

Winston & Strawn Co-Hosts AI Lunch and Learn With ACC Charlotte

AUGUST 22, 2024

Winston & Strawn and ACC Charlotte were pleased to co-host a lunch and learn in Winston's Charlotte office on August 22, 2024.

The discussion focused on ethical issues related to AI and other new technologies and how to manage legal and reputational risk. Topics included:

- eDiscovery and Ephemeral Communications Platforms
- Generative AI and Other AI Technology
- AI Drafting Tools
- AI Policies, Governance, and Best Practices

Find key takeaways from the discussions below.

EDISCOVERY AND EPHEMERAL COMMUNICATIONS PLATFORMS TAKEAWAYS

Ephemeral communication is data that only lasts for a short time. In the context of electronic communications, messages disappear once accessed/read (or soon thereafter). Companies can take proactive steps to limit risk and costs related to this technology:

- Establish a new technology committee
- Enact policies related to:
 - use (e.g., whether to use and which platforms)
 - retention (limit retention to extent practical)
 - features (e.g., turn off recordings)
- Consider legal hold options
- Determine discovery obligations

- Provide education and training (e.g., corporate hygiene in document creation)

GENERATIVE AI AND OTHER AI TECHNOLOGY TAKEAWAYS

Legal professionals are progressively turning to AI applications, such as ChatGPT, to enhance productivity and minimize expenses in various legal practices, including research, document drafting, analytical tasks, and electronic discovery.

Ethical duties related to AI applications include:

- Duty of Competence - understand the advantages and potential risks related to pertinent technology, including AI
- Duty to Communicate with Clients - engage in reasonable dialogue with clients about the strategies to be employed to achieve the client's goals.
- Duty to Charge a Reasonable Fee - prohibition on imposing "unreasonable" fees and expenses.
- Duty of Confidentiality - safeguard clients' confidential information absent: Informed consent for disclosure, implicit authorization, or as required by law or a court.
- Duty of Professional Judgement and Candid Advice - "exercise independent professional judgment and render candid advice," which advice may be based on "moral, economic, social and political factors" relevant to the client's circumstances.
- Duty to Supervise - safeguard clients' confidential information absent: Informed consent for disclosure, implicit authorization, or as required by law or a court.

AI DRAFTING TOOLS TAKEAWAYS

With the growth of AI technology, the legal industry has seen the release of numerous AI drafting tools over the last few years. These remarkable tools are hugely beneficial and can save significant time on tasks that might otherwise be done manually, but they can only help lawyers do the work better—they don't do the work for us, either as a practical or an ethical matter.

Corporate counsel should value the use of these tools by their outside counsel. Outside counsel must use these tools in a manner consistent with their ethical duties of competence, communication, confidentiality, and independent judgment. All counsel should be keenly aware of the evolving patchwork of local rules and standing orders that govern—and in some cases sharply restrict—the use of AI in documents filed with courts.

AI POLICIES, GOVERNANCE, AND BEST PRACTICES TAKEAWAYS

AI is Everywhere and in Everything

- People:
 - Employees
 - Customers
 - Directors and Shareholders
- Infrastructure
 - Physical assets (e.g., buildings, equipment, computers, networks, facilities)
 - Technology to support business functions (e.g., financial management, HR, payroll, customer relationship management, document management systems)
- Intellectual Property
 - Patents, trademarks, copyrights
 - Trade secrets, know-how, best practices

- Contracts
 - Vendors have AI everywhere and in everything too

Policies, Governance, and Best Practices

- Risk Mitigation
 - Internal use policies
 - Third-party contracts
 - Outside counsel guidelines
- Evaluate Tools
 - Look for risk AI creates (e.g., compliance, regulatory, operational, reputational, third-party, information security, technology, fraud, human capital, data management, change management risk)
- Designated AI Team
 - Comprised of employees across lines of business, functions
 - Tasked with learning about AI developments, evaluating internal use cases, and evaluating all AI-related questions/issues raised for the company
- Communication
 - AI is everybody



2 Min Read

Related Locations

Charlotte

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eDiscovery & Information Governance

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Danielle Williams



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