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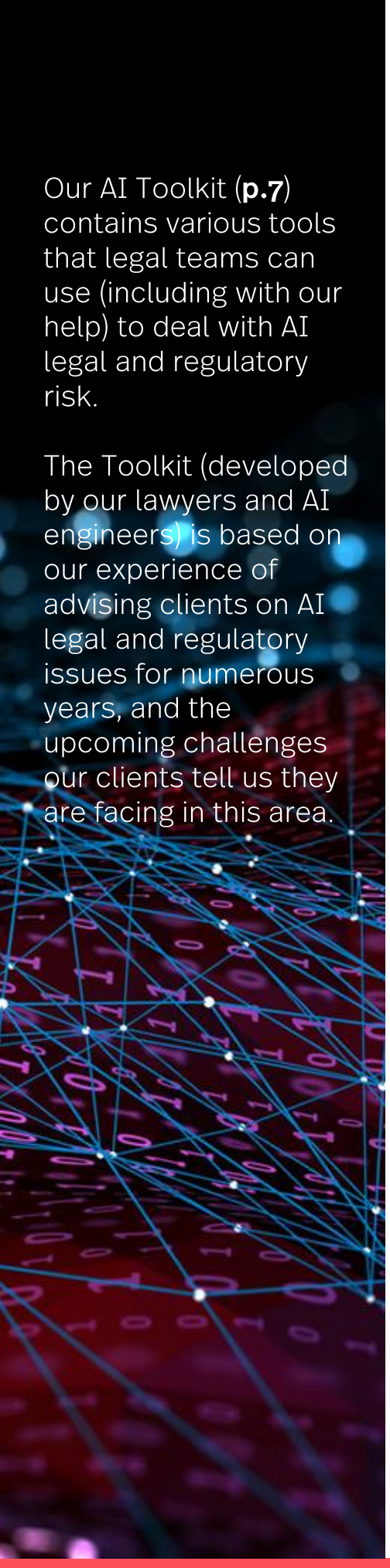
AI Toolkit for legal teams

April 2024

Our AI Toolkit (**p.7**) contains various tools that legal teams can use (including with our help) to deal with AI legal and regulatory risk.

The Toolkit (developed by our lawyers and AI engineers) is based on our experience of advising clients on AI legal and regulatory issues for numerous years, and the upcoming challenges our clients tell us they are facing in this area.



What is our AI Toolkit?

Knowledge

It explains what AI is, provides a glossary of key AI terms, and highlights why AI creates risks.

Risks

It explains the key legal and regulatory risks that AI creates, including a summary of the AI regulatory landscape.

Tools

It explains the tools that legal teams should use – either themselves or with our assistance – to mitigate these risks, achieve regulatory compliance and implement good AI governance.

How does our AI Toolkit benefit legal teams?

Our AI Toolkit:

- Highlights the key areas where action is needed.
- Identifies the key tools legal teams should use to understand, risk assess and implement measures around their development and use of AI.
- Provides a roadmap for implementing AI governance.
- Allows organisations to obtain external support in clearly identifiable areas.
- Provides mechanisms to stay up-to-date with AI developments.

What is AI?

AI is best understood as a group of technologies which aim to perform tasks which normally require human intelligence. AI is the next generation of computer software which, unlike conventional software, is not bound by explicit human-made rules.

