

EXECUTIVE INSIGHTS

Developing a smart corporate AI policy

Benesch AI Commission attorneys and in-house counsels provide their guidance on steps every company should take to establish and maintain clear and relevant governance of artificial intelligence in the workplace



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Benesch AI Commission Chair & Senior Managing Associate, IP

Kris Chandler is Chair of Benesch's AI Commission and Senior Managing Associate in the firm's Intellectual Property Practice Group. He specializes in data privacy, cybersecurity, and complex IP transactions. Kris advises clients on compliance with global data protection regulations and helps develop comprehensive corporate AI policies.



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Alison Evans is a Partner in the Intellectual Property Practice Group. She counsels clients on high-value IP and technology transactions, data security, and global privacy compliance. Alison advises on technology procurement, licenses, and business process outsourcing.



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Aslam Rawoof is a Partner in the Corporate & Securities Practice Group. He advises on capital markets transactions, corporate governance, and complex securities matters, including IPOs and debt offerings. Aslam also provides strategic counsel on AI-related corporate governance issues.



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Michelle Kaiser Bray

OPENLANE VP, IP & Technology Counsel, Chief Privacy Officer

Michelle oversees OPENLANE's privacy strategies and regulatory compliance in the rapidly evolving, data-driven landscape and leads the protection of the company's intellectual property. A certified privacy expert (CIPP/US), she previously worked in private practice, focusing on IP, privacy and data security with multinational apparel brands and automobile and financial services companies.



Rebecca Riegert

Executive Principal & Associate General Counsel at The Options Clearing Corporation

Rebecca has experience counseling companies on cybersecurity, operational resiliency, data, privacy and technology matters. Prior to joining The Options Clearing Corporation, Rebecca worked at Kraft Heinz, where she advised on data privacy, negotiated contracts involving security and privacy terms, and implemented global privacy compliance.



Jim Kirk, center, leads a discussion on AI and its legal implications and ramifications with panelists, clockwise from left, Ryan Sulkin, Alison Evans, Michelle Kaiser Bray, Aslam Rawoof, Kris Chandler and Rebecca Riegert.

By Seka Palikuca | Crain's Content Studio

The Artificial Intelligence revolution is here to stay, and so is the need for establishing a corporate policy on the use of AI in the workplace. For business leaders, there are a range of considerations to address when crafting guidance — from practical implementation to oversight to risk management and more.

With these vast implications in mind, Benesch Law and Crain's Content Studio gathered a panel of experts at the forefront of AI, including some members of Benesch's multidisciplinary AI Commission and two in-house guests, for a discussion on topics ranging from a basic definition of AI to its legal implications and ramifications going forward.

From enthusiasm to caution, this group of experts laid out some of the groundwork for how companies can move forward with their corporate governance of AI to ensure that security, privacy and innovation all thrive.

Getting in front of the AI wave

It has been less than two years since generative AI (gen AI) exploded onto the scene — and its early adoption has since spanned the globe. A McKinsey Global Survey published in May shows that 65% of respondents report that their organizations are regularly using gen AI, which is nearly double the percentage from their previous survey just 10 months prior.

“The No. 1 reason to develop a corporate AI policy is that your employees are probably using it already, with or without your guidance,” said Benesch's Aslam Rawoof of the firm's Corporate & Securities practice. “Knowing that and not creating an AI policy signals that your policy is one of indifference, that AI is not important to the company and that employees can use AI however they wish.”

In an extreme scenario, where a lawsuit may be brought against your company for improper AI usage, the first thing to be scrutinized would be your lack of an AI policy, Rawoof said. For these reasons, it's important to have an AI policy, even if it's short and quick but updated regularly.

The panel weighed in on what they believe to be essential aspects of developing a viable AI policy in the workplace:

Start with a definition of AI: When creating a corporate AI policy, you should begin with the basics, Rawoof said, and that involves a definition of what AI is. This includes generative AI (a model where you provide the prompt, the model understands the prompt, and then produces written output) and algorithmic AI (the model uses machine learning to analyze a data set and then provide an analysis).

