

The Transatlantic Tightrope:

AI, ESG, and the Evolving Duty of Care for Multinational Companies

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Today's Agenda

Introduction & Overview

AI and the Duty of Care

Ethical Considerations in Legal and Compliance Roles

Practical Guidance

Q & A

Introduction & Overview



Introduction: Key Terms

- **Artificial Intelligence (AI)** - Generally, refers to computer systems that can perform complex tasks normally done by human-reasoning, decision making, creating, etc. However, there is no single, simple definition of AI because AI tools are capable of a wide range of tasks and outputs.
 - **Generative AI (GAI)** - A type of AI that can learn from and mimic large amounts of data to create content such as text, images, music, videos, code, and more, based on inputs or prompts. GAI is distinguished from other AI types by its ability to create novel output.
- **Duty of Care** - A fiduciary duty requiring directors and officers of a corporation to make decisions that pursue the corporation's interests with reasonable diligence and prudence. Laws and regulations require companies to demonstrate a duty of care in designing and producing their goods so that they are safe for release and use. The same applies to AI tools.
- **Environmental, Social, and Governance (ESG)** - Refers to a set of standards used to measure an organization's environmental and social impact. Started in the context of investing, but has grown to apply to customers, suppliers, employees, and the general public. There is no single, simple set of standards because different frameworks and organizations focus on different standards.

ENVIRONMENTAL FACTORS



Energy Efficiency
Hazardous Materials Mgmt
Climate Change
Water and Land Mgmt

SOCIAL FACTORS



Data Protection/Privacy
Human Rights
Labor Standards
Product Safety

GOVERNANCE FACTORS



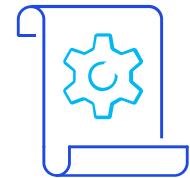

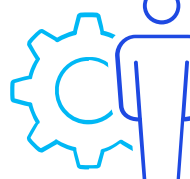
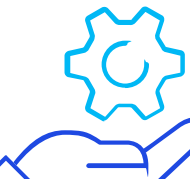
Accounting/Audit Standards
Bribery/Corruption
Business Ethics
Regulatory Compliance

[Source](#)

Intersection of AI and ESG & Sustainability

2024 Edition of KPMG Survey of Sustainability Reporting

Key findings

	World's largest 250 companies	All 5,800 companies in the research
 Report on sustainability	96%	79%
 Publish a carbon target	95%	80%
 Have a sustainability leader	56%	46%
 Consider sustainability in leadership pay	41%	30%

Intersection of AI and ESG & Sustainability

Benefits and Opportunities

- Setting, meeting, and reporting on ESG and sustainability targets has become part of “business as usual” for most of the world’s largest companies, as well as many other organizations, and these organizations face pressure to do so efficiently and consistently.
- In some jurisdictions, these targets and disclosures are (or will be) mandatory—e.g., EU's Corporate Sustainability Reporting Directive (CSRD) and California's SB 253 and SB 261.
- Increasingly, organizations are looking to AI tools to help them do so, including to:
 - Analyze vast amounts of data to assess organizations’ activities for ESG or sustainability reporting or to inform better investment decisions.
 - Identify and mitigate ESG risks and improve governance.
 - Improve DEI strategies by screening candidates fairly and objectively.



Intersection of AI and ESG & Sustainability

Risks and Challenges

The use of AI also presents risks and challenges to organizations' ESG and sustainability agendas, including :

- *Environmental Impact/Footprint*: The use of AI relies on large data centers that consume substantial amounts of electricity (for power) and water (for cooling). This can significantly impact an organization's progress towards its reduction targets for energy, water, and carbon emissions.
- *Greenwashing Allegations*: Failure to adequately assess and report on the environmental impact/footprint of AI tool usage may expose an organization to "greenwashing" allegations. Similarly, data errors leading to inaccurate AI conclusions for ESG and sustainability reporting may result in such allegations, which carry legal and reputational risks.
- *Biases*: Flaws in or inadequate governance over AI tools may lead to the creation of harmful biases in the tools, such as unintentionally favoring or discriminating against specific individuals or categories of individuals in recruitment and hiring. This could lead to discrimination claims or enforcement actions.

Accordingly, there are increasing calls and attempts to legislate or regulate AI development and use, but challenges abound...