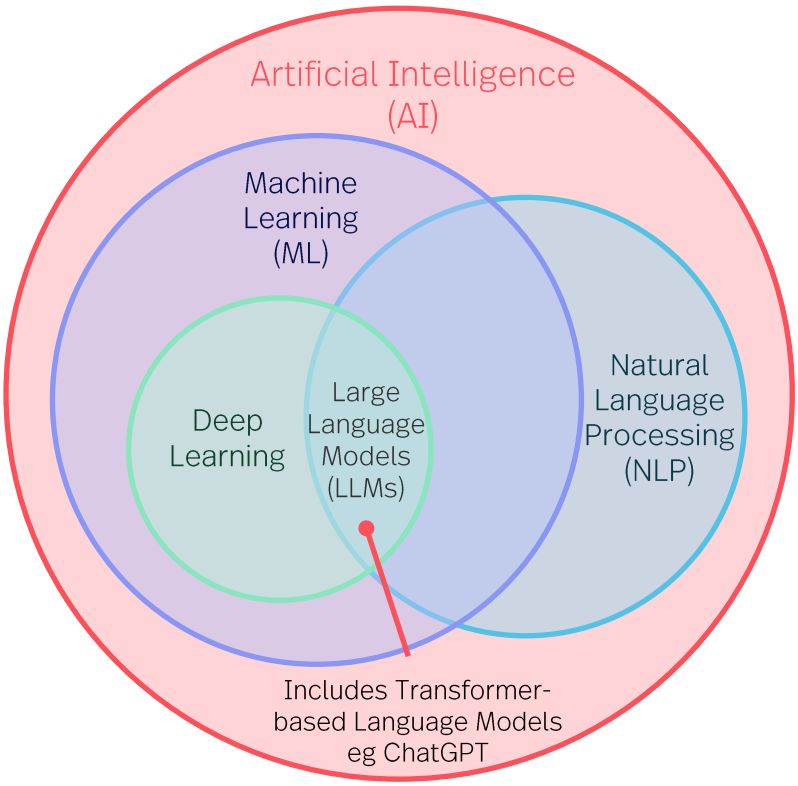
AI can learn from data itself, effectively create its own rules and autonomously produce output, whether in the form of e.g., decisions, language, images or speech.

Generative AI is a powerful form of AI that is capable of producing content rather than just making decisions, predictions or recommendations.

55% of organisations use AI in at least one business function.

McKinsey Global Survey 2023

This diagram shows the relationship between key AI technologies



See our **Glossary** on p.9 for an explanation of key AI terms

How is AI developed?

At the core of an AI system is the model, which converts inputs into outputs. A typical machine learning model is trained on data (the training dataset) using an algorithm (code which tells the model how to learn from that data).

The model uses weighted parameters to tell it how much emphasis to give to different features of the data in order to produce the desired output.

In theory, the more an AI model is trained and tested, the more accurate the weighted parameters – and the AI model – become.

Regulatory compliance and IP infringement are amongst the top 5 AI risks reported by organisations

McKinsey Global Survey 2023

Why does AI create risks?

There is increasing concern about the risks of AI, particularly as it becomes rapidly more advanced. If not properly governed or misused, AI has the capacity to cause physical, financial and other types of harm.

The risk of harm arises from **three key features of AI**:

Complexity - AI technologies involve intricate mathematical concepts and statistical techniques, as well as being multi-faceted (involving different components) and resource-intensive (requiring significant computational power).

Opacity - Complex AI models are not easy to understand and, in some cases, humans cannot establish how or why an AI system produced a certain output. This is referred to as the 'black box' issue.

Autonomy - AI models can behave autonomously, which makes them unforeseeable and unpredictable (exacerbated by the opacity issue), particularly in response to new data or new environments.

What are the key AI legal risks?

Various legal risks with the development and use of AI have emerged in light of the features and risks noted above.

The **three key legal AI legal risks** are:

1. **Regulatory** - AI creates the risk of non-compliance with existing regulations (eg data privacy, consumer protection and equality laws) and with upcoming AI regulations (eg the EU AI Act).
2. **Contractual / transactional** - Where AI is the subject matter of a contract or transaction, additional considerations need to be taken into account eg in the due diligence process, in structuring the transaction, and in apportioning contractual risk and liability.
3. **Intellectual Property** - AI creates IP issues, ranging from ownership of AI created works and contractual licensing considerations, to issues around copyright in training datasets, to IP infringement and ensuring IP protection (eg patents) for AI and AI-generated content.

Regulatory landscape

The development, procurement and use of AI must comply with existing regulation, which may indirectly apply to AI.

New AI-specific regulations are starting to come into force in many jurisdictions.