Understand variations in use cases: Understanding use cases is also important when developing policy, because something being used behind the scenes for back-office purposes may require a different level of scrutiny than a customer-facing product, for example, said Benesch IP Partner Ryan Sulkin. The cases will also vary depending on the type of company or industry. For example, a pharmaceutical company may have a policy focused on priorities that are very different from an industrial manufacturer.

A three-tiered approach: When crafting a policy, it's helpful to consider three separate buckets, said Kris Chandler, Chair of Benesch's AI Commission. The first bucket is for the internal use of AI. The second is for developing your own AI, and the third is for your procurement of third-party AI tools.



Aslam Rawoof, Partner, Corporate at Benesch

"Whether you have these components in three separate policies or one comprehensive one, this approach will help expedite different aspects of doing business," Chandler said. "Such as the procurement process with a new vendor who uses an AI tool in its software, or a data scientist within your company who wants to develop a new algorithm."

Don't strive for perfection: "Don't let the perfect be the enemy of the good," Rawoof said. "If you want to set up a grand commission of 20 people and have a committee draft a policy, it could take a year to do that. And then your policy is obsolete the moment it comes out." Instead create something short, quick and comprehensible that you review quarterly.

Learn from the experience of peers: Join industry groups. Leverage your third-party vendors, like lawyers and consultants. If you have a line of communication, reach out to your competitors. They see what others are doing in the space, and you can learn from them.

Know your legislation: Stay current on legislation and case law and what peers are doing, Sulkin said. Try to join working groups wherever possible. Then, balance that with what the business is looking to achieve with AI.

Overseeing your corporate AI policy

New AI developments are in the news nearly every day. Moderator Jim Kirk asked the panel how companies can ensure their policies are adaptable as AI technology evolves and who should have ownership of those policies.

While most companies review their corporate policies annually, that won't work for AI, because the technology is changing so rapidly, Chandler said. Within five years, virtually every company will have some type of AI capability built in — whether it relates to product efficiencies or simply automating simple tasks — and your corporate AI policy needs to adapt accordingly. That's why Chandler advises clients to develop a more frequent review cadence that is quarterly at the least and continuous at its best.



Ryan Sulkin, Partner,
Data Protection Group Lead at Benesch

It should be a living document that requires buy-in from a cross-section of internal stakeholders, from the C-suite down to the management level. This ensures that everyone recognizes that AI is here to stay and so are its legal, technological and efficiency implications.

“For the sake of innovation and maintaining the excitement for enabling the technology, you can’t lead with compliance,” OPENLANE’s Michelle Kaiser Bray said, “or you’ll die an early death. Instead, embrace cooperation and collaboration as you architect the complexities of the AI program. I don’t think it’s a one-person job. It’s a team sport.”

With that in mind, it’s crucial to appoint someone to lead AI — an AI Czar, if you will, Chandler said.

Rebecca Riegert, Executive Principal and Associate GC at The Options Clearing Corporation, believes it’s important to have someone be the “face of AI” for the company frontline, educating employees on your company’s AI stance and sharing your priorities while helping bake that into the culture of the business.

It’s also important to make sure messaging is not just coming from compliance or risk, Benesch IP Partner Alison Evans added. “You need those business and technical stakeholders to buy into what you’re doing so this wonderful policy that you’ve enacted is actually implemented in your organization and not just sitting on a piece of paper in a drawer somewhere.”

Whether you have one person or a group of people at the top, their role should be to keep abreast of AI developments and understand what’s happening with the technology and



Michelle Kaiser Bray, OPENLANE VP,
IP & Technology Counsel, Chief Privacy Officer



Alison Evans, Partner, IP at Benesch

the law, then making sure the policy is reflective of that. To that end, the panel agreed that it’s important to not just add this role to a General Counsel’s portfolio of duties but rather make it a separate and distinct role from existing counsel.

Chandler advises a two-tiered approach to AI governance. That means having someone oversee the day-to-day work of running the business, enabling

them to make more nimble decisions on things like whether you can use a particular AI tool, such as Copilot, for drafting emails but not for writing code. Then, anything that requires heightened scrutiny should go up to a higher tier of governance, such as the C-suite or a committee-level approach.

Greater scrutiny might be needed when you’re dealing with use cases around hiring or firing decisions, or you want to use an AI tool to automate something or deploy a tool that is impacting safety or health or human rights.

