



## DISPUTES AND INVESTIGATIONS

# THE LEGAL DEPARTMENT'S STRATEGIC ROLE IN AI GOVERNANCE

In today's global business landscape, a company's integrity and reputation are vital. Corporate governance, the system by which companies operate and are held accountable, plays a crucial role in maintaining this integrity. It involves a set of processes, practices, and rules that guide the board and management in making decisions that align with the interests of shareholders, other key stakeholders, and society.

The enterprise legal department is uniquely positioned to ensure that the board fully acknowledges and acts to protect the company's integrity and reputation. For the legal department, taking a proactive stance in corporate governance to foster a culture of ethical behavior and compliance is essential. The legal department's role in corporate governance extends beyond that of a traditional legal advisor in strategic planning. By leveraging its expertise in regulatory and legal frameworks, the legal department can guide the board creatively, using these insights to not only ensure compliance but also to enhance the company's competitive advantage.

As companies increasingly integrate artificial intelligence (AI) into their operations, the legal department's role in corporate governance naturally extends to AI governance. The evolving responsibilities of the legal department now include ensuring that AI systems are developed and deployed in alignment with ethical standards, legal and regulatory requirements, and the company's strategic objectives. By guiding the board and leadership on AI-related risks and governance strategies, the legal department plays a critical role in safeguarding the company's reputation, fostering trust in AI systems and ensuring that AI initiatives contribute positively to the company's long-term success.

Legal departments must ensure that AI systems align with the company's ethical standards, legal and regulatory requirements, and strategic objectives.

This white paper explores the legal department's traditional role in corporate governance, highlighting how this role has evolved to encompass the emerging challenges of AI governance. It delves into the expanding responsibilities of the legal department with the rise of AI adoption, emphasizing the need for oversight in the ethical and legal dimensions of AI, and how this extension of duties is crucial for maintaining corporate integrity in the age of artificial intelligence.

## The Legal Department's Role in Corporate Governance

At its core, the legal department plays a crucial role in an organization's corporate governance by ensuring that the enterprise operates with accountability, fairness, and sustainability in its relationships with shareholders, leadership, customers, government, and society. Through this mandate, the legal department's role in corporate governance is multifaceted, serving as both a strategic advisor and a guardian of the company's legal integrity.



At the foundation of the legal department's corporate governance role is its mandate to mitigate risk. Organizations encounter a variety of risks that may impact their operations, reputation, and overall success. The enterprise legal department is essential in identifying, assessing, and mitigating these risks through its varied oversight functions, some of which include:

## **1. Legal and Regulatory Compliance**

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The legal department is crucial in ensuring that the organization complies with applicable laws, regulations and industry standards, safeguarding the enterprise from financial and reputational harm.

## **2. Corporate Policies and Ethical Guidelines**

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The legal department is integral to the development, implementation, and enforcement of corporate policies and ethical guidelines that govern employee behavior and decision-making.

## **3. Board Advisory and Board Governance**

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The legal department serves as an advisor to the board of directors, providing legal guidance on corporate governance matters, mergers and acquisitions, shareholder relations, and other strategic issues.

## **4. Oversight of Corporate Transactions**

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In corporate transactions, such as mergers, acquisitions, divestitures and financing arrangements, the legal department plays a pivotal role in ensuring the success and legality of each deal.

## **5. Shareholder Relations and Corporate Communications**

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The legal department plays a key role in managing relationships with shareholders and other stakeholders, helping to ensure that these interactions are legally compliant and transparent. In addition to shareholder relations, the legal department is instrumental in shaping the organization's broader corporate communications strategy, helping to protect the organization's reputation and to support its overall strategic objectives.

## **6. Crisis Management and Response**

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Corporate governance crisis management involves a structured approach to anticipate, prepare for, respond to and recover from unexpected events that could disrupt operations, damage reputation or threaten financial stability. Both before and during a crisis, the legal department plays a critical role in this process by guiding the organization through legal and regulatory implications, offering real-time advice on minimizing legal risks, ensuring compliance with relevant laws, and shaping communication strategies to protect the company's interests.