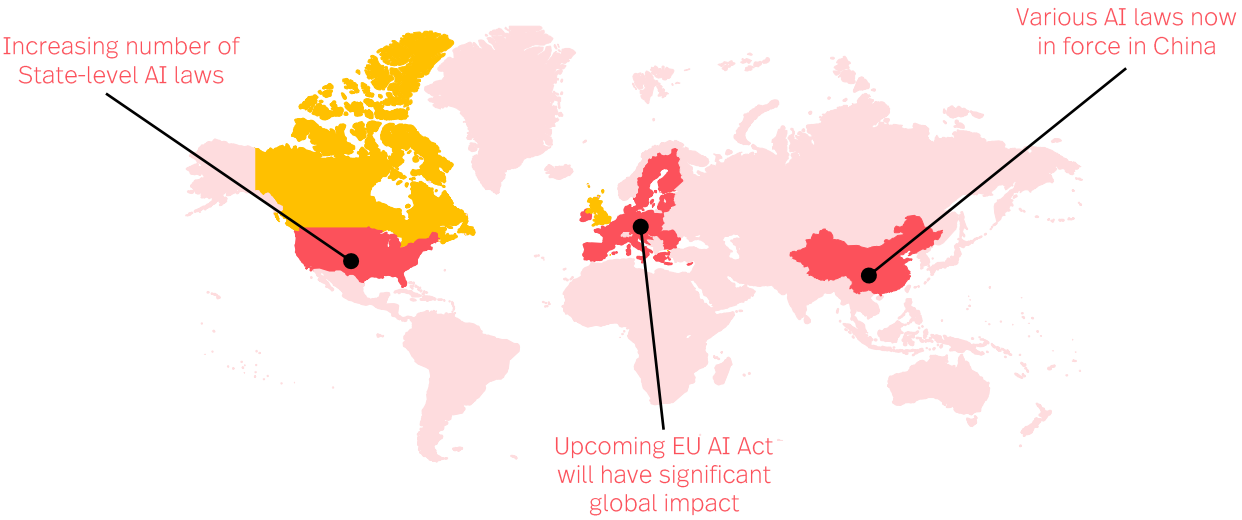
There are likely to be updates to existing liability regimes to cover AI.

We are also likely to see an increasing number of technical standards issued to guide the development of AI.

We publish a fortnightly update (**AI View**) on AI legal, regulatory and policy updates from around the world.

Examples of key AI regulation

Significant AI regulations are in force or coming into force in the US, the EU and China, with other jurisdictions starting to follow suit (eg Canada and the UK). There are also emerging AI laws and policies in the Middle East (especially the UAE and KSA) and Southeast Asia.



What should organisations be doing?

Our proposed three stage model

Understanding

Ensuring that employees, including senior leadership, understand the opportunities and risks of AI; understanding your organisation's own uses (and proposed uses) of AI; and understanding AI regulation.

Risk assessment

Assessing the risk of your organisation's AI, including from a regulatory, ethical, contractual and IP perspective.

Governance

Implementing measures to mitigate AI risks, including regulatory compliance, governance structures, and monitoring processes (given that AI is dynamic and fast-moving).

