The Impact of AI on Attorney-Client Privilege

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The increasing integration of artificial intelligence (AI) into the legal profession raises important questions about the protection of sensitive information, including attorney-client or legal professional privilege.
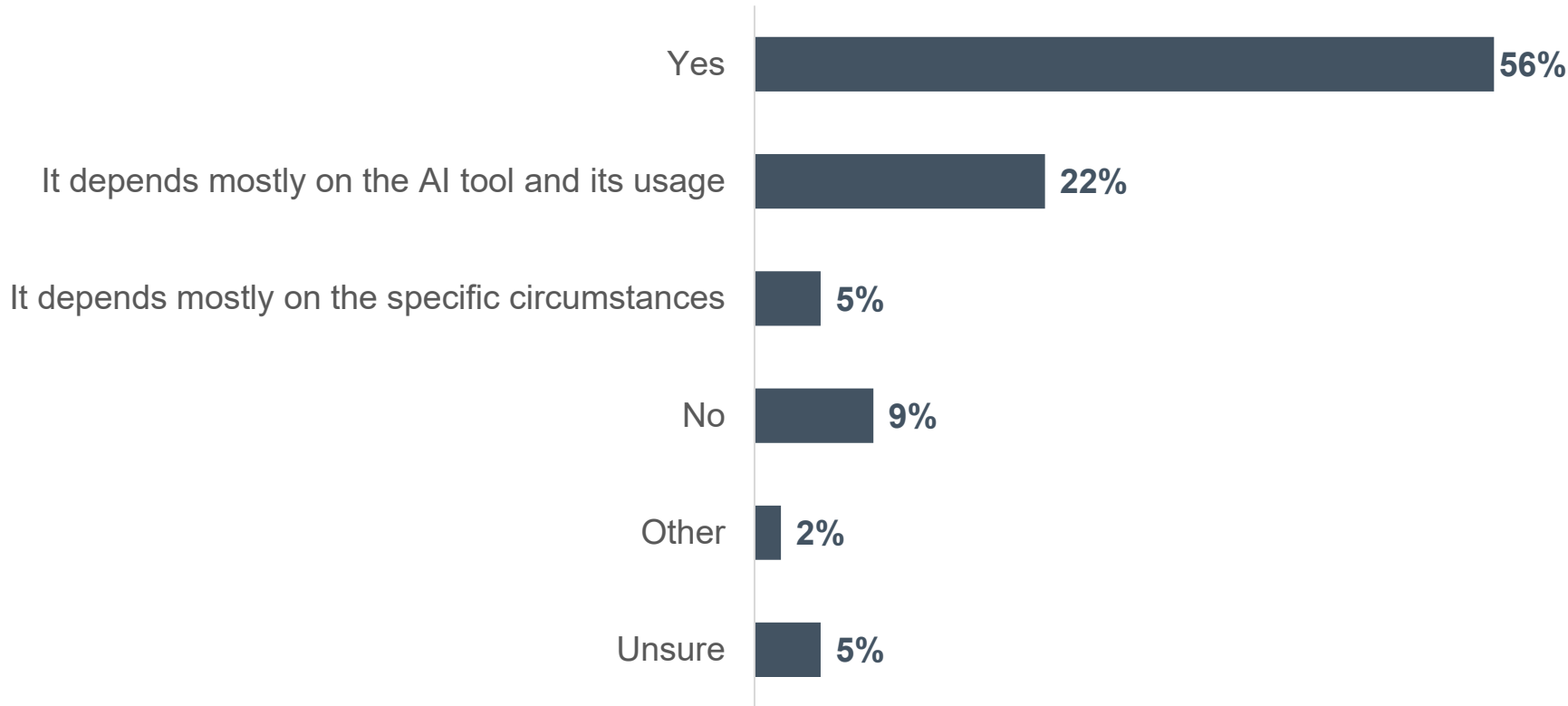
ACC conducted a survey of 456 in-house counsel globally to gather high-level insights into the concerns, practices, and perspectives of the potential impact of AI on legal privilege.

The results reveal significant concerns about potential breaches of legal privilege when using AI tools. While recognizing that the risk varies based on factors like the AI tool, data input, purpose, and security measures, many believe establishing clear guidelines for using AI in legal practice can help mitigate these risks.