# The Legal Department's Role in AI Governance

In addition to upholding its vital responsibilities in corporate governance, the legal department should now extend its expertise to navigate the complex and rapidly evolving landscape of AI governance. Just as it ensures compliance, manages risks, and upholds ethical standards across the enterprise, the legal department is increasingly responsible for applying these same principles to the organization's AI initiatives, both internal and external. This involves not only adapting existing governance frameworks to address the unique challenges of AI but also acting as a key driver to proactively guide the development, deployment, and oversight of AI systems. The goal is to ensure that implementation of AI systems aligns with the company's legal obligations, ethical values and long-term strategic goals, as well as the broader social responsibility of promoting ethical and trustworthy AI practices.

The legal department's existing role of advising the board and management on legal matters, mitigating risks, and protecting the organization from financial and reputational harm is increasingly critical as organizations adopt AI technologies. This enhanced role involves navigating complex legal, ethical, and regulatory landscapes to ensure that AI systems are developed, deployed, and utilized responsibly.

Establishing a robust oversight mechanism for AI quality, ethics, compliance and risk is one of the legal department's most important responsibilities.

Below, we explore the AI-specific strategies that the legal department should employ to fulfill its governance mandate effectively. These strategies encompass a range of activities, from ensuring compliance with emerging AI regulations and mitigating associated risks, to fostering a culture of ethical AI use within the organization. The legal department should also focus on establishing robust oversight mechanisms for AI systems, collaborating with cross-functional teams to align AI initiatives with the company's broader strategic objectives, and engaging with external stakeholders to stay ahead of legal and ethical developments in AI.

## 1. Legal and Regulatory Compliance

As AI-specific regulations and standards continue to emerge globally, the legal department plays a critical role in ensuring that the organization's AI initiatives are compliant with these evolving legal requirements. This involves staying abreast of laws, regulations and frameworks, such as the EU AI Act,<sup>1</sup> the Colorado AI Act,<sup>2</sup> the NIST AI Risk Management Framework,<sup>3</sup> and other relevant directives and guidelines that may impact AI technologies. The legal team is responsible for interpreting these complex laws, regulations, frameworks, directives and guidelines and translating them into actionable guidance for the organization, advising on how they affect AI implementations. This includes reviewing AI systems for compliance, advising on necessary adjustments to align with regulatory standards, and ensuring that documentation and reporting requirements are met.

AI risk impact assessments are a crucial component of the legal and regulatory compliance function within AI governance. These assessments involve a thorough evaluation of potential risks associated with AI systems, including ethical concerns, data privacy issues, and potential legal liabilities.

Various global laws and regulations require different AI risk impact assessments for different purposes. For example, the EU AI Act mandates a Fundamental Rights Impact Assessment in some circumstances and a Conformity Assessment in others. The Colorado AI Act requires at least annual Algorithmic Impact Assessments to analyze potential biases in certain types of AI systems. Pending legislation in other U.S. states and the U.S. federal government similarly require algorithmic impact assessments for certain AI systems.

The legal department's role in AI risk impact assessments is to provide informed guidance on how to align AI initiatives with evolving regulatory requirements. Additionally, the legal department collaborates with other departments, such as IT, Compliance, and business units to integrate these regulations into the organization's broader governance framework.

1. The European Union AI Act was published in draft form in the Official Journal of the European Union on July 12, 2024, at: *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence*. Publication in final format is anticipated to be printed in the Official Journal of the European Union in the coming weeks.
2. Colorado Senate Bill 21-169, An Act Concerning the Use of Artificial Intelligence in Certain High-Risk Decision-Making Processes, Colo. Rev. Stat. § 6-1-1301 et seq. (2023).
3. National Institute of Standards and Technology, AI Risk Management Framework, NIST SP 1270 (2023).

## 2. Corporate Policies and Ethical Guidelines

The legal department plays a crucial role in promoting the ethical use of AI within the organization by developing and enforcing comprehensive policies and guidelines. These policies and guidelines are designed to ensure that AI systems are developed and used in ways that align with core ethical principles, such as fairness, transparency, accountability, and respect for human rights. Key policies include an AI use policy, which outlines the acceptable use and limitations of AI within the organization, and documented governing principles that define the ethical standards to which AI systems must adhere.

