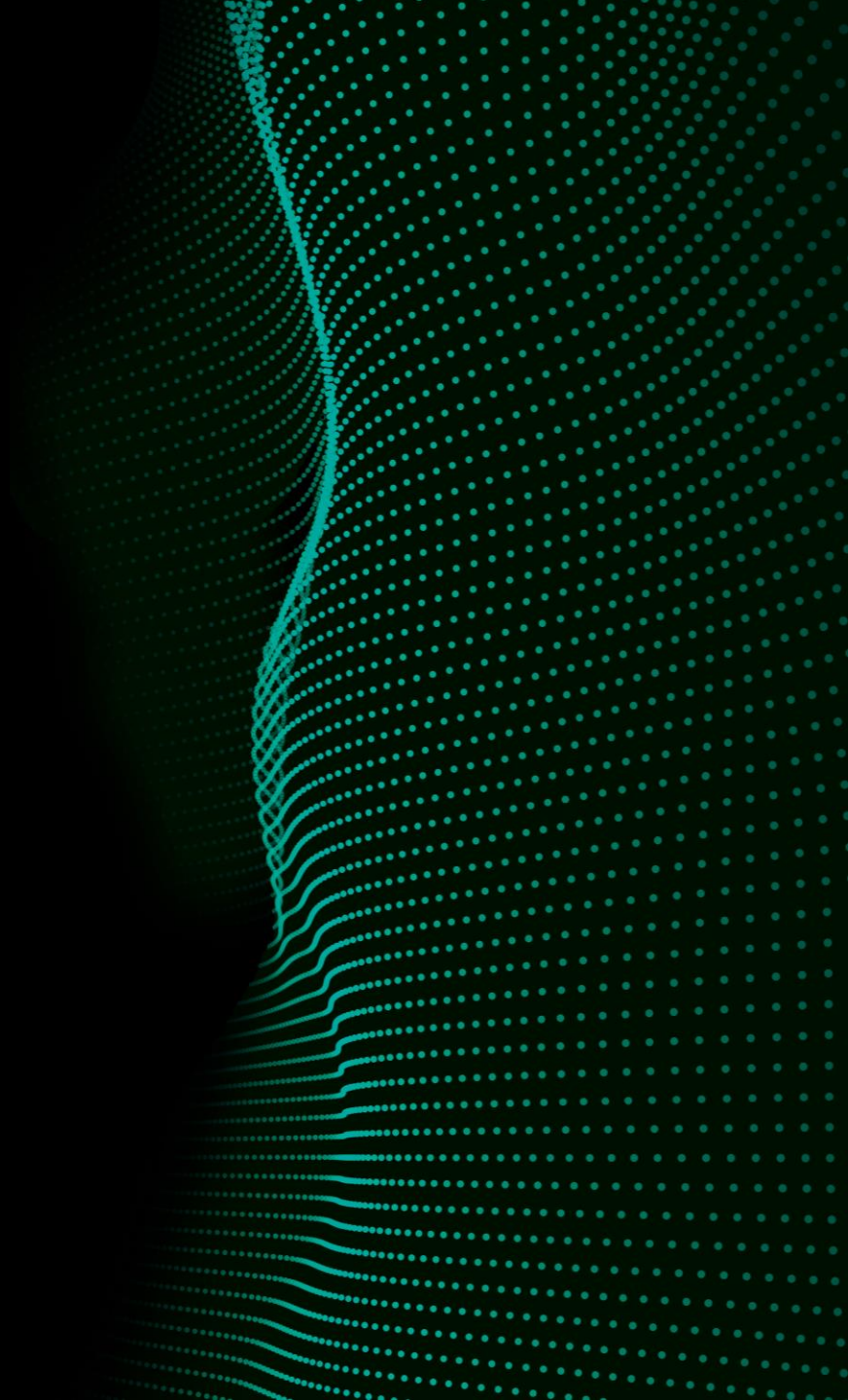# Bloomberg Law

Navigating Business Risk in the Age of Artificial Intelligence
ACC Chicago

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Speaker Panel

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Artificial Intelligence

- **a system that is designed to operate with a certain level of autonomy and that, based on machine and/or human-provided data and inputs, infers how to achieve a given set of human-defined objectives using machine learning and/or logic- and knowledge based approaches, and produces system-generated outputs such as content (generative AI systems), predictions, recommendations or decisions , influencing the environments with which the AI system interacts. – EU AI Act (EU) 2024/1689 art. 3(1)**

