# GD Training Series

**Regulating AI in Employment:** *How to Comply and Best Practices Webinar*

Labor and employment best practices to comply with current and anticipated regulations governing automated decision making technology | LINK

**Patenting AI:** *What does it mean, should we do it, and what does success look like?*

Examines various aspects of AI that patents can protect, such as data preparation, training processes, and functional applications of AI | LINK

**Generative AI:** *Navigating Privacy and Security Concerns in the U.S., EU and UK*

Overview of regulatory guidance and evolving legal requirements in the U.S., European Union and the United Kingdom, and practical steps companies can take to address legal requirements and mitigate privacy and security risks | LINK

**Coding with Generative AI:** *Open Source Compliance and Practical Risk Management*

Discussion of potential business and legal issues associated with using AI in software development, including insights into using generative AI-powered coding tools and practical strategies for companies to manage risk and exposure | LINK

# Meet the Presenter

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# AI News in the Last Quarter

- **Regulation and Enforcement**
  - Congress members hold hearings on regulation and introduce new legislation proposals
  - FTC enforces and investigates AI harms, requiring deletion of proprietary models
  - Industry players adopt self-regulation, voluntarily and through cooperation with White House

- **Copyright Developments**
  - Industry pressure mounts as content providers and creators strike, petition, lock down data, and sue
  - Big tech mitigates risk by updating terms of use and negotiating licensing deals for data

- **Trends in Deployment: Protecting Enterprise Value**
  - Meta releases LLaMA 2 for commercial use as source available opening floodgates of new opportunities
  - Enterprise versions of tools released to assuage company concerns over data use

- **Licensing, Investing & Buying: Legal Diligence and Risk Allocation**
  - Diligence and risk allocation in commercial deals
  - Evolving landscape of reps and warranties in financings and acquisitions
  - Companies file 10-Qs with new disclosures on AI risks
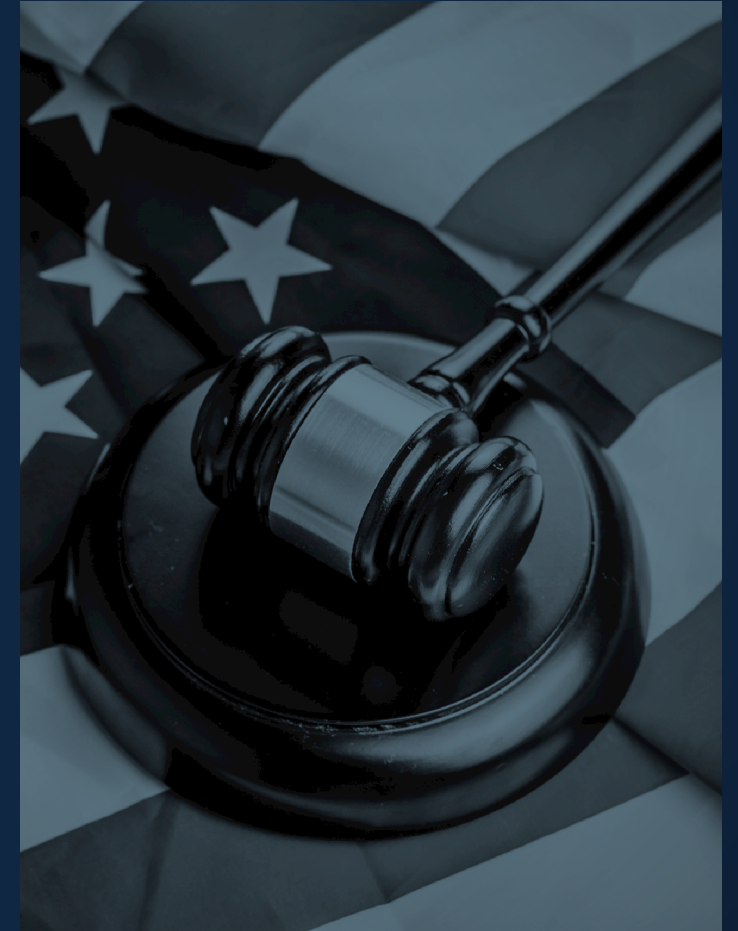
# Regulation and Enforcement