AI & the Duty of Care



AI and the Duty of Care

EU Artificial Intelligence Act (2024)

- World's first comprehensive AI law.
- Aims to ensure that general-purpose AI models placed on the European market — including the most powerful ones — are safe and transparent.
- The new rules establish obligations for providers and users depending on the level of risk, including:
 - “Unacceptable Risk”: With exceptions for law enforcement purposes, certain AI applications are to be banned in the EU, including cognitive behavioural manipulation of people or specific vulnerable groups (e.g., children), social scoring AI, biometric identification and categorisation of people, and real-time and remote biometric identification systems (e.g., facial recognition in public spaces).
 - “High Risk”: AI systems that negatively affect safety or fundamental rights. All high-risk AI systems will be assessed before being put on the market and also throughout their lifecycle. People will have the right to file complaints about AI systems to designated national authorities.
 - “Low Risk”: These AI systems will be subject only to limited transparency obligations where they interact with individuals.
- GPAI models, regardless of use case, have specific provisions governing them, primarily focused on transparency, including issuing technical documentation, compliance with EU copyright law, and providing summaries of the training data.



AI and the Duty of Care

EU AI Act: Implementation Timeline

Entered into application on August 1, 2024, but none of the requirements began to apply at this stage. They will begin to apply gradually, with compliance dates in 2025-2027, including:

- August 2, 2025: The following rules start to apply:
 - Notified bodies ([Chapter III, Section 4](#)),
 - General Purpose AI (GPAI) models ([Chapter V](#)),
 - Governance ([Chapter VII](#)),
 - Confidentiality ([Article 78](#))
 - Penalties (Articles [99](#) and [100](#))
- August 2, 2026: The remainder of the AI Act starts to apply, except [Article 6\(1\)](#).
- August 2, 2027: Providers of GPAI models that have been placed on the market / put into service *before August 2, 2025* need to be compliant with the AI Act.



AI and the Duty of Care

General Purpose AI Code of Practice (GPAI Code)

- July 10, 2025: EU AI Office issued final version of GPAI Code, a voluntary tool, prepared by independent experts in a multi-stakeholder process, designed to help industry comply with the AI Act's obligations for providers of general-purpose AI models.
- It is complemented by [Commission guidelines](#) on key concepts related to general-purpose AI models.
- The [European Commission](#) and the [AI Board](#) have confirmed that the code is an adequate voluntary tool for providers of GPAI models to demonstrate compliance with the AI Act. (De facto operational playbook, at least for now)
- Once the GPAI Code is endorsed by the Member States and the Commission, adherence to the Code will enable providers of general-purpose AI models who voluntarily sign the GPAI Code will be able to demonstrate compliance with the relevant AI Act obligations. This will benefit [GPAI Code signatories](#) through a reduced administrative burden and increased legal certainty compared to providers that prove compliance in other ways.

AI and the Duty of Care

General Purpose AI Code of Practice (GPAI Code)

Consists of three chapters: **Transparency** and **Copyright**, both addressing all providers of general-purpose AI models, and **Safety and Security**, relevant only to a limited number of providers of the most advanced models (those that are subject to the AI Act's obligations for providers of general-purpose AI models with systemic risk under Article 55 AI Act).

1. The [Transparency chapter \(PDF\)](#) offers a user-friendly [Model Documentation Form \(DOCX\)](#) which allows providers to easily document the information necessary to comply with the AI Act obligation to on model providers to ensure sufficient transparency.
2. The [Copyright chapter \(PDF\)](#) offers providers practical solutions to meet the AI Act's obligation to put in place a policy to comply with EU copyright law.
3. The [Safety and Security chapter \(PDF\)](#) outlines concrete state-of-the-art practices for managing systemic risks, i.e. risks from the most advanced models.

AI and the Duty of Care

Organisation for Economic Co-operation and Development (OECD) AI Principles

- Adopted in 2019 and updated in 2024 but lacks legal force.
- Principle 1.3 stipulates the need for AI actors to "commit to transparency and responsible disclosure regarding AI systems".
- To achieve this goal, AI actors are encouraged to "provide meaningful information, appropriate to the context, and consistent with the state of art".
- This duty is expressed in absolute terms, with no references to the expected degree of transparency being dependent on the circumstances of the AI use.
- However, U.S. and U.K. approaches differ—they implicitly acknowledge that the level of required disclosure will vary depending on the context.