Additionally, the legal department is responsible for establishing processes and procedures that guide the ethical development and deployment of AI technologies, including quality management policies that ensure AI systems meet rigorous standards for accuracy and reliability. Intellectual property policies are also essential, addressing the legal implications of AI-generated content and ensuring the organization's intellectual property is protected. Ethical guidelines for trustworthy AI are integral to this framework, providing a clear blueprint for developing and deploying AI systems that align with the organization's values and expectations of the general public.

The legal department plays a role in guiding and supporting efforts to raise awareness among employees, particularly those involved in AI projects, about the legal and ethical considerations related to AI governance. The legal team may also provide ongoing guidance and support to employees as they navigate AI-related challenges.

## 3. Data Privacy and Protection

Data privacy and protection are essential aspects of AI governance due to the high volumes and sensitive nature of the data that AI systems handle. AI-specific risks include challenges with data minimization, where AI systems may require large datasets that conflict with privacy principles and the potential ability for AI to reidentify individuals from anonymized data. Additionally, legitimate concerns arise about biases in AI algorithms leading to discriminatory

outcomes, heightened vulnerability to data breaches due to centralized data processing, and the complexity of obtaining informed consent when AI processes data in ways not fully transparent to users.

The legal department plays a critical role in addressing these risks by ensuring AI systems comply with data protection laws like the General Data Protection Regulation (GDPR),<sup>4</sup> the California Consumer Privacy Act (CCPA)<sup>5</sup> and other relevant privacy regulations. This includes developing comprehensive data governance policies that dictate how data is collected, stored, processed, and shared within the organization.

Privacy-enhancing technologies (PETs) offer additional safeguards, especially when dealing with AI systems. PETs — such as differential privacy, homomorphic encryption, and federated learning — are designed to minimize the risk of exposing personal data during AI processes. The effectiveness of PETs when applied to AI systems varies, however. While these technologies are powerful in theory, their practical implementation in AI systems can be complex and resource-intensive. Differential privacy, for example, can sometimes lead to reduced data utility, impacting the accuracy of AI models. Similarly, homomorphic encryption is computationally expensive and may slow down AI processes, making it less suitable for real-time applications. Federated learning, while promising, requires sophisticated coordination between devices and robust data governance frameworks to be effective.

Privacy-enhancing technologies, utilized with strong legal oversight, show promise in minimizing personal data exposure.

When combined with strong legal oversight, PETs may be valuable tools for enhancing data privacy in AI systems. The legal department's role includes evaluating the appropriateness and effectiveness of these technologies and ensuring they are implemented correctly, in compliance with legal and regulatory standards. By integrating PETs into the AI governance framework, the legal department helps balance the need for innovation with the obligation to protect individual privacy.

4. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

5. California Consumer Privacy Act of 2018, Cal. Civ. Code §1798.100 et seq. (West 2018).



## 4. Intellectual Property Risk Management

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Intellectual property (IP) risk management is a critical aspect of AI governance, considering the complex challenges that AI technologies present in terms of ownership, protection, and the use of intellectual property. AI systems create, use and modify content, data, algorithms and models, requiring organizations to navigate a complex legal landscape to ensure their innovations are protected while also respecting the IP rights of others.

One of the key risks involves determining the ownership of AI-generated content. Legal questions may arise regarding who owns the rights to works created by AI — whether it is the developer of the AI, the user or another party. Additionally, the patentability of AI-related or AI-assisted innovations can be complex, particularly when assessing whether an AI-generated innovation meets the criteria for patent protection, such as novelty and non-obviousness. AI systems that rely on large datasets, algorithms and preexisting works may also inadvertently infringe on the IP rights of others, posing significant legal risks.

