

# Evolve with AI or Become Extinct

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Presented by:

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## Topics Overview:

- Understanding AI and the Main Concerns for the Discussion
- Development of Company Policies for AI Use
- AI and Outside Counsel
- Practical Implications and Compliance
- Future Challenges and Considerations (bonus section if time allows)

## 1. Introductions:

- Christopher Aird
- Nelson Mullins – Established in 1897, Nelson Mullins is an Am Law 100 firm of more than 1,000 attorneys, policy advisors and professionals with 33 offices in 17 states and Washington, D.C. Among Nelson Mullins specialties are complex commercial litigation, data privacy, intellectual property, venture capital and technology, and commercial contracts.
- Rebecca Lester – Rebecca is graduate of the University of Miami School of Law and an associate on the Nelson Mullins Venture Capital and Technology team. She specializes in corporate legal advice, especially for venture capital and start-up companies in the US and LatAm.
- Francisco Armada - Francisco is a graduate of the University of Miami School of Law, prior to his legal career he served as an officer in the U.S. Army. He specializes in general civil litigation, complex commercial litigation, probate litigation, and international copyright litigation.
- Ryan Todd - Ryan is a graduate of the University of Florida School of Law and is a partner on the Nelson Mullins South Florida litigation team. Ryan's practice focuses on complex commercial litigation, white collar defense, and general outside counsel services.
- We will be reserving some time at the end of the panel for questions, but if you have relevant questions throughout feel free to askDisclaimer that this is not legal advice or the opinions of MasTec or Nelson Mullins, but our individual opinions.

## 2. Understanding AI and the Main Concerns for the Discussion (10-12 min):

### • **What is artificial intelligence (AI)? (Rebecca)**

- Discussion:
  - Definition: AI is technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy. There's two types of computer science that are used by AI – machine learning (think clippy) and deep learning which models neuro pathways (think War Games)
  - Types of AI: in 2024, most AI research and news is focused on generative AI, however, AI includes research tools, predictive modeling, and more.
  - Short use case examples: ChatGPT, Watson (developed between 2004 and 2011, to beat Jeopardy) from IBM which has backed weather channel's predictive analysis since 2016 and for tennis fans the analysis for the US Open since at least 2023, a 2019 article listed Face ID, app suggestions (think social media feed or what to watch next suggestions), voice assistants, and of course Google search as some of the best examples of how AI is used everyday.

### • **What do we mean when we talk about AI today? (Rebecca)**

- Discussion:
  - Generative AI: Today we are focusing on generative AI. Of course, that includes ChatGPT. Generative AI specifically describes algorithms that can be used to create new content. Generative AI uses deep-learning models that can generate high-quality text, images, and other content based on their training data.
  - I want to highlight the idea of training data. Imagine asking someone in Miami how to prepare the perfect coffee, now imagine asking someone in Tallahassee the same question.

You probably get two different answers. That is because their experiences and cultures are different. With AI similar things occur – differences in answer, breadth and depth of knowledge, biases – all based on the data that the models were trained on.

- **What are some of the key or more significant legal risks of generative AI systems like ChatGPT? (Francisco – if too much for one feel free to redirect to any of us)**
  - Discussion:
    - Regulation: One of the main issues is that generative AI is not well regulated. In fact, so far no major country has passed major regulation on the use of AI.
    - Companies are self-regulating.
    - A global 2024 DATA Privacy Benchmark Study done by the Tech Giant Cisco. Showed:
      - Most Large Organizations have restricted its use.
        - 27% have banned its use. These companies include JPMorgan Chase, Northrup Grumman, Apple, Verizon and Spotify have banned ChatGPT and Microsoft OpenAI
      - **Finance.** Ironically, 83% of financial companies, some which have restricted or banned the use, view AI as “crucial to the future of finance”. Yet, 42% have not yet adopted AI.
      - Top concern = security, loss of human judgment, loss of oversight, cost of acquisition
    - IP, Data Compliance and Security: Because we don’t have insight into how information is used in the generative AI system there are concerns about the confidentiality of that information. Concerningly, 45% of users have input confidential personal information and 48% have input confidential information of their employers. This means that confidential information developed by companies could be considered public domain because of how employees are using generative AI systems.

- Plagiarism/Infringement
  - Acknowledging AI as author
  - Citing AI as a reference
- WHO OWNS THE WORK?
  - AI Authorship Activists (AI should be the owner of the output) vs Anti-AI Authorship activists(writers of the code should own the materials),
  - Copyright law = human authorship is an indispensable requirement for copyright; most jurisdictions do not recognize AI rights
  - China, England and Nigeria do not recognize AI rights to own copyrights
  - US 37 CFR 202- Chapter 37 of Part 202 of the US Code of Federal Regulations – AI platforms are not protected.
  - Read paper by Ekhator Gabriel Ekhor
- The “blackbox” issue: the issue of how the information you put into the generative AI system is used.
  - Black box refers to the algorithms and other process that happen between the input of information and output of results
  - What happens to information imputed? How is it stored? Security protocols? Can they be breached?
  - AI is not barred from using personal private information, or trade secrets
  - Copyright. AI might infringe on copyrights without Customer’s knowledge.
    - In an open learning system, it is impossible for user to know what the AI is relying upon
    - Some AI systems (Westlaw, Google Cloud, Lexis) will properly cite to works, others ChatGPT, may not