Please visit acc.com/advocacy to learn more about ACC's advocacy efforts.

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RISK PERCEPTION OF AI ON LEGAL PRIVILEGE

Do you believe the use of AI tools could potentially compromise attorney-client privilege?

Response	Percentage
Yes	56%
It depends mostly on the AI tool and its usage	22%
It depends mostly on the specific circumstances	5%
No	9%
Other	2%
Unsure	5%

- Most respondents (56 percent) believe that AI tools have the potential to compromise privilege, while nine percent do not.

- The perceived risk is slightly higher in Australia (64 percent) and Canada (60 percent).

- Twenty-seven percent believe it depends either on the how specific tools are used or the circumstances.

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Twenty-seven percent of respondents said that the risk of compromising privilege is dependent on the AI tool, its usage, or on the specific circumstance. When asked to elaborate, several key themes emerged:

Nature of the AI Tool: Respondents emphasized the importance of the AI tool's design, security features, and data handling practices. For example, some expressed concerns about generative AI tools that learn from user inputs, while others felt more confident in private, non-training AI tools.

Data Input and Privacy Settings: The type of information entered into the AI tool and the tool's privacy settings were frequently mentioned. Respondents highlighted the risk of inadvertently disclosing privileged information entered into the tool or if the tool's settings are not configured correctly.

Purpose of Use: The way the AI tool is used, whether for general research or specific legal advice, also influenced perceptions of risk. Some respondents believed that using AI for general research purposes was less likely to compromise privilege, while others expressed concerns about using AI to generate legal advice or notes.

Vendor Due Diligence: The security practices and trustworthiness of the AI tool provider were considered important factors. Respondents suggested that attorneys should carefully evaluate vendors to ensure they have robust security measures in place.
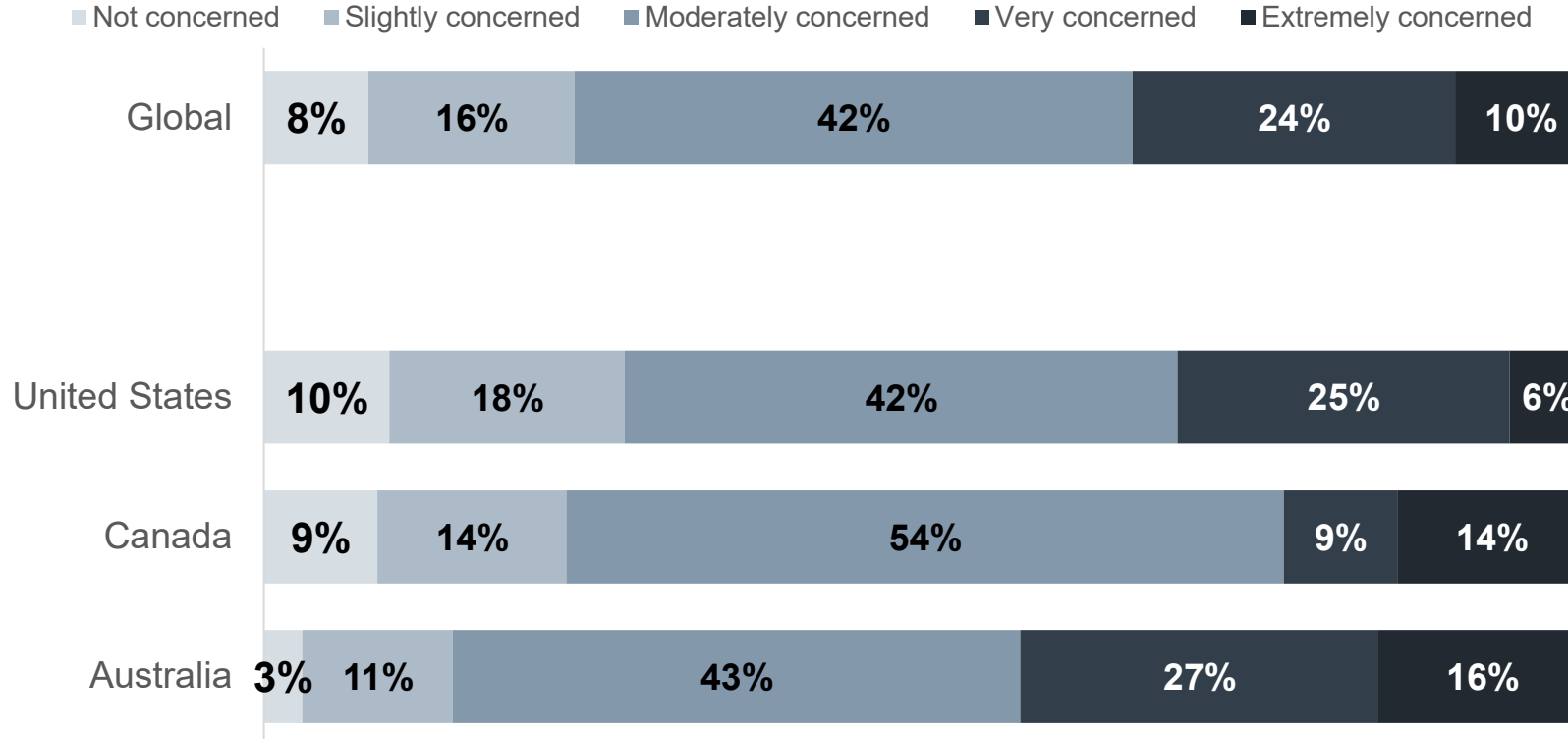
Confidentiality and Security Measures: Respondents emphasized the need for AI tools to have strong confidentiality and security measures, including data encryption, access controls, and regular security audits.

