such as traffic and road conditions.
- Bias in AI
- Inherent or learned biases in AI systems that may lead to unfair outcomes or decisions.
- Example: A resume screening AI might unfairly favor certain demographic groups if it was trained on a dataset containing biases.



# AI—Definitions



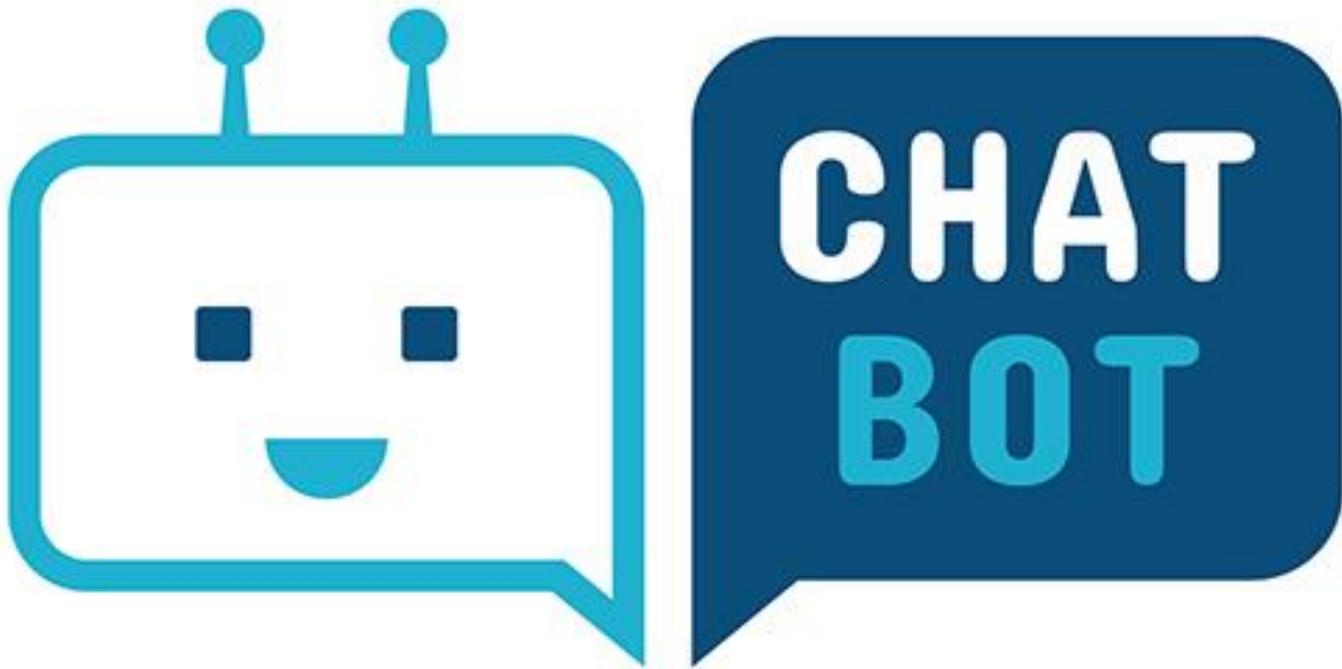
- Chatbot
- A software application that communicates with users through text or voice interactions, simulating human conversation to a certain degree.
- Example: Customer service chatbots can provide information, and direct users to relevant resources.
- Natural Language Processing (NLP)
- A subfield of AI that focuses on enabling computers to understand, interpret, and generate human language.
- Example: Google Translate uses NLP to translate text from one language to another.
- Large Language Model (LLM)
- An AI model that can understand, generate, and interpret human-like text based on the input it receives.



# AI—Definitions



- Machine Learning (ML)
- A subfield of AI where ***computer systems are given the ability to learn and improve from experience without being explicitly programmed.*** This is usually achieved by training the system with large amounts of data.
- Example: Recommendation systems, like those used by Amazon, suggest products based on a user's browsing and purchasing history.





# AI—Chatbot



- A chatbot is a software application or web interface that is designed to mimic human conversation through text or voice interactions;
- The New York Times sued OpenAI, a Chatbot software company for copyright infringement on Wednesday, opening a new front in the increasingly intense legal battle over the unauthorized use of published work to train artificial intelligence technologies.