### 3. Development of Company Policies for AI Use (10-12 min):

- What should a generative AI policy look like for the entire company? (Francisco)
  - Discussion:

- Generative AI policies should be sure to address the IP concerns we just mentioned – confidentiality and copyright in particular. They should also address accuracy, especially for attorneys and legal departments.
- IP protection:
  - Copyright is also put at risk because the generated information is not developed by the user of generative AI but rather the generative AI system is the author.
  - AI can infringe on copyright, and result in liability – AI is trained on large sources of data from existing work
    - Data used to train the model could be infringing and then result in infringement by user
  - That said in ChatGPT as an example, using the free/open system means that the works it develops are owned by ChatGPT’s developers, whereas in the paid system the IP rights are given to the user (effectively a work for hire).
    - However, this is based on ChatGPT’s policy and there is no guaranty that the output generated by Chatgpt will itself not infringe others IP (copyrights, trade secrets, patents)
    - Of paid ChatGPT is not considered a co-author under its terms and conditions; other systems may have different terms and conditions
  - Images. When we get into the discussion about images it becomes even more complex because the image generated could be subject to existing IP protections.
- Anything “entirely made” by AI is not copyright protected. But the question of “entirely made” is still up for discussion.
  - Copyright/trademark/patent
  - Trade secret
- Security: Do not input confidential information, trade secrets, personal identifying information, IP (patent)
  - Inputting this information

- Accuracy: Generative AI can have what are called hallucinations - we've seen this with the hallucination by ChatGPT of a legal precedent. But this can happen at any time and with anything.
  - September 20, 2023 Paper by Robert McGee – concluded not much concerns for writers, ChatGPT was asked to write a novel, none of it matched.
- Discrimination: users need to be aware of the fact that any generative AI program will have biases and results may be biased, offensive, or discriminatory. **(Rebecca & Ryan)**
- **What should a generative AI policy look like for a legal department? (Francisco)**
  - Discussion:
    - Confidentiality concerns: legal departments
    - Accuracy: There should be a subject matter expert because there AI has hallucinations, does not understand context, cannot discern between a reliable source or an unreliable source
    - Limit use to certain creative employees
    - Bar use of trade secret and confidential information
    - Limit use to materials and images that are not published to avoid copyright issues
    - Training

#### 4. AI and Outside Counsel (10 min):

- **What should we expect from our outside counsel regarding their use of AI? (Ryan)**
  - Discussion:



- Depending on practice area, you should expect outside counsel to use AI in an ethical, responsible, and intelligent manner. When used properly, AI can improve efficiency, reduce cost, improve quality of work product, etc.
- Does outside counsel have their own written AI policy? It should be the expectation that outside counsel have a written AI policy and it would be the prerogative (and likely best practice) of general counsel request outside counsel's policy, and carefully review the same.
- Similarly, each of your companies should have their own AI policies. Best practices might include providing that policy to outside counsel, and asking outside counsel to comply with your specific mandates regarding AI.
- There is a very high reputational risk right now for improper use of AI. No one wants their case and company to be the headline on the next sanction news article regarding improper use of AI—i.e., you don't want to be the next “cat on zoom” or “fake case in a motion” when it comes to improper use of AI. For that reason, you want to be prepared with policies for how to use and interact with outside counsel in discussions about AI.
- We spoke about some of the risks to use already—e.g., copyright and trademark implications, waiver of privilege and confidential information, hallucinations, improper citations and plagiarism, etc. Lawyers must take care in protecting these.
- As a best practice-point example, I only ever put publicly available information in an AI generator, to avoid any concerns about confidential or privileged information waiver. There are typically ways to “toggle off” many AI “review” or “learn from input” settings. And many paid services claim not to learn from inputs. However, there is usually little value in putting that information into the AI input, and so I find the best practice is only to put in publicly available information.
- Of course, all attorneys must check all citations, statements of facts, summaries of the law, etc., to ensure accuracy.



- **How does outside counsel's use of AI affect me? (Ryan)**

- Discussion:

- Cost savings: using generative AI appropriately can improve efficiency and therefore increase a company's "bang-for their-buck" when consulting with outside counsel. Real life examples:
  - **drafting contention request for production:** AI can create a near-perfect 110 request, request for production based on prompts and a copy/paste of a complaint)
  - **summarizing arguments for hearing:** AI can read a motion, and a response in opposition, and recommend the best arguments to make to a judge in a five minute motion calendar hearing
  - **draft a powerpoint:** AI can turn filed motions, responses, etc., into a powerpoint for a hearing or an opening/closing statement
  - **And more: deposition outline,** based on pleadings or interrogatory answer input; **draft response/reply motions,** based on prior filing input; **letter writing campaigns,** based on prior letter input; **etc.**
- Privity: knowing who you share your communications and information with is key to protecting privity.

## 5. Practical Implications and Compliance (10-12 min) (Ryan)

- What steps can legal departments take to monitor and enforce compliance with AI-related policies?

- Discussion:

- Training is key and using firewall blocks as well.
- One option is to block sites like ChatGPT for everyone and unlock it only for those users who have received training for the system. Or tiered system of those who have access; those who don't.

## 6. (Bonus Section) Future Challenges and Considerations (direct to whoever)

- How can legal professionals stay ahead of the curve in terms of technological competence?
- What role do you see AI playing in the legal profession over the next decade, and how can we prepare for it?