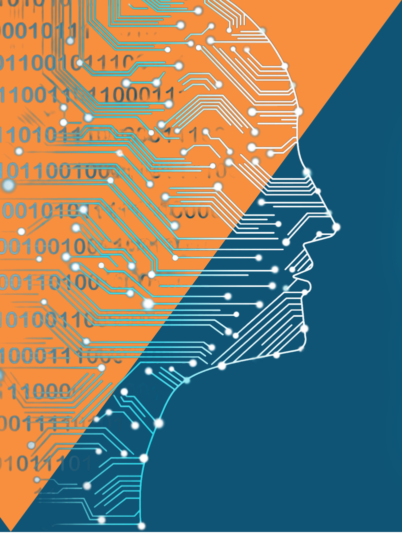

AI 2035: The Legal Profession and the Judiciary in the Age of Artificial Intelligence

AI-Driven Due Diligence: Speed, Accuracy, and Ethical Boundaries

This session examines how AI is accelerating due diligence in transactional practice while raising important questions about accuracy and reliability. Attendees will learn practical approaches to balancing efficiency with careful oversight, including strategies for verification and risk management.

Chaitanya Jayanti, Associate, Ropes & Gray

Chaitanya Jayanti is a corporate associate at Ropes & Gray LLP, advising public and private companies as well as private equity sponsors on complex corporate matters. Chaitanya's practice includes mergers and acquisitions, asset sales, and corporate governance. He brings a strong academic background, having earned his Juris Doctor from Columbia Law School as a Harlan Fiske Stone Scholar. Prior to his legal career, he served as chief speechwriter for the Leader of Opposition in the Government of India. Chaitanya combines legal expertise with a global and strategic perspective.

Moderator/Speaker: Howard Suskin, Partner, Jenner & Block

Howard Suskin is a partner at Jenner & Block and co-chair of the firm's Investor and Securities Litigation and Class Action practices. Howard has extensive first-chair experience in civil and criminal securities matters. He is widely recognized for his work in class actions and securities litigation. Howard is also a published author and frequent speaker on related topics. He serves as General Counsel to The Chicago Bar Association.

William Zimmerman, Partner, Holland & Knight

William Zimmerman is an attorney at Holland & Knight focusing on private equity and complex corporate transactions. William represents sponsors and strategic acquirers in mergers, acquisitions, and co-investments. He also advises portfolio companies on general corporate matters. William brings experience from prior roles at major law firms. His practice emphasizes strategic deal execution and client service.

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The best uses of artificial intelligence (AI) in merger and acquisition (M&A) transactions span the entire deal lifecycle, from pre-transaction planning through post-closing integration. According to the available legal sources, the following are the most significant applications and considerations:

1. Target Identification and Initial Valuation

- AI can be used to analyze market trends, identify potential target companies, and perform initial valuations based on large datasets and predictive analytics. This allows buyers and their advisors to efficiently screen for suitable targets and assess their value proposition early in the process [1].

2. Due Diligence

- AI models and algorithms are increasingly used to review large volumes of documents, identify patterns, flag inconsistencies, and detect missing information more quickly than manual review. AI can help prepare due diligence request lists and generate red flag reports, streamlining the process and improving accuracy [1], [2].
- When the target company possesses AI technologies or capabilities, buyers must conduct specialized due diligence on the AI assets, including how the technology works, how models are trained, risk mitigation strategies, and compliance with applicable AI laws and regulations (such as the EU AI Act or U.S. regulations). Supplemental AI due diligence checklists are recommended for these scenarios [1], [3], [4], [2].
- Data privacy, security, and retention policies are critical, especially if AI is used by either party or forms part of the assets being transferred. Buyers should ensure the target has proper records of data used for AI training, rights to processed data, and compliance with privacy laws [1], [5], [2].

3. Negotiation and Deal Structuring

- AI tools can simulate different deal scenarios, evaluate costs and benefits, and compare proposed purchase prices to market standards. This supports more informed negotiations and can impact deal terms [1].
- AI-driven contract analysis tools may highlight contentious terms or clauses and suggest redrafting in accordance with company policy, potentially reducing negotiation time [1].

4. Drafting Agreements

- M&A agreements increasingly require specific provisions addressing AI assets, including defined terms for AI technology, detailed representations and warranties regarding ownership, licensing, confidentiality, and compliance with AI laws [1], [6], [5], [4].
- Agreements may include representations and warranties about the target's compliance with AI regulations (e.g., EU AI Act), data privacy, and security, as well as insurance coverage and indemnification for AI-related risks [6], [5], [4].

5. Regulatory and Cross-Border Considerations

- AI assets in cross-border M&A may trigger regulatory reviews, such as CFIUS in the U.S. or compliance with the EU AI Act. Parties must assess notification requirements, potential prohibitions, and ensure compliance with extraterritorial AI regulations [3], [4], [7], [8].

6. Post-Closing Integration

- AI technologies can assist in post-closing integration by identifying discrepancies, tracking progress, and facilitating the transition of processes and systems between merged entities. Governance policies and safeguards should be established for ongoing use of AI [1], [4].

7. Risk Management and Legal Compliance

- AI introduces new legal risks, including intellectual property, privacy, cybersecurity, and regulatory compliance. M&A practitioners must address these risks through enhanced due diligence, tailored representations and warranties, and robust governance policies [2], [6], [5], [4], [8].

Summary AI is best used in M&A transactions to enhance efficiency, accuracy, and risk management in target identification, due diligence, negotiation, agreement drafting, regulatory compliance, and post-closing integration. When AI assets are involved, specialized due diligence and tailored contractual provisions are essential to address legal, regulatory, and operational risks [1], [3], [4], [2], [6], [5], [7], [8].

Was this helpful?

Was this helpful?

Sources

1 PRACTICAL GUIDANCE

M&A, Overview - Evolving AI Considerations in M&A Transactions

2 PRACTICAL GUIDANCE

Tech & Telecom, Overview - Artificial Intelligence (AI) Legal Risks: Outline & Resources

3 PRACTICAL GUIDANCE

M&A, Overview - Artificial Intelligence (AI) Regulatory Considerations in Cross-Border M&A

4 PRACTICAL GUIDANCE

M&A, Overview - EU AI Act Considerations for M&A

5 PRACTICAL GUIDANCE

M&A, Clause - Representation and Warranty - Artificial Intelligence (AI) Data Privacy (Annotated)

6 PRACTICAL GUIDANCE

Commercial, Clause - AI in Transactions (Representations & Warranties)

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China Reviews Meta's $2 Billion Deal to Buy AI Startup Manus (1)

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Lexology Panoramic, Technology M&A 2026, India: Rupinder Malik, Probir Roy Chowdhury and Pranavi Pera, JSA

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The use of artificial intelligence (AI), particularly generative AI and large language models, in merger and acquisition (M&A) due diligence presents several legal, ethical, and practical risks:

1. **Inaccuracy and Hallucinations**: AI tools may generate text or research results that are factually incorrect, outdated, or irrelevant to the specific transaction, industry, or parties involved. This includes the risk of "hallucinations," where AI produces plausible-sounding but false information. Such inaccuracies can lead to incomplete or misleading due diligence checklists, document requests, or reports, potentially resulting in missed risks or liabilities [1], [2].
2. **Outdated Data**: AI models may rely on outdated datasets, leading to research results that do not reflect the current status of litigation, corporate structure, or regulatory compliance of the target company. This can cause due diligence findings to be inaccurate or obsolete [1].
3. **Confidentiality and Data Security**: Inputting confidential or sensitive information into AI tools, especially those provided by third-party vendors, can risk breaching confidentiality agreements or attorney-client privilege. Some AI tools may learn from user-provided data, increasing the risk of inadvertent disclosure to unauthorized parties or the public [1], [2].
4. **Ethical and Supervisory Duties**: Lawyers have an ethical duty to supervise non-lawyer assistance, including AI tools. Overreliance on AI without sufficient human review may violate professional responsibilities, especially if AI-generated outputs are incorporated into critical documents without adequate verification [1].
5. **Technical Competence**: The evolving nature of AI technology imposes a duty on legal professionals to stay informed about the benefits and risks of AI tools. Failure to understand or properly use AI in due diligence may itself be a breach of the duty of technical competence [1].
6. **Data Privacy and Regulatory Compliance**: The use of AI in due diligence may implicate data privacy laws and regulations, such as the EU AI Act, GDPR, or other jurisdiction-specific requirements. Acquirers must assess whether the target's AI systems comply with applicable laws, including those governing the use of training data, algorithmic bias, and transparency [3], [4], [5], [6].
7. **Intellectual Property Risks**: AI-generated outputs and the use of third-party data for training AI models can raise questions about ownership, licensing, and potential infringement of intellectual property rights. Due diligence must address these issues to avoid post-transaction disputes [7], [6].
8. **Insurance and Liability**: There may be gaps in insurance coverage for claims or losses arising from AI use, including errors, security breaches, or regulatory violations. Representations and warranties in transaction documents should address these risks [7].
9. **Bias and Discrimination**: AI systems may perpetuate or amplify biases present in training data, leading to discriminatory outcomes or regulatory scrutiny. Due diligence should include an assessment of the target's efforts to detect and remediate algorithmic bias [3], [6].
10. **Cross-Border and Extraterritorial Risks**: In cross-border transactions, AI-related regulatory frameworks (such as the EU AI Act or CFIUS in the U.S.) may apply extraterritorially, affecting deal structure, required disclosures, and post-closing integration [4], [5].

To mitigate these risks, legal professionals should:

- Use AI-generated outputs as a starting point, not a substitute for human review.
- Regularly update and verify the datasets underlying AI tools.
- Ensure confidential information is not input into AI systems without proper safeguards.
- Review and tailor representations, warranties, and indemnities in transaction documents to address AI-specific risks.
- Stay informed about evolving AI regulations and best practices [1], [2], [3], [4], [7], [5], [6].

Was this helpful?