“What you’re trying to juggle is legal compliance with best practices, business implications and AI for process improvement,” Chandler said.

One of the challenges a lot of companies are experiencing is finding the right person with the knowledge and expertise to lead the day-to-day AI function.

“We’ve had many conversations with clients where an in-house attorney has suddenly been tasked with leading artificial intelligence and their No. 1 question is, ‘what is AI?’” Evans said. “So, it can be really challenging to get the right person in that role. That’s where you need to either up-skill your existing employees or go into the market and find someone who has the qualifications to do the job properly.”

Rawoof advises many smaller clients and emerging growth companies that are newly public and may not have the full C-suite to be able to set up an AI commission or team. That’s where the role usually falls on the general counsel, he said. “In those cases, a law firm like ours can be a resource to help support people, and there are also a lot of great consultants in the field that we often work with.”

Government regulation of AI

There are only a handful of states that have decided to tackle AI so far, but Benesch's AI Commission speculates that in five years, there will be either a federal omnibus regulation over AI use or there will be state-by-state mandates similar to how privacy laws are dictated. This means that any company that hasn't already created an AI policy will then be mandated to do so for compliance purposes.

To date, there have been a few pieces of federal guidance on AI issued. Last October, the Biden-Harris Administration issued an executive order directing the Department of Homeland Security to lead responsible development of AI. The order promotes the safe, secure and trustworthy development and use of AI to protect Americans' privacy, secure consumer and worker rights and promote innovation.

In March, the federal government's Office of Management and Budget (OMB) released Memorandum M-24-10 (Advancing Governance, Innovation and Risk Management for Agency Use of Artificial Intelligence). The memo directs agencies "to advance AI governance and innovation while managing risks from the use of AI in the federal government."

While not law, both of these have been flowing through federal agencies, Chandler said, and they have implications for the private sector, as well.

"The federal government is the largest consumer of technological goods and products in the U.S., and this guidance is indicating what they view as important with AI governance," Chandler said. "So, I'm counseling clients to keep an eye on this federal guidance because that is most likely what private sector regulation will look like. It may not be binding on your business, but it's directionally important to understand."



Rebecca Riegert, Executive Principal & Associate General Counsel at The Options Clearing Corporation

While the delay in federal laws and guidance on AI — and the subsequent patchwork of guidance — can be stifling to innovation, it also can be a handicap in the highly regulated industries, Riegert noted.

"We don't want people to not use AI, but we want them to use it in a safe and transparent way," she said. "That's why having some federal guidance to follow would make it easier for a company to go about creating a policy without then having regulators come in and deem them out of compliance."

It's also possible that the U.S. may issue industry specific guidance on AI before it enacts a federal law, Evans said. "I would venture to guess that the development of AI law is going to probably follow what we saw with the development of privacy laws. In that case, as now, the European Union led the way before the U.S. followed."

In March, the EU finalized the AI Act, which became the first-ever legal framework on AI. Its goal is to regulate the ethical use of AI, and it may influence future U.S. law on matters such as transparency, data quality, human oversight and accountability.

Before any U.S. law goes into effect, the Federal Trade Commission (FTC) may step in as well, Sulkin said. They may use their Unfairness and Deceptive Acts or Practices authority to enforce privacy and security matters in the AI space.

Real world implementation and ethics

When you're using AI for decision-making, you must be mindful that the output and information you're getting from these tools is only as good as the information that's going in. "There is a real risk of bias, there's a risk of hallucination, false and misleading information," Evans said. "This means you have to be thoughtful of that reality when you're drafting your policies."

AI tools can produce many efficiencies and opportunities, but they have limits. "When you're drafting AI policies, you can't think of these tools as a substitute for the human expertise that is needed to ensure ethics and compliance," Evans said.

When implementing AI at OPENLANE, Bray and her team began by acclimating the new guidelines with their company culture. One of those enterprises is developing an AI training video that brings back "Fields," an animated computer character who first appeared in OPENLANE's Privacy Pam® privacy training tutorials. The other practical component of their AI integration is an ongoing Zoom call once a week, where anyone can show up and join the AI task force for 30 minutes. It's an opportunity to present ideas and get guidance on how to navigate the process within the company.