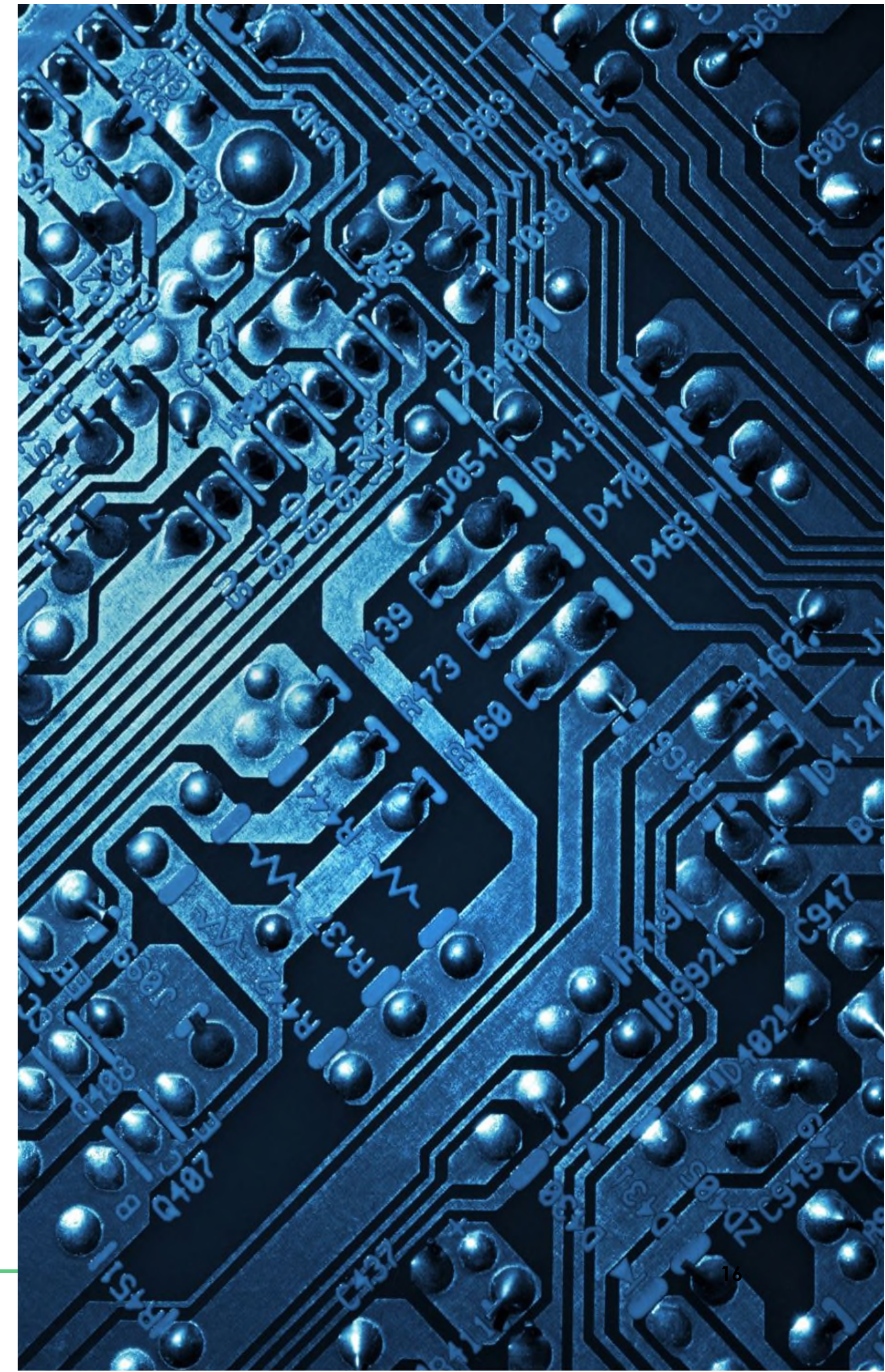
POLLING BREAK

AI and the Duty of Care

US Federal Initiatives

No comprehensive federal AI law yet, but a patchwork of laws, Executive Orders, etc., including:

