ARTIFICIAL INTELLIGENCE: FAQS

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What is Artificial Intelligence?

Artificial Intelligence, or AI, is a broad term that covers many different types of computer programs intended to simulate human intelligence and reasoning. Traditionally, computer programs are rule-based and deterministic. That means that when you put 2+2 into a calculator, the calculator's program requires the answer to be 4. These programs cannot make outputs beyond the initial programming. For instance, when you attempt to divide by zero, it returns an error.

AI programs, by contrast, are able to "learn" and make decisions beyond the initial rule-based programming. AI programs make connections and associations between information and create its own rules without being explicitly programmed to do so.

AI programs are not defined as AI by the output of the program, or the data put into the program, but instead by *how* the AI approaches the task at hand. Some examples of AI programs are self-driving cars, programs to analyze medical images, weather prediction models, consumer purchasing recommendations, surveillance or surge pricing models, OCR, voice recognition, translation software, chatbots, virtual assistants like Claude, text generators like ChatGPT, or image generators like Dall-E. The most well-known category of AI is generative AI, which is a program which creates an output in response to a user prompt.

How does AI work?

To understand how AI works, we look at how AI programs are made. First, programmers create a model architecture, which is essentially a flow chart that describes what the computer program should do with the data it is given. Then, the model architecture is given an initial dataset.

This initial dataset can include text, images, voice recordings, profiles on consumers, or statistical analysis. AI companies are often opaque about how much data is needed to develop an AI program, but this first dataset can range from 550GB to up to 45TB of data.

For context as to how much data this is, 550GB is approximately three hundred and seventy-two *million* pages of text, or around eight hundred and fifty thousand images. 45TB of data is around thirty *billion* pages of text, or almost seven hundred *million* images. As a point of reference, the Library of Congress has approximately 74TB of information available on the internet.

Once an AI program has been trained, most AI programs are "fine-tuned" on a second, smaller dataset. Fine-tuning trains the AI program to do the ultimate goal of the program. For instance, if the model architecture and first dataset has taught the AI how to recognize shapes, the fine-tuned dataset teaches the AI how to recognize circles specifically.

In small AI programs, a programmer can look and see what connections, associations, and learning the program has done on a micro-level. However, with larger AI programs, it's impossible for a human to quickly analyze how the program came to make associations and connections because of the sheer quantity of decisions the AI program is autonomously making.

What are the potential legal issues with AI?

The three primary legal concerns regarding use of AI tools:

1) Accuracy of the content provided by an AI tool;
2) Compliance with Intellectual Property laws; and
3) Compliance with state laws and Consumer Data Privacy Protection laws.

Additionally, some states have promulgated laws on AI. California, Utah, and Texas require that any chatbot or AI assistant identify itself as such to consumers. Colorado has enacted a comprehensive AI law which applies to both programmers and users of AI and requires companies which use AI tools to have an AI risk management policy and program which includes an impact assessment. Colorado and Texas both prohibit the deployment of AI tools that discriminate against protected classes.

Can AI lie?

Yes. AI tools can "hallucinate" or, effectively, lie. For generative AI, this means that the program can say false things – like the strawberry problem. For a while, when you asked ChatGPT how many R's are in the word "strawberry," it would confidently tell you that there were only two R's.

The FTC has issued guidance stating that companies which use AI tools must take precautions to prevent hallucinations or errors. Consider what happens when the FTC enforcement agent asks an AI chatbot about the price of embalming. Will the AI tool give the right price, or will it give a range of prices for embalming based on the data that it has been programmed with? Providing the wrong pricing information over the phone to a consumer is a violation of the FTC Funeral Rule, which can cost $53,000.

Are there data privacy concerns with AI?

Yes. Consumer data can be put into a dataset for AI training, both an initial dataset and a fine-tuned dataset. Consumer data cannot be removed from an AI dataset without retraining the entire program from scratch. That consumer data, even once passed through the AI, may be subject to data privacy laws or consumer deletion requests.

Over twenty states have promulgated consumer data privacy laws which require the deletion of a consumer's private data. For example, New Jersey passed a consumer data privacy law in 2024 (New Jersey Data Protection Act (NJDPA) NJ Rev Stat § 56:8-166.4, et seq), which allows a consumer to obtain a copy of their personal data, request the deletion of their personal data, and requires deletion of the personal data at the end of provision of services.

A recent California lawsuit against Eightfold AI, Inc. regarding the collection of personal data on job applicants alleged that the AI violated the Federal Credit Reporting Act and California's Investigative Consumer Reporting Agencies Act. In January 2026, the California AG announced that it will investigate AI pricing models and surveillance pricing for violations of the California Consumer Privacy Act. A recent federal court ruling in New York held that documents which were sent through an AI program

were not protected by attorney client privilege because the AI model it was sent through was not a closed-model AI.

Are there intellectual property concerns with AI?

