



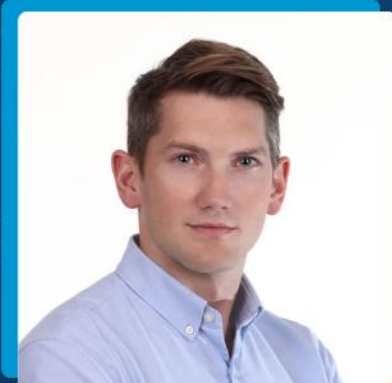
ARTIFICIAL INTELLIGENCE IN THE LAW

Counseling Clients on Data Governance and AI Strategies



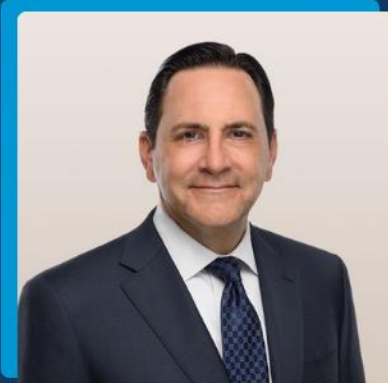
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Artificial Intelligence in the Law

April 1, 2025

Moderator:

Thomas P. Scrivo, Esq., Managing Partner, O'Toole Scrivo, Cedar Grove, NJ

Panelists:

Nicholas Berenato, Esq., Cozen O' Connor, Philadelphia, PA

Richard Lawne, Esq., Fieldfisher, Palo Alto, CA

Jamie VanDodick, Director, AI Ethics and Governance, IBM, Pleasant Valley, NY

The Evolving AI Governance Landscape in 2025



- AI is now embedded in corporate and legal functions.
- 78% of McKinsey survey respondents report AI use in at least one business function—up from 55% in 2023.¹
- According to PwC’s 2024 US Responsible AI Survey:²
 - 73% of US business/tech executives plan to use AI and GenAI.
 - 43% plan to use GenAI solely for internal operations
 - 35% plan to target both employee and customer-facing systems in their GenAI efforts

1. <https://www.mckinsey.com/capabilities/quantumblack/our-insights/the-state-of-ai>

2. <https://www.pwc.com/us/en/tech-effect/ai-analytics/responsible-ai-survey.html>

As business transformation accelerates, trust is more than an imperative and its more than compliance. It's an **opportunity**.

Brand integrity

71%

of CEOs believe customer trust has a greater impact on their organization's success than any specific product or service¹

Business value

27%

Organizations that focus on ethics for generative AI are 27% more likely to outperform on revenue growth²

Differentiation

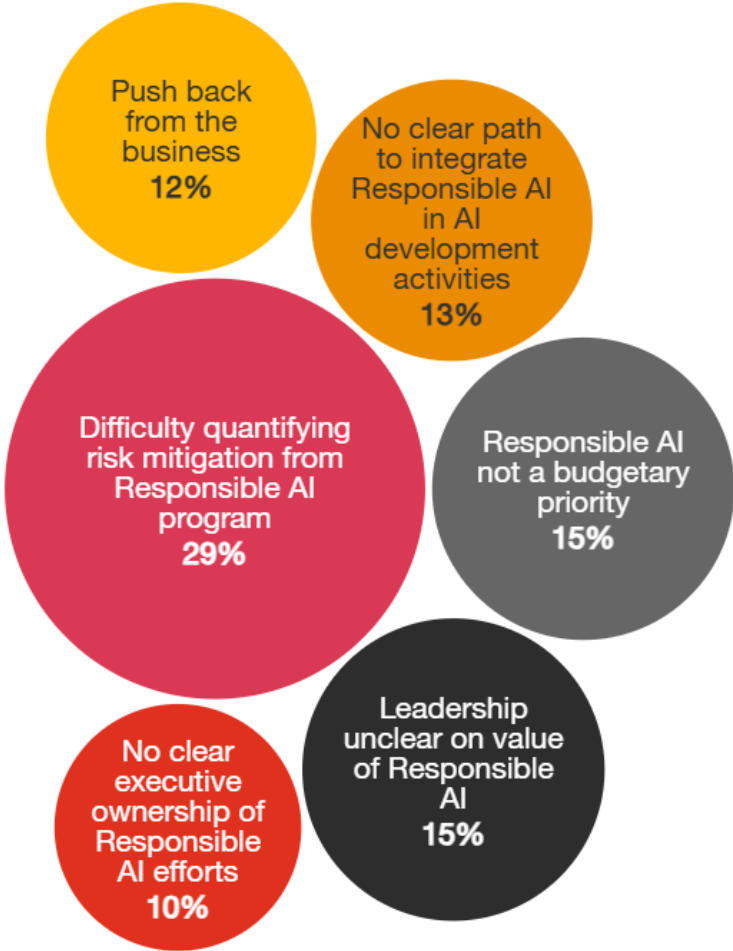
But only
21%

of executives believe their organization's AI governance maturity is leading³

Sources:

1. [6 hard truths CEOs must face](#), IBM Institute for Business Value, 2024.
2. [The CEO's Guide to Generative AI: Customer & employee experience](#), IBM Institute for Business Value, 2023.
3. [The enterprise guide to AI governance](#), IBM Institute for Business Value, 2024.