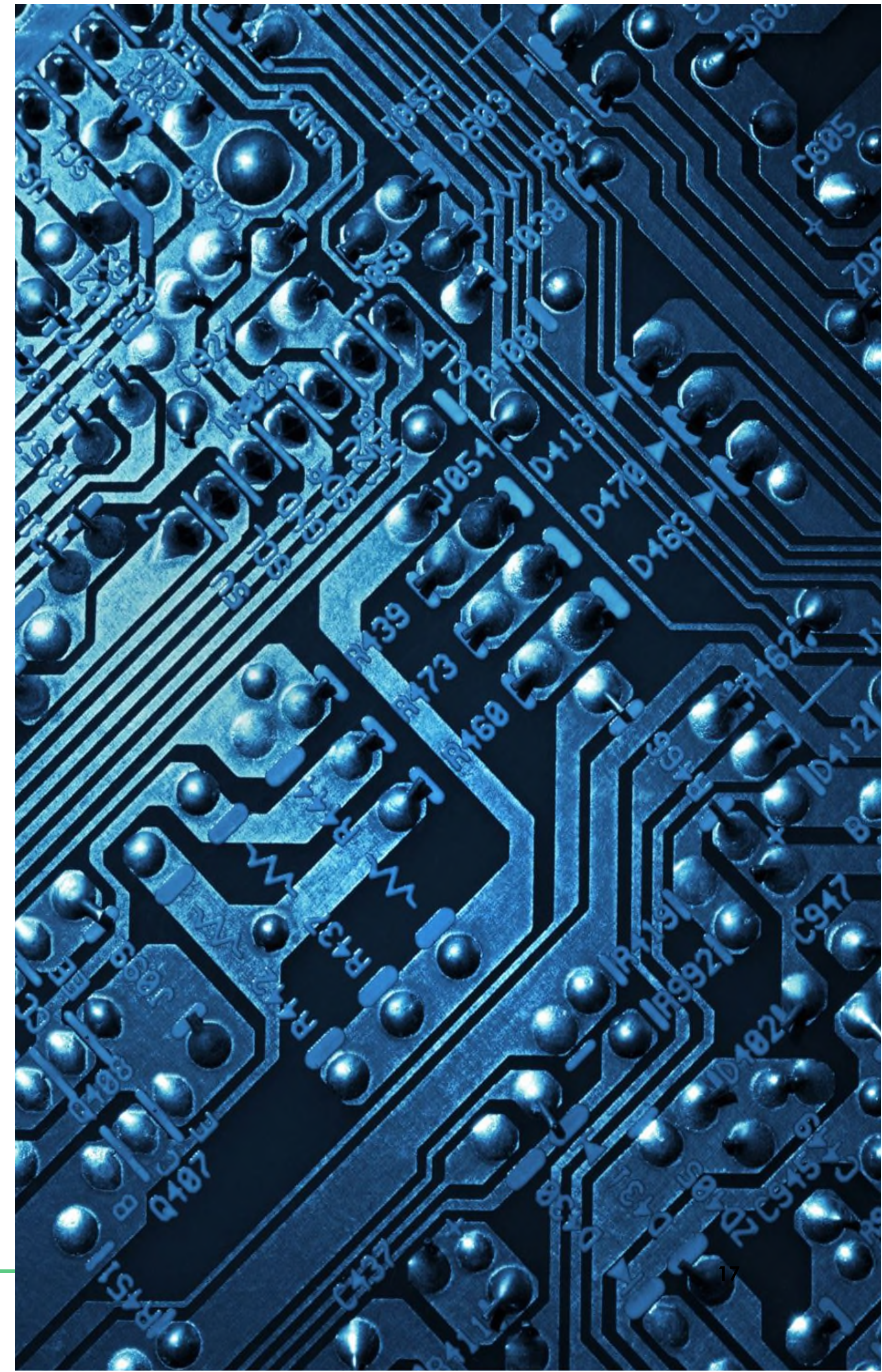
- February 11, 2019, Trump Executive Order (EO) 13859, Maintaining American Leadership in Artificial Intelligence. First-of-its-kind EO to specifically address AI, recognizing the importance of AI to the economic and national security.
- January 23, 2025, Trump EO 14179, Removing Barriers to American Leadership in Artificial Intelligence, rescinded Biden EO on AI and called for the establishment of a new plan for AI.
 - April 3, 2025, Office of Management and Budget (OMB) released two memos [M-25-21: Accelerating Federal Use of AI through Innovation, Governance, and Public Trust](#) (M-25-21) and [M-25-22: Driving Efficient Acquisition of Artificial Intelligence in Government](#) (M-25-22), which rescind and replace two Biden Administration memos on the same topics.
 - July 23, 2025, White House released [America's AI Action Plan](#), outlining 90 policy actions to implement the new AI policy.



AI and the Duty of Care

US Federal Initiatives (continued)