The legal department plays a vital role in managing these IP risks by developing a comprehensive IP strategy that aligns with the organization's goals. This includes securing patents for AI innovations, copyrighting or otherwise protecting AI-generated works, and establishing clear ownership rights. The legal team is responsible for filing and managing patents and trademarks related to AI technologies and ensuring that AI-generated content is protected under intellectual property law. Legal teams also manage licensing agreements for third-party data, algorithms, and software used in AI systems, ensuring that all necessary rights are secured, and that the organization complies with licensing terms.

As AI technologies advance, determining the ownership of AI-generated content is a growing challenge and can pose legal risk.

To further mitigate risk, the legal department may conduct IP risk assessments to identify potential infringement risks and advise on strategies to avoid potential conflicts. In cases where IP disputes arise, the legal department represents the organization in negotiations, arbitration or litigation, working to resolve conflicts related to IP ownership, infringement, and licensing.

## 5. Responsible AI Procurement: Managing Bias and Fairness in AI

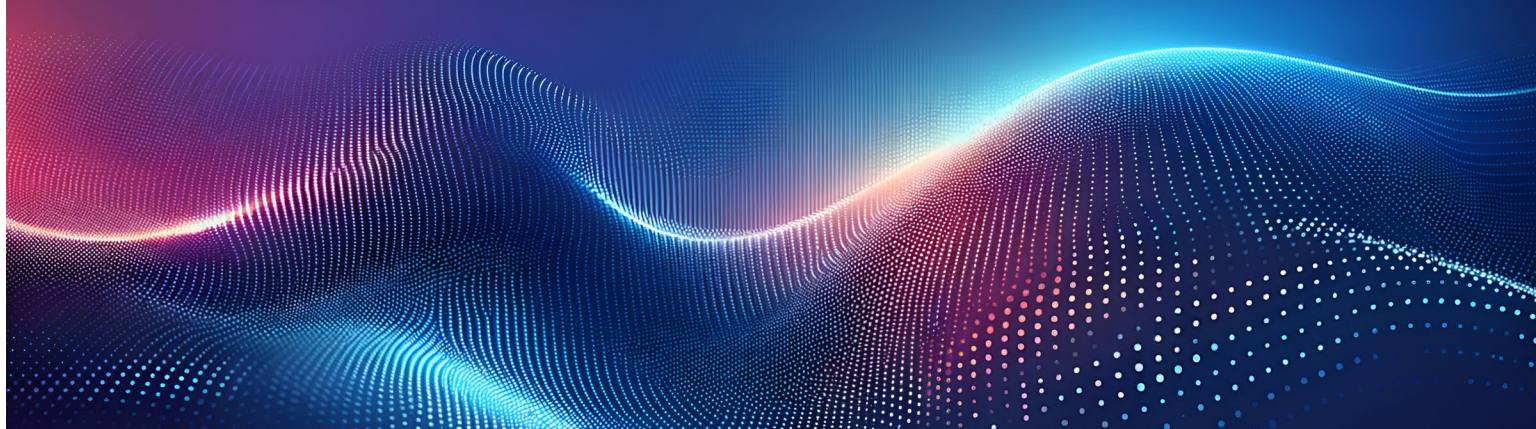
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Significant challenges in AI governance include addressing bias in AI systems, ensuring fairness and protecting legal rights, both of the enterprise and of third parties. The legal department is responsible for developing strategies to achieve these results, particularly when deploying third-party AI systems. This is accomplished through responsible AI procurement, which involves the legal department collaborating with IT to institute third-party AI risk assessment. The goals of third-party AI risk assessment include evaluating the AI system's decision-making processes, ensuring that data used to train AI models is representative, and implementing measures to detect and correct bias.

The legal team also advises on the legal implications of biased AI outcomes, such as discrimination and fairness, and works to ensure that AI systems comply with antidiscrimination laws. By managing bias, the legal department helps ensure that AI systems are fair and just.

When deploying AI systems developed by third parties, the legal department plays a key role in negotiating and drafting contracts. This includes ensuring that contracts address critical issues such as liability for AI decisions, data ownership, IP rights, and compliance with relevant regulations. The legal team also advises on service-level agreements (SLAs) and other contractual terms that govern the performance and reliability of AI systems. By carefully managing contractual arrangements, the legal department helps mitigate risks and ensures that deployments of third-party AI systems are legally sound.





