

GUIDANCE ON AI ACCEPTABLE USE POLICY

A handbook for professionals who use AI tools in their legal practice

Introduction

Artificial intelligence (AI) is a rapidly evolving technology that has the potential to transform the legal profession in many ways. AI tools can assist lawyers in tasks such as document review, contract analysis, legal research, due diligence, and predictive analytics. However, AI also poses significant ethical, legal, and professional challenges that need to be addressed by legal practitioners who use or rely on AI.

This document provides training guidance on an AI-acceptable use policy for use within legal firms. The purpose of this policy is to ensure that AI tools are used in a responsible, ethical, and lawful manner that respects the rights and interests of clients, third parties, and the public. The policy also aims to promote awareness, transparency, and accountability of AI use in the legal sector.

This document is divided into four sections. The first section outlines the scope and objectives of the policy. The second section presents the key principles and standards that govern the use of AI in legal practice. The third section provides practical recommendations and best practices for implementing and complying with the policy. The fourth section suggests ways that gamification can be used to enhance the learning and governance process within firms.

Scope and Objectives

- The policy applies to all legal professionals who work for or with the firm, including lawyers, paralegals, legal assistants, and other staff members.
- The policy covers all AI tools that are used or accessed by the firm, whether developed internally or externally, whether hosted on-premises or in the cloud, and whether used directly or indirectly.
- The policy does not replace or supersede any existing laws, regulations, codes of conduct, or professional obligations that apply to the legal profession. Rather, it complements and reinforces them by providing specific guidance on AI use.

The objectives of the policy are to:

1. Ensure that AI tools are used in a manner that is consistent with the core values and ethical principles of the legal profession, such as competence, diligence, confidentiality, loyalty, independence, and integrity.
2. Ensure that AI tools are used in a manner that is compliant with the applicable legal and regulatory frameworks, such as data protection, privacy, intellectual property, consumer protection, and human rights.
3. Ensure that AI tools are used in a manner that is respectful of the interests and expectations of clients, third parties, and the public, such as informed consent, transparency, fairness, accuracy, and accountability.
4. Ensure that AI tools are used in a manner that is appropriate and proportionate to the context and purpose of the legal task, such as relevance, necessity, and suitability.
5. Ensure that AI tools are used in a manner that is safe and secure, such as avoiding or mitigating risks, harms, and biases.
6. Ensure that AI tools are used in a manner that is sustainable and socially responsible, such as promoting diversity, inclusion, and human dignity.

The following principles and standards provide the general framework for the use of AI in legal practice. They are based on the existing ethical and professional guidelines for lawyers, as well as the emerging best practices and recommendations for AI governance. They are not exhaustive or definitive, but rather indicative and adaptable to the specific circumstances and needs of each case.

Principle 1: Competence. Professionals in legal firms who use AI tools must have the necessary knowledge, skills, and judgment to do so effectively and responsibly. They must understand the capabilities, limitations, and implications of the AI tools they use, and be able to evaluate their quality, reliability, and suitability for the legal task at hand. They must also keep abreast of the relevant developments and innovations in AI and update their skills and knowledge accordingly.

Principle 2: Diligence. Legal professionals who use AI tools must do so with due care and attention, and in accordance with the standards of professional conduct and practice. They must exercise independent and critical thinking, and not rely blindly or uncritically on the AI tools they use. They must also supervise and monitor the AI tools they use and verify and validate their outputs and outcomes.

Principle 3: Confidentiality. Legal professionals who use AI tools must respect and protect the confidentiality of the information and data they handle and ensure that the AI tools they use comply with the relevant data protection and privacy laws and regulations. They must obtain the informed consent of their clients and other data subjects before using or sharing their data with AI tools and inform them of the potential risks and benefits of doing so. They must also implement appropriate technical and organisational measures to safeguard the data from unauthorised or unlawful access, use, disclosure, or loss.

Principle 4: Loyalty. Legal professionals who use AI tools must act in the best interests of their clients and avoid any conflicts of interest or undue influence that may arise from the use of AI tools. Where applicable they must disclose to their clients any relevant information or factors that may affect their use of AI tools and may have an impact or bearing on the clients' interests. This could potentially include the source, ownership, funding, or affiliation of the AI tools, or any potential biases. Legal professionals using AI should always check for errors, or uncertainties that may affect their performance or results. They must also ensure that the AI tools they use do not compromise their professional independence or judgment or interfere with their fiduciary duties or obligations to their clients.

Principle 5: Independence. Legal professionals who use AI tools must maintain their professional autonomy and discretion, and not delegate or outsource their core legal functions or responsibilities to AI tools. They must retain the ultimate authority and accountability for the legal services they provide, and not abdicate or relinquish their role or duty to AI tools. They must also ensure that the AI tools they use do not undermine or impair their professional integrity or reputation, or the public trust and confidence in the legal profession.

Principle 6: Integrity. Legal professionals who use AI tools must do so in a manner that is honest, truthful, and respectful of the law and the legal system. They must not use AI tools to engage in or facilitate any unlawful, unethical, or fraudulent activities, such as plagiarism, misrepresentation, manipulation, or deception. They must also ensure that the AI tools they use do not violate or infringe any rights or interests of others, such as intellectual property, privacy, or human rights.

The following recommendations and best practices provide some practical suggestions and examples for implementing and complying with an AI-acceptable use policy. They are not mandatory or prescriptive, but rather illustrative and flexible to the specific situations and needs of each case.

Recommendation 1: Conduct a thorough assessment of the available AI tools before using them and document the results and rationale of the assessment. The review should cover the following aspects: the purpose, scope, and context of AI use; the technical and operational features and specifications of the AI tools; the legal and ethical implications and risks of AI use; the potential impacts and outcomes of the AI use; and the mitigation and remediation measures for the AI use.