Sources

[1] PRACTICAL GUIDANCE

M&A, Overview - Legal and Ethical Risks of the Use of Generative AI in M&A Due Diligence

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[2] PRACTICAL GUIDANCE

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3 PRACTICAL GUIDANCE

M&A, Checklist - Supplemental EU AI Act Due Diligence Checklist (Annotated)

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M&A, Overview - EU AI Act Considerations for M&A

5 PRACTICAL GUIDANCE

M&A, Overview - Artificial Intelligence (AI) Regulatory Considerations in Cross-Border M&A

6 PRACTICAL GUIDANCE

M&A, Checklist - Supplemental AI Due Diligence Checklist

7 PRACTICAL GUIDANCE

Commercial, Clause - AI in Transactions (Representations & Warranties)

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Research question

What are the best uses of AI in merger and acquisition transactions?

All State & Federal

Summary

Based on current federal and state court jurisprudence, the best uses of artificial intelligence in merger and acquisition transactions center on enhancing traditional due diligence processes, valuation methodologies, and integration planning while ensuring compliance with evolving regulatory frameworks. Courts have not yet established specific standards for AI use in M&A transactions, but existing legal precedents suggest that AI applications must complement rather than replace fundamental legal requirements for adequate due diligence, fiduciary duty compliance, and disclosure obligations. The legal landscape indicates that AI's most defensible applications include document review acceleration, pattern recognition in financial data, cybersecurity assessment, and workforce integration planning, provided these uses meet established standards of care and maintain human oversight for critical decision-making.

Due Diligence Enhancement and Board Fiduciary Duties

Delaware corporate law establishes the foundational framework for evaluating AI-enhanced due diligence in M&A transactions. Under Delaware law, directors must exercise due care by acting on an informed basis and considering material facts that are reasonably available at the time of decision Brehm v. Eisner, 746 A.2d 244 (2000), In re Walt Disney Co. Derivative Litigation, 907 A.2d 693 (2005). The business judgment rule protects board decisions unless conflicts exist requiring entire fairness review, but this protection depends on adequate information gathering In re Tesla Motors, Inc. Stockholder Litigation, 298 A.3d 667 (2023).

Courts have established that corporate boards need not be informed of every fact but must consider material facts reasonably available Brehm v. Eisner, 746 A.2d 244 (2000), In re Walt Disney Co. Derivative Litigation, 907 A.2d 693 (2005). This standard creates a framework for AI use in due diligence where artificial intelligence can enhance information gathering and analysis capabilities, but boards retain responsibility for ensuring that material AI-generated insights are properly considered in their decision-making process.

The *Tesla Motors* litigation illustrates how courts scrutinize merger processes for adequate independence and fair dealing In re Tesla Motors, Inc. Stockholder Litigation, 298 A.3d 667 (2023). Even when conflicts exist, proper process can satisfy entire fairness review if the transaction structure demonstrates fair dealing and the board maintains appropriate oversight. This precedent suggests that AI tools must be implemented within governance frameworks that preserve board independence and oversight authority.

Intellectual Property Valuation and Patent Considerations

Federal Circuit jurisprudence has established critical limitations on AI patent eligibility that directly impact M&A valuations of AI-heavy target companies. In *Recentive Analytics, Inc. v. Fox Corp.*, the Federal Circuit held that "patents that do no more than claim the application of generic machine learning to new data environments, without disclosing improvements to the machine learning models to be applied, are patent ineligible under § 101" Recentive Analytics, Inc. v. Fox Corp., 134 F.4th 1205 (2025). This ruling significantly affects how acquiring companies should value AI patent portfolios.

The court distinguished between generic machine learning applications and specific technological improvements, noting that "machine learning is a burgeoning and increasingly important field and may lead to patent-eligible improvements in technology" but rejecting broad claims that merely apply existing AI techniques to new fields Recentive Analytics, Inc. v. Fox Corp., 134 F.4th 1205 (2025). This creates a valuation framework where AI patents must demonstrate concrete technological improvements rather than novel applications of existing technology.

Conversely, the *Aon Re, Inc. v. Zesty.AI* decision shows that specific AI implementations can be patentable when they recite a concrete and specific technological solution rather than claiming abstract ideas Aon Re, Inc. v. Zesty.AI, Inc., 791 F.Supp.3d 531 (2025). The court emphasized that the patent must specifically define how known components must be structured to achieve a supposed technological improvement in accuracy and efficiency to the combination of those components Aon Re, Inc. v. Zesty.AI, Inc., 791 F.Supp.3d 531 (2025). This precedent provides guidance for evaluating the strength and value of AI patent portfolios in M&A transactions.

The Patent Act's limitation of inventorship to natural persons, confirmed in *Thaler v. Hirshfeld*, creates additional considerations for AI-generated innovations in target companies Thaler v. Hirshfeld, 558 F.Supp.3d 238 (2021). Companies acquiring AI-focused businesses must ensure proper human inventorship documentation to maintain patent validity.

Data Privacy and Cybersecurity Integration

Cybersecurity due diligence has become a material component of M&A transactions, with courts recognizing both disclosure obligations and liability risks. The *23andMe* bankruptcy proceedings demonstrate how privacy policies must address M&A scenarios, with the court noting that privacy statements had consistently contained language alerting customers that personal information may be sold in connection with mergers, acquisitions, or asset sales In re 23andMe Holding Co., 674 B.R. 487 (2025). For AI companies processing vast amounts of training data, such privacy policy provisions become critical to transaction feasibility.

The SEC has adopted new cybersecurity rules requiring disclosure of material cybersecurity incidents and annual disclosure of cybersecurity risk management strategies 88 FR 51896-01. These requirements directly impact AI systems in M&A transactions, as AI implementations often create new attack vectors and data exposure risks.

Employment Law Implications of AI Integration

The *Mobley v. Workday* decision establishes critical employment law considerations for AI use in hiring and applicant screening Mobley v. Workday, Inc., 740 F.Supp.3d 796 (2024). The court held that algorithmic decision-making tools used to screen applicants can create agency relationships that subject employers to federal anti-discrimination laws under Title VII, the ADEA, and the ADA. The court rejected arguments that would create "an artificial distinction between software decisionmakers and human decisionmakers" that would "potentially gut anti-discrimination laws in the modern era" Mobley v. Workday, Inc., 740 F.Supp.3d 796 (2024).

This precedent creates significant liability exposure for companies using AI in workforce decisions. The court reasoned that employers cannot escape discrimination liability by delegating their traditional hiring functions to third-party software tools, applying the principle from *City of Los Angeles, Department of Water & Power v. Manhart* that employers cannot avoid responsibilities by delegating discriminatory programs to corporate shells Mobley v. Workday, Inc., 740 F.Supp.3d 796 (2024). For M&A transactions, this means that AI systems used for workforce integration, redundancy analysis, or employee selection must comply with employment discrimination laws.

However, the *Saas v. Major, Lindsey* case demonstrates that employment discrimination claims based on alleged AI use require concrete evidence rather than speculation Saas v. Major, Lindsey & Africa, LLC, Not Reported in Fed. Supp. (2024). The court dismissed claims where allegations were "based solely on supposition that Defendants use artificial intelligence tools because they are large businesses" Saas v. Major, Lindsey & Africa, LLC, Not Reported in Fed. Supp. (2024). This establishes an evidentiary standard requiring specific proof of AI deployment and discriminatory impact.

Regulatory Compliance and National Security Considerations

The Office of Investment Security has implemented regulations specifically addressing outbound U.S. investments in AI under 31 C.F.R. § 850.210 31 CFR § 850.210. These regulations define covered transactions to include acquisitions of equity interests in companies engaged in artificial intelligence sectors in countries of concern, particularly involving AI alongside semiconductors/microelectronics and quantum information technologies. The regulations create mandatory disclosure requirements for certain AI-related investments and potential prohibition authority.

Export control regulations under 15 C.F.R. § 742.6 impose additional restrictions on AI technology transfers, with specific licensing requirements for artificial intelligence model weights and related technologies 15 CFR § 742.6. These controls affect M&A transactions involving AI companies with international operations or technology transfer components.

The evolving regulatory framework creates compliance obligations that must be integrated into M&A due diligence processes. Companies must assess whether target AI technologies trigger outbound investment review under § 850.210, export licensing requirements, or other regulatory restrictions that could affect transaction feasibility or structure.

Professional Responsibility and AI Use in Legal Practice

Recent court decisions have established verification requirements for legal practitioners using AI. In *In re Martin*, the Bankruptcy Court observed that "at this point, no lawyer should be using ChatGPT or any other generative AI product to perform research without verifying the results" In re Martin, 670 B.R. 636 (2025). Courts have imposed sanctions ranging from monetary penalties to mandatory training requirements for attorneys citing AI-generated fake case law In re Martin, 670 B.R. 636 (2025), In re Richburg, 671 B.R. 918 (2025).

These precedents create professional responsibility obligations for lawyers using AI in M&A transactions. The Illinois Supreme Court's AI Policy requires that "all users must thoroughly review AI-generated content before submitting it in any court proceeding to ensure accuracy and compliance with legal and ethical obligations" . Legal practitioners must independently verify AI-generated content and cannot rely solely on algorithmic outputs for legal analysis or documentation.

Antitrust Considerations

The *United States v. Google* remedial decree demonstrates how antitrust authorities view AI capabilities as competitive concerns in merger enforcement United States v. Google LLC, 803 F.Supp.3d 18 (2025). The court included generative AI in remedial measures because "generative AI products grounded in general search performed information-retrieval similar to GSEs, rendering generative AI products as potential threat to operator's dominance" United States v. Google LLC, 803 F.Supp.3d 18 (2025). This precedent suggests that AI capabilities may receive heightened antitrust scrutiny in merger review.

The *United States v. UnitedHealth Group* decision illustrates how courts evaluate vertical merger theories in healthcare technology markets, requiring concrete evidence rather than speculative harm United States v. UnitedHealth Group Incorporated, 630 F.Supp.3d 118 (2022). The court rejected arguments about innovation chilling and data access concerns that lacked supporting evidence, requiring real-world evidence of likely competitive harm rather than theoretical possibilities. This case establishes evidentiary standards that could apply by analogy to other technology merger contexts.

