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Office of General Counsel

AI, the Law, and You

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So Bottom Line, Can I Use AI or not?

- OGC is neutral on what software products the colleges and universities procure if the products meet security and legal requirements.
 - Software contracts need to be legally sufficient, including EULA's for free or open-source products.
 - Software contracts require IT Security review.
 - Campuses must be mindful of existing laws and policies concerning Acceptable Use, Intellectual Property, Data Privacy, and Data Security when using software products.
- So, if you comply with law and System policy, YES, you can use AI.

Wait, Dan, that's a lot of conditions. What does that mean?

- Good question! Let's dig into today's topics:
 - What is generative AI?
 - What system policies govern AI usage?
 - How should we use AI?
 - How do we buy AI products?
 - 1010101011000110 (Just kidding, there's a 2 in there somewhere).

What Generative AI is

- Software that gathers data from the internet (a process called “scraping”).
- Using the data, its algorithm, called a “large language model” can produce content.
- This content can be anything from summaries of popular books to images synthesized from existing image databases.

What Generative AI is not

- Perfect. It will sometimes “hallucinate,” making up information out of thin air.
- Truly “artificial intelligence.” It is algorithmic, not sentient.
- It is not HAL 9000 or R. Daneel Olivaw (Arthur C. Clarke’s cruel, indifferent AI or Isaac Asimov’s compassionate robot). As of now, it is neutral.

Example: The Schwartz Case

- Last year, an attorney in New York submitted a brief to a court.
- The brief had cases cited which did not exist.
- The lawyer admitted to using Chat GPT to write the brief and was fined \$5,000 by the court.
- This case has spawned hundreds of Continuing Legal Education panels. However, for your purposes, it is a good example of not trusting your research entirely to AI.

AI and Bias

- We asked an AI to send four pictures of “distinguished businesspeople.”
- It returned images of four, older men.
- The men were of four different ethnicities. But the fact that there were no women or younger people shows that the AI was biased.
- This should be a red flag for HR departments. If AI screens applicants, can we trust that it will not discriminate?

Intellectual Property

- Still covered by Board Policies 3.26 and 3.27 (IP generally and copyrights).
- Students and faculty still own rights to their copyrightable works.
- However, the Copyright Office has stated that AI generated works are not copyrightable.
- Keep this in mind when inputting prompts into AI.

Copyright Office Guidance on AI

- The United States Copyright Office has issued guidance stating that works without a human author are not eligible for copyright protection.
- However, they have also commissioned a study on AI, from which they may have additional guidance.

Data Security and Acceptable Use

- Acceptable Use (5.22.1), Data Security (5.23.2.1), and Information Security Controls (5.23.3.1).
- Do not put private data into an AI service unless there is a contract in place (e.g. Turnitin).
- Use of AI products can be both consistent with academic freedom and data security.

Note: Microsoft Co-Pilot

- We have a contract with Microsoft for Office that protects private data.
- Microsoft Co-Pilot is available to all Minnesota State employees.
- One benefit of Co-Pilot is that you can check its work because it provides references.
- One drawback is that it does not save your search history.

But What If I Want to Buy Something Else (e.g. ChatGPT)?

- Follow campus procurement process for software products.
- The answer is not “no.” The answer is that just like any software contract, an AI tool contract must be legally sufficient and pass security review.
- As an aside, we do have a software addendum, which stands as a pre-approved template in many circumstances.

Examples of Proper/Improper Use of AI Tools: HR

- Proper: an HR employee uses an AI tool to create templates for position descriptions. The AI generates draft templates, which the employee adjusts to meet their needs.
- Improper: an HR employee uses AI to craft interview questions. The AI produces a list of biased questions. The HR employee uses them anyway.

Proper/Improper (Cont.) Academic Use

- Proper: a faculty member uses AI tools to get a start on their research. They don't put any private data into Chat GPT.
- Improper: a faculty member sends a student paper to a free service to check for plagiarism. The free service does not have a contract with the College/University and is not FERPA compliant.

Proper/Improper (Cont.): Students

- Proper: A student uses an AI tool to generate a list of books to look for that could help them with a research paper.
- Improper: A student uses an AI tool to write the paper for them and turns it in as their own work.

Proper/Improper (Cont.) AI Images

- Proper: Asking AI to generate images to for a PowerPoint presentation.
- Improper: Using AI to generate “deep fake” images for nefarious uses.

AI and Syllabus Statements

- The System Office AI Guidelines have recommendations on how to notify students in classes about whether the use of AI will be allowed and how.
- These are not legal recommendations or policy edicts, rather useful suggestions on how to address this important issue.

AI Detection

- AI detection software exists.
- However, be wary. It is not perfect and often reads human-generated content as AI-generated content.
- Campuses should be careful to ensure they procure accurate detection software, since using inaccurate software can open us up to problems.

But can I require students to use it?

- Sort of. Students are not our agents, so any contract they sign for an AI program is between them and the manufacturer.
- However, we can't require students to sign contracts with third parties. If a student objects to contract terms and conditions, we must provide them an alternative method of completing the course.

NYT vs. Open AI

- In December, the New York Times sued OpenAI and Microsoft in federal court.
- NYT claims that the companies used its copyrighted works to “train” ChatGPT without its permission.
- This case is just getting started – stay tuned!

System Office Guidelines

- Uploaded in the chat.
- Watch the System Office website for updated versions – this is a living document.



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Questions and Answers

- Please chat in your questions.