

My Employees Are Using ChatGPT. Now What?

Cheat Sheet

Given the potential risks associated with the use of ChatGPT and similar tools, it's crucial for companies to provide guidance to their employees. This guidance can take the form of a new formal policy or a more general best practice guide that leans on existing employee, information security, and other company policies.

The following table provides a list of risks stemming from the use of AI solutions, including generative AI tools like ChatGPT, and guidance that employers can provide to their employees.

Risk	Guidance
<p>Confidentiality: Sharing confidential company or client information with generative AI systems may violate contractual obligations or expose trade secrets to public disclosure. Current consumer grade generative AI tools do not provide sufficient assurances or protections relating to confidentiality or security.</p>	<p>Remind employees of the risks of sharing confidential information with consumer grade generative AI solutions and the employee's obligations under existing corporate policies pertaining to confidential information. Consider revising the guidance once the company deploys an enterprise grade solution with better protections and assurances regarding confidentiality.</p>
<p>Personal Data and Privacy Violation: Sharing personal information about customers, clients, or employees with generative AI systems can create privacy risks as well as public relations risks. This is particularly relevant in the context of stringent data protection regulations such as the General Data Protection Regulation (GDPR) in the European Union.</p>	<p>Remind employees of the risks of sharing personal employee or customer information with consumer grade generative AI solutions and relevant laws pertaining to data privacy, including reporting procedures. Consider revising the guidance once the company deploys an enterprise grade solution with better protections and assurances regarding handling of personal information.</p>
<p>Quality Control: Generative AI systems can produce inaccurate results, which can lead to quality control issues. While AI tools can enhance productivity, they are not infallible. Furthermore, generative AI tools can produce incorrect results in a very convincing manner. It's essential to have checks and balances in place to ensure the accuracy and reliability of the output. Companies cannot relieve themselves from responsibilities and liabilities by saying they relied on generative AI tools.</p>	<p>Remind employees to review all outputs generated using generative AI solutions and that employees will be ultimately responsible for the use of AI generated output. These generative AI solutions can generate incorrect information but the tools are improving so it will be harder to detect incorrect information with time.</p>

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<p>Bias and Discrimination: Generative AI systems can produce biased and discriminatory results. As Large Language Models (LLMs) are trained on data available on the internet, they are capable of repeating biases found on the web. If companies rely on generative AI tools, companies need to ensure that they do not engage in any biased or discriminatory actions based on the use of these tools.</p>	<p>Relevant company personnel involved in the selection and deployment of generative AI tools should test and evaluate the results of each tool to confirm there is not an impermissible or inappropriate disparate or discriminatory impact on a protected class, minority, or vulnerable population. The company should also include contractual protections (e.g., warranties, indemnification, remedies, etc.) when using third-party generative AI solutions. This is particularly important in the event generative AI (or more traditional AI analysis) is used for automated decision-making or substantially assisting human decision-making.</p>
<p>Product Liability: Generative AI tools can be used in product research, design, development, and manufacturing phases. If a product or system powered by AI makes a decision that harms a user, it could result in claims and liability for all actors and organizations in the “chain” of the AI development and use.</p>	<p>Due to the potential quality control issues arising from inaccuracies in AI-generated content, it's important to start thinking about AI governance and providing mechanisms for regular audits, training, and monitoring. Not only can such mechanisms detect errors early on, but they also aid in refining the company's use of generative AI solutions over time. Furthermore, an audit trail provides the ability to trace back any problems to their source, helping to prevent repeat issues. In addition, if companies decide to, without human review, directly provide the results of generative AI tools to their clients and customers, companies must understand the higher level of risk it entails and that these tools can produce incorrect or offensive results.</p>
<p>Intellectual Property Ownership: The use of generative AI systems raises complex IP issues, including whether documents or code generated by generative AI systems are entitled to legal protection or whether the company can be held liable for using the output of generative AI systems that have been trained on copyrighted or otherwise private data without consent.</p>	<p>Evaluate copyright ownership issues and liability for copyright infringement due to training a LLM to reduce exposure for copyright infringement.</p>
<p>Misrepresentation: Claiming output is human-generated when it's not can lead to consumer protection claims or other public relations issues depending on use. Companies should be aware that there is a risk of unfair or deceptive practice claims under state or federal law if incorrectly using AI tools. Transparency is key when using AI tools. In addition, social media is notorious for calling out content that was created using generative AI but not made known.</p>	<p>To avoid misrepresentation claims and potential public relations issues, companies need to be transparent about their use of AI tools. If a company uses generative AI for communicating with customers, employees, or other third parties (e.g., a chatbot) in a manner that the recipient may not understand the content was generated by generative AI, the company should include a notice that the content is generative AI-generated. For example, this could be done in a chatbot window at the beginning of the session or with a persistent notice such as “Responses generated using AI.” In a world where consumers value authenticity, revealing that content was generated using generative AI is not just ethical, but could be appreciated by the audience.</p>

Risk	Guidance
<p>Insurance Coverage: Depending on the policy, insurance may not provide coverage for liability resulting from the use of generative AI tools. As generative AI tools become more integrated into business operations, companies need to ensure that their insurance policies cover any potential risks associated with their use.</p>	<p>With the risks associated with AI usage, insurance policies need to evolve in tandem. Companies should engage in discussions with insurers or insurance brokers to ensure coverage extends to potential liabilities resulting from AI use.</p>
<p>Future Requirements: As the industry evolves and regulations get passed, there may be future requirements to clearly identify AI-generated content if a company needs to make representations in a deal, financing, or commercial agreement with a vendor or a customer.</p>	<p>Given the fast-paced evolution of AI regulations, it's important for businesses to stay ahead of the curve. Anticipating and preparing for potential regulatory changes will keep the company compliant and limit future disruptions.</p> <p>Consider implementing systems that can track content created using generative AI solutions to avoid downstream disruptions resulting from regulations regarding the use of it.</p>
<p>Potential Employment Discrimination: The adoption of generative AI tools may adversely affect the performance of individuals who are not using them relative to their peers. This could potentially lead to employment decisions stemming from the use or non-use of AI tools, which may have a discriminatory or adverse impact on a protected class of individuals (e.g., persons 40 and over). Companies need to ensure that the use of AI tools does not create an unlevel playing field within the workplace or potential bias in employment decision-making.</p>	<p>To ensure fair play within the workplace, companies should monitor the use of AI tools and the impact such use is having on performance of employees. Measures should be implemented to ensure that the performance evaluation of individuals not using AI tools is not adversely affected and consider training for those employees who are not early adopters of generative AI tools, thereby mitigating potential discrimination.</p> <p>Similarly, there are existing regulations that extend to companies using AI for automated decision-making processes for hiring purposes. Companies are advised to evaluate such regulations and ensure that their hiring process is compliant with such regulations.</p>

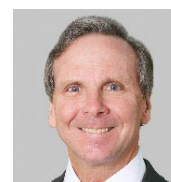
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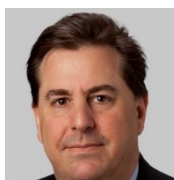
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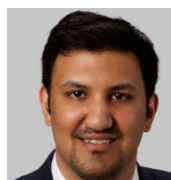
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