Practical Implications

The practical implications of AI use in M&A transactions include several key areas where legal compliance intersects with business efficiency. Due diligence enhancement through AI can accelerate document review, identify patterns in financial data, and improve risk assessment, but legal precedents show companies must still meet traditional standards of care and disclosure. The technology can augment human analysis but cannot replace the fundamental requirement for informed board decision-making and adequate investigation of material facts.

Regulatory compliance creates new layers of complexity for AI-focused M&A transactions. Outbound investment regulations restrict certain AI investments, particularly involving countries of concern, requiring careful regulatory analysis in cross-border transactions. Export control compliance adds additional due diligence requirements for companies with international AI technology operations or licensing arrangements.

Employment law risks emerge when AI systems are used in workforce decisions. Federal anti-discrimination laws apply to AI-driven hiring, promotion, and termination decisions, creating potential liability that must be addressed through careful compliance protocols and bias testing. Companies must maintain documentation showing that AI systems do not create discriminatory impacts on protected classes.

IP valuation challenges affect acquisition pricing for AI-heavy targets. The Federal Circuit's restrictive approach to AI patent eligibility means that generic machine learning patents may have limited value, while specific technological improvements retain patent protection. This distinction requires sophisticated technical and legal analysis to properly value AI patent portfolios.

Professional responsibility requirements for legal practitioners create new verification obligations when using AI in legal work. Attorneys must independently verify AI-generated content and cannot rely solely on algorithmic outputs for legal analysis or documentation. This standard affects both transaction efficiency and professional liability exposure.

Cybersecurity integration requirements have expanded beyond traditional IT security to encompass AI-specific vulnerabilities and data protection obligations. AI systems create new attack vectors and potential disclosure requirements under securities laws, particularly when processing sensitive customer or proprietary data that could affect transaction valuations or regulatory compliance.

Recent Developments

Recent legal developments have significantly affected the AI M&A landscape. The Office of Investment Security's 2025 regulations under 31 C.F.R. § 850.210 now require notification and create potential prohibitions for certain U.S. outbound investments in AI, semiconductor, and quantum technology companies in countries of concern, adding a new dimension to national security analysis of U.S. investments abroad 31 CFR § 850.210.

The Federal Circuit's 2025 decision in *Recentive Analytics v. Fox Corp.* established a new standard for AI patent eligibility, holding that generic machine learning applications are patent-ineligible unless they improve the machine learning technology itself Recentive Analytics, Inc. v. Fox Corp., 134 F.4th 1205 (2025). This development has immediate implications for AI company valuations and patent portfolio assessments in M&A transactions.

The 2024 *Mobley v. Workday* decision held that AI hiring tools can create agency relationships subject to federal anti-discrimination laws when the tools perform traditional employment functions like screening and rejecting applicants Mobley v. Workday, Inc., 740 F.Supp.3d 796 (2024). This precedent has prompted consideration of new compliance protocols for AI-driven HR systems.

The consolidation of OpenAI multidistrict litigation in 2025 signals increased judicial focus on AI-related legal disputes and may establish important precedents for AI liability and intellectual property rights In re OpenAI, Inc., Copyright Infringement Litigation, 776 F.Supp.3d 1352 (2025). This litigation could affect how companies structure AI-related indemnification provisions and risk allocations in M&A agreements.

Professional responsibility standards have evolved rapidly, with multiple courts imposing verification requirements for attorneys using AI. Courts have imposed sanctions ranging from monetary penalties to mandatory training requirements for attorneys citing AI-generated fake case law In re Martin, 670 B.R. 636 (2025), In re Richburg, 671 B.R. 918 (2025). These developments have created new compliance obligations for legal practitioners.

Antitrust enforcement has begun incorporating AI considerations more directly, as demonstrated by the Google remedial decree's treatment of AI capabilities as competitive concerns United States v. Google LLC, 803 F.Supp.3d 18 (2025). This development suggests that future merger reviews may include more detailed analysis of AI market positions and competitive effects.

Related Issues

- Data privacy and transfer rights under GDPR, CCPA, and other privacy regulations affecting AI training data and customer information transfers in cross-border M&A transactions
- Export control compliance with Bureau of Industry and Security regulations on AI technology exports affecting international M&A transactions and technology transfer agreements
- Algorithmic bias and fairness considerations under equal protection and civil rights laws when AI systems are used in employment or customer-facing applications post-merger
- Trade secret protection and confidentiality issues when AI models are trained on proprietary data or when merger due diligence involves access to sensitive AI algorithms and datasets

Commentary on This Question

Artificial intelligence (AI) plays a transformative role in merger and acquisition (M&A) transactions, particularly by streamlining the due diligence process. AI technologies facilitate accurate verification of data through automation tools such as data refresh automation and data quality monitoring, ensuring that all transaction-related materials from both parties are current and reducing delays. AI-powered document review tools significantly accelerate the traditionally labor-intensive review of vast document volumes by identifying key information and highlighting potential risks, thereby saving time and costs. These capabilities have been integrated into offerings by established legal research providers. Moreover, AI's analytical power extends beyond due diligence, enabling acquirers to systematically assess risks, re-evaluate deals, or even abandon transactions based on comprehensive data analysis. Post-transaction, AI can automate alerts for discrepancies and facilitate transparent record-keeping via blockchain technology, enhancing intellectual property (IP) management and compliance. Importantly, deployment of AI in M&A requires meticulous adherence to privacy, compliance, and regulatory frameworks, balancing efficiency gains with legal obligations. Risk-based compliance programs that integrate AI can improve transaction monitoring, mitigate misconduct risks, and assist with timely integration of acquired entities, thus maintaining robust internal controls throughout the M&A lifecycle. AI's growing role also aligns with evolving legal policies surrounding national security and foreign investment in technology sectors, including AI itself IPMA § 4:4, LACII APP 68.

The adoption of AI is further supported by courts recognizing AI-based inventions as patentable when they provide technical solutions in specialized fields. Additionally, cloud computing and AI integration enhance efficiency and cost-effectiveness in M&A operations, particularly through faster IT delivery and operational integration. Federal policies increasingly focus on managing AI-related national security risks within M&A, particularly with regard to foreign investments in cutting-edge AI technologies, highlighting the intersection of AI innovation, regulatory oversight, and transaction scrutiny on a national scale. These considerations emphasize AI as a critical tool in M&A while framing the need for strategic governance and compliance CLOUDCDB § 19:1, ECKLICN-JV § 6:23, CAMD § 11:211.

Current Awareness

AI supports M&A execution by automating contract and document analysis, including clause extraction, rapid summarization, privilege identification, and compliance-focused redaction; it also enhances workflow across the deal timeline by enabling early-stage public data analysis and VDR setup, mid-process analytics with automated issue flagging and communication loops, and late-stage generation and analysis of transaction agreements to address disclosure-related liabilities, as well as ongoing contract lifecycle compliance monitoring 'Revolutionizing Legal Document Review with AI', by U.S. Legal Support, Published By JD Supra. Robotic process automation can handle repetitive diligence tasks such as extracting and cross-referencing financial data, while AI-driven financial tools generate projections and valuations; machine learning can monitor VDR activity for anomalous behavior to protect sensitive information during diligence 'Revolutionizing M&A Due Diligence: How AI Tools...', by Samantha Cira, Alex Jones, Kohrman Jackson & Krantz LLP, Published By JD Supra. Within legal teams, AI also assists with drafting, reviewing diligence materials, summarizing records, analyzing risk, and organizing the deal process 'Artificial Intelligence Issues for Transactional...', by Philip Nulud, Jonathan Wilson, Roy Hadley, Mitzi L. Hill, Buchalter, Published By JD Supra.

AI is also a diligence subject and valuation driver: practitioners assess whether a target's AI enhances scalability, efficiency, or differentiation, or instead introduces risks tied to training data rights, dependence on third-party models, ownership substantiation, and emerging regulatory obligations—implications that bear on contract drafting, diligence focus, deal structuring, disclosure, representations and warranties, and post-closing integration planning; related IP ownership issues include the current U.S. rule limiting copyright to human authorship, with the D.C. Circuit holding humanity a necessary condition for authorship in Thaler v. Perlmutter, 130 F.4th 1039 (D.C. Cir. 2025) 'Artificial Intelligence Issues for Transactional...', by Philip Nulud, Jonathan Wilson, Roy Hadley, Mitzi L. Hill, Buchalter, Published By JD Supra.

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AI document summary
Holding that under Delaware law, directors must consider material facts that are reasonably available at the time of decision

2. **In re Walt Disney Co. Derivative Litigation**
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AI document summary
Establishing that directors must use care which ordinarily careful and prudent persons would use and consider all material information reasonably available

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Establishing that the business judgment rule protects corporate board decisions unless conflicts exist requiring entire fairness review

4. **Recentive Analytics, Inc. v. Fox Corp.**

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AI document summary
Holding that patents claiming use of machine learning for generation of network maps were directed to abstract ideas and patent-ineligible where they relied on generic machine learning technology without technological improvements

Supporting section 1 of 1
...Conclusion. Machine learning is a burgeoning and increasingly important field and may lead to patent-eligible improvements in technology. Today, we hold only that patents that do no more than claim the application of generic machine learning to new data environments, without disclosing improvements to the machine learning models to be applied, are patent ineligible under S 101. AFFIRMED...