"It seems to be working pretty well," Bray said. "We've had some hiccups, for sure, but we're learning from those."

In the financial services industry that Riegert works and advises in, she suggests two first steps when embarking on creating an AI policy. The first is

assessing your organization's risk appetite, and the second is to start talking to your regulators to ensure that your policy will pass muster.

She likens the process to the cloud migrations and other large tech initiatives financial services companies, such as the Options Clearing Corporation, undertook in the past that required an ongoing dialogue with regulators.

Riegert thinks that while the financial services industry won't be early adopters of AI due to regulatory oversight, they'll slowly get there. The path forward involves looking at very specific use cases, making sure there's comfort with where the policy sits and how they've structured it. They will start small in a lower-risk area of their business and expand slowly, making sure to communicate with regulators along the way.

"For financial services firms, it's important to understand why you made the decisions you made. What are your risk management practices? What are you doing from a privacy and cybersecurity perspective to make sure you're comfortable with implementing said use case and AI."

Potential pitfalls of AI

The panel was asked by Kirk to share some of the most common AI pitfalls. The participants highlighted the various risks and precautions that companies should consider when developing AI guidelines or policies:

- **Contractual clarity and limitations of liability** are critical when integrating AI tools into business operations.
- **Vetted and approved AI tools** ensure cybersecurity standards are met. AI introduces new cyber risks that demand heightened security efforts.

- **Regular security and privacy assessments** are mandatory to mitigate vulnerabilities in AI environments.

- **Human oversight and backup plans** are necessary to manage AI tool failures effectively.

- **Deep fake technology** poses significant phishing risks that require advanced security protocols.

Compliance and enforcement

Finally, the panelists addressed the question of how companies can ensure compliance with both internal AI guidelines and external regulations.

It's crucial to train people to use the technology because if they don't understand it, they're not going to be able to comply with it. "Employees come at AI from varying levels of background, so you must assume that no one has prior knowledge, or maybe their knowledge is incorrect," said Rawoof. There should also be an acknowledgement form or a box to click to ensure people have read the policy, he explained. Then, follow up with surveys or focus groups to see how people



Kris Chandler, Benesch AI Commission Chair & Senior Managing Associate, IP

are using AI, whether they understand the policy and whether they're complying.

One of the best ways to get the buy-in is to celebrate the technology and innovation and benefits it can bring to the company, Chandler said. A couple of his clients rolled out their policy with monthly or quarterly meetings to talk about AI and introduce employees to the tools. The vendor demos focus on what you can do with the technology, not what you can't do with it.

Create an AI sandbox where teams can experiment with the new technology in a safe environment. It allows employees to get involved at the front end and champion it. That will help enable and facilitate the use of AI toward the business' strategic goal, which is the end-product.

"Get it out in the open, so people don't have to hide their use case and because it's then easier to map and track," Chandler said. "It is easier to enforce an AI governance policy if you know what everyone is doing with the technology."

Harnessing the Benefits of AI

The development of a smart corporate AI policy is crucial for businesses aiming to effectively navigate the rapid evolution of AI technology. As highlighted by the experts of Benesch Law's AI Commission and their guests, companies must be proactive in creating adaptable policies that ensure responsible AI usage while balancing innovation and compliance.

Corporate AI policies should be regularly reviewed, comprehensive in scope and supported by cross-functional stakeholder involvement. By prioritizing a flexible approach, continuous education and strategic governance, businesses can harness the benefits of AI while mitigating potential risks. Ultimately, this will foster a culture of secure, ethical and innovative AI adoption.

Benesch's AI Commission: Helping You Navigate the Future of AI with Confidence

As AI technologies revolutionize industries worldwide, Benesch is at the forefront, guiding clients in identifying issues, addressing AI risks, leveraging opportunities and resolving disputes.

Benesch's multidisciplinary AI Commission combines deep legal knowledge, tech know-how and incisive strategic business solutions to empower clients to safely and effectively deploy AI tools, enhance operations, drive growth and optimize customer experiences. With our finger on the pulse of proposed laws, evolving regulations and emerging trends, we ensure you're positioned for success in the rapidly changing AI landscape.

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