

# AGENDA

## Companies Ignoring AI Are Doing So ‘At Their Own Peril’

While there are many risks involved with AI, experts warn that one of the biggest risks is being left behind

By Nick Muscavage | April 10, 2023

A recent open letter from nearly 2,000 researchers and executives, including Elon Musk, called for a “pause” on the development of new artificial intelligence technology. However, sources told Agenda that “the train has left the station” on AI. Given its wide array of uses, boards should be aware of AI’s nuts and bolts to minimize potential risks that could materialize from leveraging the machine mind.

As companies race to incorporate new forms of AI, like ChatGPT, into their businesses, experts say board members should familiarize themselves with the technology, which could include delegating AI issues to existing board committees, such as audit or technology, or even forming a new committee focused on AI.

Brad Fisher, co-founder and CEO of AI consulting firm Lumenova and a retired KPMG partner, said that for companies planning on using AI in their businesses, there are five main risks for business leaders to consider: The accuracy of the AI; whether it’s using the correct data; whether it has bias; whether it’s subject to cybersecurity threats; and if it is explainable.

“These are the five questions that, aside from ChatGPT, [companies] want to know,” he said. “And interestingly, when it comes to ChatGPT, you can’t answer any of these.”

ChatGPT is a form of generative AI, a type of AI tool that use prompts to provide desired outputs. Generative AI can be “absolutely transformational” for businesses, he said.

Indeed, one of the biggest risks facing a company is getting left behind, according to Fisher.

“My advice to anybody — even if they’re a little company, and even with my colleagues from my last company — is, ‘Look, we need to think about how we can use this broadly to make our business better,’” said Fisher, who was previously the U.S. leader for technology consulting at KPMG.

Avi Gesser, co-chair of law firm Debevoise & Plimpton’s data strategy and security group, said companies exploring the use of AI are running pilot programs before rolling out AI features to fully understand the risks.

“AI has lots of beneficial commercial uses, but it can also create reputational risks, operational risk and legal risks,” he said. “For generative AI, these include privacy, IP, cybersecurity and contractual risks if confidential data is being shared with the tool. If these tools are being used to generate information that is being shared with customers, or is being used to make decisions about customers, you also need to consider bias, transparency and quality control risks.”

Some of the more specific legal risks, he said, include the possibility of confidential information or trade secrets being shared through generative AI, as well as regulators’ scrutiny. The Federal Trade Commission, he added, has warned companies “not to exaggerate what their algorithm can do” and announced that it would pursue false advertising claims related to AI.

While companies planning on using AI do not necessarily need an AI expert on their boards, “directors should probably consider having AI risk and governance as a periodic board agenda item,” Gesser said.

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**Eric Talley**

Columbia Law School

However, some companies may take other routes when overseeing AI risks, he said.

“AI can reside with the full board; an existing committee, like audit or technology; or a newly formed committee dedicated to AI,” Gesser wrote in an email. Additionally, other companies “have decided to place responsibility over AI with whichever committee is responsible for cybersecurity.”

Steven Tiell, a data ethics expert who serves as a fellow at the Atlantic Council, and Reid Blackman, a researcher and author who studies AI ethics, have both published articles in the Harvard Business Review arguing that organizations should be forming AI ethics committees — although not necessarily at the board level — to manage and oversee these issues.

However, if a board is concerned that it does not have the necessary expertise to oversee AI opportunities and risks, Gesser said it should consider having some board members receive AI training.

“They should also consider assigning management responsibility over AI risk and regulatory compliance to a particular member of management or a management committee, to help facilitate proper oversight,” he added.

## **AI's Applications**

Although AI has been used by corporations since as early as the 1980s, companies more recently have been finding new ways to harness the technology as it continues to progress.

Eric Talley, a professor at Columbia Law School who is researching machine learning's role in corporate valuation, said that he believes more law firms and businesses may begin relying on AI to assist in mergers and acquisitions.

While he noted that AI will undoubtedly replace some jobs, there are other jobs that will not be able to be replicated through AI, particularly those that seek to answer novel questions that have not been addressed before, such as attorneys' arguing a case without precedent.

Board members can also probably rest assured, he said.

“Just about every state has a requirement that a board of directors has to have at least one human,” he said. “By law, AI can never replace a board of directors.”

However, Talley said companies that are ignoring the emerging capabilities of AI are “doing so at their peril.”

“And that's both in terms of not seeing hazards that are coming down the road and also failing to see very powerful opportunities that are coming down the road.”

For example, as companies increase their focus on diversity, equity and inclusion, one area in which AI can help companies is in making the recruitment process more equitable.

Orly Lobel, a professor at the University of San Diego School of Law and author of “The Equality Machine: Harnessing Digital Technology for a Brighter, More Inclusive Future,” acknowledged that while there are many cynics who fear that the increasing role of AI in the corporate space could result in biases, the technology can be successfully used to achieve greater diversity in the workplace if used correctly.

Lobel, who serves as the director of the Center for Employment and Labor Policy at University of San Diego, studies discrimination and racial and gender pay gaps and said that for years there's been frustration on the part of employers and employees because corporations express a will to increase diversity “but there's been a lot of stagnation.” Lobel's research has looked at how corporations are introducing algorithms for hiring, pay decisions, promotions and assessing performance.

She has found that “at every stage, we can use algorithms to detect discrimination, to detect disparities,” she said.

“But more than that, what machine learning is really being revolutionary about is seeing things that are kind of unseen to the human eye,” she added. For example, machine learning has been able to reveal biases in job advertisements that could keep certain demographics from applying.

“Whether it’s the highest executives all the way to lower-skilled workers, it turns out that even the way that the job ad is described — so, things that really shouldn’t make a difference and we wouldn’t think that they make a difference, like what fonts you use, do you use bullet points, what kind of language — turns out really matters to who applies and how diverse the applicant pool will be or how narrow it will be,” she explained.

Job posts that are phrased in sports jargon or military analogies can deter certain demographics, she explained. AI tools are able to examine applicant pools from differently worded job advertisements and identify hidden biases.

Incorporating AI in job search functions “rather than just using humans in the decision-making” can help ensure human biases are screened out of the process, she said.

Meanwhile, some companies, such as legal and business solutions provider Integreon, have been exploring ways to incorporate generative AI such as ChatGPT into its services, according to Integreon’s senior vice president and global director of operations, Deeanna Fleener.

Companies hire Integreon to provide legal services, such as contract work and document review, she said. Integreon serves clients across all industries but deals heavily with companies operating in the financial services, financial technology and pharmaceutical industries.

“Where I see [generative AI such as] ChatGPT coming into play is as the background technology for new and improved AI tools that we will certainly use. So, things like using the ChatGPT functionality for predictive coding or continuous active learning, using the way that ChatGPT finds information and provides back information. I see that as something that we’ll utilize in managed docs review, but also in contracts and also in back-office administrative support.”

Incorporating generative AI into Integreon’s services could also help reduce costs for customers, she added.