

OFFICE OF THE GENERAL COUNSEL & ACT

**LEGAL ISSUES & DEFINING ACCEPTABLE USES OF
ARTIFICIAL INTELLIGENCE (AI)**

October 2024

This memorandum is not intended to provide specific advice about individual legal, business, or other questions. It was prepared solely as an informational guide and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

The promise of artificial intelligence is compelling. Your agency likely has access to newly available automated products or services that could make your agency more efficient and effective. Even if you haven't actively sought it out, AI is being quickly incorporated into existing technology products and services. Despite its potential advantages, it's important to remember that AI also poses legal risks.

Below is an overview of some risks to consider when using AI, as well as a template of an internal policy that your agency may wish to consider using to create an AI acceptable use policy to help manage this risk.

Data privacy and security

Like all third-party services, AI may create data privacy and security risk. For example, imagine if your agency uses AI to create client proposals that incorporate personally identifiable information ("PII"). That PII data may now be stored on a third-party vendor's server that might get hacked. If your business is using sensitive data as an input to create or analyze content, the data is not only susceptible to a breach, but it might also be used in unintended ways such as sales or marketing. AI vendors, especially ones that provide products or services "free" of charge, often incorporate one-sided terms and conditions that lack strong protections for user data.

Given the risks, it is important to carefully review the applicable terms of service and privacy policies for any AI vendors being vetted or used by your agency. Moreover, as a general matter employees should not be permitted to input confidential, proprietary or sensitive information, such as PII, without adequate protections in place.

Quality and Accuracy

Another legal concern is the potential for work product or other outputs generated by AI to include inaccurate or misleading information, which could in turn give rise to potential liability. Indeed, various AI models have been found to generate "hallucinations" – i.e., seemingly plausible information presented as fact that may be false or misleading.

Lawyers learned this lesson the hard way after filing AI-generated briefs that contained citations to case law that did not exist. The presiding judge sanctioned them, and some courts now require certifications disclosing the use of AI. One can easily imagine similar issues arising in the insurance context, such as an agency chatbot inadvertently misleading a client about coverage.

Thus, it is essential for users to carefully review, edit and monitor the quality and accuracy of AI outputs.

IP Ownership & Infringement Issues

There are two types of intellectual property (IP) risks relating to AI. First, it remains an open question as to whether AI-generated work product is eligible for copyright, trademark or patent protections. Some courts have found that only human-authored portions of the work can be copyrighted. Thus, companies should be careful about using AI for works for which they wish to seek IP rights, such as logos or marketing materials.

Second, AI platforms rely heavily on the datasets they ingest. It may be possible for the work product generated by AI to draw too heavily on and incorporate existing third-party IP that is subject to its own legal protection. If not properly vetted, using such AI-generated works could expose a business to potential third-party infringement claims.

Contractual Restrictions

Agents should also be aware that some carriers may begin to prohibit the use of AI in connection with carrier data without express prior permission. Indeed, the Office of General Counsel has recently reviewed an agent appointment agreement incorporating such language. Thus, agents should be careful to ensure that any use of AI is not in violation of any contractual restrictions.

Regulatory Compliance

Finally, there is heightened risk when companies use AI to automate highly regulated processes, such as hiring or employment decisions. For example, AI systems that contain errors or are based on data that overrepresents or underrepresents certain groups may produce biased and potentially discriminatory results. In August 2023, the Equal Employment Opportunity Commission settled an action against a tutoring service alleging AI hiring discrimination. There is also a class action against Workday, Inc. focused on certain applicant screening tools.

While there is currently no comprehensive law in the US regulating use of AI, federal and state regulators are increasingly focused on AI safety and security issues. For example, in May 2024, the EU Parliament voted to adopt the EU Artificial Intelligence Act, clearing the path for formal signature and publication. The EU AI Act will establish new regulatory bodies focused on AI and uses a risk-based approach that identifies unacceptable and high-risk uses of AI. Additionally, in June 2024, Colorado enacted an AI law that will regulate use of AI for “consequential decisions” in certain industries, including insurance, though it does not go into effect until February 2026.

Acceptable Use Policies

Agents should consider placing limits on using AI, especially in the following circumstances:

- Do not upload confidential, sensitive or proprietary information to AI platforms.
- Do not use AI-generated works in final work product without first reviewing and editing.
- Do not use AI to create content over which you intend to rely on asserting IP rights, and review works for potential infringement of third-party IP rights.
- Do not use AI if prohibited by contract or in connection with confidential or sensitive business processes that are subject to heightened regulatory scrutiny without careful consideration and any required prior authorizations.