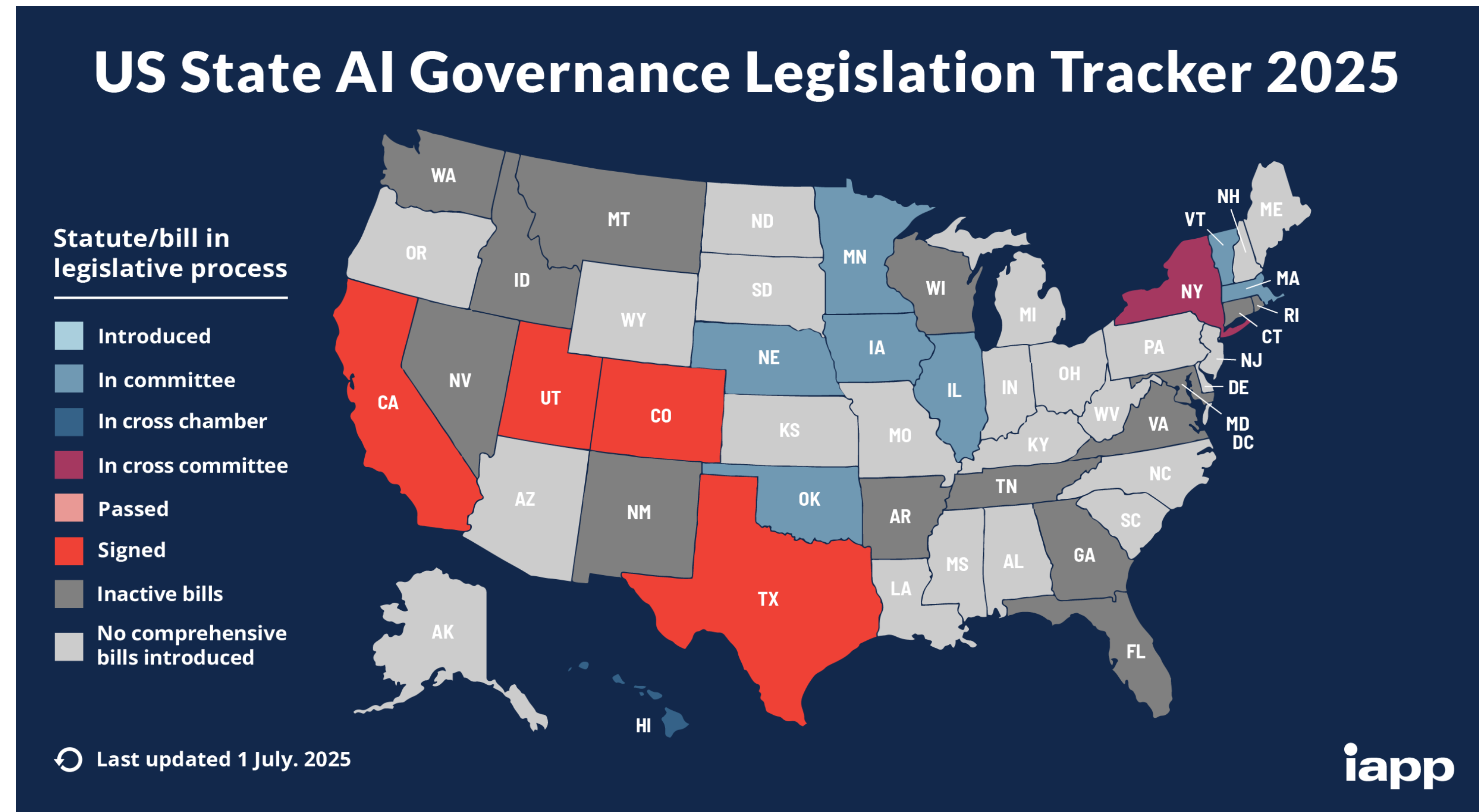
- December 2020, AI in Government Act of 2020 – Created the AI Center of Excellence within the General Services Administration and directed OMB to issue a memorandum informing federal agencies of policies for acquisition and application of AI and identifying best practices for mitigating risks.
- January 2021, National AI Initiative (NAII) Act of 2020 – Established direction and authority to coordinate AI research, development, and demonstration activities among civilian agencies, the Department of Defense, and the intelligence community to ensure that each informs the work of the others.
- 2023 Update to the National Artificial Intelligence R&D Strategic Plan, proposed for update in 2025 – Outlines strategic areas for R&D, such as making long-term investments in fundamental and responsible AI research; understanding and addressing the ethical, legal, and societal implications of AI; and ensuring the safety and security of AI systems.
- August 2023 DHS Policy Statement 139-06 Acquisition and Use of Artificial Intelligence and Machine Learning by DHS Components – Provides that DHS will acquire and use AI only in a manner that is consistent with the Constitution and all other applicable laws and policies.
- May 2025, TAKE IT DOWN Act – Criminalizes the creation and distribution of nonconsensual intimate visual depictions, including AI-generated deepfakes, and establishes a notice-and-takedown process for online platforms.



AI and the Duty of Care

US State-Specific Developments

- Since 2019, 17 states have enacted 29 bills focused on regulating the design, development and use of artificial intelligence.
- Illinois, New York, Texas, and Vermont's legislation fosters interdisciplinary collaboration through creation of task forces, working groups, or committees focused on the potential impacts of AI systems on consumers and potential cybersecurity challenges.
- Other states' legislation focuses on protection from unsafe or ineffective systems, data privacy, transparency, protection from discrimination, and accountability.



POLLING BREAK

AI and the Duty of Care

Other Statutes or Policy Documents

- H.R.9671, the Department of Energy Artificial Intelligence Act of 2024, seeks to provide guidance for and investment in the research and development activities of AI at the Department of Energy, and for other purposes.
- The White House released "Winning the AI Race: America's AI Action Plan," on July 23, 2025 with goals that aim to accelerate innovation, building American AI infrastructure, and lead in international diplomacy and security.
- Artificial Intelligence Risk Management Framework (AI RMF) is a risk-based, voluntary framework designed by the National Institute of Standards and Technology (NIST) to help organizations govern, assess, and manage AI risks while promoting the development of trustworthy AI systems. The AI RMF aims to create a world where AI can thrive responsibly.