Concerns Preventing Responsible AI Investment³



*Note: Responses to 'Other,' 'Unsure' and 'NA' not shown.
Q. What are the biggest challenges your organization is facing or has faced in investing in Responsible AI practices? (Ranked 1st.)
Source: PwC's 2024 US Responsible AI Survey, August 15, 2024 base of 1,001
3. <https://www.pwc.com/us/en/tech-effect/ai-analytics/responsible-ai-survey.html>

Generative AI offers many benefits...



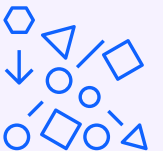
Performing complex tasks



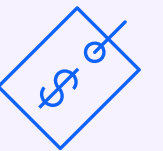
Increase in productivity



Shorter time to value



Diverse data modalities



Amortized expenses



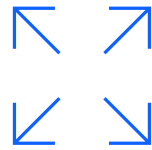
... but also carries potential risks



New risks

Emerging risk areas intrinsic to generative AI

- Downstream-based retraining
- Personal information in prompt
- Intellectual property in prompt
- Confidential data in prompt
- Prompt-based attack
- Output bias
- Copyright infringement
- Toxic output
- Dangerous advice
- Spreading disinformation
- Toxicity
- Dangerous use
- Non-disclosure
- Impact on cultural diversity
- Harmful code generation
- Exposing personal information
- Hallucination
- Traceability
- Legal accountability
- Generated content ownership
- Generated content IP
- Impact on education – Bypassing
- Impact on education – Plagiarism



Amplified risks

Known risk areas intensified by generative AI

- Data bias
- Data curation
- Data acquisition
- Data usage rights
- Data transparency
- Data provenance
- Data privacy rights
- Evasion attack
- Nonconsensual use
- Improper usage
- Over/under reliance
- Unexplainable output
- Accountability
- Source attribution
- Impact on jobs
- Human exploitation
- Impact on environment
- Impact on human agency



Traditional risks

Risk areas known from earlier forms of AI

- Data poisoning
- Data transfer
- Data usage
- Personal information in data
- Reidentification
- Informed consent
- Decision bias
- Model transparency

Source: IBM AI Ethics Board, [Foundation models: Opportunities, risks and mitigations](#), Feb. 2024

Data Governance, Compliance, and Risk Mitigation



- **Data Quality and Compliance:** Ensure training data is lawful, accurate, and regularly reviewed.
 - FTC has indicated: no “AI exemption” to civil rights, consumer protection, or privacy rules.⁴
- **Issues Addressed by AI Risk Assessments:**⁵ According to PwC 2024 survey respondents, 58% of companies have performed preliminary AI risk assessments on:
 - **Algorithmic discrimination/bias**
 - **Transparency/Explainability of AI decision making**
 - **Privacy**
 - **Security** (adversarial manipulation)
 - **Data quality** (accurate information)
 - **Human oversight** (mechanism for human intervention/appeal in high-impact decisions)
 - **Deployment context** (what is it used for?)
 - **Legal and regulatory** (does AI system implicate FCRA, ECOA, ADA, or Title VII?)

4. <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eeoc-release-joint-statement-ai#:~:text=uses%20of%20automated%20systems%20and,and%20use%20of%20automated%20systems>

5. <https://www.pwc.com/us/en/tech-effect/ai-analytics/responsible-ai-survey.html#:~:text=When%20it%20comes%20to%20assessing,each;https://www.brookings.edu/articles/nists-ai-risk-management-framework-plants-a-flag-in-the-ai-debate/#:~:text=explainable%20and%20interpretable%2C%20privacy,and%20transparent%2C%20valid%20and%20reliable>