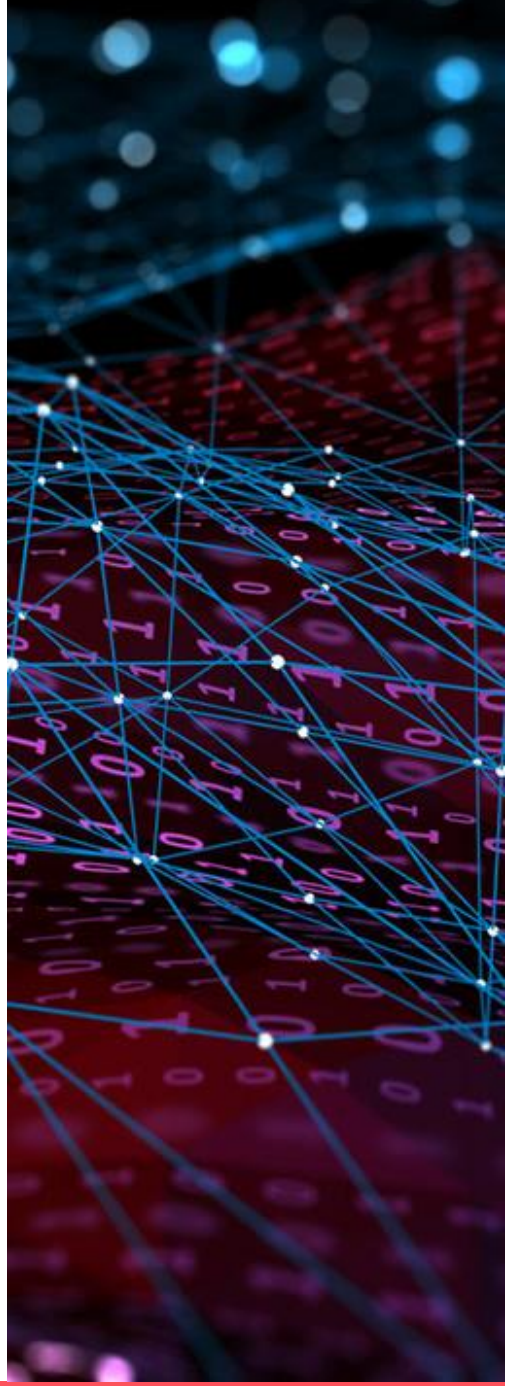
Other areas to consider

Intellectual Property
IP is a significant issue for AI, particularly generative AI. As well as ownership of AI created works and contractual licensing issues, there may be concerns around copyright infringement in training AI systems and the availability of IP protection (eg patents) for AI systems and AI-generated content.

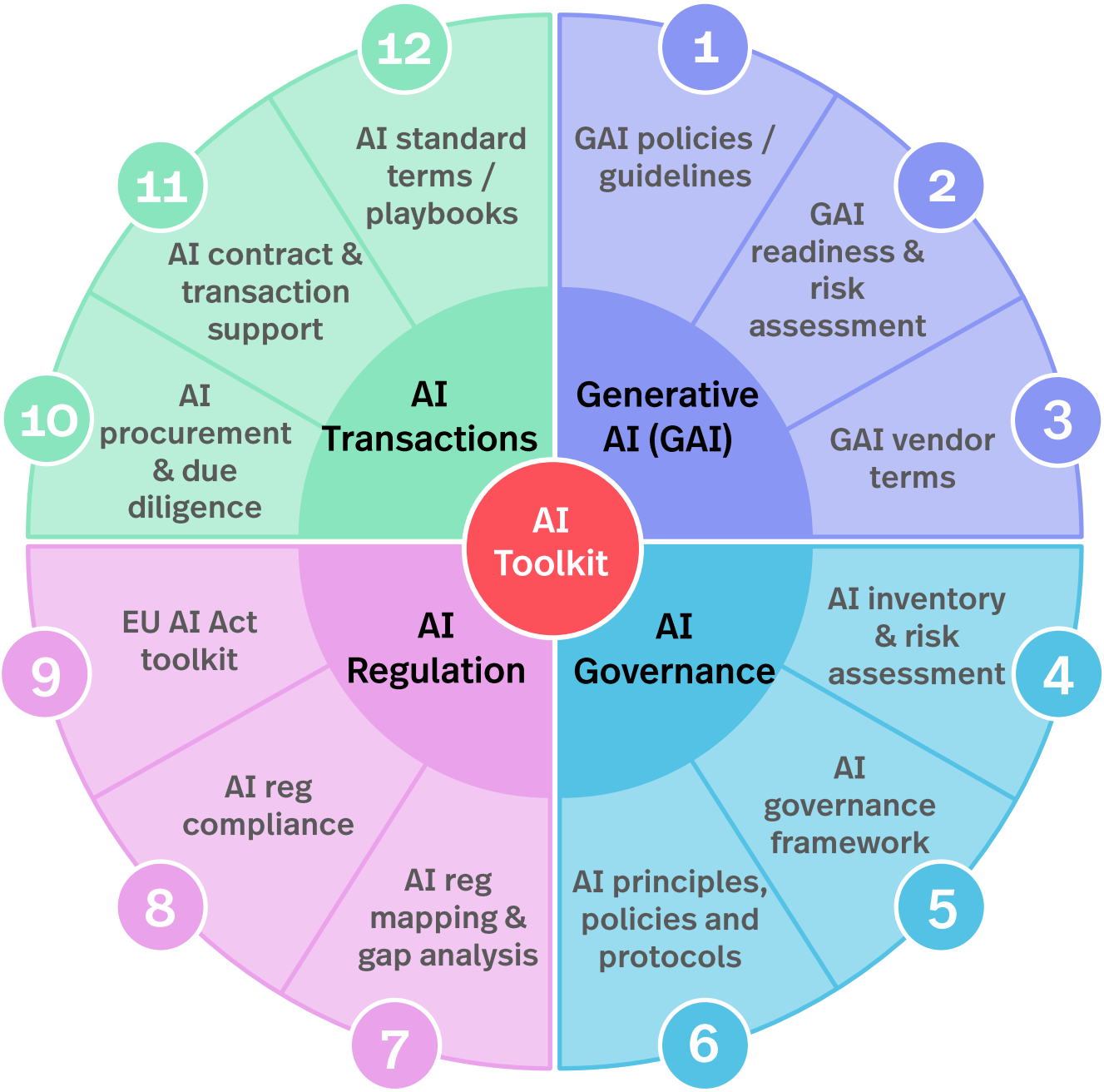
Transactional (procurement and contracts)
Organisations should consider AI risk in a transactional context eg when licensing AI solutions. The complexity of AI systems and AI risks and the treatment of any AI output must also be reflected in any contracts relating to AI.