Agents may wish to adopt an acceptable-use policy. A sample policy is provided below that members may wish to review and customize for their own business needs.

EXHIBIT A

SAMPLE AI ACCEPTABLE-USE POLICY

IMPORTANT DISCLAIMER. THIS DISCLAIMER MUST BE READ BEFORE YOU USE THE SAMPLE.

This sample policy (“Sample”) has been prepared for IIABA member agencies for general information purposes only. This Sample may assist agencies whose staff use artificial intelligence technologies in defining acceptable uses. The agency should always ensure that any policy accurately reflects its own practices and procedures. The agency may need to take other action in connection with and in addition to adopting an appropriate acceptable use policy.

By providing this Sample to member agencies, IIABA does not intend to provide, and is not providing, a legal opinion or legal advice, and it should not be acted upon or relied upon as such. The states where your agency conducts business and the carriers with which your agency transacts business may have legal, regulatory, contractual, or other requirements. Moreover, this Sample includes only general information and comments, and is not intended to provide specific advice about individual legal, business, or other questions. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

[Please see next page for sample policy.]

[SAMPLE] Artificial Intelligence (AI) Acceptable-Use Policy

As of [INSERT DATE OF ADOPTION OR UPDATE]

Purpose

This Artificial Intelligence (AI) Acceptable-Use Policy outlines the expectations and guidelines for the responsible and ethical use of artificial intelligence by staff of [AGENCY NAME] (the “Agency”). The Agency recognizes the rising availability and usage of AI and remains committed to responsibly adopting innovative technologies. The purpose of this policy is to ensure that AI is employed in a manner that aligns with the Agency’s values, professional ethics, and evolving legal standards. This policy addresses the use of any AI technology and relevant risks associated with its use, including but not limited to liability for intellectual property infringement; false, misleading, and/or biased or discriminatory content; confidential and proprietary information (including the Agency’s information and third-party information); and ensuring compliance with developing laws, regulations, and ethical rules governing the use of AI technologies. The Agency recognizes the evolving legal environment surrounding AI technology and anticipates this policy will evolve. As such, the Agency will regularly review and revisit this policy. The Agency reserves the right to and may change this policy at any time with or without notice.

Identification of “Artificial Intelligence” or “AI” Tools

With the advent of tools like ChatGPT, AI has become increasingly prevalent as a productivity tool. For example, “generative” AI generates content in ways that mimics human creative expression. AI may also be incorporated into existing technology used by the Agency, such as Adobe or Zoom. If one is unsure whether a software tool or website employs AI technology, and falls within the scope of this policy, please contact your manager.

Rules and Policies Applicable to AI

- 1. Authorization, Transparency, and Accountability.** One must be transparent and accountable about the use of AI technology in one’s work, and **seek clear permission before using AI tools for work purposes.** AI tools (including but not limited to ChatGPT, GPT-4, Bard, AlphaCode, Claude, and similar tools) are not all the same; and versions of the same tool may offer different protections or entail different risks. In order to protect the Agency’s intellectual property rights in its work product, one may not use AI tools in connection with the performance of Agency duties unless: **(1) the specific version of the tool has been approved and (2) prior approval for use of that tool for the intended purpose is granted by the appropriate supervisor (e.g., Vice President, Executive Director, CFO, President or CEO).** Approval may be granted, denied, or conditioned to best meet the Agency’s policy, legal requirements, or other business needs. Users of AI may not install AI assisted plug-ins or use software tools that have not been pre-approved by the Agency on any Agency equipment or Agency-provided equipment. Users of AI may submit requests to use AI technology for review, guidance, and approval by their manager. One must strive for transparency by clearly communicating how AI systems are intended to be utilized and the impact they may have.
- 2. Confidentiality and Data Privacy.** One must not expose confidential or proprietary information and data to AI technology. Users of AI should prevent the unauthorized access, disclosure, or destruction of data and must respect privacy laws and adhere to applicable data protection laws to ensure that any personal or sensitive information used in AI technologies is handled with care and compliance. AI technology is capable of collecting, storing, and using inputted information and disclosing this information to other third-parties. This creates a risk of the disclosure of data in violation of U.S. or international law, and also of cybersecurity risks such as potential spam, phishing, and deep fakes. Users of AI should remain alert and vigilant of potential cybersecurity threats and attacks as AI generated content is everywhere, creating a need to increase fact-checking procedures. Specifically, those using AI should not share the following:
 - Personally identifiable information (“PII”);
 - The Agency’s intellectual property (including patents and copyrighted material, and in many cases, trademarks and logos), and confidential or proprietary information and trade secrets;

- Credentials or sensitive security and system access information; and
- Disclosure in violation of U.S. or international data privacy laws.