- **any machine-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including content, decisions, predictions, or recommendations, that can influence physical or virtual environments. - Colo. Rev. Stat. § 6-1-1701(2)**

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Artificial Intelligence
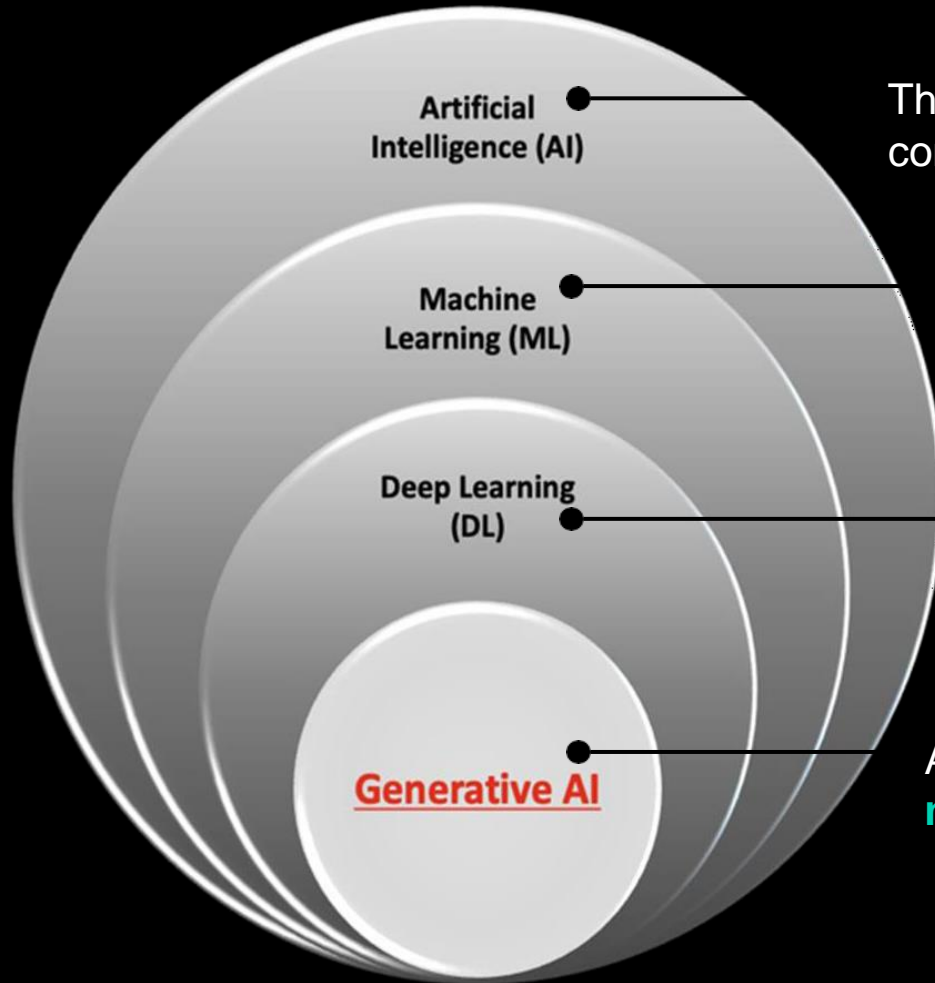
The **simulation of human intelligence** processes by machines, especially computer systems

