

# Artificial Intelligence (AI)

## Interim Guidance

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from the AI Rapid Response Team at the National Center for State Courts

## AI and the Courts: Platform Considerations

As courts experiment with and use various AI tools, it is important that leaders understand how information and data may be utilized by the AI technology.

### Data Governance Plus Applies

AI tools are similar to other technologies in that it is critical to understand the sensitivity of data that will be entered, who will have access to it, and what will happen with it. The same considerations apply for any new data generated by the AI.

### New Terms but Basic Contracting Principles Still Apply

As with any technology it is important that all contractual terms and conditions are carefully reviewed and understood. Be sure to also review terms and conditions buried in click-through agreements. Some new key terms include:

#### Prompt

The user input that directs AI content generation

#### Generated Content

The output produced by AI in response to a prompt

#### Training Data

The dataset used to educate AI models

#### Model

The trained algorithm that generates content

#### Fine-tuning

The process of refining a model for particular outcomes

Key considerations also include whether any prompts or generated content will be available to other users of the product, the technology provider, or any third parties; how such data is stored; and if any such data will be utilized to train and fine-tune the model.

What is acceptable or not will depend on the sensitivity of the data for the specific task as well as how the AI technology was developed (for example AI built for specific legal use).

### Take a Team-Based Approach

Given the novelty, complexity, and rapid pace of innovation, a team-based approach is recommended that includes representatives from IT, Legal Counsel, the Bench and Business/Operations to evaluate AI technologies from all perspectives and understand how they will be used. It should be clear who in the organization has authority to agree to any terms and conditions.

### Also Be On the Lookout For

#### Terms of embedded/required services

Some Generative AI technologies, such as Google Gemini, require that users have a Gmail account to access the technology, requiring evaluation of additional terms and conditions.

#### AI-related changes to terms and conditions

As existing technologies commonly utilized by courts (e.g. Zoom or Adobe) incorporate generative AI into their products, they may modify terms and conditions. These terms and conditions should be continually reevaluated, and any long-term costs of a free trial or preview should be understood.

#### Marketing Hype or Embedded AI

The label “AI-enabled” may be used loosely in marketing to sell a product or conversely AI may be buried in a product and not disclosed. Rigorous evaluation is required to discern genuine AI capabilities.

### In Closing

As with any technology, understanding terms and conditions and taking a team-based approach to evaluating AI-related technologies are prudent steps in ensuring courts can safely benefit from the use of generative AI. See the “Getting Started” Interim Guidance publication for advice on experimenting with AI tools.