AI and The Duty of Care

Directors' Duties

- Directors must also ensure they are aware of how AI is being developed and/or implemented by and in their companies' businesses, as well as the related risks and impacts.
- Laws such as the Delaware General Corporation Law and Ireland's Companies Act 2014, along with landmark cases on directors' duty of care, highlight the significance of proper oversight.
- Directors should be aware of the global regulatory landscape, industry standards, and best practices applicable to AI and implement a robust AI corporate governance framework within their organization to identify, mitigate, and manage related risks.
- Some organizations have created a Chief AI Officer (CAIO) role, who focuses on strategically deploying AI to transform business operations and drive competitive advantage, as distinct from the Chief Technology Officer (CTO), who primarily oversees the development and implementation of technology across an organization.



Ethical Considerations in Legal and Compliance Roles



Ethical Considerations in Legal and Compliance Roles

Currently Available Guidance – e.g., International Bar Association (IBA)

- *IBA General Principle 1:* A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.
- *IBA General Principle 2:* A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.
- *IBA General Principle 4:* A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.
- *IBA General Principle 6:* A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.
- *IBA General Principle 10:* Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.



Ethical Considerations in Legal and Compliance Roles

Ireland

- Section 150 Legal Services Regulation Act
- Not limited to time input, although that has historically been the key metric
- Billing transparency
- Records & document flagging
- Client engagement and transparency, supervision, vetting, filtration, “first draft” pass & iteration



Ethics Opinions

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AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512

July 29, 2024

Generative Artificial Intelligence Tools

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

I. Introduction

Many lawyers use artificial intelligence (AI) based technologies in their practices to improve the efficiency and quality of legal services to clients.¹ A well-known use is electronic discovery in litigation, in which lawyers use technology-assisted review to categorize vast quantities of documents as responsive or non-responsive and to segregate privileged documents. Another common use is contract analytics, which lawyers use to conduct due diligence in connection with mergers and acquisitions and large corporate transactions. In the realm of analytics, AI also can help lawyers predict how judges might rule on a legal question based on data about the judge's rulings; discover the summary judgment grant rate for every federal district judge; or evaluate how parties and lawyers may behave in current litigation based on their past conduct in similar litigation. And for basic legal research, AI may enhance lawyers' search results.

This opinion discusses a subset of AI technology that has more recently drawn the attention of the legal profession and the world at large – generative AI (GAI), which can create various types of new content, including text, images, audio, video, and software code in response to a user's prompts and questions.² GAI tools that produce new text are prediction tools that generate a statistically probable output when prompted. To accomplish this, these tools analyze large amounts of digital text culled from the internet or proprietary data sources. Some GAI tools are described as "self-learning," meaning they will learn from themselves as they cull more data. GAI tools may assist lawyers in tasks such as legal research, contract review, due diligence, document review, regulatory compliance, and drafting letters, contracts, briefs, and other legal documents.

¹ There is no single definition of artificial intelligence. At its essence, AI involves computer technology, software, and systems that perform tasks traditionally requiring human intelligence. The ability of a computer or computer-controlled robot to perform tasks commonly associated with intelligent beings is one definition. The term is frequently applied to the project of developing systems that appear to employ or replicate intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize, or learn from past experience. BRITANNICA, <https://www.britannica.com/technology/artificial-intelligence> (last visited July 12, 2024).

² George Lawton, *What is Generative AI? Everything You Need to Know*, TECHTARGET (July 12, 2024), <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

Ethical Considerations in Legal and Compliance Roles

[ABA Formal Opinion 512](#)

- Established current ABA guidelines in July 2024.
- Prior to this, individual states were leading the way on ethical obligations for their bars with regard to the use of GAI.
- For example, in 2023 and 2024, [Texas](#), [Illinois](#), [California](#), [Florida](#), and other state level taskforces and Bar Associations released opinions on AI use and ethical considerations for lawyers.
- Generally, these opinions are nonbinding, but instructive.