Awareness and Training: Some respondents highlighted the importance of attorney awareness and training regarding the potential risks of using AI tools and the necessary precautions to protect privileged information.

Overall, respondents stressed the importance of careful consideration and due diligence when using AI tools to minimize the risk of compromising attorney-client privilege. They emphasized the need to understand the specific features and capabilities of the AI tool, to be mindful of the information being inputted, and to take appropriate security measures to protect sensitive data.

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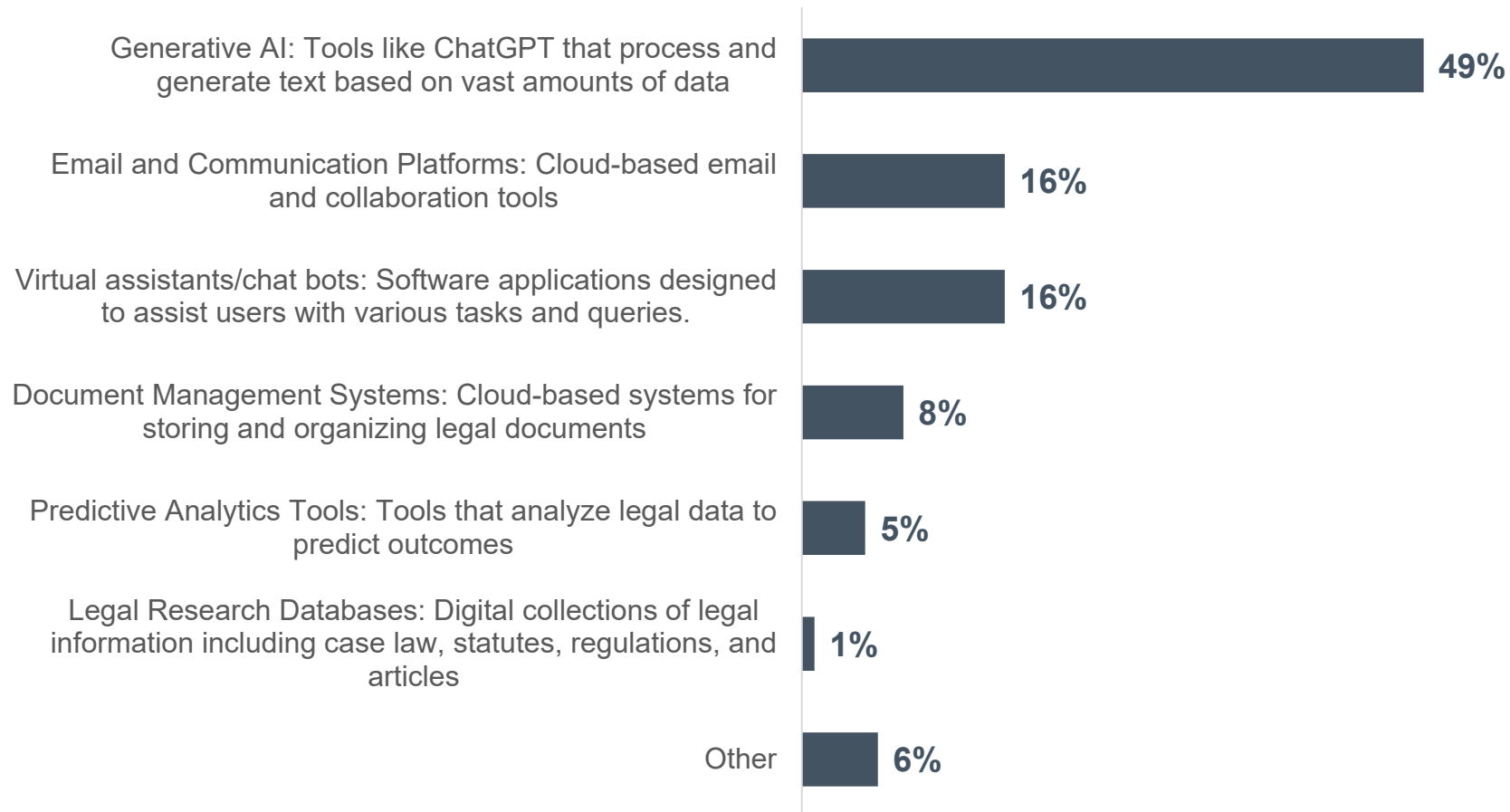
CONCERN ABOUT DISCLOSING PRIVILEGED INFORMATION WHEN USING AI TOOLS