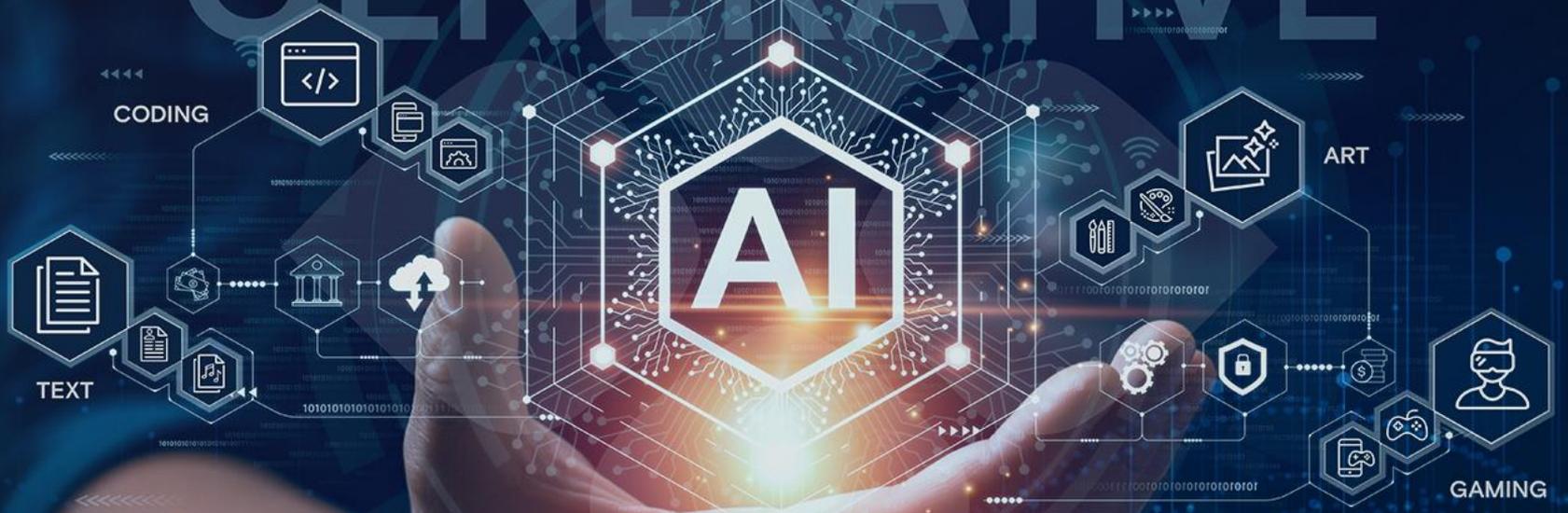


# AI—Chatbot



- The lawsuit, filed in Federal District Court in Manhattan, contends that millions of articles published by The Times were used to train automated chatbots that now compete with the news outlet as a source of reliable information;
- The lawsuit could test the emerging legal contours of generative A.I. technologies — so called for the text, images and other content they can create after learning from large data sets — and could carry major implications for the news industry.

# GENERATIVE





# Generative AI



- Generative AI, like ChatGPT or Google Bard, is just one type of AI technology, and presently, the most popular;
- Generative AI, for text, works by predicting the next word in a sentence, and the next sentence in a paragraph and so on, based upon what's most likely to follow according to text pulled from many sources, including the Internet.
- Generative AI does not generally test for accuracy—humans should fact check its outputs.



# Generative AI



- While Generative AI can rapidly produce clear prose, the information and content might be inaccurate, outdated, or simply made up. It is your responsibility to verify that the information is accurate by independently researching claims made by the AI;
- What to look for: Inaccurate information including links and references to events or facts;
- Bias in the positions or information.



# Generative AI in Court



- The Hon. P. Kevin Castel, United States District Court Judge for the Southern District of New York, recently sanctioned lawyers who submitted a legal brief written by the AI tool ChatGPT, which included citations of non-existent court cases, and attributing them to sitting judges.
- In addition to each paying a \$5,000 fine, the attorneys, Peter LoDuca and Steven Schwartz, and their Levidow law firm, were ordered Thursday to notify each judge falsely identified as the author of the bogus case rulings about the sanction.
- Judge Castel said “I might not have sanctioned the attorneys if they had come clean about using ChatGPT to find the purported cases the AI cited.”



# Generative AI in Court



- The attorneys sanctioned responded as follows:
- “Our attorneys are using AI to retrieve and manipulate or summarize language in legal agreements and pleadings, draft and change the tone of emails, summarize discovery documents and articles, and brainstorm different examples of legal language or topics for presentations to clients;
- We have discovered creative ways to use AI to help teach clients to craft better prompts;
- Our business and technology clients have used the tool to help them create and repurpose content for marketing, answer RFPs, prepare for meetings, structure and format data, write code and improve their written communications.”



# Generative AI in Court



- UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
  - **Notice of Amendment to 5TH CIR. R. 32.3**
- Counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human;
- A material misrepresentation in the certificate of compliance may result in striking the document and sanctions against the person signing the document.