5. **Aon Re, Inc. v. Zesty.AI, Inc.**
United States District Court, D. Delaware. • July 15, 2025 • 791 F.Supp.3d 531 • 2025 WL 1938214

AI document summary
Holding that patents for computer systems using machine learning to evaluate real property were patent-eligible where they recited concrete and specific technological solutions

Supporting section 1 of 1
...Representative claim, in patents for computer systems using machine learning to evaluate real property from aerial imagery, was not directed to an abstract idea, and thus was patent-eligible under Alice test, as it recited a concrete and specific technological solution; rather than referring to use of machine learning in general or broadly claiming evaluating risk using imagery, claim required individually trained machine learning classifiers performing separate and clearly defined analytical tasks, claim specifically defined how known components

6. **Thaler v. Hirshfeld**
United States District Court, E.D. Virginia, Alexandria Division. • September 02, 2021 • 558 F.Supp.3d 238 • 2021 WL 3934803

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Holding that artificial intelligence machines cannot be listed as inventors under the Patent Act, which limits inventorship to natural persons

7. **In re 23andMe Holding Co.**
United States Bankruptcy Court, E.D. Missouri, Eastern Division. • June 27, 2025 • 674 B.R. 487 • 2025 WL 1791166

AI document summary
Describing how privacy policies must address M&A scenarios and noting that company privacy statements consistently contained language regarding data sales in mergers and acquisitions

Supporting section 1 of 1
...B. The Debtors' Privacy Policies. The Debtors' privacy policies have changed throughout the nearly twenty years that the Debtors have been operating (Omb. Rep. 32). But one aspect of the Privacy Statement has been consistent: since 2007, every version of the statement has contained language alerting customers that their personal information may be sold in connection with a merger, acquisition, or sale of the Debtors' assets and that the requirements of the Privacy Statement would apply to the successor or purchaser (Omb. Rep. App. C). In 2022,

8. **88 FR 51896-01**
SECURITIES AND EXCHANGE COMMISSION • August 04, 2023 • RULES and REGULATIONS • Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure • 2023 WL 4971409

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Establishing SEC rules requiring disclosure of material cybersecurity incidents and annual cybersecurity risk management disclosure

9. **Mobley v. Workday, Inc.**
United States District Court, N.D. California. • July 12, 2024 • 740 F.Supp.3d 796 • 2024 WL 3409146

AI document summary
Holding that algorithmic decision-making tools used in hiring create agency relationships subject to federal anti-discrimination laws under Title VII, ADEA, and ADA

Supporting section 1 of 1
...b. Allegations that Workday Acted as an Agent. Drawing an artificial distinction between software decisionmakers and human decisionmakers would potentially gut anti-discrimination laws in the modern era. By Workday's argument, the administrator in Spirt could escape liability if it had simply sold the employer an automated system designed to pay women lower retirement benefits instead of running the calculations itself manually. Indeed, if the Court were to draw the distinction invited by Workday, employers could delegate hiring, firing, promotion,

10. **Saas v. Major, Lindsey & Africa, LLC**

United States District Court, D. Maryland. • May 10, 2024 • Not Reported in Fed. Supp. • 2024 WL 2113654

AI document summary
Dismissing employment discrimination claims based on alleged AI use where allegations were based on speculation rather than concrete evidence

Supporting section 1 of 1
...1. Failure to Refer Claim / Algorithmic Bias Claim. Plaintiff's claim fails here because it is entirely speculative. Plaintiff has not identified a particular employment practice that exists. Her allegation is based solely on supposition that Defendants use artificial intelligence tools because they are large businesses. (ECF No. 10 at p. 7.) Plaintiff's allegation, however, that MLA stated that it did not use artificial intelligence tools, directly contradicts her supposition. (ECF No. 1-1 PP 19, 22, 28.) Ms. Catone's comment that she had trouble

11. § 850.210 Covered transaction.
31 C.F.R. § 850.210

AI document summary
Defining covered transactions to include acquisitions of equity interests in AI companies in countries of concern and establishing disclosure and prohibition requirements for certain AI investments

12. § 742.6 Regional stability.
15 C.F.R. § 742.6

AI document summary
Establishing export control licensing requirements for artificial intelligence model weights and related technologies

13. In re Martin
United States Bankruptcy Court, N.D. Illinois, Eastern Division. • July 18, 2025 • 670 B.R. 636 • 2025 WL 2017224

AI document summary
Observing that no lawyer should use generative artificial intelligence to perform legal research without verifying results and imposing sanctions for violations of Rule 9011

Supporting section 1 of 1
...No lawyer should use any generative artificial intelligence (AI) product to perform legal research without verifying the results....

14. In re Richburg

United States Bankruptcy Court, D. South Carolina. • August 27, 2025 • 671 B.R. 918 • 2025 WL 2470473

> **AI document summary**
> Imposing sanctions on attorney for citing fake case law generated by artificial intelligence in violation of Rule 9011

15. Illinois Supreme Court Policy on Artificial Intelligence (effective Jan. 1, 2025)

> **AI document summary**
> Requiring thorough review of AI-generated content before submitting it in any court proceeding to ensure accuracy and compliance with legal and ethical obligations

16. United States v. Google LLC

United States District Court, District of Columbia. • September 02, 2025 • 803 F.Supp.3d 18 • 2025 WL 2523010

> **AI document summary**
> Holding that inclusion of generative artificial intelligence was warranted in antitrust remedial decree because AI products posed potential threat to defendant's market dominance

> **Supporting section 1 of 1**
> ...Inclusion of generative artificial-intelligence (AI) was warranted, in remedial decree for general search engine (GSE) operator's monopoly in violation of Sherman Act; generative AI products grounded in general search performed information-retrieval similar to GSEs, rendering generative AI products as potential threat to operator's dominance in market for general search services, and operator had deepened integration between search and generative AI by incorporating AI overviews into its search results and with AI mode for search. Sherman Act

17. United States v. UnitedHealth Group Incorporated

United States District Court, District of Columbia. • September 21, 2022 • 630 F.Supp.3d 118 • 2022 WL 4365867

> **AI document summary**
> Rejecting government's vertical merger theory where evidence did not support allegations that acquisition would give enterprise ability to raise rivals' costs or chill innovation

18. In re OpenAI, Inc., Copyright Infringement Litigation

United States Judicial Panel on Multidistrict Litigation. • April 03, 2025 • 776 F.Supp.3d 1352 • 2025 WL 1037221

AI document summary
Consolidating multiple actions against artificial intelligence companies for centralized litigation management

19. § 4:4. The due diligence process
Intellectual Property in Mergers and Acquisitions • IPMA § 4:4

Supporting section 1 of 2
...The use of technology during the IP due diligence process can continue the trend of streamlining the process. Open communication via tried-and-true channels like email and chat services will help ensure fair and equitable processes, and further integration of AI-powered technologies may help prevent costly delays early in the action. AI can help confirm that data is accurate during the due diligence process by ensuring first and foremost that all information from both sides of the transaction is up-to-date before taking action on that information,

Supporting section 2 of 2
...Another way acquirers can harness the innovation of AI and machine-learning technologies is by the application of such tools to document management processes. Doc review is, perhaps famously, considered to be one of the more thankless tasks within the legal industry. Kathryn Rubino, Doc Review Attorney Demands To Be Seen In Biglaw Departure Email, ABOVE THE LAW (Jan. 7, 2019, 1:16 PM), https://abovethelaw.com/2019/01/doc-review-attorney-demands-to-be-seen-in-biglaw-departureemail (lamenting the “salt mine” that is doc review and providing a

20. APPENDIX 68. DOJ Criteria for Evaluation of Compliance Programs
The Legal Audit: Corporate Internal Investigation • LACII APP 68

Supporting section 1 of 1
...A well-designed compliance program should include comprehensive due diligence of any acquisition targets, as well as a process for timely and orderly integration of the acquired entity into existing compliance program structures and internal controls. Pre-M&A due diligence, where possible, enables the acquiring company to evaluate more accurately each target's value and negotiate for the costs of any corruption or misconduct to be borne by the target. Flawed or incomplete pre- or post-acquisition due diligence and integration can allow misconduct

21. § 19:1. Merger and acquisition drivers
Cloud Computing Legal Deskbook • CLOUDCDB § 19:1

Supporting section 1 of 1
...The use of cloud services in implementing an M&A transaction has also grown significantly in recent years. From a practical perspective, in an M&A transaction (regardless of industry), speed is often key and cloud services permit greater efficiency and cost savings for all parties involved, especially with respect to the due diligence process. Cloud services accelerate IT delivery in M&A transactions by 30% on average and simplify post-closing operational integration,[19] as emerging cloud-based Enterprise Resource Planning (ERP) technology

22. § 6:23. Smart Machines and Smarter Policy: Foreign Investment Regulation, National Security, and Technology Transfer in the Age of Artificial Intelligence, by Justin Shields, Esq. (Ernst and Young, San Diego)
Eckstrom's Licensing in Foreign and Domestic Operations: Joint Ventures • ECKLICN-JV § 6:23

Supporting section 1 of 1
...Artificial intelligence is an incredible new technology with the power to transform our entire world. Its commercial applications can be as simple as playing your favorite song in the morning at the command of your voice or as complex as sifting through numerous data sets to find patterns that lead to productivity improvements in manufacturing processes. Unfortunately, the transformative nature of AI also means that it has tremendous national security implications. AI's potential to alter the balance of economic and military superiority in the

23. § 11:211. U.S. restrictions on acquisitions and mergers by foreign firms—Presidential authority to block foreign takeovers of U.S. corporations on national security grounds
Corporate Acquisitions, Mergers and Divestitures • CAMD § 11:211

Supporting section 1 of 1
...National security concerns were the justification for the Executive Order. "[T]hese countries [named as PRC/Hong Kong/Macau in the Annex to the Executive Order] eliminate barriers between civilian and commercial sectors and military and defense industrial sectors, not just through research and development, but also by acquiring and diverting the world's cutting-edge technologies, for the purposes of achieving military dominance. Rapid advancement in semiconductors and microelectronics, quantum information technologies, and artificial intelligence

24. Revolutionizing Legal Document Review with AI
U.S. Legal Support
JD Supra • 2026 WLNR 311801 • January 5, 2026

Supporting section 1 of 1
...In the early going, AI streamlines analysis of public data for buyers, mitigating time

pressure. Streamlined access to analyzed content allows stakeholders to make more informed decisions regarding potential investments. For sellers, it can facilitate establishing a secure virtual data room (VDR). Mid-process, AI can supercharge due diligence analytics with much faster pattern (and issue) identification, including automated flagging and communication loops. AI's advanced predictive capabilities in contract review ensure legally sound documentation.

