

Strategic Perspectives

Optimism, caution for integration of generative AI into legal profession abound at AALL 2023

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Session participants discussed how law librarians and knowledge management (“KM”) professionals could best integrate new AI tools such as ChatGPT into their institutions—and what not to do.

Artificial intelligence was a major topic at this year’s [American Association of Law Libraries \(AALL\) Annual Meeting](#) held in Boston on July 15-18. Sessions focused on AI and its use by legal professionals, including those in legal education, law firms, and the judiciary. Speakers and panelists discussed the potential opportunities presented by AI, and generative AI (“Gen AI”) in particular, as well as the potential pitfalls of using these emerging technologies, and the necessary guardrails to keep information safe and ensure accuracy.

The first of these sessions kicking off AALL 2023 on the topic of Gen AI was “Exploring the Opportunities and Risks of ChatGPT in the Legal Industry,” moderated by Ken Crutchfield, Vice President & General Manager of Legal Markets at Wolters Kluwer Legal & Regulatory U.S., and with panelists Vishal Agnihotri, Senior Director of Knowledge and Innovation at Alston & Bird, Courtney Toiaivao, Director of Research Services at Holland & Knight, and Jean O’Grady, Director of Research at Venable LLP. The participants during this July 16 session first discussed the basics of

Gen AI and ChatGPT in particular, a product of the company OpenAI. Crutchfield explained that ChatGPT was a type of generative AI, meaning it was designed to generate new text with human-like usage. It can respond to a question by creating an answer based on the words its training suggests are most likely to occur. In essence, it functions like the predictive text in a phone messaging app, but with data at a massive scale informing its predictions. Tying the discussion to the Boston venue, Crutchfield told the session attendees that the large language models provide answers to questions that are often times “wicked good.”

Although different applications of AI have been in development for many years, with some already deployed, the seemingly sudden release of ChatGPT in November 2022 catapulted AI into the public consciousness. The capabilities of ChatGPT in terms of human-like language processing and output leap-frogged previous products available to the public, noted Agnihotri. ChatGPT is able to understand human syntax, a major development, while natural language processing was just not very strong before.

Now, there are many types of text-based Gen AI besides ChatGPT, including Bing, Bard, and Copilot, as well as Gen AI tools that create images. Different products might be better for different tasks. For

instance, it was suggested that Bard, based on Google’s search engine, might be better at fact-checking, since it is more current. ChatGPT was seen as a good model for creating summaries of publicly-available information. Agnihotri cautioned that research is probably the least significant application of ChatGPT—in fact, people should not use it for that.

Text-based Gen AI products rely on large language models (“LLMs”), huge databases of text, currently drawn primarily from the internet. Gen AI products are trained on such datasets, and they draw on the connections and probabilities that they learn from them in order to create text in a human-like way. They are not designed to search out a factually “correct” answer or even a most common answer. Instead, they generate a human-like answer based on the probability that certain words will follow others in response to a question that contains certain words. Consequently, Gen AI is prone to “hallucinations” – giving an answer to a question that is not factually correct.

In a panel on July 17, “Generative AI and KM: A New Paradigm?,” with moderator Zach Warren, Technology and Innovation Insights Lead at Thomson Reuters, and speakers Harris Crooks, Director of Knowledge & Resource Services at Stroock & Stroock & Lavan LLP, Andre Davison, Executive Board Member of the AALL, and Leanna R.

Simon, Director of Research and Knowledge Management at Honigman LLP, the panelists emphasized that the framework of ChatGPT, developed by OpenAI, is currently the base for every other Gen AI product. They all start with the foundation created for ChatGPT and build on that framework. Crooks noted that other companies are thus able to take advantage of the work done by OpenAI, work that cost hundreds of millions of dollars.

A key to keep in mind, the panelists noted, is that ChatGPT is only designed to create an answer that sounds right – it is not designed to find the correct answer.

Opportunities

Despite the limitations of Gen AI, speakers still found plenty of potential opportunities. They did, however, urge proceeding with caution.

Toiaivao encouraged the crowd, as experts in research, to take advantage of the huge opportunity and not be afraid of the new technology. She added that understanding the risks of Gen AI will enable researchers to better use the technology. Through testing, researchers can learn to get the best output, she added.

O’Grady also pointed to tremendous opportunities for law librarians because they have an understanding of information quality. “We are the masters of information quality.” This knowledge gives them an important role in using Gen AI for legal research. O’Grady said that she did not see any end to the level of training that will be needed with the roll-out of Gen AI.

As for proceeding with caution, law firms were encouraged to consider establishing committees to set out ethical standards and to ensure transparency in the use of Gen AI.