How concerned are you about the possibility of inadvertently disclosing privileged information when using AI-powered tools?

- Not concerned
- Slightly concerned
- Moderately concerned
- Very concerned
- Extremely concerned

	Not concerned	Slightly concerned	Moderately concerned	Very concerned	Extremely concerned
Global	8%	16%	42%	24%	10%
United States	10%	18%	42%	25%	6%
Canada	9%	14%	54%	9%	14%
Australia	3%	11%	43%	27%	16%

- Globally, 34 percent of respondents are "very" or "extremely" concerned about disclosing privileged information.

- There is greater concern in Australia with 43 percent "very" or "extremely" concerned, while the concern level is more moderate in Canada (23 percent).

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AI TOOLS POSING GREATEST PERCEIVED RISK

Which category of AI tools do you believe is most at risk of compromising attorney-client privilege?

Category	Percentage
Generative AI: Tools like ChatGPT that process and generate text based on vast amounts of data	49%
Email and Communication Platforms: Cloud-based email and collaboration tools	16%
Virtual assistants/chat bots: Software applications designed to assist users with various tasks and queries.	16%
Document Management Systems: Cloud-based systems for storing and organizing legal documents	8%
Predictive Analytics Tools: Tools that analyze legal data to predict outcomes	5%
Legal Research Databases: Digital collections of legal information including case law, statutes, regulations, and articles	1%
Other	6%

- By far, generative AI tools are believed to be the most at-risk of compromising legal privilege. This aligns with the previous results indicating concern around tools retaining and learning from user input.

- There is moderate variation internationally with genAI being selected by 61 percent in Australia and document management systems being the second most selected tool in Canada (21 percent).

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7%
of respondents globally say they have encountered

specific instances where the use of AI has raised questions about the applicability of attorney-client privilege. Examples include:

Accidental disclosure of privileged information: Respondents reported inadvertently including privileged information in prompts or outputs of AI tools, such as generative AI, document management systems, email and communication platforms, legal research databases, predictive analytics tools, and virtual assistants/chatbots.

Data retention and reuse: AI tools retaining and reusing privileged information, even after it has been deleted from the user's input, in tools such as generative AI, document management systems, email and communication platforms, legal research databases, predictive analytics tools, and virtual assistants/chatbots.