# ARTIFICIAL INTELLIGENCE

T TEACHING & LEARNING INNOVATION



# AI at UT

- “UT recognizes the growing interest in artificial intelligence and the many consequential impacts it might have on teaching and learning on all levels.
- Artificial intelligence capabilities and availability are changing rapidly, and so are experts’ approaches to their best use in higher education.
- Therefore, we are assembling a resource for faculty members, graduate students, and members of our campus community.”

# AI in California

- Our higher education institutions – including UC Berkeley’s College of Computing, Data Science, and Society, and Stanford University’s Institute for Human-Centered Artificial Intelligence – are among the most advanced AI research institutions in the world.
- Coupled with the State’s unparalleled access to venture capital, our culture of innovation, and history of new, world-changing technologies, California sits at the epicenter of an industry that is experiencing exponential growth and development.



LOS ANGELES  
**"Dopest Attorney"**



alternative

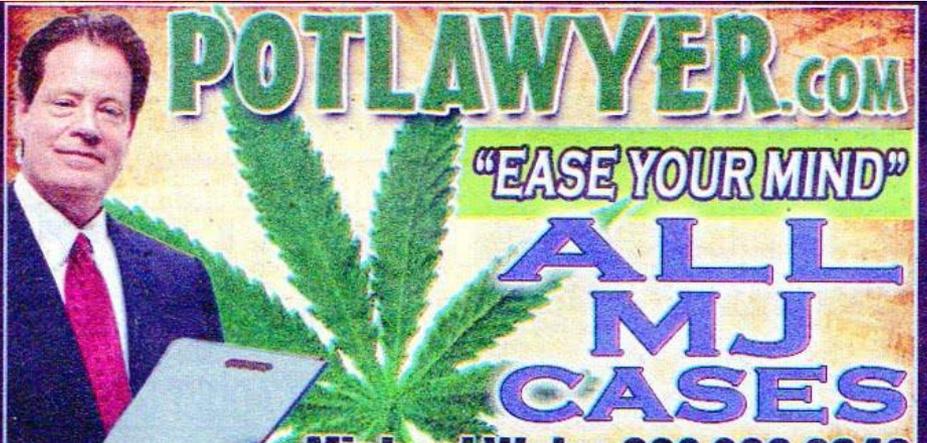
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A photograph of a billboard for She-Hulk, featuring the character's image and promotional text for the Disney+ series.

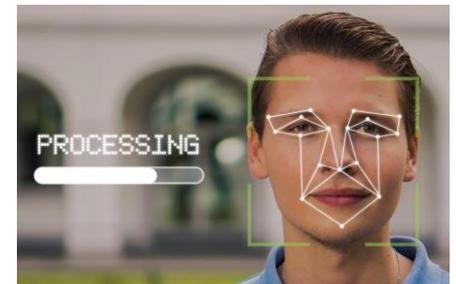


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# AI & Facial Recognition Software

- Facial recognition technology has garnered considerable attention and controversy in recent years.
- While supporters argue that it has been instrumental in identifying criminals, solving crimes, and rescuing human trafficking victims, critics contend that it disproportionately misidentifies people of color, leading to unjust arrests and infringements on civil liberties.





# AI & Facial Recognition Software

- “Rite Aid Banned from Using AI Facial Recognition After Federal Trade Commission (FTC) Rules Retailer Deployed Technology without Reasonable Safeguards” *FTC news release*;
- FTC says Rite Aid technology falsely tagged consumers, particularly women and people of color, as shoplifters; Ban will last five years;
- “This groundbreaking order makes clear that the Commission will be vigilant in protecting the public from unfair biometric surveillance and unfair data security practices.” *Samuel Levine, Director of the FTC’s Bureau of Consumer Protection*



# AI & Facial Recognition Software

- This past Thanksgiving, Randal Quran Reid was driving to his mother's home when he was pulled over by the police on a busy Georgia interstate and informed that he was wanted for crimes in Louisiana, a state he claims he had never visited. Subsequently, Reid spent several days in jail, until it was learned he was mis-identified by police.
- The lawsuit, filed on December 8 in federal court in Atlanta, points to the misuse of facial recognition technology by detective Andrew Bartholomew of the Jefferson Parish Sheriff's Office.
- Bartholomew solely relied on a match generated by facial recognition technology to obtain an arrest warrant for Ried.



# AI & Facial Recognition Software



- The alleged crime involved the unauthorized use of a stolen credit card to purchase luxury items worth over \$8,000 from a consignment store outside New Orleans in June 2022.
- However, the lawsuit claims that Bartholomew failed to conduct even a basic search into Mr. Reid's whereabouts at the time of the theft, which would have proven his innocence.
- Reid was in Georgia when the alleged crime occurred, and this information was not taken into account during the investigation.

