



What Disclosures Will You Need to Make about Your AI Use?

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This presentation is not intended to be comprehensive. Different jurisdictions, industries, use cases and other factors will give rise to context-specific obligations.

This presentation may quickly become out of date. The law is moving quickly in this space, and vigilance is required.

Setting the Table

Some record-keeping and disclosure requirements will be mandatory.

- Certain states have enacted requirements, e.g. California, Colorado.
- Others will follow.
- The EU AI Act imposes certain requirements.
- Also, certain clients may bring with them mandatory requirements, e.g. government as client, political candidates, healthcare, and some clients may impose contractual requirements.

Some record-keeping and disclosure requirements will be “elective” (but with a variety of potential consequences).

- Proof of originality (copyright), inventorship (patent), and reasonable measures to preserve confidentiality (trade secret) may counsel for certain record-keeping.
- Discovery obligations may require preservation of certain records.
- Due diligence inquiries in corporate transactions may require records to respond to questionnaires.

Mandatory Requirements

California

Artificial Intelligence Training Data Transparency, Assembly Bill No. 2013 (2024).

- Requires “developers” of generative artificial intelligence systems to post on their websites (before January 1, 2026) documentation regarding data used to train the system, including sources of the datasets, types of data labels used, whether datasets include any data protected by IP law, whether datasets were purchased or licensed by the developer, and whether the datasets include personal information.
- Developer is anyone who “designs, codes, produces, or substantially modifies an artificial intelligence system or service for use by members of the public”.
- Statutory language is broader than LLM providers and may reach AI-enhanced tools offered by companies that are not in the business of providing general-purpose AI platforms.
- What about a customized customer service chatbot? Or a product-selection tool?
- No private right of action.

Mandatory Requirements (cont.)

California

California AI Transparency Act, Senate Bill No. 942 (2024).

- Requires “covered providers” (by January 1, 2026) to make available an AI detection tool; include a latent disclosure in AI-generated image, video, or audio content created/alterd by the covered provider’s AI system; offer the user the option to include a manifest disclosure in image, video, or audio content created/alterd by the covered provider’s system; and require licensees of the system to maintain the system’s ability to include a latent disclosure. Scope expanded by Assembly Bill No. 853 (2025), with compliance due by January 1, 2027.
- Covered provider is anyone who “creates, codes, or otherwise produces a generative artificial intelligence system that has over 1,000,000 monthly visitors or users and is publicly accessible within the geographic boundaries of the state”.
- This legislation can impose obligations on platforms that host/include ads (e.g. Instagram) that are causing platforms to seek additional disclosures from advertisers/agencies and in some cases automatically attaching AI information tags.
- No private right of action.

Mandatory Requirements (cont.)

Colorado

Colorado AI Act, Senate Bill No. 24-205 (2024).

- Imposes disclosure requirement (by June 30, 2026) for all consumer-facing AI systems unless “obvious” consumer is interacting with AI. Additional requirements for “high-risk” use cases and to prevent algorithmic discrimination. High-risk use cases are those that make or are a “substantial factor” in making a “consequential decision”, such as education, employment, financial services, housing, and others.
- No private right of action.

Other States

- Multiple bills calling for “transparency” (i.e. disclosure/notice), protection of minors, prohibition of price-setting/adjustment, and protection of personal information.
- Multiple bills imposing requirements on AI developers/providers and on “high-risk” use cases.



Mandatory Requirements (cont.)

Federal

The Biden administration emphasized ethical considerations, safety, and regulatory measures in AI development through EO 14148. The Trump administration has shifted focus toward deregulation through EO 14179.

However, it is reasonable to expect the pendulum may swing back at some point.

Limited congressional action outside context of deepfakes, use of DeepSeek.

“Elective” Requirements

No baseline requirement, but ...

Proof of originality (copyright) and inventorship (patent).

- Copyright Office and USPTO positions regarding human contribution. Litigation continues on these issues. How can a company substantiate human roles, whether in securing rights or in litigation, without contemporaneous records?
- How can a contractor/agency prove to its client that deliverables are ownable, protected under copyright or patent law?

Proof of reasonable measures to preserve confidentiality (trade secret).

- Company policies regarding trade secrets and use of AI systems. Enterprise licenses with (or without) platform undertaking of confidentiality (not just “won’t train”). Employee use of personal AI accounts. Anticipate production of platform license agreements, detailed disclosure of operations and controls.
- Fact of confidentiality? What does reasonableness require?

“Elective” Requirements (cont.)

No baseline requirement, but ...

Discovery obligations.

- Obligations arise when company reasonably anticipates litigation.
- *In re OpenAI Copyright Infringement Litigation* (S.D.N.Y./M.D.L). Magistrate ordered production of 20 million ChatGPT user conversations; OpenAI asked her on November 12, 2025 to reconsider. So, OpenAI has records of 20 million ChatGPT user conversations?
- Clearly, the obligations here may be more complicated than turning off autodelete on a company mail server...

“Elective” Requirements (cont.)

No baseline requirement, but ...

Corporate transactions.

- Due diligence questionnaires increasingly inquire about AI policies and usage.
- Topics include company record-keeping policies, trade secret policies, and AI usage policies.
- Do companies have information about failures of employees to follow policies?
- AI usage encompasses not only standalone tools like ChatGPT and AI agents but also AI functions built into traditional business software, including Word, Salesforce, and others.
- Has AI been used to create works or inventions? Have confidential documents or other information, plans, etc. been uploaded to AI systems?
- Has AI been used to make business decisions (e.g. hiring, investment/resource allocation, etc.)?
- Has AI been used to analyze confidential third-party information?
- Has AI been used to interact with customers or the public?

“Elective” Requirements (cont.)

No baseline requirement, but ...

Corporate transactions (cont.)

- Who is in charge or knows the most about the company’s engagement with AI tools?
- How does the target stay current on its own AI usage and that of its vendors?
- How does the target stay current regarding legal/regulatory obligations?
- How does the target manage ethics issues, bias, safety?
- What records does the target keep relating to these issues?
- Does the target have a roadmap or strategic plan for future development and use?

What records will a company need to substantiate and/or explain the circumstances surrounding these questionnaire responses?

“Elective” Requirements (cont.)

No baseline requirement, but ...

Corporate transactions (cont.)

- Different companies, of course, will have different record-keeping needs.
- Deep discussion with counsel required to anticipate needs in various types of transactions.
- What effect of the absence of records? Representations and warranties to shift risk? Price discount for increased buyer/investor/lender risk?



Thanks! Questions?



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