

Appendix 1:

Essential Factors for Selecting AI Products and Formulating an AI Policy in Legal Firms: A Starting Point

This guidance provides initial discussion items law firms and/or legal professionals can use to navigate integrating AI tools into their practices.

From understanding the risks and advantages of AI to selecting appropriate tools, ensuring data protection and training staff, each aspect is designed to help legal professionals address vital factors that must be considered. When undertaking substantial AI projects, it is advisable to consult with data privacy and AI experts throughout the integration process. Simultaneously, it is of utmost importance to maintain detailed records of any interactions involving AI, GAI and client data.

Disclaimer

This guidance is designed to initiate conversations and serve as a starting point for law firms considering the integration of AI into their practices. It is not intended to replace a comprehensive AI policy. By addressing the key questions and considerations outlined in this guidance, law firms can take proactive steps toward using AI in alignment with ethical and legal considerations.

Key Considerations

1. **Understanding AI risks:** Alongside its advantages, AI presents potential risks such as data privacy concerns and ethical dilemmas. Conducting a thorough risk assessment is crucial for identifying and mitigating these risks.

Here are some key questions to consider, and if possible, ask the AI software provider when starting a risk assessment for AI:

1. What are the potential risks associated with the AI system, such as data privacy breaches, bias or unintended consequences?
2. How is the AI system trained, and what data sources are used? Are there any potential biases or limitations in the training data?
3. If the system is specifically designed to work with sensitive data of any kind, what measures are in place to ensure the security and privacy of the data used by the AI system?
4. How are the AI system's decisions or outputs validated and monitored for accuracy and fairness?
5. What are the potential legal and ethical implications of the AI system's actions or decisions?
6. What is the plan for addressing and mitigating any identified risks or unintended consequences?
7. How will transparency and replicability be monitored and maintained?

8. What is the process for involving stakeholders, such as AI experts, legal professionals and ethical advisers in the risk assessment and management process?

These questions can help organizations identify, evaluate and mitigate some of the potential risks when implementing AI systems.

2. Leverage AI's advantages and choose the right tools: Before investing in an AI tool, thoroughly investigate its capabilities to determine whether it can deliver the desired benefits, such as increased efficiency and cost savings, in a responsible and secure manner. With the exponential growth of AI tools tailored to the legal sector, it is essential to select tools aligned with your firm's needs and use cases.

Establishing key performance indicators (KPIs) can help gauge the effectiveness of AI tools in improving legal services. Given the wide range of choices available, retaining a trusted technology adviser can significantly assist in navigating the increasingly complex landscape of AI product options, especially for those in traditionally non-technical professions.

3. Ensure data protection: To address data protection and privacy concerns, establish clear policies for data usage with AI tools. Keep up to date with changing data protection laws and verify that both you and your AI software or service providers adhere to industry-standard best practices for data privacy and security.

The National Institute of Standards and Technology (NIST) provides a valuable resource, the NIST Privacy Framework, for organizations looking to establish robust data privacy standards. This comprehensive tool offers a structured approach to identifying, evaluating, and addressing privacy risks, along with recommendations for implementing effective controls and protective measures. By adopting the guidelines outlined in the NIST Privacy Framework, organizations can align their data privacy practices with industry standards and best practices (“Getting Started | NIST,” 2021).

More information about NIST’s Privacy Framework is available at <https://www.nist.gov/privacy-framework/getting-started-0>

4. Train your staff: Regular training sessions should cover technical aspects and ethical considerations of using AI tools. Law firm staff should be well-versed in data protection guidelines.

5. Manage integrating AI with existing systems: It is essential to collaborate with data privacy and AI professionals as necessary during the integration process of AI tools with existing systems. Additionally, it is crucial to document any interactions between AI, GAI and client data, specifying the tools used and the data involved.

6. Stay current with technology: Law firms must stay updated on advancements in technology in two ways – first, through maintaining subscriptions to relevant publications or by attending industry conferences, and second, through software updates that fix bugs, privacy and security issues and more.

7. Attribute AI content when necessary: Law firms should establish and follow clear guidelines on attributing content generated or inspired by AI. Providing staff with a framework for acknowledgment can streamline this process.

8. Monitor AI for bias and errors: Law firms must adopt and adhere to regular fact-checking and bias review procedures to ensure the accuracy and integrity of AI-generated content. It is vital for law firms to report any identified bias or errors to the AI software or service provider(s) immediately.

9. Consider the impact of AI: Evaluate how AI may affect the financial aspects of law practice, and if necessary, consider adapting billing models to align with client expectations regarding AI's ability to streamline tasks that were previously time-consuming. *Note: Ensure that any changes to billing models are clearly communicated to clients prior to engagement.*

10. Know your legal obligations: Using the guidance provided in this report, as well as educational materials and information published by the NJSBA, the Administrative Office of the Courts (AOC), and other trusted legal sources, ensure that you thoroughly understand the legal and ethical obligations you must consider or adhere to when incorporating AI or GAI into your legal practice.