




Founder Focus: FAQs for Start-Up Success

Using AI – Legal Considerations for Start-Ups

Summary

As artificial intelligence (AI) continues to transform the business landscape globally, many businesses, not least start-ups, are leveraging these innovative technologies to gain competitive advantages. This article will consider some legal considerations businesses should be aware of when utilising AI solutions in their business. The rapid evolution of AI combined with its plethora of potential use-cases means that there are a host of legal challenges which all businesses must carefully navigate to ensure compliance and protect their businesses.

In particular, the following key areas should be considered when adopting AI solutions:

-  **1. Data protection**
-  **2. Intellectual property**
-  **3. Contractual obligations**

1. Data protection – There is no AI without data. AI relies on huge amounts of data to train it. However, this can pose issues under UK GDPR where personal data is involved. As with any processing of personal data, businesses should have a clear lawful basis if processing personal data for use in AI systems and should ensure processing is carried out in line with the principles of the UK GDPR:

- If consent is obtained for a specific use-case, then such consent cannot be relied upon for another use-case (the “purpose limitation” principle). For example, if personal data was collected from individuals for the purpose of sending marketing materials, then this lawful basis cannot then be relied upon to use that personal data for training AI systems.

- Similarly, where there is a lawful basis for collecting personal data to train AI models, unnecessary data collection should be guarded against so that only the data strictly necessary for specific objectives is collected (the “data minimisation” principle).
- Caution should also be taken to protect the accuracy of personal data, for example by ensuring that there are robust mechanisms in place for the correction of inaccurate personal data (the “accuracy” principle). The UK GDPR prohibits solely automated decision-making that may have a legal or similarly significant effect on individuals, for example automatic refusal of online credit applications or recruitment without human intervention.

While the law and related guidance relating to AI and personal data is still developing (see ICO guidance [here](#)), we have highlighted some key practical tips for start-ups when tackling the use of personal data in the AI space. This is by no means exhaustive and specialist advice should be sought to ensure compliance under the UK GDPR.

Practical tips

- 1. Carry out Data Protection Impact Assessments** – this can help identify and minimise the risk of non-compliance with data protection legislation.
- 2. Organisational measures to help comply with fairness** – AI systems can create new security risks, so consider carrying out a security risk assessment which includes an up-to-date inventory of AI systems to ensure there is an understanding of where potential incidents could occur. In particular, businesses should take care to ensure that they are complying with the data minimisation principle, for example by ensuring necessary storage restrictions are in place.
- 3. Up-to-date policies including privacy notices** – while there is no specific legal requirement to publish an AI policy, you may want to consider updating any general privacy policies to reflect any use of AI.

2. Intellectual property (“IP”) – The legal landscape surrounding AI-generated IP remains complex and continues to evolve. One particular aspect of this is the ownership of AI-generated output. This is a murky area because even if the terms governing the use of the AI system (e.g. ChatGPT) state that any output shall be owned by the user providing the prompt, it is unclear whether the AI system developer (e.g. OpenAI) actually has the right to assign such ownership in the first place, given that many of the works used to train the AI system are likely subject to copyright. There are associated risks for businesses relying on AI-generated output here. For example, if a business uses ChatGPT to help write code which underpins one of its core products, it is important that the company has the necessary intellectual property rights in the code to allow it to sell its product without risk of third-party IP infringement claims. However, given the current unclear legal position, it may not be possible to have such comfort. There will likely be legislative intervention to clarify the position at law in this area, given that current laws were not drafted with AI-generated works in mind.

3. Contractual obligations – Finally, when utilising AI solutions, users should stop and think about whether they have the right to input certain data into AI systems to avoid being in breach of their contractual obligations. For example, if a business has a subscription to an online news outlet, the terms and conditions of that subscription may state that their content cannot be used in AI models. Clients may also prohibit the use of AI by their suppliers in services provided to them. Beyond content restrictions, there is a risk of breaching confidentiality obligations when sharing information with AI systems. Before integrating AI into any service, businesses should thoroughly examine their contractual terms and assess the specific information being used to prevent inadvertent contractual breaches.

Final thoughts

While there are many exciting use-cases involving AI, businesses should take the time to consider the associated risks before diving in headfirst. As the law is still catching up, care should be taken to stay abreast of the evolving regulatory landscape in this area.

**Any questions?
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