A subfield of AI focused on the use of data and algorithms in machines to imitate the way that humans learn, **gradually improving its accuracy**

A machine learning technique that imitates the way humans **gain certain types of knowledge**; uses statistics and predictive modeling to process data and make decisions

Algorithms (such as ChatGPT) that use prompts or existing data to **create new content**:
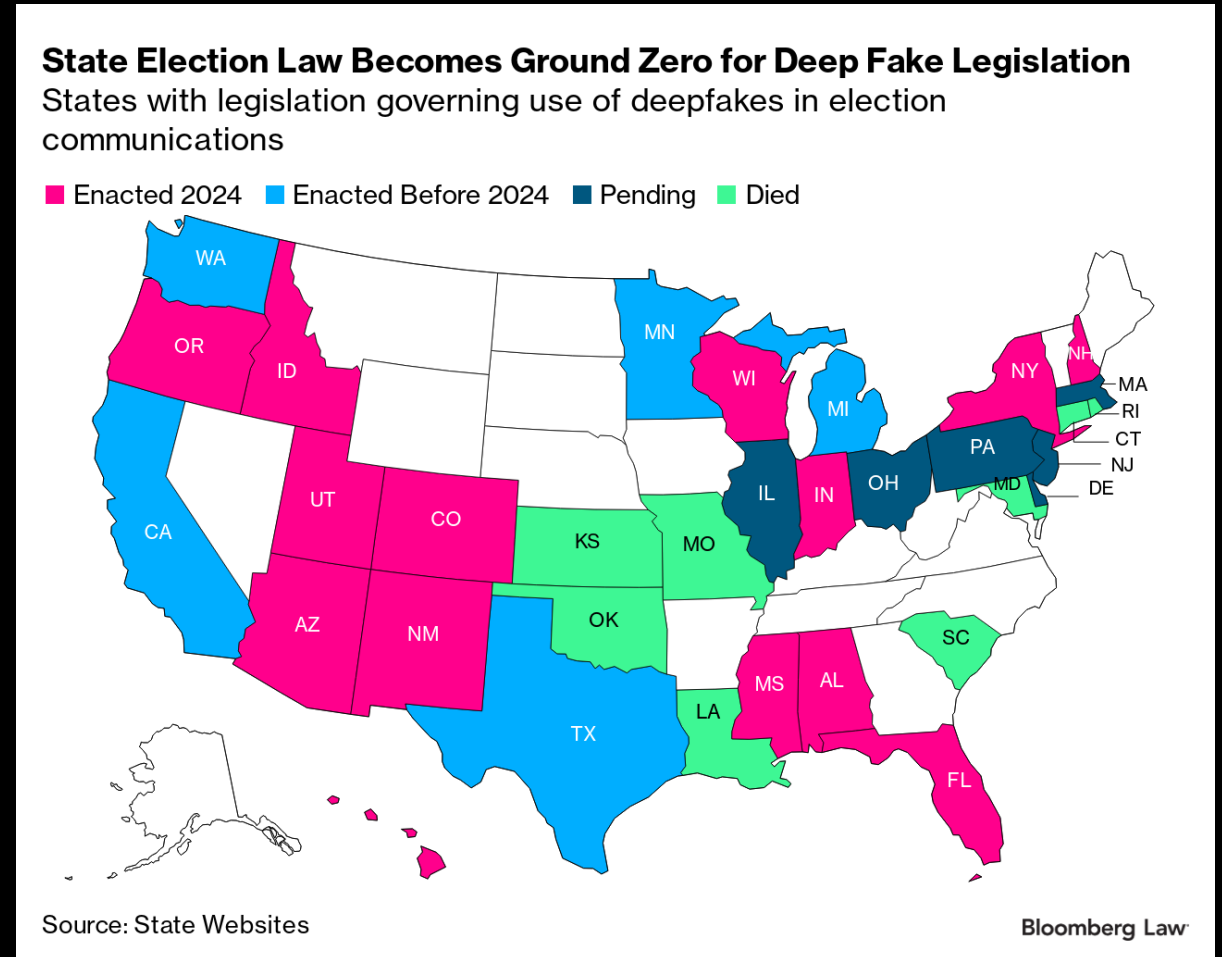- Written: text, code
- Visual: images, videos
- Auditory: audio, musical, vocal reproductions