# AI & Local Government Ethics

- ChatGPT offers enormous benefits for local government operations, but poses some risks.
- There are a variety of potential ways to integrate ChatGPT into your organization.
- It is most suitable for routine or automated processes, such as responding to resident inquiries. It can be used for more complex tasks such as conducting research and drafting reports.
- However, the more subjective or complex the issue, the more the author will need to evaluate ChatGPT responses carefully and edit them thoroughly to ensure the final product is accurate. It is important to remember that ChatGPT is not a substitute for experience and human judgement, but can be a useful aid to assist in processing work more quickly. It is best used to write first drafts.

# AI & Local Government Ethics

- The introduction of this powerful new technology does raise ethical concerns. First, and one of the most important, is privacy protections. The security of ChatGPT's site is unknown.
- It is important that you never enter personal data such as names, social security numbers, home addresses, medical information, or any other confidential matters.
- Second, if you are using ChatGPT to write policies, contract language or the like, **make sure to have your legal counsel review the final draft. ChatGPT is not a substitute for legal review.** Because it pulls information from across the internet and repackages it, the text it is creating for you may contain biases and inaccuracies.

# AI & Local Government Ethics

Third, ChatGPT is not a substitute for employees doing their own work with the usual expectation that they are applying their expertise and judgment for which they are being paid. Its use within the organization should be transparent and fully disclosed.

Because ChatGPT is drawing upon existing information and reformatting it, the use of its output may in some circumstances be considered plagiarism. Establishing a well-defined policy on this subject will be essential to ensure its appropriate use.



# AI & the White House



- On Oct. 30, 2023, the White House released a long-awaited executive order on artificial intelligence, which covers a wide variety of topics;
- “With this Executive Order, the President directs the most sweeping actions ever taken to protect Americans from the potential risks of AI systems” *White House release*
- Require that developers of the most powerful AI systems share their safety test results and other critical information with the U.S. government;
- Develop standards, tools, and tests to help ensure that AI systems are safe, secure, and trustworthy;
- Protect against the risks of using AI to engineer dangerous biological materials by developing strong new standards for biological synthesis screening;



# AI & the White House



- Protect Americans from AI-enabled fraud and deception by establishing standards and best practices for detecting AI-generated content and authenticating official content;
- Establish an advanced cybersecurity program to develop AI tools to find and fix vulnerabilities in critical software, building on the Biden-Harris Administration's ongoing AI Cyber Challenge;
- Order the development of a National Security Memorandum that directs further actions on AI and security, to be developed by the National Security Council and White House Chief of Staff.



# AI & the White House



- **AI is “Rights-Impacting”**
- Decisions to block, remove, hide, or limit the reach of protected speech;
- Law enforcement or surveillance-related risk assessments about individuals, criminal recidivism prediction, offender prediction, predicting perpetrators' identities, victim prediction, crime forecasting;
- Deciding immigration, asylum, or detention status; providing risk assessments about individuals who intend to travel to, or have already entered, the U.S. or its territories;
- Detecting or measuring emotions, thought, or deception in humans;



# AI & the White House



- **AI is “Rights-Impacting”**
- **In education**, detecting student cheating or plagiarism;
- Influencing admissions processes;
- Monitoring students online or in virtual-reality;
- Projecting student progress or outcomes;
- Recommending disciplinary interventions;
- Determining access to educational resources or programs, determining eligibility for student aid;
- Facilitating surveillance (whether online or in-person)



# AI & the Tennessee Governor



- **Governor's response to White House edict:**
- For those organizations engaging in high-risk activities, they should be encouraged or, where appropriate mechanisms (such as procurement requirements) can allow, mandated—to publish public-facing policies that describe what decisions are powered by AI, what human involvement there is in validating those decisions, and what process individuals can use to appeal those decisions;



# AI & the Tennessee Governor



- **Governor's response to White House edict:**
- The White House should investigate and establish baseline transparency, testing, assessment, and audit standards;
- One role of such standards would be to identify the relevant risks associated with AI systems and then work to create a framework for assessing AI systems inputs and outputs relative to the identified risks;
- The development of agile and dynamic public and civic initiatives that build trust and spur trusted technological changes bear consideration by the White House as it moves this effort forward.



# AI & the Tennessee Governor



- **Governor's response to White House edict:**
- The development of appropriate standards for trusted AI should flow from a multistakeholder process that is transparent, inclusive, and accessible, and incorporates a code of ethics;
- In addition to transparent disclosure of how AI systems work and the development of standards for trusted AI, entities must engage in periodic testing and assessment of AI systems that pose a notable risk to the legal rights of consumers or citizens.



