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GENERATIVE AI: PRACTICAL CONSIDERATIONS FOR COMPANIES AND BOARDS

The AI revolution is creating both extraordinary opportunities and potentially far-ranging and novel risks for U.S. companies. This article provides an overview of the current AI legal landscape, summarizes key risks for AI adoption and implementation, discusses the roles of boards and senior leaders in overseeing AI adoption and deployment, and provides key takeaways for navigating and mitigating these risks.

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I. INTRODUCTION

In 2025, the question is no longer *whether* an organization should use artificial intelligence (“AI”),¹ but where and how to use it to maximize its utility in the service of its business, employees, and customers. This past year saw a shift from general contemplation of AI use to deployment and value generation.² AI continues

to revolutionize business in big and small ways and is rapidly evolving. Its potential use cases are far-ranging, from drug development, environmental impact analysis, and precision farming, to supply chain and human resource management and software development. AI in marketing is an area of fast-paced innovation, including content development and optimizing target audience. AI-powered chatbots are exploding in popularity. At any depth of deployment, companies and boards need to be aware of key risks AI poses and areas of uncertainty in the laws governing its use. This article provides an overview of the current AI legal landscape, and then discusses the roles of boards and senior leaders in overseeing AI adoption.

II. RISKS FOR AI ADOPTION AND IMPLEMENTATION

A. Copyright

When considering legal risks presented by AI, many people think first of copyright concerns. Copyright may vest in any original work of authorship fixed in a tangible medium of expression. Copyright conveys upon the owner certain exclusive rights, including the

¹ This article focuses on generative AI, including tools built using large language models (“LLMs”) and diffusion models. Generative AI models are trained on vast quantities of data from which they derive complex algorithms that allow them to understand language, process user text or voice prompts (or “inputs”), and generate “outputs” in the form of images, text, video, audio, etc.

² According to McKinsey & Company’s 2024 annual survey, in just over 10 months from the 2023 survey, the respondents who reported regular use of AI nearly doubled to 65%. McKinsey & Company “The State of AI in Early 2024: Gen AI adoption spikes and starts to generate value” (May 30, 2024), *available at* <https://www.mckinsey.com/capabilities/quantumblack/our-insights/the-state-of-ai-in-2023-generative-ais-breakout-year>.

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