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Automated Decision Making in Hiring

- **High Volume of Applications and AI-Generated Resumes Challenge HR Teams**
  - Companies are receiving thousands of applications for open positions
  - Job board's "Easy Apply" features allows people to apply for jobs quickly

- **Legal Risks**
  - Bias and discrimination
    - NYC (AEDT), Jan 2023
    - Colorado AI Act, Feb 2026
    - Executive Order
    - EU AI Act, February 2025
  - Reputational Harm to Organization
    - Over 70% of Americans oppose using AI in hiring decisions and facial recognition technology.

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Additional State and Local Government Laws

- California (AB-972 (Cal. 2022)), Texas SB-751 (Tex. 2019)), Washington (SB-5152 (Wash. 2023), and Minnesota (HF-1370 (Minn. 2023)) passed bills that prohibit using deepfakes to influence elections without clear disclosures.

- In 2024, Utah passed the AI Policy Act, which imposes transparency obligations and limits the ability of entities to claim as a legal defense that generative AI was to blame for violations of consumer protection laws.

- In Connecticut, CT S. 1103 (2023) establishes an office of AU and a task force to study AI, develop a bill of rights, and protect children against targeted advertising.

State Election Law Becomes Ground Zero for Deep Fake Legislation
States with legislation governing use of deepfakes in election communications