Language model learning: AI language models learning from privileged information and incorporating it into future outputs, particularly in generative AI tools.
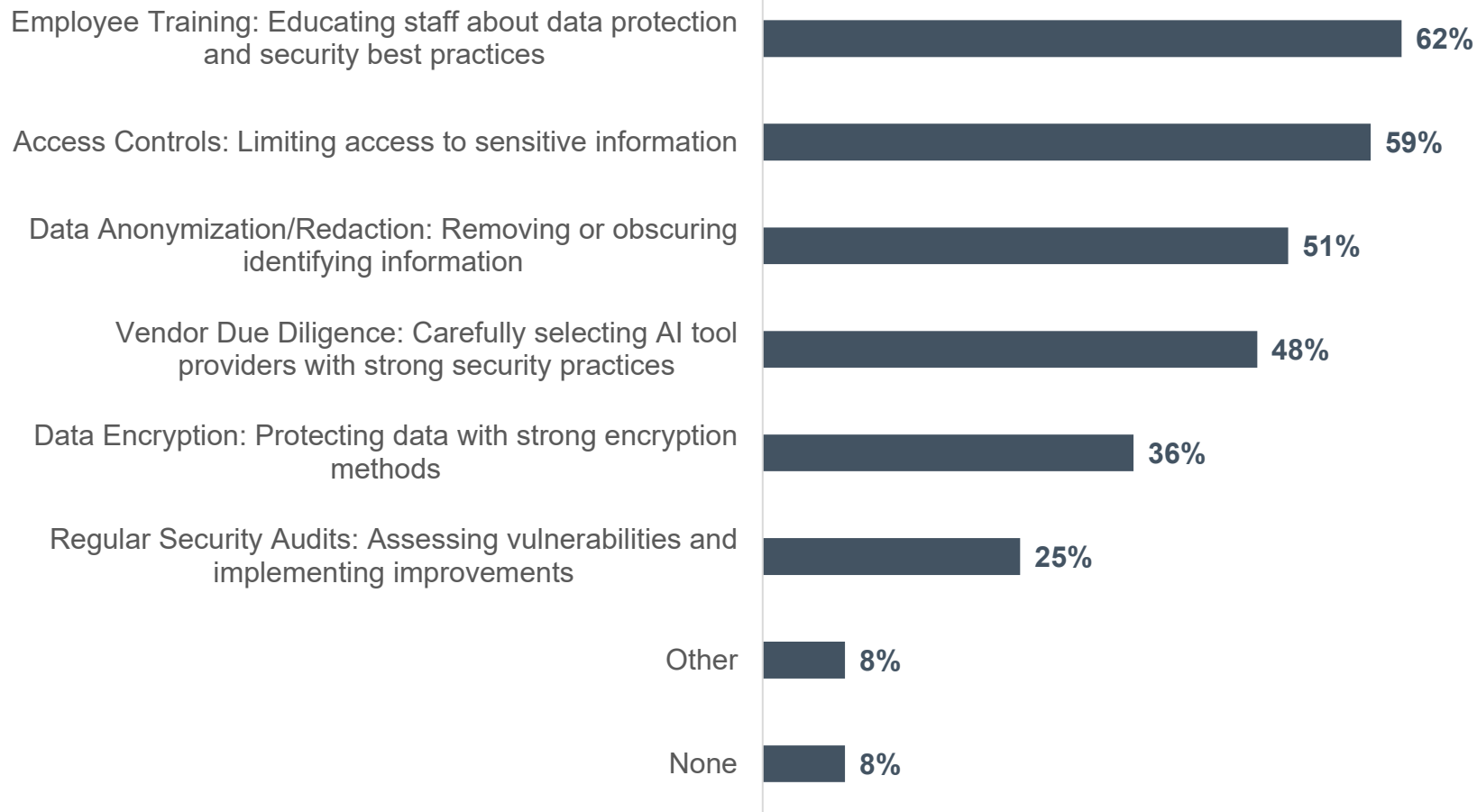
Data sharing and access: The sharing of privileged information with third-party AI tools or services, such as legal research databases, predictive analytics tools, and email and communication platforms, may compromise privilege.

Recording and monitoring: The use of AI tools to record or monitor attorney-client communications, potentially compromising privilege, is a concern in email and communication platforms.

