

Client advisory on potential legal risks from AI use

At Norton Rose Fulbright, we recognize that clients are confronted with a rapidly changing world of new artificial intelligence (AI) tools of different kinds that clients may seek to use in a variety of contexts to enhance their capabilities, efficiency and value proposition. While the law regarding such AI use is at present in a nascent stage, clients should be aware of certain legal risks that may arise from their own use of AI tools.

- **Privilege/Confidentiality.** Inputting communications with counsel, counsel's advice or expert witness reports onto AI platforms, or unilaterally using AI tools (particularly on public platforms or unapproved private platforms) with such material may impact or even destroy confidentiality and/or privilege protections that such material might otherwise enjoy. In addition, the prompt and the resulting outputs—including any emails or other documents based on the prompt/outputs—are “documents” for the purposes of legal proceedings to which privilege may not apply. To help guard against such risks, no such activity should be undertaken without advance discussion with counsel.
- **Hallucination.** Generative AI tools may produce outputs that contain or report “hallucinations” or other false or inaccurate statements, on both general and technical subject matters. Absent attorney review and approval, such outputs should not be relied upon as the basis for making any legal decisions.
- **Inaccurate Processing.** AI tools that work from auditory inputs may mishear, fail to hear and/or misattribute statements. The outputs of such tools should not be relied upon for legal decisions or decisions with significant legal consequences without review for accuracy from counsel or at least some other participant in the underlying events.
- **Quality of Output.** Absent sufficient testing and quality control of how particular AI tools perform on particular tasks, assumptions about how well such tools actually perform may prove to be unfounded or overly optimistic. Here again, the outputs of such tools should not be relied upon for legal decisions or decisions with significant legal consequences without appropriate consultation with counsel.
- **Discovery.** Even if not acted upon or formally acknowledged as accurate, AI outputs that are generated, and the prompts inputted into the tool by the user to attain these outputs, can end up becoming part of company records. As such, they possibly can become subject to discovery by adverse parties in current or future litigation or other dispute resolution proceedings. Such material could then potentially be used in such proceedings to challenge decisions that were made, and/or the testimony and recollections of persons involved in the events underlying such proceedings. Producing AI outputs relating to important business or legal decisions should thus be undertaken with care, and potentially only in consultation with counsel.

As we note in our statement on [Responsible use of AI at Norton Rose Fulbright](#), we are fully committed at Norton Rose Fulbright to the responsible use of AI, have developed principles and guidelines for the responsible and ethical development and deployment of AI technologies and require that our suppliers' use of AI conforms with our existing confidentiality, data protection and information security standards/requirements. We do not intend by this advisory to suggest that clients should not use AI, only that such usage be undertaken with similar care and appropriate awareness of when such use may give rise to legal risks.

We welcome ongoing dialogue and discussion on how clients and counsel can safely use AI to create value and drive innovation. If you have any questions, or if you would like to consult with us further regarding your use or potential use of particular AI tools, please do not hesitate to contact a member of our team.