- ## Federal Regulation
  - **May 16 & July 25:** Congressional hearings held on AI regulation; OpenAI and Anthropic testify
  - **June 14, 20 & 21:** No Section 230 Immunity for AI, National AI Commission Act & SAFE Framework bills introduced
  - **July 21:** White House secures voluntary commitment from Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI under "AI Agreement"
  - **July 26:** Frontier Model Forum launched by Anthropic, Google, Microsoft & OpenAI

- ## State Regulation
  - **2023:** Numerous state privacy laws enacted with opt-out rights for automatic decision making
  - **July 5:** NY Law 144 goes into effect regulating use of AI for employment decisions

- ## FTC Enforcement and Investigations
  - **May 31 & July 19:** Orders/Judgments against Ring and Amazon both relating to lack of transparency around collection and retention of data for building models; orders include requirements to delete models.
  - **July 13:** FTC opens investigation against OpenAI

# Regulation and Enforcement

**Themes and Predictions**

## Risk-Based Approaches

Unlike the EU, the United States favors risk-based laws over comprehensive ones, so we should expect to see high risk uses as the initial targets of regulation.

## Is Federal Regulation the Answer?

AI involves unique risks given the breadth and speed of development, such that the traditional legislative process may lag behind.

## Industry Participation in Process

Major industry players appear eager to participate in the process and cooperate with government asks for guidance and self-imposed guidelines

## State Enforcement Through Privacy Regulation and High-Risk Applications

While enactment of AI-specific bills has been spotty (with a number of failed attempts), privacy regulation that mimics CCPA continues to spread.

## FTC Will Play Key Role

The FTC has the authority to act most quickly to protect consumers from unfair, deceptive and dangerous applications of AI and has announced its intent to investigate and enforce its power.

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# Regulation and Enforcement

Takeaways

**Evaluate Your Use of AI**

**Flag High Risk Uses**

**Review Your Public Statements**

**Foundational Models Should Self-Regulate**

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# Copyright Developments

- **Using Public Data for Training: Industry Pressure Mounts**
  - **May 2:** Writers Guild of America strikes in part over use of AI
  - **June 19:** Reddit announces no more free access to data for commercial purposes
  - **June 28, July 7, July 11:** Class actions filed against OpenAI, Meta and Google relating to use of data for training models
  - **July 13:** X Corp (i.e. Twitter) files petition for damages against unknown entities for data scraping
  - **July 18:** More than 10,000 authors sign Authors Guild Open Letter to big tech CEOs
  - **July 23:** Barry Diller announces efforts to form coalition of publishers against AI models
  - **August 3:** NY Times updates TOS to prohibit use of content for AI training

- **Big Tech Mitigates Risks**
  - **July 1:** Google updates privacy policy to clarify that it can use public data to train models
  - **July 11 & 13:** OpenAI announces licensing deals with Shutterstock and the AP
  - **July 18**: Meta releases LLaMA 2 openly, without disclosing source of training data
  - **August 7:**   In response to backlash, Zoom clarifies meaning of updated terms of service for AI training

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# Copyright Developments

**Themes and Predictions**

## Litigation Against Scraping

Expect more litigation and industry pressure against companies that are training foundational models on unlicensed data.

## Industry Pressure: Blocking of Data and Content

Publishers and creators will continue to push against use of content for training without compensation. Publishers may also shut down access to data that can be easily scraped.

## Data Licensing Deals

Foundational and fine-tuned models will secure access to high quality data sets through licensing deals.

## Fair Use Debate

Despite industry pressure for broad compensation system, early predictions are that much of the use of data for training is transformative and aligns with precedent on fair use. Moreover, international policies may play a role as other countries declare training to be fair use.