These instances highlight the potential risks to attorney-client privilege when using AI tools and emphasize the need for careful consideration and appropriate safeguards to protect sensitive information.
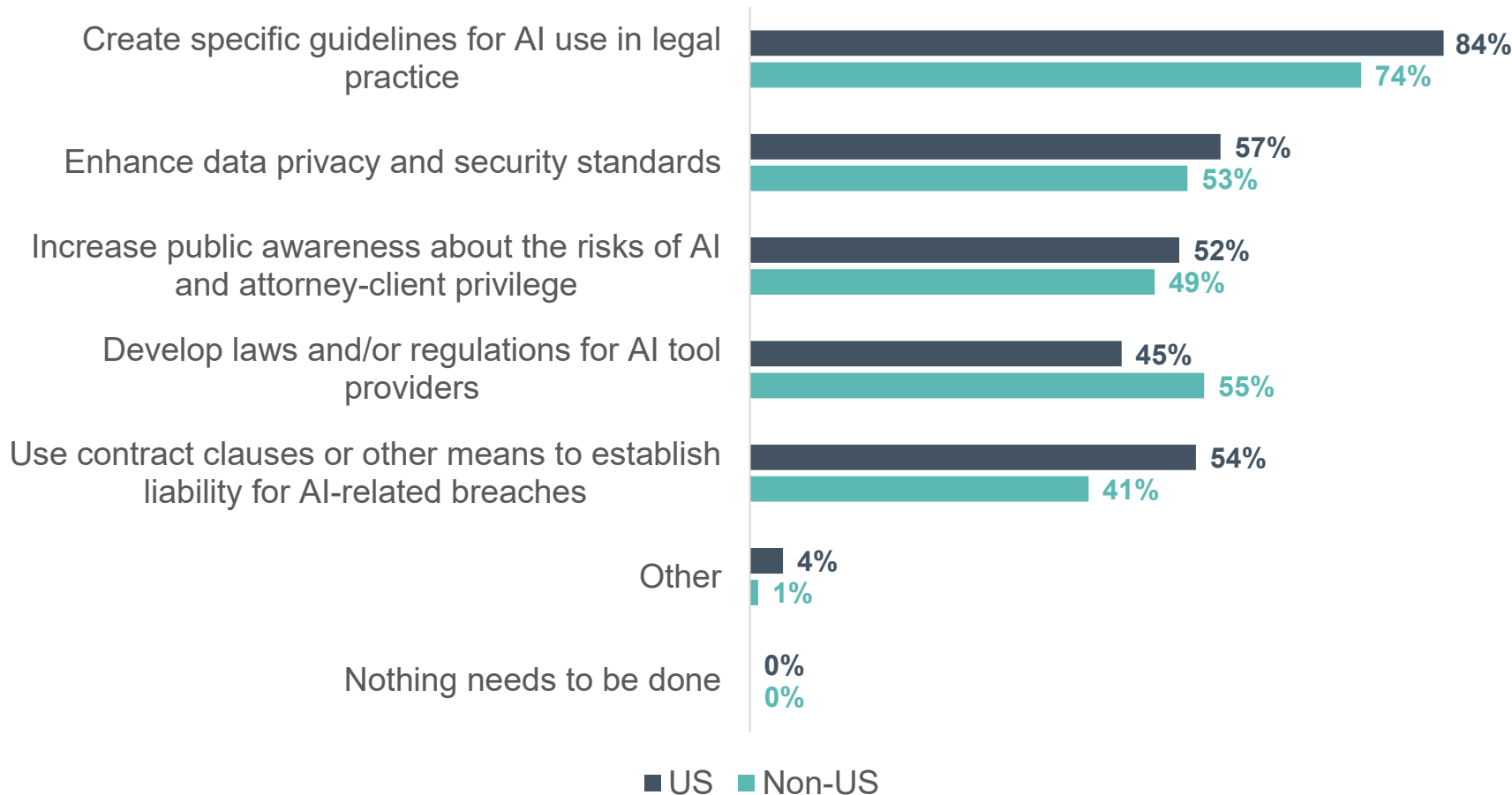
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CURRENT PRACTICES TO PROTECT LEGAL PRIVILEGE

What measures do you currently take to protect privileged information when using AI tools?

Measure	Percentage
Employee Training: Educating staff about data protection and security best practices	62%
Access Controls: Limiting access to sensitive information	59%
Data Anonymization/Redaction: Removing or obscuring identifying information	51%
Vendor Due Diligence: Carefully selecting AI tool providers with strong security practices	48%
Data Encryption: Protecting data with strong encryption methods	36%
Regular Security Audits: Assessing vulnerabilities and implementing improvements	25%
Other	8%
None	8%

Most respondents prioritize measures such as employee training, access controls, and data anonymization to safeguard privileged information. However, only a quarter conduct regular security audits, and a concerning 8 percent take no proactive measures to protect privileged information.