Ethical Considerations in Legal and Compliance Roles

ABA Formal Opinion 512

Addresses the use of GAI in the context of ethical obligations covered by the ABA Model Rules of Professional Conduct, including:

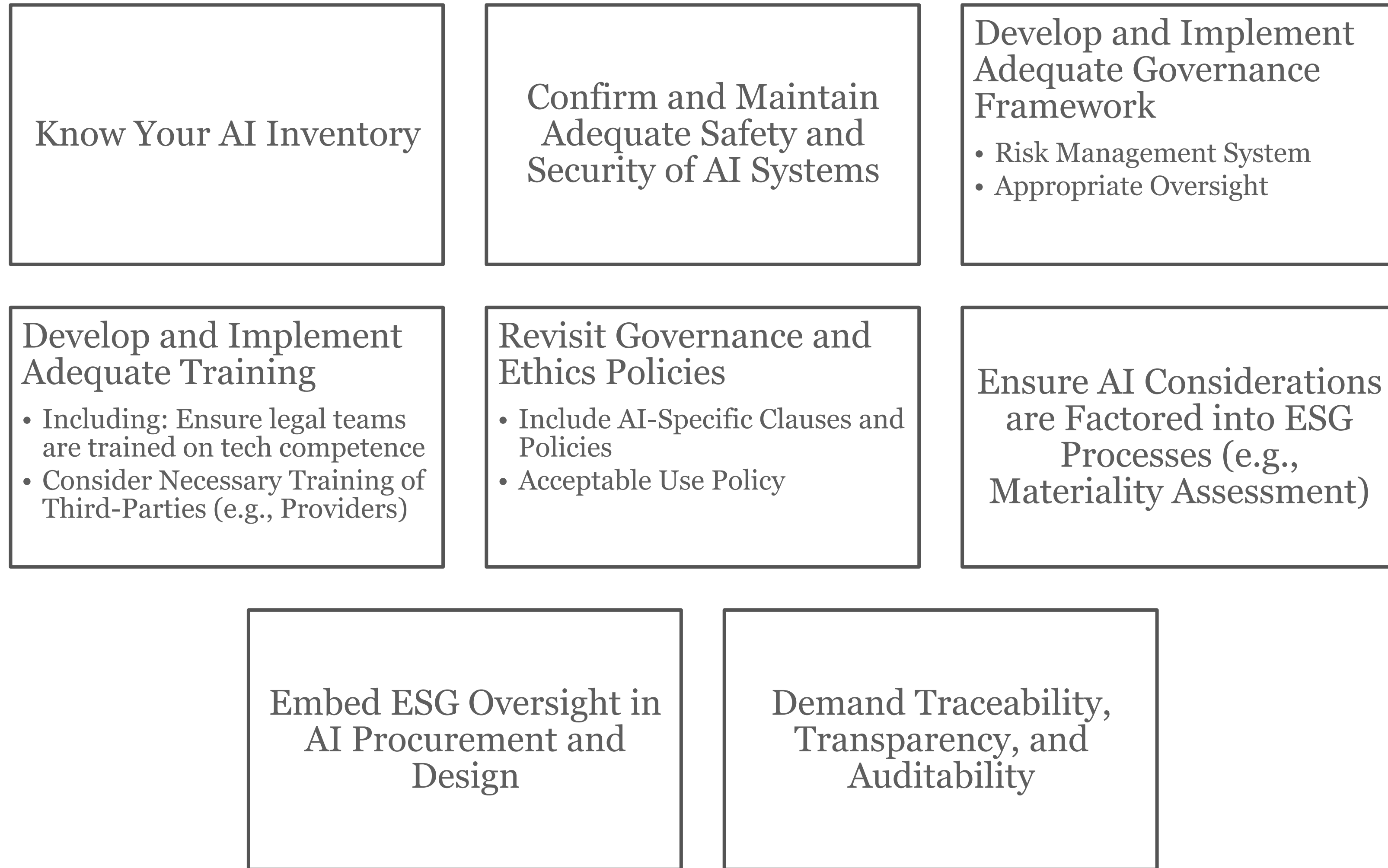
1. *Competence* ([Model Rule 1.1](#)): Lawyers must understand the capacity and limitations of GAI and periodically update that understanding.
2. *Confidentiality* ([Model Rule 1.6](#)): Lawyers using GAI must be cognizant of the duty to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent. Other model rules require lawyers to extend similar protections to former and prospective clients' information.
3. *Communication* ([Model Rule 1.4](#)): Lawyers have a duty to communicate with their clients and have legal obligations as fiduciaries, which include "the duty of an attorney to advise the client promptly whenever he has any information to give which it is important the client should receive." Formal Op. 512 offers guidance on when, and to what extent, lawyers are required to communicate their use of GAI to clients.
4. *Candor Toward the Tribunal* ([Model Rule 3.3](#) and [Model Rule 8.4\(c\)](#)): Duties to the tribunal require lawyers, before submitting materials to a tribunal (e.g., courts, arbitrators, administrative agencies), to review GAI output, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, any failure to include controlling legal authority, and any misleading arguments.
5. *Supervisory Responsibilities* ([Model Rule 5.1](#) and [Model Rule 5.3](#)): Partners and other lawyers with managerial or supervisory duties must establish clear policies regarding the permissible use of GAI and supervise lawyer staff to ensure compliance with these policies. Partners and other lawyers with supervisory responsibilities must make sure that nonlawyers (e.g., outside providers) are adequately trained in the ethical and practical uses of GAI.
6. *Fees* ([Model Rule 1.5](#)): Lawyers' fees and expenses must be reasonable. Formal Op. 512 states that, in most circumstances, the lawyer cannot charge a client for learning how to work an AI tool (with exceptions). However, the opinion notes that, if a lawyer uses an AI tool to draft a pleading and spends 15 minutes to input the relevant information into the program, the lawyer may charge for that time and for the time necessary to review the resulting draft for accuracy and completeness.



