

Reframing Legal vs. Compliance Roles in the Context of AI and Technology

The Shifting Boundaries Between Legal and Compliance in the Age of AI

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Legal and Compliance serve distinct but complementary functions

LEGAL DEPARTMENT

- Advises the business on legal risk and regulatory interpretation
- Manages litigation, investigations, and regulatory responses
- Protects attorney-client privilege and work product
- Structures transactions and contractual relationships

COMPLIANCE FUNCTION

- Designs and implements the compliance program
- Conducts training, monitoring, and internal reporting
- Manages policies, procedures, and risk assessments
- The DOJ ECCP evaluates whether compliance operates with genuine authority and resources

Why AI Changes the Equation

AI creates challenges that neither Legal nor Compliance can address alone

SPEED AND SCALE

- AI decisions happen in milliseconds across thousands of transactions
- Traditional review cycles cannot keep pace with automated outputs
- The DOJ now expects companies to assess AI risks in real time, not just at deployment

CROSS-FUNCTIONAL RISK

- AI risk spans IP, privacy, employment, antitrust, and consumer protection simultaneously
- No single department holds the full picture of exposure
- The ECCP asks whether compliance has adequate data access to monitor AI systems

REGULATORY PRESSURE

- The EU AI Act imposes risk-tiered obligations with significant penalties
- DOJ prosecutors now evaluate whether companies govern AI and emerging technology effectively
- State laws like the Colorado AI Act require impact assessments for high-risk AI decisions

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Legal's Evolving Role in AI

From reactive counsel to proactive AI governance partner

TRADITIONAL RESPONSIBILITIES — EXPANDED

- Advise on AI vendor contracts, including liability allocation for AI outputs and data training restrictions
- Manage privilege considerations when AI tools process confidential information
- Navigate multi-jurisdictional AI regulations, from the EU AI Act to state-level disclosure laws
- Assess litigation exposure from hallucinations, bias, and IP infringement in AI outputs

NEW FRONTIER

- Participate in AI governance committees alongside compliance, IT, and business units
- Evaluate whether AI systems create discoverable records that affect privilege strategy
- Advise on regulatory responses to DOJ inquiries about the company's AI risk management
- Help define the boundary between AI-assisted decisions and fully autonomous actions

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Compliance's Evolving Role in AI

From program management to technology oversight and product interaction

PROGRAM DESIGN FOR AI

- Build and maintain a complete AI inventory, including third-party vendor tools and embedded AI
- Conduct risk-tiered assessments: tools that assist vs. inform vs. decide vs. act autonomously
- The ECCP expects compliance to have direct access to relevant data sources, including AI system logs
- Design acceptable-use policies covering what data can be input, what AI can decide, and what requires human review

MONITORING AND PRODUCT TEAMS

- The DOJ now asks how compliance interacts with product and operational teams deploying AI
- Monitor AI outputs for bias, drift, and noncompliance on an ongoing basis, not just at launch
- Establish whistleblower channels specifically for AI concerns, with protections the ECCP now scrutinizes
- Ensure compliance has the technical resources and expertise to evaluate AI systems independently

Where Legal and Compliance Must Collaborate on AI

Neither function can govern AI risk in isolation — collaboration is a regulatory expectation

AI Governance Committee

Joint oversight body with Legal, Compliance, IT, and business stakeholders setting policy and risk tolerance

Incident Response

Coordinated playbook for AI failures combining Legal's litigation readiness with Compliance's investigation protocols

Regulatory Strategy

Unified approach to the ECCP's expectations around AI risk management, data access, and tone from the middle

Vendor Due Diligence

Combined review of AI vendor contracts for legal liability, data handling, and compliance program integration

Board Reporting

Consolidated reporting to the board on AI risk, controls effectiveness, and regulatory developments