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PROPOSED ACTIONS TO MITIGATE RISKS

What steps do you think should be taken to address the potential impact of AI on attorney-client privilege?

Action	US	Non-US
Create specific guidelines for AI use in legal practice	84%	74%
Enhance data privacy and security standards	57%	53%
Increase public awareness about the risks of AI and attorney-client privilege	52%	49%
Develop laws and/or regulations for AI tool providers	45%	55%
Use contract clauses or other means to establish liability for AI-related breaches	54%	41%
Other	4%	1%
Nothing needs to be done	0%	0%

■ US ■ Non-US

- Most respondents would like to see specific guidelines created for use of AI in legal practice, especially in the US (84 percent).

- A greater number of respondents outside of the US would like to see regulations developed for AI tool providers.

- Notably, not a single respondent believes that no action should be taken.

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ADDITIONAL CONCERNS BEYOND PRIVILEGE

Job displacement and automation: Respondents expressed concerns about AI replacing human lawyers and legal professionals, leading to job losses and decreased opportunities.

Ethical considerations: Ethical issues related to AI, such as bias, transparency, and accountability, were a major concern for many respondents.

Data privacy and security: The potential for data breaches and privacy violations associated with AI was a significant concern.

Accuracy and reliability: Respondents expressed concerns about the accuracy and reliability of AI-generated legal advice and documents as well as non-lawyers becoming overly reliant on AI for legal advice and discounting their internal legal team.

Lack of human judgment: Some respondents noted that AI may not be able to replicate the human judgment, intuition, and creativity necessary for effective legal practice. Others are concerned that people will mistakenly believe that AI can make accurate judgement calls.

Cost and accessibility: The cost of implementing and maintaining AI tools, as well as concerns about accessibility for smaller legal departments, were raised.

Regulatory challenges: The need for clear regulations and guidelines to govern the use of AI in legal practice was identified as a significant concern.

Impact on legal education: Respondents expressed concerns about the potential impact of AI on legal education and training.

Respondents were asked to list other concerns that AI might have on the in-house legal profession beyond its impact on privilege. Responses were organized into themes, which demonstrate a wide variety of concerns.

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KEY TAKEAWAYS

Overall, the survey results indicate a growing awareness of the potential risks posed by AI to attorney-client privilege. While many respondents are taking steps to mitigate these risks, there is still a significant level of concern, particularly regarding the potential for inadvertent disclosure and the challenges of keeping up with the rapidly evolving landscape of AI tools.
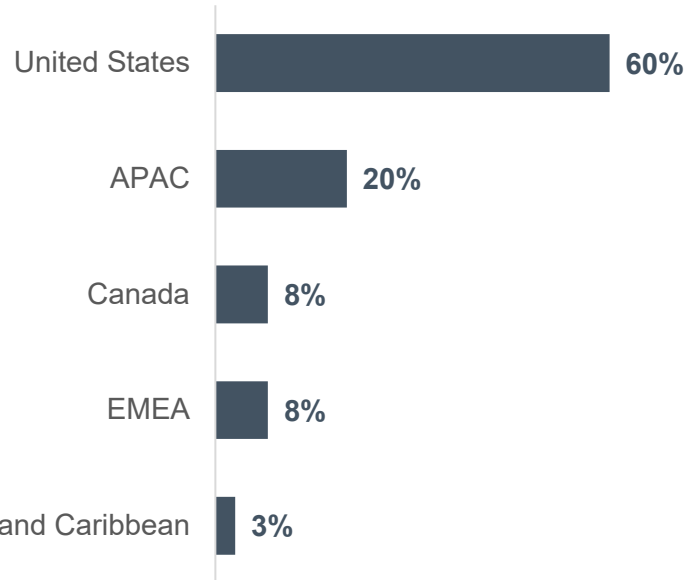
Summary of findings:

- Respondents generally perceive a **high degree of risk** to legal privilege when using AI tools, although the level of risk varies depending on factors such as the specific AI tool, its usage, and the nature of the information being processed.