Legend: Enacted 2024 | Enacted Before 2024 | Pending | Died

Source: State Websites

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International Governments

- **EU AI ACT**
  - Establishes a regulatory framework for AI in the EU and classifies AI systems into four categories:
    - unacceptable risk (banned)
    - high-risk (strict requirements)
    - limited risk (transparency obligations)
    - and minimal risk (voluntary compliance).
  - Includes regulating high-risk AI, mandating transparency of use, banning harmful applications (e.g., mass surveillance), and requiring human oversight
  - Large penalties for non-compliance (€30 million or 6% of global annual revenue, whichever is higher).
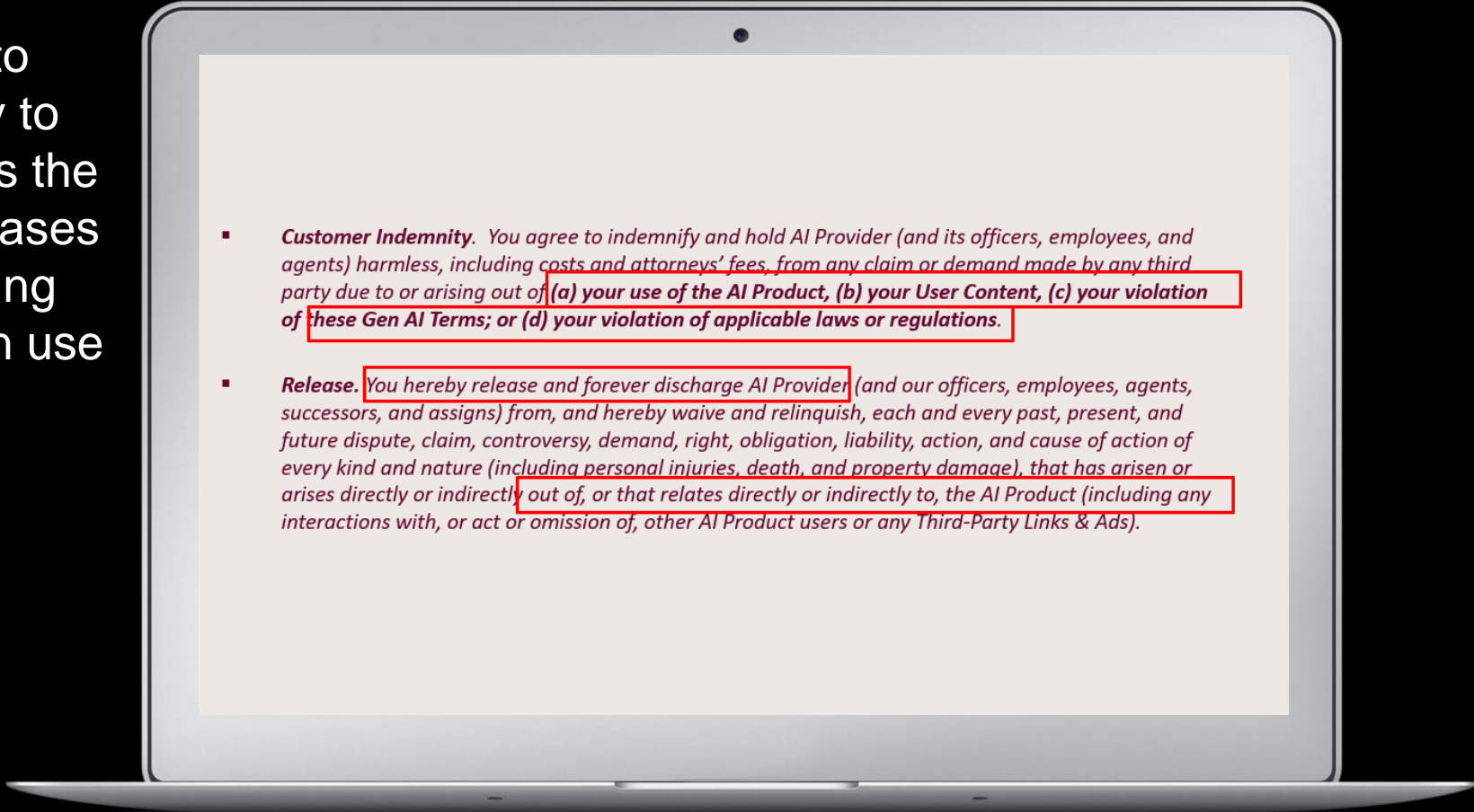- **China**
  - Issued rules governing the use of recommender systems, AI-generated content, and generative AI.
    - Recommender systems: (1) may not engage in price discrimination, (2) are restricted in what actions they can take regarding minor users; and (3) must allow users some control over their personal data.
    - AI-generated content must be identified as such
    - Generative AI cannot be used to incite subversion or government overthrow, endanger national security, or promotes extremism, violence, or discrimination

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Evolving Model Clauses/Terms of Use

- Due to emerging innovations, no standard market practice yet
- Frequently structured as "Additional AI Terms" or "AI Addendum" to supplement General Ts & Cs or Master Terms
- Main themes are broad disclaimers of warranty and liability for AI products
- As a default rule, customers use at their own risk

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Broad End User Indemnity and Liability

The AI provider is attempting to shift legal and financial liability to the user. This potentially limits the AI provider's liability and increases the likelihood of the user bearing the consequences of their own use of the AI system.

- **Customer Indemnity.** *You agree to indemnify and hold AI Provider (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of **(a) your use of the AI Product, (b) your User Content, (c) your violation of these Gen AI Terms; or (d) your violation of applicable laws or regulations**.*

- **Release.** *You hereby release and forever discharge AI Provider (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present, and future dispute, claim, controversy, demand, right, obligation, liability, action, and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the AI Product (including any interactions with, or act or omission of, other AI Product users or any Third-Party Links & Ads).*

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Warranty Disclaimers

The AI provider is attempting to limit its responsibility for any claims associated with the Output. This can protect the AI provider from being held accountable for unexpected or unsuitable Outputs