Yes. AI programs require an immense amount of data to train on, and it's nearly impossible to get that quantity of data without violating intellectual property rights.

Many companies have sued AI firms for copyright infringement to date. AI company Anthropic settled a recent lawsuit for $1.5 billion in September with authors who alleged that nearly half a million books were illegally pirated to train chatbots. In June 2025, Disney and Universal sued the AI firm Midjourney for copyright infringement, alleging that Midjourney took copyrighted works to train its AI image generator. The New York Times has sued OpenAI and Microsoft, Sony Music Entertainment sued and settled cases against AI song generator companies Suno and Udio, and Getty Images has sued Stability AI. Recently, a federal bill, called the Transparency and Responsibility for Artificial Intelligence Networks (TRAIN) act, was introduced which would provide a mechanism for writers, musicians, artists, and other creators to determine if their intellectual property was utilized in training AI programs without their permission and get compensation for that use.

Intellectual property does allow the use of copyrighted materials under the fair use doctrine in certain contexts. The fair use doctrine allows limited use of intellectual property without permission by its owner. Two courts in 2025 have held that AI training was transformative and protected under fair use, but the holdings in both cases were crafted carefully to state that it was possible for AI datasets to infringe intellectual property rights. Furthermore, another court held that non-generative AI programs did not qualify for fair use and was therefore infringing.

Until this area of the law is more settled, generative AI tool use should be carefully tailored to take into account intellectual property rights.

Can an AI be biased or discriminatory?

Yes. AI tools are reflections of their dataset and machine learning. Bias or discrimination in a dataset can be reflected and amplified by an AI tool which uses that dataset. This means that AI tools which engage with consumers can potentially reflect that bias or discrimination.

This is particularly concerning in an employment context. An AI tool which is used to assist with filtering resumes, performing interviews, or hiring employees is capable of engaging in bias or discrimination which could violate federal law or state law. Texas and Colorado have put forwards laws regarding discriminatory AI use. Additionally, the FTC has stated that disclosures about potential bias in an AI tool are not enough, and that companies must take all reasonable precautions to avoid bias prior to an AI tool being utilized.

Who is responsible for an AI tool?

The company which uses an AI tool is responsible for the AI tool's actions. The FTC has issued guidance that companies are responsible for the actions of their chatbots. Air Canada's AI chatbot gave wrong information to a consumer about bereavement fare pricing, and the court required Air Canada to honor the prices that the chatbot provided. Chevrolet's website had an AI chatbot that a consumer was able to persuade to sell him a 2024 Chevrolet Tahoe for one dollar.

Lastly, a lawsuit was recently filed in New York against AI Holdings Corp. against the AI company for producing explicit deepfake images, and the court will rule on whether the user or the company is liable for the actions of the AI.

Can AI sell funerals?

Not yet. For now, funeral directing is still a licensed profession which requires a licensed human being to participate in the arrangement process. AI tools should be limited to only the tasks that unlicensed administrative staff can legally perform.

Can I use AI legally?

Yes! AI tools have their place to promote efficiency and help workers become more efficient. However, we encourage all users to be educated on how each AI tool works, to be cautious, and to engage in best practices.

What are the best practices when using AI tools?

1) **INFORM.** Consumers should be informed whenever they are interacting with an AI tool. This includes: AI notetakers during arrangement conferences or meetings, chatbots or AI assistants that communicate with consumers directly without human interaction, or AI tools that organize and sift through consumer accounts and data. Companies with AI tools should have appropriate disclosures to ensure consumers know about AI tool use and obtain consent from consumers for use of these AI tools. Consumers should be informed when their data may be utilized by an AI tool.
2) **CONFIRM.** AI tools should not be able to make decisions without the involvement of human beings, such as entering into contracts. AI tools should be checked routinely to ensure they provide correct information, especially when communicating directly with consumers. AI tools should be taken "with a grain of salt" and checked over after each use. When looking at whether to implement an AI tool, users should as the AI provider if the AI tool is in compliance with consumer data privacy laws and intellectual property laws.
3) **AUDIT.** Companies which use AI tools should audit them periodically for accuracy of information, tone, intellectual property infringement, and bias. Companies should ensure that any AI tool which communicates with a consumer is providing accurate information, especially with regards to pricing for funeral services as required by the FTC Funeral Rule. Companies should also routinely audit information that is being provided to the AI and ensure that such data is not in violation of any consumer data privacy laws or intellectual property laws. Companies should perform routine audits and updates to ensure that the AI tool uses industry standards to maintain security and protection against bad-faith actors.
4) **BE HUMAN**. Keep human beings involved with AI tools. Give consumers the option to speak with a live person instead of an AI tool or chatbot. Have a human being check over information provided by AI tools, both internally and externally. Have human beings involved in any contract or agreement with consumers. Keep licensed humans involved in tasks that require licensure.