- A significant concern is the potential for **inadvertently disclosing privileged information** through AI tools, either through prompts, outputs, or metadata.

- The risk of privilege being compromised **varies depending on the specific AI tool category**, with generative AI tools being identified as particularly risky due to their ability to learn from and generate text based on vast amounts of data.

- Many respondents are **taking steps to protect privileged information**, including employee training, access controls, data anonymization, and vendor due diligence. However, there is a need for more widespread adoption of best practices, such as regular security audits.

- Respondents largely believe that **creating specific guidelines and regulations** for AI use in legal practice can help mitigate the risks to attorney-client privilege.

- Beyond attorney-client privilege, respondents expressed **additional concerns** about job displacement, ethical considerations, data privacy, and the accuracy and reliability of AI-generated legal advice.
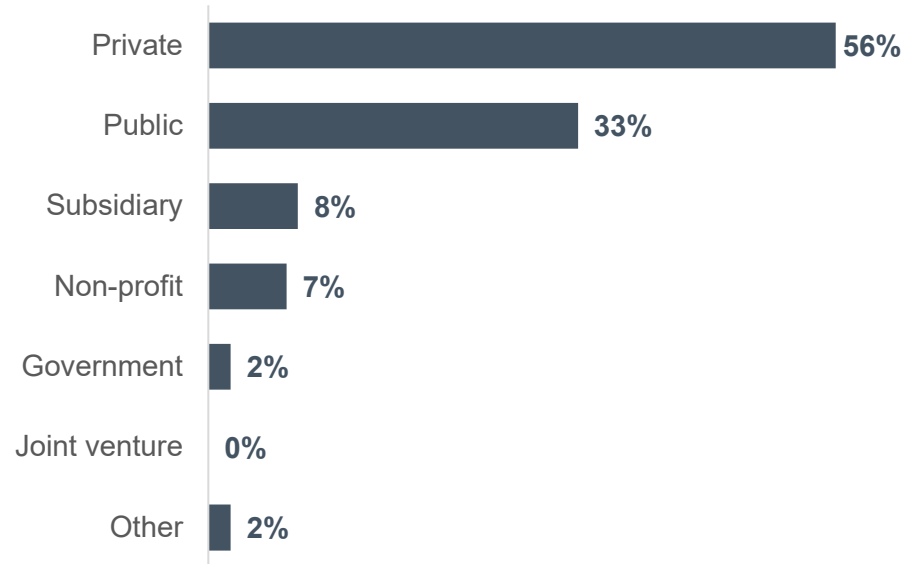
The survey data highlights the importance of careful consideration and appropriate safeguards when using AI tools in legal practice to protect attorney-client privilege. As AI technology continues to evolve, it will be essential for legal professionals to stay informed about the latest developments and best practices to ensure that the use of AI does not compromise the confidentiality of client communications.

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PARTICIPANT PROFILE

Global Region

United States	60%
APAC	20%
Canada	8%
EMEA	8%
Latin America and Caribbean	3%

Company Type

Private	56%
Public	33%
Subsidiary	8%
Non-profit	7%
Government	2%
Joint venture	0%
Other	2%

- 456 ACC member in-house counsel from 27 countries participated in this survey.

- ACC members were sent one survey invitation email and one reminder in August 2024.

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ADVOCACY AT ACC

From its inception, ACC recognized the importance of advocacy by, and for, its membership.

ACC's advocacy initiatives focus on issues that directly affect the practice of law by its members in their capacity as in-house counsel.

ACC's advocacy efforts span the courts, legislative bodies and regulatory agencies, and in media and professional journals.

Learn more at www.acc.com/advocacy

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KEY ACC ADVOCACY INITIATIVES

- **Legal Professional Privilege:** ACC advocates for the recognition and protection of legal privilege for in-house counsel globally.

- **Multijurisdictional Practice:** ACC advocates for clarification and simplification of multijurisdictional practice rules to promote flexibility.

- **Gatekeeper Liability:** ACC advocates for the position that in-house counsel who act ethically in representing or defending their clients should not be held liable for their actions simply because they are attorneys.

- **Seat at the Table:** ACC supports the position that CLOs should report directly to the CEO and that by doing so, they are in a better position to foster a culture of compliance.

- **Diversity, Equity, and Inclusion:** ACC supports the use of DEI best practices through ACC Foundation programs.

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