- **DISCLAIMER**. *YOU ACKNOWLEDGE THAT OUTPUT IS GENERATED BY MACHINE LEARNING CAPABILITY, AND WE MAKE NO WARRANTY OR GUARANTEE AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF THE OUTPUT. PROVIDER WILL HAVE NO LIABILITY ARISING FROM YOUR USE OF THE AI FEATURES OR ANY ERRORS OR OMISSIONS CONTAINED IN THE OUTPUTS.*

- **Provided "As Is."** *Provider disclaims all warranties, express or implied, regarding the Output, including any implied warranties that the Output will not violate the rights of a third party or any applicable law. You are solely responsible for the creation and use of the Output.*

- **Suitability, and Similarity of Output.** *Use of generative AI features may produce Output that is unexpected or unsuitable for some users. The Output may not be unique and other users of generative AI features may generate the same or similar Output. The Output may not be protectable by Intellectual Property Rights.*

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Customer Liable for Prompts/Outputs

The AI provider is attempting to make the user responsible for claims that arising from the user's use of the AI system.

- **You agree to defend, indemnify and hold harmless the AI Provider** and its Affiliates against any and all claims arising from your use of the AI Content.
  - Carveout for "non-text Outputs" generated from text-based Inputs (i.e., text to image feature) – Customer not responsible for text to image Outputs generated by AI Product

- **You agree that you will not include any sensitive personal data** of any individual (including data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, health data or data concerning your sex life or sexual orientation) in any Input to AI Products.

- When using Outputs, **you agree to inform viewers of those Outputs that the content is AI-generated.**

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Considerations – Enterprise vs. Non-Enterprise Agreements

Enterprise Agreements

- **Developer and Deployer**

- **Unique Risks**
    - Indemnification Carveouts
        - Modifications to the software or technology
        - Unauthorized combination of the software or technology with other software or technology
        - Use of the software or technology beyond the scope authorized in the agreement

Non-Enterprise Agreements

- **General Terms of Use**

- **Unique Risks**
    - The Vendor of the AI System could leverage input data to develop competing products
    - Malicious output via direct or indirect prompt injection

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Methods of Protecting Proprietary Information

Technical/Administrative Safeguards

- **Content Filters**
- **Compliance Filters**
- **Data Validation Filters**
- **Human in the Loop**
- **AI Literacy (Upskilling Employees)**

Contractual Safeguards

- **Core Company Contracting Principles**
- **Data Usage**
- **RACI Matrix**

Consider the risk versus reward analysis when implementing safeguards and determine the level of risk the organization is willing to take

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Increased Cybersecurity Risks in the Age of AI

- **AI-powered Spear-phishing at scale**
  - Attackers may leverage the ability of advanced AI assistants to learn patterns of regular communications to craft highly convincing and personalized phishing emails or other communications

- **Malicious Code Generation**
  - Advanced AI assistants with the ability to produce source code can potentially lower the barrier to entry for threat actors.

- **Circumvention of Technical Security Measures**
  - Black Box Theory
  - Gray Box Theory
  - White Box Theory

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Consumer-Focused Best Practices

For Developers

- Assume the attacker knows your system and how to attack it
- Consider the strongest defense and the strongest attack and let this be your guide

For Deployers

- Understand the organization's risk appetite
- Identify the roles and responsibilities of relevant stakeholders
- Identify the IT environment's security boundaries and how the AI system fits within these boundaries

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Best Practices for Applying Responsible AI

- **Mapping Technologies, Data, and Use Cases**
  - Identify technologies being used, where, and for what purpose.
- **Prioritization and Focus**
  - Prioritize high-risk use cases
- **Principles and Processes**
  - Tailor principles and processes to the organization
- **Piloting and Testing**
  - Pilot and test principles and policies to real use cases
- **Oversight Boards**
  - Establish a multistakeholder and interdisciplinary board or committee
- **Documentation**
  - Keep documentation throughout the lifecycle of the AI solution
- **Training and Reporting**
  - Focus on upskilling and reskilling your employees

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Thank You

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