Recommendation 2: Establish clear and transparent policies and procedures for the use of AI tools, and communicate them to the relevant stakeholders, such as clients, colleagues, supervisors, regulators, and the public. The policies and procedures should include the following elements: the roles and responsibilities of the AI users and providers; the relevant terms and conditions of the AI use; the data governance and security practices; the quality assurance and control mechanisms; the reporting and disclosure requirements; and the feedback and review processes.

Recommendation 3: Provide adequate and appropriate training and education for the legal professionals who use AI tools and ensure they have the necessary competencies and qualifications to do so. The training and education should cover the following topics: the basic concepts and principles of AI; the benefits and challenges of AI use in legal practice; the ethical and professional standards and obligations for AI use; the legal and regulatory frameworks and compliance issues for AI use; and the best practices and case studies for AI use.

Recommendation 4: Adopt and apply a human-centric and human-rights-based approach to using AI tools and ensure that the AI tools respect and promote the dignity, autonomy, and well-being of human beings. The approach should involve the following steps: engaging and consulting with the relevant stakeholders, especially the affected individuals and groups, throughout the AI lifecycle; ensuring that the AI tools are designed and developed with human values and needs in mind; ensuring that the AI tools are accessible and inclusive to all, and do not discriminate or exclude anyone; ensuring that the AI tools are responsive and accountable to the human users and beneficiaries, and do not harm or exploit anyone; and ensuring that the AI tools are subject to human oversight and intervention, and do not override or replace human agency or decision-making.

Recommendation 5: Monitor and evaluate the performance and impact of the AI tools on a regular and ongoing basis, and update and improve the AI tools accordingly. The monitoring and evaluation should include the following measures: collecting and analysing data and feedback on the AI use; conducting audits and reviews on the AI use; identifying and addressing any issues or problems with the AI use; implementing and testing any changes or enhancements to the AI use; and reporting and documenting any findings or outcomes of the AI use.

The AI AUP is a useful tool for educating and guiding users in the use of AI as well as ensuring that the deployment of AI technologies aligns with legal compliance, ethical standards, and data protection requirements. However, the challenges are not limited to the formulation of these policies but are significant in their adoption, understanding, and consistent application by staff members.

Traditional methods of corporate training and governance enforcement often fall short in engaging staff, leading to gaps in compliance and the underutilisation of AI tools' potential. To bridge this gap, gamification emerges as a powerful strategy to transform the training and enforcement of governance into an engaging, interactive, and continuous learning experience.

Gamification applies game-design elements and principles in non-game contexts to motivate participation, engagement, and loyalty. By leveraging human psychology that thrives on achievement, competition, and recognition, gamification can make the learning process about AI governance both enjoyable and effective. The following are suggestions on how gamification can assist with the training and ongoing enforcement of an AUP in a legal firm context:

Launch Event: Introduce the AUP with a firm-wide launch event, emphasising its importance and benefits. Use this opportunity to present key elements in an engaging format, such as a quiz show or interactive presentation.

Gamified Training Modules: Develop online training modules with gamified elements, such as scoring, badges, and leaderboards, to encourage participation. Cover essential aspects of the AUP, including legal compliance, data protection, and ethical use of AI tools.

Scenarios and Simulations: Use real-life scenarios and simulations that staff might encounter, allowing them to apply policy principles in a controlled, risk-free environment. Reward correct decisions and provide feedback on areas for improvement.

Monitoring and Feedback Mechanisms

Regular Audits with Rewards: Implement a system for regular audits of AI tool usage, and reward departments or individuals who consistently comply with the AUP. Rewards could include public recognition, small prizes, or points towards professional development opportunities.

Feedback Loops: Create channels for staff to provide feedback on AI tools and the AUP itself, using a gamified platform where suggestions can be upvoted by peers. High-scoring suggestions could be reviewed by management and potentially implemented, with recognition given to contributors.

Continuous Learning and Engagement

Ongoing Challenges: Introduce periodic challenges or competitions related to the AUP, such as spotting potential data protection issues or suggesting improvements to AI workflows. Winners could receive rewards or recognition.

Leaderboards: Maintain leaderboards for various compliance and learning activities, encouraging a friendly competition atmosphere. Leaderboards could track participation in training, contributions to feedback mechanisms, or innovative uses of AI within policy guidelines.

Policy Updates and Communication

Dynamic Update Announcements: Gamify the announcement of policy updates, by embedding them in a short, interactive experience. Staff could earn recognition for quickly reviewing updates and demonstrating understanding through a mini quiz.

Annual AUP Review Game: Turn the annual review of the AUP into a collaborative game, where staff form teams to propose amendments or highlight areas for clarification, with rewards for the best contributions as voted by peers or management.

Recognition and Rewards System

Recognition Program: Establish a recognition program for exemplary adherence to the AUP, innovative suggestions for improvement, or outstanding performance in training activities. Recognitions could be announced in firmwide meetings or newsletters.

Professional Development Incentives: Link gamification rewards to professional development opportunities, such as attending a conference, online courses, or other learning resources, aligning personal growth with policy compliance.

Governance and Enforcement

Dedicated Compliance Team: Form a dedicated team responsible for the governance, monitoring, and enforcement of the AUP. This team can also manage the gamification elements, ensuring they remain effective and engaging.

Transparent Reporting: Regularly report on compliance status, gamification engagement, and the impact of both on the firm's operations and culture. Use this data to continuously refine and improve the AUP and its gamification elements.

Summary

By applying the steps recommended in the guide and incorporating gamification, a legal firm can foster a culture of compliance, continuous learning, and engagement with the AUP for AI tools. This approach not only makes learning and compliance more enjoyable but also encourages adoption and practical understanding of the policy across the firm.

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