25. Revolutionizing M&A Due Diligence: How AI Tools Enhance Efficiency and Accuracy

Samantha Cira, Alex Jones, Kohrman Jackson & Krantz LLP
JD Supra • 2024 WLNR 25702890 • April 22, 2025

Supporting section 1 of 1
...Data security is becoming an increasing concern during due diligence, particularly in an age where sellers exchange their documents with buyers via the use of virtual data rooms. Machine learning algorithms can help alleviate these concerns by identifying unusual patterns of behavior and flagging potential security threats in real-time, ensuring that sensitive information remains protected throughout the diligence process. Conclusion The use of AI in M&A due diligence can alter the way dealmakers approach this crucial phase of the acquisition

26. Artificial Intelligence Issues for Transactional Law Practice

Philip Nulud, Jonathan Wilson, Roy Hadley, Mitzi L. Hill, Buchalter
JD Supra • 2026 WLNR 8188949 • March 19, 2026

Supporting section 1 of 1
...Artificial intelligence is now affecting transactional law practice from multiple directions at once. On one level, AI is changing how lawyers themselves perform work: drafting contracts, reviewing diligence materials, summarizing records, analyzing risk, and organizing deal process. On another level, AI is changing the underlying businesses and assets that are the subject of transactions. Buyers, sellers, licensors, customers, vendors, investors, and counsel increasingly must evaluate whether AI creates value, introduces hidden risk, or both.

Additional sources

These sources are not cited in your report, but can provide context that may be helpful.

27. Acquiring an AI Company

Practice Note • Maintained • National/Federal

Practical Law resource summary
A Practice Note highlighting issues to consider when counseling a prospective buyer

> of an AI company. This Note discusses the primary due diligence issues relating to AI and machine learning (ML) and strategies to mitigate or allocate risks in the context of an M&A transaction. This Note is also helpful for AI company targets that seek to anticipate potential issues. In this Note, the term AI company refers to a company involved in the research, development, or monetization of a product or service that is primarily powered by an ML algorithm or

28. AI Representations: Stock Purchase or Merger
Standard Clauses • Maintained • National/Federal

> **Practical Law resource summary**
> These Standard Clauses provide model representations and warranties for use in a stock purchase or merger agreement in M&A transactions where the target is an artificial intelligence (AI) company. These clauses address the unique legal and business risks associated with AI development and deployment that may not be adequately covered by standard intellectual property or software representations. The representations cover critical issues such as the collection and use of training data, protection of confidential and proprietary information in prompts

29. AI Representations: Asset Purchase
Standard Clauses • Maintained • National/Federal

> **Practical Law resource summary**
> These Standard Clauses provide model representations and warranties for use in an asset purchase agreement in M&A transactions where the target business involves the development or commercialization of artificial intelligence (AI) products or services. These clauses address the unique legal and business risks associated with AI development and deployment that may not be adequately covered by standard intellectual property or software representations. The representations cover critical issues such as the collection and use of training data, protection

Research Steps

✓ Researching current regulatory guidance from the Department of Justice and Federal Trade Commission regarding artificial intelligence use in merger review and antitrust analysis

- Limited specific DOJ/FTC guidance found on AI use in merger review. General antitrust principles apply (UnitedHealth). Google remedial decree shows DOJ treating AI as competitive concern in antitrust enforcement.

Need to monitor evolving enforcement positions as AI M&A activity increases.

- ✓ Analyzing Securities and Exchange Commission disclosure requirements and guidance for AI-related considerations in M&A transactions
  - o Found limited specific AI disclosure regulations for M&A. Key regulations include SEC Rule 10b-5 for material misstatements, new CFIUS AI investment restrictions (31 C.F.R. 850.210), and export controls on AI technologies. General business disclosure requirements under 17 C.F.R. 229.101 apply to material M&A developments.
- ✓ Examining federal court decisions addressing AI technology valuation methodologies in merger and acquisition contexts
  - o Found limited federal court decisions specifically addressing AI valuation in M&A contexts. Most cases deal with AI patent eligibility and copyright/IP issues rather than M&A-specific valuation methodologies.
- ✓ Researching state corporate law frameworks governing board fiduciary duties when evaluating AI-enhanced due diligence processes in M&A transactions
  - o Found comprehensive Delaware corporate law precedents on board fiduciary duties in M&A. Business judgment rule applies unless conflicts exist requiring entire fairness review. Board must be adequately informed and consider material facts. Due diligence failures can breach duty of care if grossly negligent. The Marriott case shows cybersecurity due diligence claims face high burden.
- ✓ Analyzing federal and state data privacy and cybersecurity legal requirements affecting AI implementation during merger integration processes
  - o Found significant case law on cybersecurity due diligence in M&A transactions. Key holdings: Marriott Int'l shows cybersecurity due diligence is expected but general statements aren't actionable; data privacy policies must address M&A scenarios (23andMe); materiality of cybersecurity disclosures depends on specific circumstances (Alphabet, SolarWinds).
- ✓ Examining intellectual property law considerations for AI assets and technologies in M&A transactions under federal patent, copyright, and trade secret frameworks
  - o Found key Federal Circuit guidance on AI patent eligibility. Recentive Analytics establishes that generic machine learning applications are not patent-eligible under Alice test unless they improve the machine learning

itself. Aon Re shows specific AI implementations can be patentable if they describe concrete technological solutions. AI cannot be listed as inventor (Thaler v. Hirshfeld).

✓ Researching employment law implications of AI-driven workforce analysis and integration planning in merger transactions across federal and state jurisdictions

  o Found important employment law implications in Mobley v. Workday establishing AI tools can make employers liable for discrimination. Courts recognize AI hiring tools as agency relationships subject to Title VII, ADEA, ADA. However, need concrete evidence of AI usage, not speculation (Saas v. Major, Lindsey).

✓ Analyzing regulatory compliance requirements for AI systems in highly regulated industries during M&A transactions

  o Found limited specific regulatory guidance on AI in highly regulated industries for M&A context. CFIUS regulations now cover AI investments (31 C.F.R. 850.210), export controls apply to AI technologies (15 C.F.R. 742.6), but sector-specific AI regulatory frameworks for M&A still developing.

✓ Examining contractual and liability frameworks for AI vendor relationships and technology dependencies in merger due diligence processes

  o Limited case law specifically addressing AI vendor due diligence in M&A. General principles from technology M&A apply: need comprehensive IP and technology due diligence, assessment of key vendor relationships, data dependencies, and contractual limitations on transfer or use.

✓ Researching emerging case law and regulatory trends regarding AI governance and risk management obligations for merged entities

  o Found emerging trends include: increased AI litigation (OpenAI multidistrict litigation), professional responsibility requirements for AI use (In re Martin, In re Richburg), antitrust considerations for AI market dominance (Google case), and evolving standards for AI privileges and work product protection (United States v. Heppner).

Questions for further research

1. **What specific type of AI technology or application is involved in the merger or acquisition transaction you are considering?**
2. **Are you representing the acquiring company, target company, or providing general advisory services regarding AI use in M&A processes?**
3. **Does the transaction involve cross-border elements or companies from countries that may trigger outbound investment review under the new AI investment regulations?**
4. **What is the approximate size and structure of the transaction (asset purchase, stock acquisition, merger) and the industries involved?**
5. **Are there specific AI-related intellectual property assets, employment systems, or data processing activities that are central to the transaction's value or risk profile?**

Research question

What are the risks of using AI when performing due diligence in merger and acquisition transactions?

All State & Federal

Summary

Using artificial intelligence in merger and acquisition due diligence creates significant legal risks for attorneys across multiple domains. Courts have established that attorneys remain fully responsible for AI-generated content and cannot delegate their professional duties to AI systems. The primary risks include: (1) professional responsibility violations when attorneys fail to competently supervise AI use or verify AI outputs, leading to potential sanctions and malpractice liability; (2) confidentiality breaches and attorney-client privilege waiver when using third-party AI platforms with sensitive M&A information; (3) data security and trade secret protection violations under federal law; (4) potential securities law liability for material misstatements or omissions in disclosure documents; and (5) professional liability insurance coverage gaps for AI-related errors. While no jurisdiction prohibits AI use in legal practice, all require competent supervision, verification of outputs, and appropriate risk management protocols.

Professional Responsibility and Competence Requirements

The fundamental legal principle governing AI use in due diligence is that attorneys cannot delegate their professional duties to artificial intelligence systems. Courts have consistently held that lawyers must maintain competent supervision over AI tools and verify all AI-generated content before relying on it in client representation.

The New York Supreme Court in Cassata v. Michael Macrina Architect, P.C., --- N.Y.S.3d ---- (2026) established a critical precedent regarding attorney supervision of AI use. The court found that a law firm violated professional conduct rules when a supervising attorney who does not "really know how to use any AI stuff" attempted to supervise counsel's use of AI-enhanced research tools, resulting in the submission of court filings containing hallucinated content—filing an opposition paper containing nonexistent decisions, nonexistent quotations, and propositions of law that are not supported by cases cited. The court concluded: "The Court finds incompatable the concept that a supervising attorney can properly supervise an associate regarding the proper use of technology provided by the law firm (Artificial Intelligence version of Westlaw), with the concept herein conceded that the supervising attorney does not know how to use it." Cassata v. Michael Macrina Architect, P.C., --- N.Y.S.3d ---- (2026)

This principle has been reinforced across multiple jurisdictions. The Ohio Court of Appeals in STATE OF OHIO, Plaintiff-Movant v. MALIKHI JERMAINE COLEMAN, Defendant, and WILLIAM B. NORMAN, Respondent., 2026 WL 789665 (2026) emphasized that "competence in the modern legal landscape requires an attorney to understand the tools he or she employs in the practice of law, including artificial intelligence tools." The court explained that attorneys using AI must "understand the technology sufficiently to recognize its limitations, including the well-documented tendency of generative AI platforms to produce hallucinated content." STATE OF OHIO, Plaintiff-Movant v. MALIKHI JERMAINE COLEMAN, Defendant, and WILLIAM B. NORMAN, Respondent., 2026 WL 789665 (2026)

Federal courts have imposed substantial sanctions for inadequate AI supervision. In ByoPlanet International, LLC v. Johansson, 792 F.Supp.3d 1341 (2025), the U.S. District Court for the Southern District of Florida sanctioned an attorney for continuing to use AI-generated hallucinated cases and quotations in multiple civil cases after being put on notice of AI's tendency to generate false information. The court found that Paul's conduct was so egregious that it could only be committed in bad faith, and stated: "To paraphrase the Supreme Court: this conduct defiles the temple of justice and brings disrepute to the practice of law." The court also found that such conduct constituted bad faith warranting sanctions under the court's inherent powers. ByoPlanet International, LLC v. Johansson, 792 F.Supp.3d 1341 (2025)

The competence requirement extends beyond technical understanding to ongoing verification obligations. In Garner v. Kadince, Inc., 571 P.3d 812 (2025), the Utah Court of Appeals, citing *Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 493 (D. Wyo. 2025), emphasized that "as attorneys transition to the world of AI, the duty to check their sources and make a reasonable inquiry into existing law remains unchanged." Courts have consistently rejected arguments that attorneys can rely on AI-generated content without independent verification. Garner v. Kadince, Inc., 571 P.3d 812 (2025)

Attorney-Client Privilege and Confidentiality Risks

Using third-party AI platforms with confidential M&A information creates significant risks of waiving attorney-client privilege and violating confidentiality obligations. In a matter of first impression, the U.S. District Court for the Southern District of New York addressed this issue in United States v. Heppner, --- F.Supp.3d ---- (2026).