The number of AI incidents and controversies has increased 26-fold since 2012.

AIAAIC database



AI Toolkit


AI Toolkit
AI Transactions
AI Regulation
Generative AI (GAI)
AI Governance
1
GAI policies / guidelines
2
GAI readiness & risk assessment
3
GAI vendor terms
4
AI inventory & risk assessment
5
AI governance framework
6
AI principles, policies and protocols
7
AI reg mapping & gap analysis
8
AI reg compliance
9
EU AI Act toolkit
10
AI procurement & due diligence
11
AI contract & transaction support
12
AI standard terms / playbooks


AI Know-how
AI training
13
AI reg tracking
14
AI horizon scanning
15

AI Toolkit: details

Pricing

Some of our tools are offered at a fixed price (see below). For others, we are happy to discuss pricing with you and we can offer competitive packages where we assist with more than one tool.

Generative AI (GAI)

Helping you to implement GAI safely and responsibly and navigate the specific legal issues relating to GAI.

1. **GAI policies / guidelines** – Standard or bespoke policies around the use of GAI (eg if / how employees are permitted to use ChatGPT) and guidelines to develop GAI safely and responsibly*.
2. **GAI risk assessment** – Using a standard form questionnaire, risk assessing each of your proposed or actual GAI use cases and advising on risk mitigation measures.
3. **GAI vendor terms** – Advice on the interpretation, impact and risk of third-party vendor terms (eg LLMs).

AI Governance

Advising on appropriate documents, structures and processes to help you navigate AI challenges.

4. **AI inventory and risk assessment** – Capturing your AI uses cases / models in an inventory and providing a legal + regulatory risk assessment.
5. **AI principles, policies and protocols** – Advising on and implementing AI principles, policy documents, standards, guidelines and structures / processes to manage AI risk.
6. **AI governance framework** – Establishing risk assessment and control frameworks, accountability structures, cross-functional teams, oversight committees.

AI Regulation

Advising you on the impact of regulation and assisting with compliance measures.