Letters and emails. Agnihotri noted that the strength of the product is its text creation. Consequently, it can be used like a template, but with added flexibility. For example, Gen AI could be used to create a client alert letter based on a particular new law, which the user provides. The style could then be adjusted to match the lawyer’s own, again by providing a sample. The client’s information, however, should be inserted by the lawyer directly and offline, after the AI has provided a draft.

Research is the least significant application of ChatGPT—in fact, it should not be used for that, Vishal Agnihotri cautioned.

The panelists in “Generative AI and KM: A New Paradigm?” also emphasized the utility of Gen AI for lower-stakes, non-legal uses. Simon, for example, highlighted the potential time-savings of using it for email drafting. A task that might take 30 minutes could be reduced to five, for example, saving both the lawyer and the client time and money.

All the participants, however, noted the importance of checking the output of the AI. The ultimate responsibility for the accuracy of the product would rest with the lawyer.

Summarization. Davison emphasized the strong potential to improve overall efficiency and productivity through the use of Gen AI. The panelists noted that it could be used effectively to summarize complex, public documents, like regulations. This could potentially save lots of time, reducing the hours or even days long process of combing through voluminous government documents. However, to the extent a close

reading might be needed, a human would still need to review the document, as there is no guarantee at the moment that the summary produced by Gen AI would be complete, accurate, and error-free.

Routine documents. Another potential future use that the panelists discussed was drafting long documents that are relatively routine. They noted that intellectual property lawyers have some of the best insight into what AI can and cannot do, and are exploring possibilities. For example, there is a strong potential for the use of Gen AI in patent drafting, because it is difficult and time consuming, but clients do not want to pay a lot for it because it seems routine. In a case like this, firms would need a product that had the creativity to take the technical information and use it to draft a patent application, but without any mistakes or hallucinations, or any data leakage risks. This would require the AI to be running in a confined environment, and would not work with ChatGPT.

Legal products incorporating Gen AI. Outside of the use of publicly available Gen AI products, the AALL conference featured several new applications of generative AI for the legal market. Products were discussed that incorporate generative AI, but use it to search and extract information from particular databases, in order to protect against hallucinations and provide reliable, factual answers. These include Lexis+ AI and Casetext’s CoCounsel, as well as Microsoft’s CoPilot, although this is not specific to the legal industry. Panelists in the sessions discussed the potential to use the natural language comprehension and generation capabilities of Gen AI to search in a defined, constrained, reliable database, finding it to be the most promising aspect of AI for the legal market.

An important distinction was made in these discussions between extractive AI versus

generative AI. Extractive AI, something that has already been in development but has not reached the high profile that Gen AI has over the last months, is designed to be a fact and issue finder. It mines large data sets to optimize results, and to find the factually “correct” answer, or a selection of possible answers. Generative AI, on the other hand, can create new content that is human-like in its vocabulary and syntax. By combining the two, companies could potentially produce a tool that could understand natural language questions, search legal databases to determine the correct answer, and give that answer in natural language, with citations for confirmation.

While this offers a tantalizing promise of the future of legal research, providers were not able to give a complete guarantee that their products were hallucination-free, or that the answers provided were always the best or only answer. In fact, it is not yet clear what the hallucination rates are, or how this would even be calculated. Although the AI in these products is not supposed to create answers from outside the specified database, there is not yet a surefire way to confirm it is complying.

Pitfalls

“Hallucinations.” The pitfalls of using Gen AI are now well-known in the public sphere. The high-profile case of a New York law firm, in which a lawyer used ChatGPT to research and draft a brief, is now infamous. In that case, one lawyer used ChatGPT to find cases pertinent to a personal injury lawsuit against an airline. ChatGPT happily provided several cases, complete with citations, all of them fabricated. The brief was submitted by another lawyer at the firm. When opposing counsel cautioned that they could not find the given citations, the lawyers doubled-down, asking ChatGPT to confirm that the cases were real. ChatGPT said yes, and stated that the

cases were available on Lexis and Westlaw. Apparently, the lawyers reported this to the court, again without checking themselves. When the whole situation came to light, the lawyers were **sanctioned** by the court, they lost their case, and the legal world could no longer claim ignorance about the problem of Gen AI “hallucinations.”

“[Law librarians] are the masters of information quality,” Jean O’Grady said.

As discussed above, Gen AI is designed to produce human-like verbal responses to natural-language questions – it is not designed to give the factually “correct” or “true” answer to an inquiry. Because it generates its answers based on a predictive method, it will potentially create a combination of words that look true, but are not at all—such as realistic looking case citations that it has created based on how real case citations look.