# AI & the Tennessee Governor



- **Governor's response to White House edict:**
- State Attorneys General should have concurrent enforcement authority in any Federal regulatory regime governing AI. Significantly, State AG authority can enable more effective enforcement to redress possible harms;
- Consumers already turn to state Attorneys General offices to raise concerns and complaints, positioning our offices as trusted intermediaries that can elevate concerns and take action on smaller cases;
- The current reality in the data privacy arena is one where states are active and engaged in protecting consumers.



# THE ETHICS OF ARTIFICIAL INTELLIGENCE

# UNESCO Code of AI Ethics

- UNESCO is the United Nations Educational, Scientific and Cultural Organization;
- “Generative AI products, for example, were released to the market before full assurances were made about their safety and trustworthiness.
- They were quickly adopted by millions of people around the world but were nevertheless capable of delivering racist or biased outcomes;
- Questions pertaining to transparency or accountability were seldom addressed.

# UNESCO Code of AI Ethics

- Once electing to employ AI, the user organization must determine which AI method to use;
- Such use should be justified in the following ways:
- (a) the AI method chosen should be appropriate and proportional to achieve a given legitimate, legal aim;
- (b) the AI method chosen must not violate or abuse human rights; and
- (c) the AI method should be appropriate to the context and should be based on rigorous foundations;
- (d) the AI method must not impact fundamental human rights (e.g., human dignity, freedom of expression, fair trial).

# The ABA & AI

- Under our legal system, in order to be held accountable, an entity must have a specific legal status that allows it to be sued, such as being an individual human or a corporation.
- On the other hand, property, such as robots or algorithms, does not have a comparable legal status;
- Thus, it is important that legally recognizable entities such as humans and corporations be accountable for the consequences of AI systems, including any legally cognizable injury or harm that their actions or those of the AI systems or capabilities cause to others, unless they have taken reasonable measures to mitigate against that harm or injury

# The ABA & AI

- The ABA House of Delegates Resolution:
- The ABA urges courts and lawyers to address the emerging ethical and legal issues related to the usage of artificial intelligence (“AI”) in the practice of law, including:
  - (1) bias, explainability, and transparency of automated decisions made by AI;
  - (2) ethical and beneficial usage of AI; and
  - (3) controls and oversight of AI and the vendors that provide AI.

# The ABA & AI

- Further, the ABA urges federal, state, local, territorial and tribal governments to:
- Ensure due process and refrain from using pretrial risk assessment tools unless the data supporting the risk assessment is transparent, publicly disclosed, and validated; and
- Recognize that an individual's criminal history and other criteria may reflect structurally biased application of laws, policies or practices, as well as conscious or unconscious bias.

# The ABA & AI

- Lawyers, predictably, use AI for electronic discovery. The process involves an attorney training the computer how to categorize documents in a case.
- Through a method of predictive coding, the AI technology is able to classify documents as relevant or irrelevant, among other classifications, after extrapolating data gathered from a sample of documents classified by the attorney.

# The ABA & AI

- AI also is being used to predict the outcome of litigation through the method of predictive analytics.
- AI tools utilize case law, public records, dockets, and jury verdicts to identify patterns in past and current data.
- The AI then analyzes the facts of a lawyer's case to provide an intelligent prediction of the outcome.

# The ABA & AI

- As AI becomes more advanced, it will be used by lawyers to detect deception.
- Researchers, for example, are working on developing AI that can detect deception in the courtroom.
- In one test run, an AI system performed with 92 percent accuracy, which the researchers described as “significantly better” than humans.

# The ABA & AI

- There are a number of ethical duties that apply to the use of (**and non-use of**) AI by lawyers, including the duties of:
  - (1) competence (and diligence),
  - (2) communication,
  - (3) confidentiality, and
  - (4) supervision.

## Key Practical Takeaways Relating to The Ethics of AI

- There clearly are a number of ethical rules that apply to lawyers' use and non-use of AI technology, and they have real-world application.
- Lawyers must be informed about AI's ability to deliver efficient and accurate legal services to clients while keeping in mind the ethical requirements and limitations.
- Ultimately, lawyers must exercise independent judgment, communicate with clients, and supervise the work performed by AI.

# Key Practical Takeaways Relating to The Ethics of AI

- In many ways, the ethical issues raised by AI are simply a permutation of ethical issues that lawyers have faced before with regard to other technology.
- It shows that the legal ethics rules are adaptable to new technologies, and AI is no exception.