7. **AI reg mapping and gap analysis** – Based on your use cases / models, advising on regulatory impact and providing a gap analysis.
8. **AI reg compliance** – Advising on the steps required to ensure regulatory compliance and providing guidance on the technical measures which will need to be implemented.
9. **EU AI Act Toolkit** – Using our dedicated EU AI Act Toolkit, helping you to navigate, risk assess and comply with this important regulation.

AI Transactions

Supporting you on AI transactions and advising on AI contracts.

10. **AI procurement and due diligence** – Advising on options for AI adoption / procurement and typical enquiries you may wish to ask of AI vendors**.
11. **AI contract and transaction support** – Advising on AI contracts (e.g. red-flag assessment of terms) and generally supporting on AI transactions.
12. **AI standard terms / playbooks** – Helping to update your standard terms of contract or playbooks to reflect your organisation's use of AI.

AI Know-how***

Helping you to understand AI and keep up-to-date with regulatory and policy developments.

13. **AI training** – Training on a variety of AI topics to a range of audiences, including specialist legal teams and C-suite.
14. **AI reg tracking** – Keeping you updated on AI regulations and policies (in force) applicable to AI.
15. **AI horizon scanning** – Keeping you updated on key incoming AI policy and regulatory developments and proposals (eg new regulations, updates to existing regulations).

Fixed price tools

* We have a standard policy on the use of external Generative AI services.

** We have a standard AI procurement due diligence checklist, containing c.50 questions / requests for AI vendors.

*** We can provide our AI know-how tools on a fixed price basis. Please contact us to enquire about these.

AI glossary

- Algorithm: A set of rules or instructions given to an AI, or any computer program, to complete a task.
- Artificial Intelligence (AI): The simulation of human intelligence in machines that are programmed to think and act like humans.
- Artificial Neural Network (ANN): Computational models inspired by the human brain's structure. They consist of layers of interconnected nodes (or "neurons").
- Automated Decision-Making: A process where decisions are made by machines or software algorithms without human intervention.
- Automated Facial Recognition: Technology that identifies or verifies a person by analysing patterns based on facial contours.
- Backpropagation: A method used in training neural networks by adjusting weights based on the error from the output.
- Bias: Patterns in data that can lead the model to make unfair or unbalanced decisions. It can also refer to a term in neural networks which shifts the output of a neuron.
- Biometric Data: Unique physiological or behavioural characteristics of an individual, such as fingerprints, retina scans, or voice patterns, used for identification or verification.
- Black Box: A system where the internal workings or decision-making processes are not transparent or easily understood.
- Chatbot: A software program designed to simulate conversation with human users, especially over the Internet.
- Completions: The generated responses or outputs from a language model when given a prompt. For example, in response to the prompt "What is the capital of France?", the completion would be "Paris".
- Convolutional Neural Network (CNN): A type of deep learning model mainly used for image processing.
- Data Scraping: The automated process of extracting and collecting information from websites or other digital sources for analysis or to train and test models.
- Dataset: A collection of structured or unstructured data that can be processed and analysed by computer programs. In the context of ML and AI, a dataset typically refers to a collection of data points or samples used for training, validating, or testing algorithms and models.
- Deep Learning: A subset of machine learning that uses neural networks with many layers.
- Embedding: An embedding represents words or phrases as vectors in a continuous space where semantically similar items are mapped to nearby points.
- Explainability: The ability of an AI system to provide clear, understandable reasons for its decisions or actions.
- Feature: An individual measurable property or characteristic of a phenomenon being observed or analysed.
- Few-shot Learning: A machine learning approach where a model is trained to recognise patterns or make decisions based on a very limited set of labelled data examples.
- Fine-tuning: The process of taking a pre-trained model (a model trained on a large dataset) and training it further on a smaller, specific dataset to adapt it for a particular task or to align with certain preferences.
- Foundation Model: A large-scale, pre-trained machine learning model that serves as a base and can be fine-tuned or adapted for various specific tasks or applications.
- Generalisation: The ability of a machine learning model to make accurate predictions on new, unseen data.
- Hallucinations: Instances when a model produces incorrect or fabricated information that wasn't present in its training data.
- Hyperparameters: The external configurations for a model that are set before training and are not learned from the data.