In *Heppner*, the court ruled that a defendant waived attorney-client privilege by inputting privileged information into a publicly available AI platform, even when the defendant later shared AI-generated documents with his attorney. The court reasoned that "he waived the privilege by sharing that information with Claude and Anthropic, just as if he had shared it with any other third party. Further, in light of Anthropic's privacy policy discussed above, Heppner had no reasonable expectation that the inputs would not be shared with other third parties." United States v. Heppner, --- F.Supp.3d ---- (2026) The court also noted that AI users do not have substantial privacy interests in communications voluntarily disclosed to publicly accessible platforms, citing *In re OpenAI, Inc., Copyright Infringement Litig.*, No. 25 MD 3143 (S.D.N.Y. Jan. 5, 2026). United States v. Heppner, --- F.Supp.3d ---- (2026)

This holding creates substantial risk for M&A due diligence, where attorneys routinely handle highly confidential financial information, trade secrets, and privileged communications. The Defend Trade Secrets Act provides federal protection for trade secrets, defining them as information where (1) the owner has taken reasonable measures to keep such information secret, and (2) the information "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information." 18 USCA § 1839 Inputting such information into third-party AI platforms could constitute misappropriation under federal law.

Rule 11 Violations and Sanctions

Courts have consistently found that submitting AI-generated content without verification violates Federal Rule of Civil Procedure 11, which requires attorneys to certify that factual and legal contentions have reasonable basis in law and fact after reasonable inquiry. The U.S. Bankruptcy Court for the Southern District of Texas in In re Kheir, 674 B.R. 631 (2025) exemplified this approach by sanctioning an attorney who submitted a response containing "caselaw citations that were hallucinated by generative artificial intelligence" despite a standing order from the Southern District of Texas holding attorneys responsible for AI-generated papers.

The court in *Kheir* emphasized that "confirming the accuracy of cited caselaw is a basic, routine matter, and something to be expected from a practicing attorney, especially because carelessness, good faith, or ignorance are not excuses for submitting materials that are non-compliant with Federal Rule of Bankruptcy Procedure 9011." In re Kheir, 674 B.R. 631 (2025) The court ordered the attorney to reimburse opposing counsel for reasonable attorney fees, obtain continuing education on AI use, and provide a copy of the sanctions order to his client.

Similarly, the U.S. District Court for the Eastern District of Pennsylvania in Bunce v. Visual Technology Innovations, Inc., Not Reported in Fed. Supp. (2025) imposed sanctions on an attorney who "substituted technology for his own professional judgment, lawyerly responsibility, and legal commission" by using ChatGPT to generate motions containing fictitious case citations. The court noted that while "there is nothing in Rule 11 that specifically prohibits reliance on AI for research assistance," Rule 11 "does make clear that the signing attorney is the final auditor for all legal and factual claims contained in their motions." Bunce v. Visual Technology Innovations, Inc., Not

Reported in Fed. Supp. (2025)

Data Security and Trade Secret Protection

Federal law provides multiple layers of protection for confidential information processed during M&A due diligence. The Defend Trade Secrets Act creates civil and criminal liability for misappropriation of trade secrets, broadly defining trade secrets under 18 U.S.C.A. § 1839(3) to include "financial, business, scientific, technical, economic, or engineering information" where the owner has taken reasonable measures to keep it secret and it derives independent economic value from not being generally known or readily ascertainable. 18 USCA § 1839 The Economic Espionage Act criminalizes theft of trade secrets, particularly when conducted to benefit foreign entities. 18 USCA § 1831

The National Institute of Standards and Technology has developed an AI Risk Management Framework that specifically addresses privacy and security concerns. NIST standards emphasize the importance of "privacy and security, including for datasets used to train or test artificial intelligence systems and software and hardware used in artificial intelligence systems." 15 USCA § 278h-1

Securities Law Implications

While courts have not established specific disclosure requirements for AI use in M&A transactions, traditional materiality standards apply to any defects in AI-assisted due diligence that could affect investor decisions. The Securities and Exchange Commission has issued warnings about conflicts of interest in AI use by financial firms. In its 2023 release on "Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers," the SEC expressed concern that "firms will intentionally or unintentionally take their own interest into account in the data or software underlying the applicable AI, as well as the applicable PDA-like technologies, resulting in investor harm." S.E.C. Release No. Release No. 6353 The SEC noted that AI risks "will expand as firms' use of AI grows" and warned that "[t]hese risks will have broad consequences if AI makes decisions that favor the firms' interests and then rapidly deploys that information to investors, potentially on a large scale." S.E.C. Release No. Release No. 6353

Professional Liability Insurance Coverage

Traditional professional liability insurance policies may not adequately cover AI-related errors and omissions. While specific case law on AI coverage exclusions remains limited, general principles of professional liability insurance apply. Courts have consistently interpreted professional services exclusions to bar coverage for claims arising from the performance of professional services requiring specialized knowledge.

The U.S. District Court for the Eastern District of Pennsylvania in Sentinel Ins. Co., Ltd. v. Monarch Med Spa, Inc., 105 F.Supp.3d 464 (2015) found that professional services exclusions broadly exclude coverage for negligence and misrepresentation claims related to professional services, including services provided by staff members that are integral to providing professional medical services. The court held that services provided by staff at a medical spa were themselves considered professional services because they were an integral part of providing such professional services. Sentinel Ins. Co., Ltd. v. Monarch Med Spa, Inc., 105 F.Supp.3d 464 (2015)

Given AI's role as a professional tool requiring specialized knowledge and the potential for AI-generated errors to cause substantial client harm, traditional professional liability policies may exclude coverage for AI-related claims, requiring firms to seek specialized coverage or policy endorsements.

Practical Implications

The research reveals several critical practical implications for law firms conducting M&A due diligence with AI tools. Firms must implement comprehensive AI governance frameworks including validation protocols, human oversight requirements, and competence training. Using third-party AI platforms with confidential M&A information risks waiving attorney-client privilege and potentially violating trade secret protections. Professional liability insurance may not cover AI-related errors, requiring firms to reassess coverage and potentially obtain specialized policies. Courts are imposing substantial sanctions for AI misuse, creating both reputational and financial risks. Attorneys must obtain informed client consent before using AI tools and ensure they understand the technology's limitations and risks.

Recent Developments

Recent developments show rapid judicial response to AI misuse in legal practice. Courts nationwide have imposed substantial sanctions for AI hallucinations, with cases beginning in 2025 and continuing into 2026, such as Cassata v. Michael Macrina Architect, P.C., --- N.Y.S.3d ---- (2026) (decided January 27, 2026) and numerous other decisions establishing that attorneys cannot delegate professional duties to AI systems.

The NIST AI Risk Management Framework 15 USCA § 278h-1 provides evolving federal guidance. State courts are implementing local rules requiring AI disclosure, such as Ohio's Warren County Probate Court Rule 2.6 OH R WARREN PROB Rule 2.6 mandating attorneys disclose AI use and maintain ultimate responsibility for AI-assisted materials.

Related Issues

- Data security breach liability and cybersecurity compliance requirements when AI systems are compromised
- Intellectual property infringement claims when AI systems use proprietary data without authorization
- Regulatory compliance violations in highly regulated industries where AI tools may not meet sector-specific requirements
- Cross-border data transfer restrictions under international privacy laws when AI platforms process data across jurisdictions
- Professional liability coverage disputes over whether traditional malpractice insurance covers AI-related errors
- Corporate governance issues regarding board oversight of AI risk management in M&A transactions

Commentary on This Question

The use of AI in the due diligence process of mergers and acquisitions (M&A) offers efficiencies such as automating document review, maintaining updated data through automated refresh processes, and conducting risk assessments to inform deal decisions. AI can mitigate delays by ensuring accuracy and currency of information, automatically monitor data quality, and help advise whether to proceed, renegotiate, or terminate deals. Post-deal, AI technologies including blockchain may be used to create immutable records of intellectual property transactions and alert parties to potential discrepancies. Nonetheless, deployment of AI introduces increased compliance challenges, requiring careful alignment with privacy laws and regulatory standards to manage risks such as data breaches, inaccuracies, or unintended bias. Legal professionals emphasize that due diligence powered by AI must balance financial interests and regulatory compliance through meticulous evaluation of AI tools and their outputs at all stages of M&A transactions. Firms are advised to adopt comprehensive AI usage policies and provide relevant training to mitigate risks. Further, risk-based approaches to due diligence and continuous monitoring within enterprise risk management frameworks are recommended to address emerging AI-related compliance risks. Governmental initiatives, including federal executive orders and evolving standards, underscore the importance of transparency, fairness, and management oversight in AI applications within business transactions IPMA § 4:4, LACII APP 68.