Practical Guidance

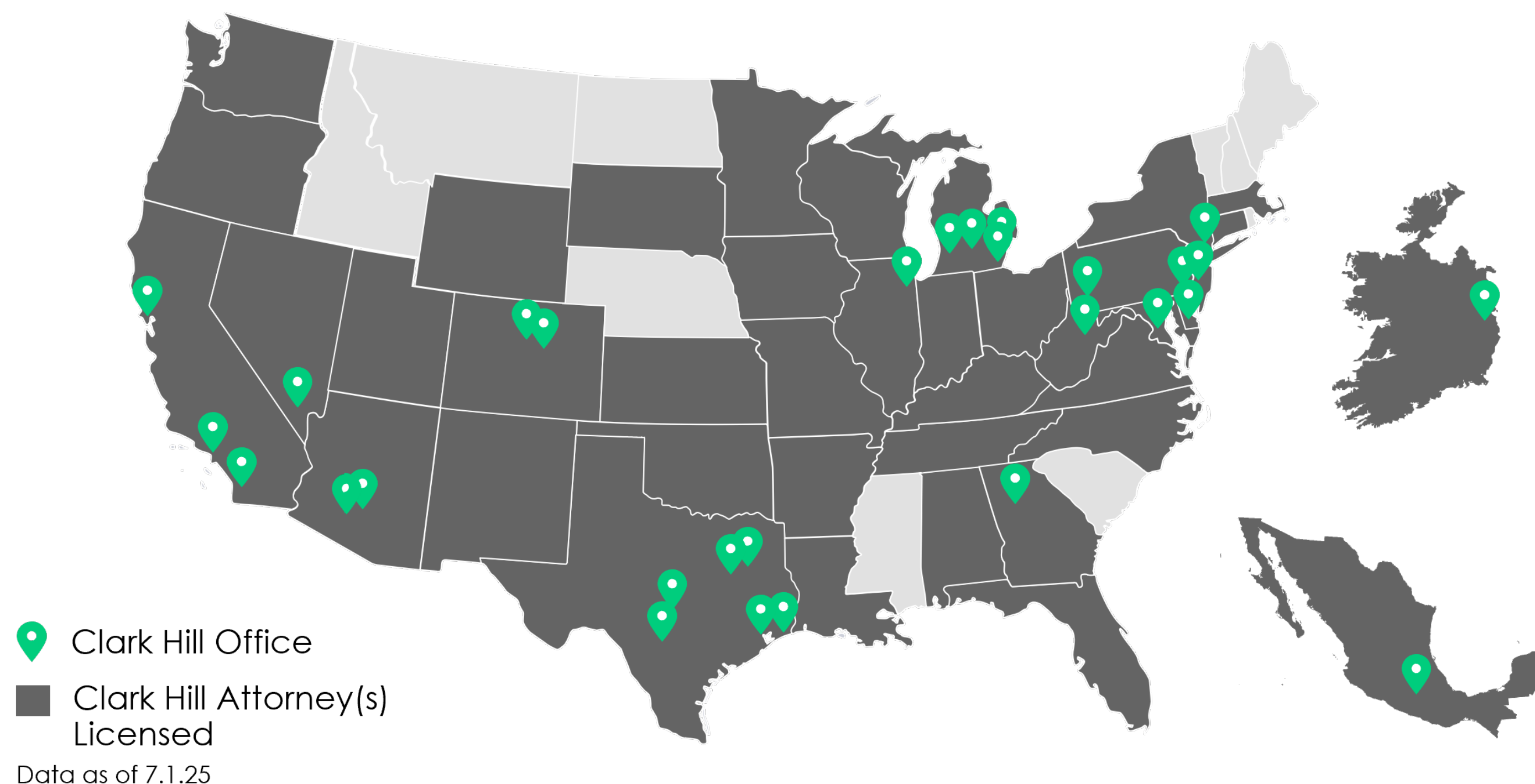


Practical Guidance for GCs and In-House Teams



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Questions?



Thank You

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