- Large Language Model (LLM): A type of AI model specialised in processing and generating human-like text. It's trained on vast amounts of textual data, allowing it to understand and produce a wide range of language-based tasks.
- Machine Learning (ML): A type of AI that provides systems the ability to learn and improve from experience without being explicitly programmed.
- Metadata: Data that provides information about other data, often describing its context, quality, condition, or characteristics.
- Natural Language Processing (NLP): A branch of AI focused on the interaction between computers and humans through natural language.
- Neural Network: A computational model inspired by the human brain's structure, consisting of interconnected nodes ("neurons") that process information.
- Open Source: Software for which the original source code is made available to the public, allowing anyone to view, modify, and download (depending on the licence – not all open source materials allow for distribution).
- Overfitting: A modelling error in statistics where a function corresponds too closely to a particular dataset and may fail to predict future observations reliably.
- Parameters: The adjustable values in a model that are learned from data to best predict outcomes or representations.
- Perceptron: A type of artificial neuron, which is the basic unit in a neural network.
- Prompt: An input or instruction given to a language model to guide its response or output. For instance, asking a model "What is the capital of France?" serves as a prompt.
- Prompt Engineering: The practice of carefully crafting and refining prompts to get more accurate or specific responses from a language model. This is especially important when trying to extract certain types of information or when guiding the model's behaviour.
- Recurrent Neural Network (RNN): A type of neural network designed to recognise patterns in sequences of data.
- Reinforcement Learning: A type of machine learning where agents learn how to behave by receiving rewards or penalties.
- Robotic Process Automation (RPA): Technology that uses software robots to automate repetitive tasks previously done by humans in business processes.
- Supervised Learning: A machine learning task where the algorithm is trained on labelled data, meaning the data comes with an output.
- Synthetic Data: Data that is artificially generated, rather than collected from real-world events, often used for training or testing purposes without compromising privacy.
- Temperature: A hyperparameter used in probability scaling, where higher values produce more random outputs and lower values make model outputs more deterministic or confident.
- Tokens: Chunks or segments of text that models read. In the context of language models, tokens can be as short as one character or as long as one word (e.g., “a” or “apple”). Tokenisation is the process of converting input text into such tokens, which can then be further analysed or processed.
- Transfer Learning: Using a pre-trained model on a new, but related task.
- Transparency: The clarity and openness with which a model operates, allowing its decision-making process and inner workings to be easily understood, explained, and interpreted by humans.
- Turing Test: A measure of a machine's ability to exhibit intelligent behaviour indistinguishable from that of a human.
- Unsupervised Learning: A type of machine learning where the algorithm is given data without explicit instructions on what to do with it.
- Weights: The parameters in a neural network that are adjusted during training to minimise the error in predictions.

Our experience

We have advised:

- a **global bank** on AI regulation, including the EU AI Act.
- one of **the world's largest developers of biometric technology** on a response to the European Commission's draft EU AI Act proposal.
- a **big tech company** on the interpretation and application of the EU AI Act, including drafting proposed changes.
- a **large financial institution** on contentious contractual issues arising out of a collaboration agreement for the joint development of AI technology.
- a **global bank** to implement an AI governance framework across its global business.
- a **big tech company** on regulatory investigations relating to its AI products.
- a **leading global alternative investment management platform** on the disposal of its stake in an AI company.
- a **leading software developer / provider to financial institutions** on a digital sandbox tool to assist data synthesis in machine learning.
- an **AI app developer** on data privacy issues, including undertaking a data privacy impact assessment and liaising with the data protection regulator.
- a **developer of AI technology** on its standard contractual documents.
- one of **the world's largest biopharmaceutical companies** on collaboration and licensing agreements to develop and use AI models.
- one of **the world's largest online supermarkets** in its development of AI-powered smart platforms and robotics systems.
- an **Israeli unicorn** involved in biometric and medical AI products on its expansion and potential IPO.
- a **global telecoms provider** on an AI system used to predict healthcare issues for its customers.
- a **global technology company** on a cooperation agreement with Mercedes Benz on autonomous vehicles.