The NIST Framework

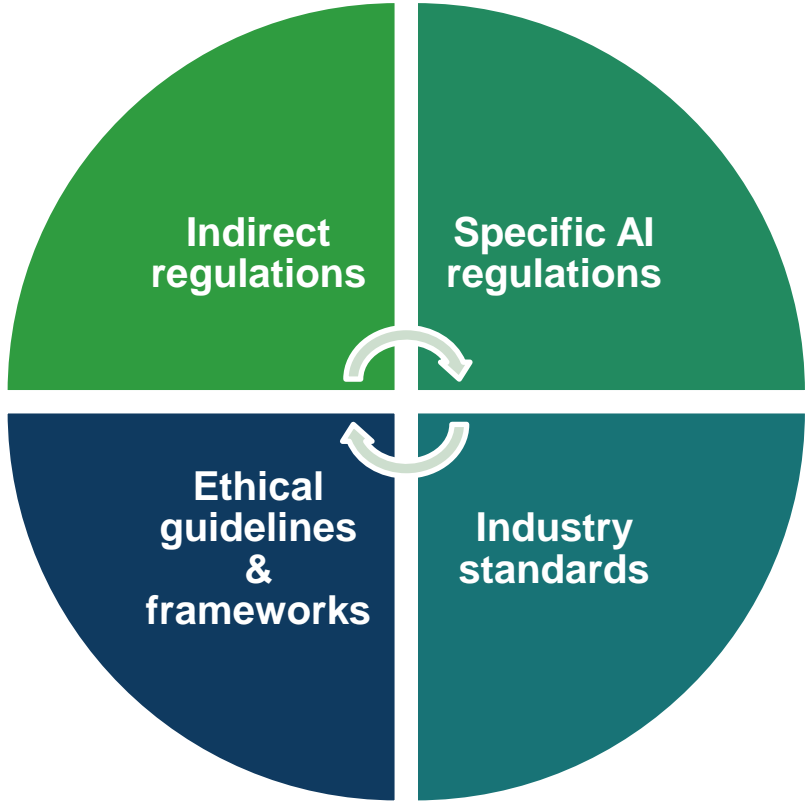


- The National Institute of Standards and Technology (NIST) AI Risk Management Framework (AI RMF 1.0)⁶ provides practical guidance for structuring AI oversight and identifying risk. It recommends organizations:
 - **Map** AI systems and their use contexts
 - **Measure** risks like bias, explainability gaps, and data vulnerabilities
 - **Manage** those risks through safeguards and controls
 - **Govern** the full AI lifecycle with documentation and oversight
- NIST also outlines six characteristics of **trustworthy AI**:
 - Valid and reliable
 - Safe
 - Secure and resilient
 - Explainable and interpretable
 - Privacy-enhanced
 - Fair (with harmful bias mitigated)



6. <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>

General regulations that impact AI
(privacy, employment, IP, cybersecurity...)



Regulations explicitly designed to address AI technologies
(U.S. state AI laws, EU AI Act...)

Non-binding principles & guidelines
(e.g., OECD Principles...)

Voluntary frameworks & industry standards
(e.g., NIST, ISO/IEC, CEN...)



AI Governance

The United States Fragmented, Sector Specific Approach⁷



- **No comprehensive federal AI law** yet — existing laws (FTC Act, civil rights laws, consumer protection) are applied to AI on a case-by-case basis
- The **FTC** plays a major enforcement role by targeting unfair or deceptive AI practices under Section 5
- The **White House AI Executive Order (Oct. 2023)** moves toward a national strategy, focusing on:
 - Safety testing & transparency obligations for powerful AI models
 - Red-teaming guidelines from NIST to test AI robustness
 - Review of federal data collection practices involving personal data
 - Anti-discrimination guidance for landlords, benefit programs, and contractors
 - Worker protections and economic impacts of AI
 - National AI Research Resource to broaden access to AI research tools
 - U.S. model offers **regulatory flexibility**, but creates **inconsistencies across states and sectors**
- The lack of a unified federal law may weaken the U.S. position in setting **global AI governance norms**

7. <https://arxiv.org/pdf/2503.14540>



- **European Union Artificial Intelligence Act:** Four risk categories:
 - **Unacceptable risk** (e.g. subliminal manipulation, social scoring) – banned outright
 - **High risk** (e.g. education, employment, law enforcement) – subject to strict requirements
 - **Limited risk** – requires transparency measures
 - **Minimal risk** – no regulatory obligations
 - **High-risk AI** must meet requirements for:
 - Risk management, data governance, documentation
 - Transparency to users, human oversight, and cybersecurity
 - **Extraterritorial** – could create a “Brussels effect,” making EU standards global by default
 - Stifling innovation?

8. <https://arxiv.org/pdf/2503.14540>



- **Internal governance:** Recommend clients assign AI oversight at the board level (only ~30% of S&P 500 currently do, up from 17% in 2023)¹⁰
 - In practice, many companies expand the charter of an existing committee (e.g. Audit or Risk Committee) to include AI oversight.¹¹
- **External accountability:** FTC, DOJ, EEOC, and CFPB have committed to enforcing fairness in AI.¹²
- **Disclosure duties:** Several U.S. states are considering bills in 2025 requiring explicit AI disclosures, such as bot identification and labeling AI-generated content.¹³
 - Hawaii HB 639 / SB 640, Idaho HB 127, Illinois HB 3021, Massachusetts SD 2223, and New York A222.
 - Counsel should track these and ensure clients implement required transparency measures.

10. <https://news.bloomberglaw.com/business-and-practice/s-p-500-disclosing-more-about-boards-ai-scrutiny-study-shows>

11. <https://insights.issgovernance.com/posts/roughly-15-percent-of-large-u-s-companies-disclose-board-oversight-of-ai-iss-corporate-analysis-finds/#:~:text=Explicit%20disclosure%20of%20full%20board,the%20Audit%20Committee%E2%80%99s%20risk%20oversight>

12. <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eeoc-release-joint-statement-ai#:~:text=%E2%80%9CWe%20already%20see%20how%20AI,books%2C%20and%20the%20FTC%20will>

12. <https://www.insideprivacy.com/artificial-intelligence/blog-post-state-legislatures-consider-new-wave-of-2025-ai-legislation/#:~:text=State%20lawmakers%20are%20considering%20a,may%20be%20on%20the%20horizon>



THANK YOU