Users of AI should raise concerns or questions related to privacy or data issues with their manager.

3. Legal Compliance and Ethical Obligations. One must comply with all relevant laws and regulations pertaining to AI usage, including but not limited to intellectual property, data protection, and anti-discrimination laws. Specifically, those using AI must:

- Use AI technologies only in accordance with Agency policies; and ensure that content generated or provided by AI technologies aligns with the Agency’s mission, vision, and practices;
- **Fact-check and screen any content generated or provided by AI technologies for accuracy** before relying on it for work purposes; if information cannot be independently verified, refrain from using it for Agency purposes;
- Ensure that any content related to the Agency’s fields of expertise is reviewed by someone with relevant expertise;
- Instruct third-party contractors creating content for use by the Agency on whether use of any specific AI tools is permitted, and, if permitted, confirm in writing whether their content is AI generated;
- Screen AI-generated content for biases and discriminatory content;
- Disclose use of AI when presenting work product; and
- If in doubt, verify the Agency has a legal right to use any inputs to or outputs from AI technology to avoid liability for intellectual property infringement.

The Agency expressly prohibits all use of AI in any manner that infringes or otherwise violates the intellectual property rights of third parties. Users of AI should also consider the ethical implications of their work and ensure that AI systems are designed and deployed in a manner that upholds fairness.

4. Appropriate Uses of AI Tools. Due to its inherent limitations, AI technology must be used appropriately. For example, use of AI technology may create liability for the Agency (e.g., if it is used to produce content that infringes copyright or trademark rights or if the Agency disseminates false information “hallucinated” by an AI tool). AI technology may also be inappropriate for use in situations where the Agency seeks to own intellectual property rights in its content, since U.S. intellectual property laws treat AI outputs differently from human-generated content. Accordingly, the Agency prohibits use of AI tools in connection with work for the Agency unless expressly permitted by this policy.

The following are examples of what would commonly be appropriate uses for AI technology:

- **Research or brainstorm** (e.g., through Google or other online searchable resource that employs AI technology) **so long as such research does not involve inputting confidential or sensitive information in the query or search prompt and the user carefully fact-checks the output;**
- **If pre-approved for a specific project, use of AI tools to generate first drafts** of content for marketing, blogs, webinars, social media, or other written content such as correspondence, educational materials, presentations, test questions, summaries, and note-taking or outlines, which are then subject to careful review and editing as needed; and
- **To automate data analysis and repetitive tasks**, including but not limited to formulas for Excel spreadsheets or similar programs, **so long as such analysis does not involve inputting confidential or sensitive information.**

5. Prohibited Uses. Although the use of AI technology is prohibited by this policy unless expressly permitted, for the avoidance of doubt, AI technology should **never** be used under the following circumstances:

- **To use unedited works created by AI technology in final work product or represent such AI-generated works as your own original work.**

- To upload confidential, sensitive, or proprietary information (note: this may breach your or the Agency's obligations to keep certain information confidential and secure, and it risks widespread disclosure).
- To upload sensitive and personal information protected by data privacy laws.
- To upload the Agency's intellectual property or third-party intellectual property.
- To create content for which the Agency intends to assert intellectual property protection or other proprietary interests.
- To generate content that may infringe on the intellectual property or rights of publicity of others, or which uses prompts, requests or keywords that may invoke protected content, or content that is substantially similar to, in the style of, or a direct copy of protected content (e.g., copyrighted characters, or individuals' names, images, likenesses, etc.).
- To obtain confidential, proprietary, or legally protected information and materials.
- To help make any employment decisions about applicants or staff, including but not limited to recruitment, hiring, retention, promotions, transfers, performance, discipline, demotions, terminations, or similar decisions.
- To integrate any third-party tools with internal software without express prior permission.

6. Approval and Acknowledgment.

In using AI within the scope of one's work on behalf of the Agency, one acknowledges understanding of, and commitment to compliance with, this policy. Any breach or violation of this policy may lead to disciplinary action with potential severe consequences.