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Technology

How small businesses can be mindful of legal pitfalls when integrating AI into operations



Kyle Miller, a Louisville-based attorney with Dentons global data privacy and cybersecurity group, poses for a portrait at the firm's office in PNC Tower.

CHRISTOPHER FRYER



By [David A. Mann](#) – Managing editor, Louisville Business First
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Technology always seems to find away to disrupt the status quo for U.S. intellectual property law.

Decades ago, there were many lawsuits around what was appropriate for people to record on a personal VCR – or how they could distribute that content, explained Kyle Miller, a Louisville-based attorney with [Dentons' global data privacy and cybersecurity group](#).

It was a similar situation when the early days of the internet introduced streaming music and web video into the public conscience.

“Some of those early cases, they’re fun to read. You can see judges are trying to wrap their heads around what it means to stream something,” said Miller. “What does this mean to rights-holders” such as artists or record companies.

This sort of mind-wrapping is now taking place among judges once again with courtroom debates over the implementation of artificial intelligence. But this time it’s at a much larger scale, and has far bigger implications for businesses across the spectrum.

Questions about intellectual property rights are just one piece of a much larger puzzle about the impact of AI. There are a million questions and a million articles out there answering each of them. (I bet a bunch of those articles were written by AI and left out clever jokes like this one.)

Considering that, I’m going to hone in on just one that exclusively affects small business owners: What do I need to watch out for?

That’s a complicated answer, of course. But legally speaking, it seems that most issues can fall into a few distinct categories.

Data privacy and IP concerns

The plot of “Terminator 2” reveals that there are many, many AI concerns that we might not have considered yet. We won’t get to all those.

The broad categories that small businesses need to look out for seem to focus around intellectual property and data privacy, according to the sources I spoke with for this story. AI tools used in hiring also tend to pick up a lot of legal and legislative scrutiny – but more on that in a bit.

On the data privacy front, if your company has, without proper consent, shared personal or client information to train an AI tool there may be consequences to consider, explains Miller, the Dentons attorney. Federal regulators have said entities not only have to stop using that tool, but they also have to purge that data from the tool.

Businesses working in the health care field may take note of this, as health data carries Health Insurance Portability and Accountability Act (HIPAA) and other privacy concerns.

On the intellectual property front, there is an open question on if works created by – or with – generative AI can be copyrighted, said Miller.

These are the debates that people working in creative fields like marketing or advertising should be watching.

“If a generative AI tool used copyrighted works in its training data set ... there are individuals who will argue that whoever uses that output should pay a license to the creators of the data that went into the training,” Miller said.

If it’s a vendor’s tool, the risk for using those tools can be mitigated through the use of contracts which shift the risk to the vendor. There can also be corporate policies, such as training policies, which seek to minimize inappropriate AI use to mitigate risk.

“The tricky part about that is that you need to know what these tools are capable of, how these tools operate,” said Miller. “You need to be getting good information from your vendors so you can properly evaluate them. The FTC [Federal Trade Commission] has made clear in [recent enforcement action](#) that not evaluating these vendors is not good enough.”

A special focus on hiring

Another key area where AI seems to be being widely adopted is in the human resources and hiring realm, said Timothy Weatherholt, partner at [Fisher & Phillips LLP](#).



Timothy Weatherholt

FISHER PHILLIPS

There are some pitfalls to avoid here, too, including making sure your company isn't discriminating against people with disabilities. For instance, in a video screening of a potential job candidate, an AI tool might analyze speech patterns to determine problem-solving abilities.

"But [the candidate] might have a speech impediment," he said, meaning a person with disabilities was unfairly screened out.

Even a chatbot or an algorithm can be designed to reject all applicants with a gap in their employment, without knowing or caring why that gap exists. It becomes discrimination if someone is rejected because they had a medical condition that accounts for the gap, he said.

Again, even if it's an outside vendor that designs or manufactures the AI that's doing the discriminating, the company using it could be on the hook, said Weatherholt.

Debates about what's appropriate aren't just taking place in courthouses, but we're also seeing them in statehouses as well.

"There's an emerging trend of states trying to adopt certain laws with respect to AI," Weatherholt said.

A few years ago, [Illinois adopted the Artificial Video Interview Act](#), which required that companies seek consent from job applicants before having an AI evaluate video footage of a job applicant, for instance.

Video footage of interviews might have been used to generate recommendations on applicants based on their facial expressions, body language, word choice and so forth.

A local use case

At this point, you might be thinking: Wait, with all these risks, is AI even worth embracing?

It isn't actually much of a choice.

Generally speaking, a number of very common products that businesses use every day are becoming integrated with AI, said Miller. Therefore, companies need to be knowledgeable of that, so they can be proactive about getting proper controls in place.

But don't think of AI as only a risk. There are plenty of ways it can be useful for businesses with matters like customer service or customer acquisition across a number of industries – including the law field itself.

David Palmore, director of marketing and operations at the law firm [Wise & Associates](#), told me about his firm, which specializes in divorce, child custody and domestic violence cases. It's using an AI tool called "Pocket Lawyer" to help find new clients and serve the ones it has. Pocket Lawyer is a free-to-use tool to answer basic questions that a client or would-be client may have rather than have an attorney spend time on the phone doing so.



David Palmore, director of marketing and operations at Wise & Associates.

KATHRYN HARRINGTON

Attorneys aren't always particularly good at selling their services if they're just in it for the practice of law, Palmore said. So an AI tool is a good way to balance for that.

Wise & Associates educated the Pocket Lawyer bot on the family law matters relevant to its practice in Kentucky, Indiana, Ohio and Tennessee.

It's only been in use for a few months. At the time of our interview in early February, Palmore estimated that 60% of the firm's 170 or so clients had used or were at least aware of the bot. As examples of searches, clients and would-be clients had asked about the price of divorce, dividing assets or parental rights, he said.

"Anyone who is layman to the law should be able to use the bot and walk away with some type of insight," Palmore said. "Now, it's not strong enough that you could represent yourself. We programmed it to encourage you to call us once you get to a certain level of complexity."

The firm is up front with people that they are talking to a bot and tells users not to rely on it as their representation.

Palmore noted that the firm has received inquiries from other practices that are interested in using it as well. With that, Wise & Associates is testing it as a possible product it can offer to other law firms in the future.

It was developed on a GPT platform it licensed using legal information that the firm chose to provide to it. By the way, GPT is short for Generative Pre-trained Transformer and it's a type of artificial intelligence model.

Quickly coming around

To wrap things up, a few keen observations on the quick adoption of AI technology.

Miller told me that in November 2022 – when Chat GPT really emerged and started making waves on the Internet – he had clients who had stated policies that said: “We will not use AI.”

“Most of those companies have changed their approach,” he said.

They now have acceptable use policies that specify the type of tasks they will use generative AI for, and the proper approvals process for doing so.

For his part, Palmore told us he's worked in places where there was some apprehension about it. People worry about losing jobs to AI or falling behind on implementation of it or other factors. He doesn't, however.

“My principle is: The faster you adopt it, the less likely you are to lose to it.”