



Legal Tech: Future-Proofing Legal Contracts

Technology, Privacy, and eCommerce



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The burgeoning integration of AI, especially Generative AI, across business sectors marks a transformative era in commercial practices. In-house legal teams are compelled to confront and adapt to the distinct challenges this technology introduces in contractual frameworks. AI's dynamic and often unpredictable nature demands a proactive, forward-thinking approach in the drafting and amendment of contracts. Legal professionals must now navigate with strategic foresight, ensuring that agreements are legally sound and sufficiently agile to accommodate the rapid evolution and unique risks associated with AI.

AI's legal implications

As AI technologies advance, key issues relate to commercial contracts, intellectual property (IP), privacy, and data security.

In commercial contracts, AI integration necessitates reevaluating traditional clauses to address the technologies' unique characteristics and potential liabilities. IP concerns arise particularly in scenarios where AI systems, including those based on large language models (LLMs), are "trained" on potentially protected content, or output new content, raising questions about ownership and infringement. Privacy and data security take on heightened significance given AI's reliance on large datasets, which often contain personal identifiable information ("PII") or other sensitive data.

The legal landscape surrounding AI is evolving rapidly, influencing how contractual rights and obligations are interpreted and enforced. This evolution is driven by emerging precedents, regulatory developments, and an increasing recognition of AI's transformative impact across industries. Consequently, legal professionals must not only stay abreast of current laws and regulations but also anticipate future shifts that could impact AI implementation within their organizations.

Key clauses for AI-related contracts

In AI-related contracts, there are several key clauses that must be crafted to address the unique challenges posed by AI technologies.

Limitations of liability

Central to AI-related contracts is the need for well-defined liability clauses, especially since AI can make autonomous decisions that might lead to unforeseen outcomes. It is crucial to delineate the extent of liability for each party, particularly in scenarios where actions based upon or taken by an AI technology's output result in financial loss, operational disruption, or legal disputes. These clauses should detail the responsibilities and limitations of each party, providing a clear framework for liability (and any limitations thereto) in the complex landscape of decision-making resulting at least in part from the use of AI.

Data usage and privacy

Given AI's reliance on vast datasets, contracts must rigorously define the terms of data usage, storage, and protection. This includes strict adherence to data protection laws such as the General Data Protection Regulation (GDPR) and California Consumer Privacy Act (CCPA), ensuring that all AI-related activities comply with legal and ethical standards. Establishing clear data handling protocols is crucial for maintaining public trust and protecting sensitive information.



It is imperative contracts clearly state the terms of data handling protocols to safeguard confidential

Intellectual property considerations

AI's potential interaction with intellectual property, namely protected works, presents unique challenges, particularly regarding the ownership of AI-generated outputs and the use of third-party data or algorithms. Contracts should explicitly address these issues to prevent ambiguity over IP rights and usage permissions. These should include delineating the rights over any new IP created by AI, the terms of use for existing IP in AI processes, and the handling of potential IP infringement claims.

Performance standards and warranties

To ensure reliability and effectiveness, AI-related contracts should include specific provisions for performance standards and service levels. These provisions must define the expected performance metrics, uptime commitments, and quality assurances. Additionally, contracts should specify the remedies and/or compensations available in cases of performance failures or service interruptions, thereby safeguarding the interests of all parties involved.

Updates and modifications

The rapidly evolving nature of AI technology necessitates clauses in contracts that address updates and modifications. These clauses should detail the following: how updates and modifications are managed, the party responsible for implementing updates and modifications, and the financial aspects related to these changes. Such clauses ensure that the AI system remains up-to-date and continues to function effectively, while also maintaining clarity on responsibilities and costs associated with technological advancements.

Incorporating these key clauses in AI-related contracts is imperative to manage the complexities and risks associated with AI integration, ensuring legal compliance and operational effectiveness.

Strategies for effective AI contract negotiations

Crafting robust and adaptable AI-related contracts requires effective negotiation strategies. Here are key strategies to consider:

Risk assessment and allocation

A pivotal step in AI-related contract negotiations involves a thorough assessment of potential risks associated with the AI technology in question. This includes evaluating risks related to data privacy and security, intellectual property, operational dependencies, and potential liabilities. Once these risks are identified, it is essential to determine how to fairly allocate risks among the contracting parties. This allocation should reflect the nature of the AI technology, the capabilities of each party, and the context of use. Fair risk allocation not only mitigates potential legal disputes but also fosters a sense of mutual understanding and trust.



Risk assessments are crucial to AI-related contract negotiations. *chaylek / Shutterstock.com*

Flexibility for future adaptations

Given the rapidly evolving landscape of AI technology and the legal regulation of that landscape, contracts need to be crafted with flexibility in mind. In-house legal teams should create agile clauses that allow for adjustments in response to technological advancements, changes in legal requirements, or shifts in business strategies. Such adaptive clauses might include provisions for regular reviews, updates to performance standards, or modifications in light of new regulatory frameworks. Flexibility ensures that contracts remain relevant and effective over time, accommodating the dynamic nature of AI.

Expert consultation

The complexity and specialized nature of AI technology call for consultation with experts in both AI technology and legal domains. Legal professionals should collaborate with AI technologists to gain a deeper understanding of the AI system. Insights from legal experts specializing in AI can provide valuable perspectives on emerging legal trends, potential liabilities, and regulatory compliance. This multidisciplinary approach ensures that contracts are technically feasible, legally sound, and aligned with industry best practices.

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Balanced approach

Successful AI-related contract negotiations hinge on achieving a balance between protecting the interests of the contracting parties and ensuring the contract is fair and sustainable. This means

crafting agreements that are mutually beneficial and consider the needs, capabilities, and constraints of each party. A balanced contract not only addresses the immediate requirements of the AI deployment but also lays the groundwork for a long-term, cooperative relationship. A balanced approach to AI-related contract negotiations involves clear communication, an understanding of mutual goals, and a willingness to find common ground.

By incorporating these strategies, legal professionals can negotiate AI contracts that are risk-aware, adaptable, expertly informed, and balanced, thereby laying a strong foundation for successful AI integration.

AI is a highly disruptive technology that matures and finds new applications daily. Law and the legal industry are not, and should not be, immune to changes in technology. Rather, legal strategies and approaches to managing AI's impact, from the courtroom to the boardroom, must continue to evolve and adapt to match AI's mercurial nature.

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Mack is also an award-winning (such as the prestigious ACC 2018 Top 10 30-Somethings and ABA 2022 Women of Legal Tech) general counsel, operations professional, startup advisor, public speaker, adjunct professor, and entrepreneur. She co-founded SunLaw, an organization dedicated to preparing women in-house attorneys to become general counsels and legal leaders, and WISE to help female law firm partners become rainmakers.

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