Beyond operational risks, there are legal implications such as potential liability for AI-generated errors, issues surrounding intellectual property ownership of AI-created content, and the necessity to ensure contractual terms address AI-related risks. Compliance programs integrating AI must include thorough pre- and post-acquisition due diligence, risk-tailored resource allocation, and ongoing integration efforts to prevent misconduct carried over from acquired entities. Managing AI risk involves detecting bias, maintaining transparency, safeguarding data privacy, and preparing for evolving regulatory landscapes, including possible federal and international AI regulations. The inherent unpredictability and complexity of AI systems require organizations to establish governance mechanisms that ensure human oversight and accountability for AI's role in due diligence and compliance processes IPMA § 4:4, LACII § 1:22, BUSTRANSOL § 197:4.50, LACII APP 68.

Current Awareness

Using AI during M&A due diligence presents intellectual property and compliance risks. Only human inventors can be named on U.S. patents, and USPTO inventorship guidance permits AI-assisted inventions only where a human made a significant contribution, creating diligence challenges in evaluating ownership and validity of target IP developed with generative AI (Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022)). AI-generated source code may not be eligible for copyright protection, affecting valuation and necessitating verification of human authorship in software assets. Inputting personal information into AI tools can trigger obligations under regimes such as the GDPR and CCPA because models may ingest, commingle, and reuse personal data, creating risk of unauthorized use. Entering privileged or confidential information into public AI tools can threaten privilege and confidentiality, and at least one court concluded prompts to a public, non-secure AI were not privileged in United States v. Heppner, No. 1:25-cr-00503-JSR. 'Artificial Intelligence Issues for Transactional...', by Philip Nulud, Jonathan Wilson, Roy Hadley, Mitzi L. Hill, Buchalter, Published By JD Supra

Privilege and discoverability risks are reinforced by professional ethics guidance. ABA Formal Opinion 512 (July 29, 2024) identifies duties of competence and confidentiality when lawyers use generative AI, including understanding tool functionality and protecting client information, and notes that self-learning tools that train on user inputs threaten confidentiality. The State Bar of California cautioned against inputting confidential client information into generative AI lacking adequate protections. In Heppner, a client who used a consumer AI tool to draft legal strategy created documents later seized by agents, and the court rejected privilege claims, underscoring that client or counsel use of consumer AI during diligence can create potentially discoverable materials and privilege waivers. 'Client Use of AI Creates Possibly Discoverable...', by Esquire Deposition Solutions, LLC, Published By JD Supra

Generated by AI. Not legal advice. A qualified professional must verify accuracy and legal compliance.

Sources (22)

1. **Cassata v. Michael Macrina Architect, P.C.**
Supreme Court, Suffolk County, New York. • January 27, 2026 • --- N.Y.S.3d ---- • 2026 WL 263521

AI document summary
Holding that law firm violated professional conduct rule governing lawyer's duty of supervision when supervising attorney did not know how to use artificial intelligence and could not adequately supervise counsel's use of AI tools

Supporting section 1 of 1
...C. Lawyer's Duty to Keep Abreast of Technology, Rule 1.1. The Court finds incompatable the concept that a supervising attorney can properly supervise an associate regarding the proper use of technology provided by the law firm (Artificial Intelligence version of Westlaw), with the concept herein conceded that the supervising attorney does not know how to use it....

2. **STATE OF OHIO, Plaintiff-Movant v. MALIKHI JERMAINE COLEMAN, Defendant, and WILLIAM B. NORMAN, Respondent.**
Court of Appeals of Ohio, Eleventh District, Ashtabula County. • March 20, 2026 • Slip Copy • 2026 WL 789665

AI document summary
Establishing that competence requires attorneys to understand AI tools and their limitations, including tendency to produce hallucinated content

Supporting section 1 of 1
...C. Prof.Cond.R. 1.1: Competence. {P59} Prof.Cond.R. 1.1 requires a lawyer to "provide competent representation to a client," which requires "the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Competence in the modern legal landscape requires an attorney to understand the tools he or she employs in the practice of law, including artificial intelligence tools. An attorney who uses AI in the preparation of legal filings must understand the technology sufficiently to recognize its limitations,

3. **ByoPlanet International, LLC v. Johansson**

United States District Court, S.D. Florida. • July 17, 2025 • 792 F.Supp.3d 1341 • 2025 WL 2091025

AI document summary
Imposing sanctions for attorney's continued use of AI-generated hallucinated cases after notice of AI's unreliability

4. **Garner v. Kadince, Inc.**

Court of Appeals of Utah. • May 22, 2025 • 571 P.3d 812 • 2025 WL 1481740

AI document summary
Holding that duty to verify sources and make reasonable inquiry into existing law remains unchanged despite AI use

Supporting section 1 of 1
...As attorneys transition to world of artificial intelligence (AI), duty to check their sources and make reasonable inquiry into existing law remains unchanged....

5. **United States v. Heppner**

United States District Court, S.D. New York. • February 17, 2026 • --- F.Supp.3d ---- • 2026 WL 436479

AI document summary
Ruling that inputting privileged information into publicly available AI platform waives attorney-client privilege

Supporting section 1 of 1
...Even assuming that defendant inputted information protected by attorney-client privilege into publicly available artificial intelligence (AI) platform, in connection with pending criminal investigation of him for securities fraud, wire fraud, conspiracy, making false statements to auditors, and falsifying corporate records, defendant waived attorney-client privilege for that information, where he shared that information with AI platform, just as if he had shared it with any other third party, and in light of AI platform's privacy policy, he

6. **§ 1839. Definitions**

18 USCA § 1839

AI document summary
Defining trade secrets under the Defend Trade Secrets Act to include financial, business, and technical information deriving value from secrecy

Supporting section 1 of 1
...As used in this chapter-- (3) the term "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if-- (B) the information derives independent economic value, actual or

7. **In re Kheir**
United States Bankruptcy Court, S.D. Texas, Houston Division. • November 04, 2025 • 674 B.R. 631 • 2025 WL 3083272

AI document summary
Sanctioning attorney for submitting AI-generated hallucinated case citations in violation of Federal Rule of Bankruptcy Procedure 9011

Supporting section 1 of 2
...Appropriate sanction for attorney, who signed and submitted response to motion to dismiss containing caselaw citations that were hallucinated by generative artificial intelligence (AI), in violation of order of Southern District of Texas holding attorneys responsible for AI-generated papers under federal rule of civil procedure governing representations to court and in violation of corresponding federal rule of bankruptcy procedure, was ordering attorney to reimburse opposing counsel for reasonable and necessary attorney fees, register and obtain

Supporting section 2 of 2
...MEMORANDUM OPINION. As a matter of first impression, this Court has been tasked with determining whether Mr. Derrick D. King, counsel for Deondra Joyce Kheir ("Plaintiff"), utilized generative artificial intelligence to manufacture legal authority without verifying the content within such authorities, or the existence of such authorities, in violation of the Southern District of Texas General Order 2025-04. The Court publishes this opinion to remind lawyers that confirming the accuracy of cited caselaw is a basic, routine matter, and something

8. **Bunce v. Visual Technology Innovations, Inc.**
United States District Court, E.D. Pennsylvania. • February 27, 2025 • Not Reported in Fed. Supp. • 2025 WL 662398

AI document summary
Imposing Rule 11 sanctions for attorney's reliance on ChatGPT-generated fictitious cases without verification

Supporting section 1 of 1
...III. DISCUSSION. This Court recognizes that technology is always evolving, and legal research tools are no exception. But if approached without prudential scrutiny, use of artificial intelligence can turn into outright negligence. Where the danger in violating Rule 11 lies not in AI's utility but in the overconfidence of attorneys who revere it as infallible. There is nothing in Rule 11 that specifically prohibits reliance on AI for research assistance, but Rule 11 does make clear that the signing attorney is the final auditor for all legal

9. **§ 1831. Economic espionage**
18 USCA § 1831

AI document summary
Criminalizing economic espionage involving theft of trade secrets to benefit foreign governments or entities

10. **§ 278h-1. Standards for artificial intelligence**
15 USCA § 278h-1

AI document summary
Authorizing NIST to develop standards for trustworthy AI systems including privacy and security protections for AI datasets

Supporting section 1 of 1
...The Director of the National Institute of Standards and Technology may-- (1) support measurement research and development of best practices and voluntary standards for trustworthy artificial intelligence systems, which may include-- (A) privacy and security, including for datasets used to train or test artificial intelligence systems and software and hardware used in artificial intelligence systems;...