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We are one of the leading AI law firms

Simmons has a thriving AI law practice. Our AI Group comprises c.100 lawyers and non-lawyers (including data scientists and AI engineers), across different practice areas and jurisdictions.

- We have AI law expertise and experience across our offices in Europe, the Middle East and Asia. We advise clients across the tech, finance and healthcare sectors, including governments.
- Members of our AI Group are contributing authors to the leading AI law textbooks: *Artificial Intelligence Law and Regulation* (Elgar, 2022), *Artificial Intelligence in Finance* (Elgar, 2023) and the next edition of *The Law of Artificial Intelligence* (Sweet & Maxwell) (forthcoming)).
- Members of our AI Group are regularly invited to speak at AI conferences. They have previously spoken on behalf of the United Nations and at the prestigious CogX AI conference.
- Our ground-breaking work on advising on the world's first AI Explainability Statement to receive input from a regulator (the UK's Information Commissioner's Office) was shortlisted at the *Legal Innovation Awards 2022* and the *Financial Times Innovative Lawyers Awards Europe 2022*.
- Through our Wavelength offering, we have a team of data scientists who have experience of developing AI models (LLMs in particular) and are therefore able to offer a practical insight on AI.
- Our Global AI Lead, Minesh, is Chair of the Society for Computers and Law (SCL) AI Group and Chair of the City of London Law Society (CLLS) AI Committee and considered a leading AI lawyer in the market.

Key AI contacts

Minesh Tanna
Partner | Global AI Lead, UK
E minesh.tanna@simmons-simmons.com

Alejandro Guerrero
Partner | Competition, Antitrust and Tech Regulation, Belgium/Spain
E alejandro.guerrero@simmons-simmons.com

Eric Le Quellenec
Partner | Digital Business, France
E eric.lequellenec@simmons-simmons.com

Christopher Götz
Partner | Digital Business, Germany
E christopher.goetz@simmons-simmons.com

Daisy Mak
Lead Data Scientist - LLM | Simmons Wavelength, UK
E daisy.mak@simmons-simmons.com

David Wood
Productised Services Consultant | Simmons Wavelength, UK
E david.wood@simmons-simmons.com

Drew Winlaw
Partner | Global Head of LLM, Simmons Wavelength, UK
E drew.winlaw@simmons-simmons.com

Edoardo Tedeschi
Partner | Corporate & Commercial, Italy
E edoardo.tedeschi@simmons-simmons.com

Emily Jones
Partner and Head of US*
E emily.jones@simmons-simmons.com

Jayne Bentham
Partner | Disputes & Investigations, UK
E jayne.bentham@simmons-simmons.com

Jenny Liu
Supervising Associate | Corporate & Commercial, China
E jenny.liu@simmons-simmons.com

Jonathan Newman
Managing Associate | Employment, UK
E jonathan.newman@simmons-simmons.com

Lisa Kingsbury
Associate | Competition and Antitrust, UK
E lisa.kingsbury@simmons-simmons.com

Lydia Torne
Partner | Intellectual Property, UK
E lydia.torne@simmons-simmons.com

Priya Nagpal
Partner | Intellectual Property, UK
E priya.nagpal@simmons-simmons.com

Raza Rizvi
Partner | Digital Business, Middle East
E raza.rizvi@simmons-simmons.com

Sarah Bailey
Partner | Intellectual Property, France
E sarah.bailey@simmons-simmons.com

Sophie Sheldon
Partner | Digital Business, UK
E sophie.sheldon@simmons-simmons.com

William Dunning
Supervising Associate | Disputes & Investigations, UK
E william.dunning@simmons-simmons.com

Yingyu Wang
Partner | Corporate & Commercial, Singapore
E yingyu.wang@simmons-simmons.com

*Our US office does not practice US law

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