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# Copyright Developments

## Takeaways

**If Deploying Products Based on Third Party LLMs to Customers, Make Appropriate Disclaimers**

**Explore Licensed Use Cases**

**Beware of Prompts that Invite Substantial Similarity to Another's Work**

**Do Diligence on AI Vendors and their Sources for Data Training**

# Trends in Deployment: *Protecting Enterprise Value*

- ## Open Source Models
  - **July 18:** LLaMA 2 released for commercial use

- ## Continued Enterprise Caution
  - **May 19**: Apple bans use of ChatGPT by employees, following similar announcements by Samsung, Amazon, Spotify, Verizon, and several large banks and investment firms

- ## Enterprise-Friendly Tools and Updates to Terms Released
  - **March 1:** OpenAI updates licensing terms to state that it would not train models on API data
  - **June 8**: Adobe announces that it will indemnify enterprise users of Firefly for copyright claims related to works created from the tool
  - **June 12**: Salesforce announces AI Cloud to bring a trust layer within its generative AI tools
  - **June 20**: Github updates Copilot Terms stating user prompts are not used for training
  - **July 18:** Microsoft previews Bing Chat Enterprise

# Trends in Deployment: *Protecting Enterprise Value*

**Themes and Predictions**

## Open vs. Closed Debate

There will be continued discourse in the open vs. closed model debate.

## High Quality Data is the Moat

LLMs will continue to seek access to high quality data for use as training sets in order to distinguish their products on the market.

## Enterprise-Safe Versions of Tools

Proprietary models will continue releasing new versions of tools that assuage enterprise concern around data security and IP risk.

## Local Deployment

More companies will consider hosting and training their own proprietary LLMs using source available models like LLaMA 2.

# Trends in Deployment: *Protecting Enterprise Value*

**Takeaways**

**Evaluate Costs and Benefits of AI Deployments in Context of Usage and Inputs**

**Review Licensing Terms and Privacy Policies of Third Party Models**

**Deploy Internal AI Policy and Guidelines**

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# Licensing, Investing & Buying:
## *Legal Diligence and Risk Allocation*



- **Deals with Vendors and Customers**
  - Most off the shelf LLMs will not indemnify customers, but new tools are emerging on the market
  - Disclaimers and pass through terms
  - In some contexts, customers are doing more rigorous diligence, and requesting adherence to certain ethical principles

- **Representations in Financings and Acquisitions**
  - Ongoing debate within the venture legal space regarding scope of AI-specific representations and warranties; early proposals are burdensome and impractical
  - M&A deals more likely to see fulsome reps and warranties addressing risks and unknowns
  - Expect enhanced diligence regarding internal AI policies and practices

- **Risk Factors**
  - Increased public company disclosures around AI risks
  - Gunderson Client Alert forthcoming

# Trends in Licensing, Investing and Buying: *Legal Diligence and Risk Allocation*

## Themes and Predictions

### Large Enterprise Will be Cautious and Looking for Safer Applications

As large enterprise companies adopt AI tools, they will gravitate towards tools that can provide the safety guarantees around IP risk, security, trust and data leakage.

### Alignment on Appropriate Legal Reps Will be Challenging

The fast pace of changing technology will make it difficult for lawyers to align on appropriate representations for financings and acquisitions, potentially resulting in more protracted negotiations.

### Diligence in Acquisitions will Resemble Open Source Diligence

Expect prospective acquirers to do deep dives into the models you are using to build products and the underlying license terms that apply.
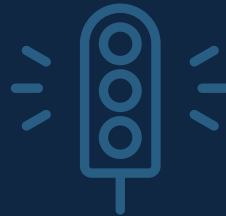
### New Risk Factors

Public companies will significantly bolster disclosures made around use of AI depending on deployments and specific risks involved.

# Licensing, Investing and Buying:
## *Legal Diligence and Risk Allocation*

**Takeaways**

**Update Your End User Terms and Services Agreements**

**Deploy LLMs Carefully to Mitigate Risk in the Absence of Contractual Protection**

**Understand How You Are Using AI and Deploy Internal Policies and Guidelines**

# We want your feedback!

**Please email us at** insights@gunder.com

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