11. **CONFLICTS OF INTEREST ASSOCIATED WITH THE USE OF PREDICTIVE DATA ANALYTICS BY BROKER-DEALERS AND INVESTMENT ADVISERS**
S.E.C. Release No. • July 26, 2023 • Release No. 6353

AI document summary
SEC warning about conflicts of interest and investor harm from AI use by financial firms

Supporting section 1 of 1
...Any risks of conflicts of interest associated with AI use will expand as firms' use of AI grows. These risks will have broad consequences if AI makes decisions that favor

the firms' interests and then rapidly deploys that information to investors, potentially on a large scale. Firms' nascent use of AI may already be exposing investors to these types of risks as well as others. We are concerned that firms will intentionally or unintentionally take their own interest into account in the data or software underlying the applicable AI, as well as

12. Sentinel Ins. Co., Ltd. v. Monarch Med Spa, Inc.

United States District Court, E.D. Pennsylvania. • April 30, 2015 • 105 F.Supp.3d 464 • 2015 WL 1954199

AI document summary
Applying professional services exclusion to bar coverage for negligence claims arising from professional services

Supporting section 1 of 1
...Under Pennsylvania law, pursuant to professional services exclusion in liability policy, insurer had no duty to defend or indemnify insured medical spa operator with respect to negligence and misrepresentation claims arising from liposuction procedures that allegedly caused bacterial infections; alleged injuries arose from the performance of professional services provided at the insured's offices, negligent training and supervision claims concerned work that, even if performed by non-professionals, was an integral part of the professional services

13. Rule 2.6. Artificial intelligence

OH R WARREN PROB Rule 2.6

AI document summary
Local court rule requiring attorneys to disclose AI use and maintain responsibility for AI-assisted materials submitted to court

14. § 4:4. The due diligence process

Intellectual Property in Mergers and Acquisitions • IPMA § 4:4

Supporting section 1 of 3
...The use of technology during the IP due diligence process can continue the trend of streamlining the process. Open communication via tried-and-true channels like email and chat services will help ensure fair and equitable processes, and further integration of AI-powered technologies may help prevent costly delays early in the action. AI can help confirm that data is accurate during the due diligence process by ensuring first and foremost that all information from both sides of the transaction is up-to-date before taking action on that information,

Supporting section 2 of 3
...In any legal endeavor, parties must be vigilant to align their procedures with applicable laws. This is true for IP due diligence with or without the use of AI, but the addition of such technology further increases the need to attentively ensure compliance. Increasingly, AI's possible applications have been expanding in scope to include activities like influencing lawmaking through lobbying, assisting teachers in the classroom, and mitigating costs associated with legal services. (See Nathan E. Sanders & Bruce Schneier, How AI could write our

Supporting section 3 of 3
...While there is no "one-size-fits-all" approach to conducting technology-enhanced IP due diligence in legal business transactions, a customizable, step-by-step approach to harness available technology, including AI, while balancing financial interests and compliance concerns is available. First, these necessary considerations surrounding the actors and the technology before the due diligence process begins needs to be addressed. Next, the application of technology during the due diligence process, while also addressing privacy and compliance

15. APPENDIX 68. DOJ Criteria for Evaluation of Compliance Programs

The Legal Audit: Corporate Internal Investigation • LACII APP 68

Supporting section 1 of 2
...Prosecutors may credit the quality and effectiveness of a risk-based compliance program that devotes appropriate attention and resources to high-risk transactions, even if it fails to prevent an infraction. Prosecutors should therefore consider, as an indicator of risk-tailoring, "revisions to corporate compliance programs in light of lessons learned." JM 9-28.800.Risk Management Process - What methodology has the company used to identify, analyze, and address the particular risks it faces? What features of the company reduce its exposure to

Supporting section 2 of 2
...The extent to which a company subjects its acquisition targets to appropriate scrutiny is indicative of whether its compliance program is, as implemented, able to effectively enforce its internal controls and remediate misconduct at all levels of the organization.Due Diligence Process - Was the company able to complete pre-acquisition due diligence and, if not, why not? Was the misconduct or the risk of misconduct identified during due diligence? Who conducted the risk review for the acquired/merged entities and how was it done? What is the

16. § 1:22. Employing new technologies for ensuring law compliance and monitoring compliance programs

The Legal Audit: Corporate Internal Investigation • LACII § 1:22

Supporting section 1 of 1
...This guide indicates how AI-related risks should be incorporated and managed within the broader Enterprise Risk Management (ERM) standards issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).[19] The guide notes that "AI is like other technological components of an organization and thus can be successfully governed by effective ERM."[20] The guide recommends that companies adopt practices consistent with the COSO ERM Framework in order to identify and manage AI-specific risks in organizational activities. This

17. **§ 197:4.50. Artificial intelligence**
Business Transactions Solutions • BUSTRANSOL § 197:4.50

Supporting section 1 of 1
...Regardless of their level of use of Generative AI, businesses must take steps to mitigate the risks including exercising due diligence and addressing potential AI-related legal liabilities in their contracts with service and data providers and implementing terms of use that affirm that their copyrighted works is not available for training AI models and implementing technical protection measures to safeguard those works from unauthorized use. Business should also adopt artificial intelligence usage policies (see Specialty Forms at § 197:228.50

18. **Artificial Intelligence Issues for Transactional Law Practice**
Philip Nulud, Jonathan Wilson, Roy Hadley, Mitzi L. Hill, Buchalter
JD Supra • 2026 WLNR 8188949 • March 19, 2026

Supporting section 1 of 1
...For transactional lawyers, this approach to patents creates challenges in service contracts and in M&A due diligence. Generative AI and Data Privacy Although data privacy is not a form of intellectual property, AI and privacy law are intertwined in increasingly significant ways. As an initial matter, it is important to understand that entering "personal information" into an AI may be covered by a consumer privacy law such as the EU's General Data Protection Regulation or the California Consumer Privacy Act. If a user is under a legal duty to

19. **Client Use of AI Creates Possibly Discoverable Information**
Esquire Deposition Solutions, LLC
JD Supra • 2026 WLNR 7308379 • March 11, 2026

Supporting section 1 of 1
...The court's discussion of attorney-client privilege in the context of artificial intelligence is not surprising or novel. For several years now, the American Bar Association and numerous state bar regulators have urged lawyers to be extremely

careful when sharing client confidential information with generative AI tools. Matters of professional ethics, and attorney-client privilege, have been thoughtfully raised and discussed at length. In Formal Opinion 512, published July 29, 2024, the American Bar Association's Standing Committee on Ethics

Additional sources

These sources are not cited in your report, but can provide context that may be helpful.

20. Acquiring an AI Company

Practice Note • Maintained • National/Federal

Practical Law resource summary
A Practice Note highlighting issues to consider when counseling a prospective buyer of an AI company. This Note discusses the primary due diligence issues relating to AI and machine learning (ML) and strategies to mitigate or allocate risks in the context of an M&A transaction. This Note is also helpful for AI company targets that seek to anticipate potential issues. In this Note, the term AI company refers to a company involved in the research, development, or monetization of a product or service that is primarily powered by an ML algorithm or

21. Due Diligence: Lending

Practice Note • Maintained • National/Federal

Practical Law resource summary
A Practice Note discussing the legal due diligence process in lending transactions including the parties involved in the due diligence process, the types of due diligence typically conducted in loan transactions, and the issues counsel should look out for when reviewing due diligence materials.

22. Digital Diligence: AI-Specific Diligence and Subject Matter Experts in Corporate Transactions

Article • Law stated as of 12-Dec-2025 • National/Federal

Practical Law resource summary
An Article providing a framework for conducting AI-specific due diligence in connection with a private company acquisition or investment. As AI becomes a key product or differentiator, it also acts as a risk multiplier, presenting unique challenges that traditional IP, privacy, and cybersecurity diligence may not uncover. This Article outlines preliminary scoping decisions based on transaction structure and the materiality of the target's AI development or use. It delves into the substantive areas of inquiry, including a target's proprietary AI

Research Steps

- ✓ Researching federal and state regulatory frameworks governing the use of artificial intelligence in legal practice and due diligence processes
  - Found comprehensive federal regulatory framework through Executive Order on AI safety/security, NIST AI Risk Management Framework, FTC guidance on AI bias/discrimination risks, and SEC warnings about AI conflicts in financial services
- ✓ Analyzing attorney professional responsibility rules and ethical obligations regarding the use of AI tools in client representation and due diligence work
  - Found extensive case law establishing attorney duty to competently supervise AI use, verify AI-generated content, and maintain professional judgment. Courts impose sanctions for blind reliance on AI without verification under Rule 11 and professional conduct rules
- ✓ Examining data privacy and security requirements under federal and state laws for AI systems processing confidential merger and acquisition information
  - Found federal trade secrets protection under DTSA, confidentiality requirements under FOIA exemptions, and AI standards focusing on privacy and security. Limited specific privacy statutes for AI in M&A context beyond general confidentiality protections
- ✓ Investigating liability standards and malpractice exposure for attorneys using AI in due diligence when AI produces errors or omissions
  - Found extensive malpractice liability standards - attorneys fully responsible for AI-generated content, cannot delegate duties to AI, violations of competence and supervision rules create malpractice exposure, with courts imposing significant sanctions
- ✓ Researching disclosure obligations to clients and opposing parties regarding the use of AI tools in due diligence processes
  - Found disclosure obligations require informed consent for AI use, but cases show inputting confidential information into AI platforms waives attorney-client privilege. Limited case law on specific disclosure requirements for AI in due diligence

✓ Analyzing confidentiality and attorney-client privilege implications when using third-party AI platforms for processing sensitive transaction documents

- o United States v. Heppner establishes that using third-party AI platforms with confidential information waives attorney-client privilege because information is shared with third parties and users have no reasonable expectation of privacy

✓ Examining competence and supervision requirements for attorneys utilizing AI in due diligence under professional conduct rules

- o Cassata and other cases establish that attorneys must understand technology they use, cannot delegate supervision duties to AI, and must verify all AI outputs - supervising attorneys who don't understand AI cannot adequately supervise its use

✓ Researching potential securities law implications and disclosure requirements when AI-assisted due diligence affects material transaction decisions

- o Cases show limited specific securities disclosure requirements for AI use in M&A, but general materiality standards apply. Due diligence defects and material omissions remain subject to securities fraud liability regardless of AI involvement

✓ Investigating insurance coverage issues and exclusions related to AI use in professional liability policies for merger and acquisition work

- o Found general professional liability insurance principles with professional services exclusions. Limited specific case law on AI-related exclusions, but traditional professional liability policies may not cover AI errors, requiring specialized coverage evaluation

✓ Analyzing jurisdictional variations in AI regulation and professional responsibility standards across federal circuits and state courts

- o Found consistent approach across federal circuits imposing sanctions for AI misuse, with some state courts implementing specific AI disclosure rules. Professional responsibility standards remain largely uniform, though some jurisdictions have adopted local court rules requiring AI disclosure

Questions for further research

1. **What specific type of AI tools are you considering using for the due diligence process (document review, contract analysis, financial modeling, etc.)?**
2. **What types of confidential information would the AI system be processing (trade secrets, financial data, strategic plans, customer lists, etc.)?**
3. **Are you planning to use third-party AI platforms or internally developed AI systems for the due diligence work?**
4. **What is the approximate dollar value and complexity of the merger or acquisition transaction you are working on?**
5. **Do you currently have professional liability insurance that specifically addresses technology errors and omissions, or only traditional malpractice coverage?**