## 6. Ongoing Monitoring and Compliance of Deployed AI Systems

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After the deployment of AI systems, continuous monitoring and compliance are essential to ensure that these systems operate within legal, ethical, and regulatory boundaries over time. The legal department plays a vital role in this ongoing process by working closely with technical teams to monitor AI performance and its compliance with relevant laws, standards, and internal policies. This includes regularly reviewing AI outputs for potential biases and verifying that the AI system continues to align with its intended ethical guidelines.

Transparency and explainability are essential aspects of AI governance, particularly when AI systems are used in decision-making processes that impact individuals. The legal department ensures that AI systems are designed to be transparent and that their decision-making processes can be explained to stakeholders, including regulators, customers, and employees. This may involve advising on the development of explainable AI (XAI) techniques and ensuring that AI systems meet regulatory requirements for transparency. By promoting transparency, the legal department helps the enterprise build trust in AI systems and ensures compliance with legal obligations.

The legal team is also responsible for ensuring that compliance protocols are updated as new regulations emerge and ensuring that any modifications to the AI system remain compliant. Modifications may include software updates from the third-party developer. Additionally, modifications may occur when enterprise data is used to update or train an AI model, even if the model was developed by a third-party company. This subtle concept is vitally important because an enterprise that only procures and does not develop AI systems may consider itself to be only a “deployer” of AI systems for purposes of emerging laws and AI regulations. Companies may inadvertently subject themselves to “developer” obligations under certain circumstances, however.

When enterprise data is used to train an AI model, the company may be a ‘deployer’ of third-party software but could be subject to ‘developer’ obligations.

Legal teams may accomplish these monitoring and compliance functions by conducting or overseeing periodic regulatory audits to assess AI systems’ adherence to applicable standards and regulations. Additionally, the legal department advises on the implications of any identified issues, such as biases or violations, and helps develop remediation plans to address these concerns. By supporting the ongoing monitoring and compliance of AI systems, the legal department helps mitigate legal risks, protect the organization’s reputation, and ensure the ethical use of AI throughout its lifecycle.

## 7. Crisis Management and Response in AI Incidents

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In the event of an AI-related incident, such as a data breach, biased AI decision or regulatory investigation, the legal department is at the forefront of the organization’s response. This involves coordinating internal and external communications, conducting investigations, and managing legal defense strategies. The legal team also advises on remediation efforts, such as correcting AI errors or implementing additional safeguards. By managing AI-related crises effectively, the legal department helps minimize legal exposure and protect the organization’s reputation.

## Conclusion

As organizations increasingly depend on AI for innovation and efficiency, the legal department should evolve from being a guardian of compliance to a strategic advisor that influences the organization's approach to AI. This entails a deep understanding of AI-related risks — from data privacy and bias to intellectual property and regulatory compliance — and integrating these considerations into the company's broader corporate governance structure.

Through this understanding of how AI governance responsibilities fit into the broader corporate governance structure, the legal department emerges as a key force in helping the organization navigate the complexities of AI adoption while safeguarding its legal interests, reputation, and long-term success. The legal department's role in AI governance is integral to ensuring that AI technologies are used responsibly and in compliance with legal and ethical standards.

By ensuring that AI governance responsibilities are seamlessly woven into the corporate governance fabric, the legal department becomes a central force in guiding the organization through the multifaceted challenges of AI adoption. This includes advising on the risks inherent in and unique to AI systems, managing contractual obligations

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with AI vendors, and navigating the evolving landscape of AI regulations. The legal department also plays a critical role in fostering an ethical culture around AI, ensuring that the organization's use of AI aligns not only with its legal obligations but also with its values and commitment to social responsibility.

In this capacity, the legal department not only protects the organization's legal interests and reputation but also supports its long-term success by ensuring that AI technologies are implemented in a manner that is both legally sound and ethically responsible. As AI continues to transform industries and redefine business practices, the legal department's leadership in AI governance will be pivotal in helping the enterprise harness the benefits of AI while mitigating its risks, ultimately contributing to the organization's sustainable growth and competitive advantage.

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