All of the panelists emphasized this point many times, and stressed the importance of not using “open” Gen AI products, such as ChatGPT, for research purposes. Crooks, for example, noted the important distinction between “open” and “closed” Gen AI, such as some of the products being developed to allow database searching. While closed Gen AI has a lot of potential, open Gen AI gives you “dirty information,” both because it is generating its answers based on probability rather than factual sources, and because the data that it was trained on includes many untrustworthy sources of information.

But this pitfall also could be an opportunity for law librarians. The fact that the proliferation of AI-generated text may have bits and pieces of hallucinations makes

the job of researchers and the information from research databases “all the more precious, all the more premium,” Agnihotri reminded attendees.

Data security. Another very important risk in the use of Gen AI is data security. The panelists noted that open Gen AI products are not secure. Information entered into a query might be stored in the system and used as future training material, could be vulnerable to hacking, and could even be regurgitated to a future user. Consequently, the panelists cautioned, client data should never be included in a prompt to Gen AI. Neither should proprietary information, including client patent or trade secrets information, or firm data.

Another issue that was raised was a growing problem regarding law firm insurers. The use of Gen AI products, and ChatGPT in particular, is an issue that they have been raising with law firms that they insure. The insurers want to ask new questions and get guarantees that these products will not be used. This could lead to increased insurance rates for firms.

Crooks noted that there is a real issue around liability. At the moment, as seen in the case in New York, liability for mis-using Gen AI rests with the law firms. However, in the future, when vendors release a product that is meant to address some of these issues around hallucinations and so on and they take on that risk, then firms may be more willing to adopt these technologies. Once one firm does that, there will likely be a domino effect.

“Normalizing mediocrity.” Crutchfield asked his panelists about the particular risks that they are concerned about. Toiaivao noted that users have to be comfortable with some amount of risk. Large language models can “normalize mediocrity,” because of what they’re

trained on. It will be up to human users, such as law librarians, to improve the final answers through the queries that they use.

O'Grady noted that she recalled individuals decades ago lamenting that some online practice tools would normalize mediocrity as well. She suggested that perhaps Gen AI is just amplifying problems that have always existed, in terms of views of and relationships to new research and writing tools.

Court rules on AI usage. Multiple panelists were also concerned about the recent proliferation of anti-AI rules being set by the courts. "We have judges somewhat overreacting, creating possibly overbroad rules against the use of AI," remarked O'Grady. "Some of this is happening way too soon."

Some judges, they argued, are creating rules that are too broad, by asking for affirmations that no AI was used in the preparation of a brief, for example. AI is so embedded into so many online tools that it would likely be impossible for a lawyer to draft something on a computer without AI being involved to some degree. The lawyer may not even be able to know for sure whether AI was involved or not, and so would not be able to sign such a certification. Even though Gen AI might not have been used, this could still create serious issues for conscientious attorneys.

Other courts have barred only filings drafted by named generative AI products, unless they have been checked for accuracy by a human.

Bias. Another issue that was discussed was bias in the underlying training data, and how this might impact the output of Gen AI products. Attendees raised this multiple times in the Q&A sections, but no concrete answers could be given. While developers

are ostensibly working on this issue, it is not yet known exactly what impact this will have or how to combat it.

FTC investigation of OpenAI. In the panel "Generative AI and KM: A New Paradigm?," an audience member asked about the Federal Trade Commission's investigation of OpenAI, and the panel's thoughts on it. The FTC sent a demand for records to OpenAI in mid-July, requesting information about how it plans to address risks of AI. Some questions seemed to center around potentially defamatory statements made by ChatGPT, as well as unfair or deceptive practices, and security breaches. Crooks opined that the investigation could be a good thing, because it could allow the setting of baseline rules. "It's the wild west out there right now," he noted, adding that while most of those participating in the AI race are probably well-meaning, some rules would slow down any bad actors.

Safeguards and Advice

Encouraging AI adoption. Given all of these potential pitfalls and dangers, a common theme in the sessions was the question of how knowledge management professionals can build trust for AI in their workplaces. The panelists emphasized that lawyers and clients are very interested in ChatGPT and are already actively exploring it. Rather than sit back and wait, knowledge management specialists would benefit from jumping out ahead of this new technology and learning as much as possible about how to use it responsibly. Toiaivao noted that LinkedIn has partnered with Microsoft, for example, to offer a free certificate for a training in Gen AI, titled "Career Essentials in Generative AI by Microsoft and LinkedIn," and that other companies offer similar trainings. Gen AI is a development on par with photography, she noted. It is something that is going to have an impact

on how the legal industry functions. She encouraged people not to be afraid of this new type of AI, but instead to learn as much as possible about it.

Davison advocated for a proactive, multi-step process to demonstrate how Gen AI could be useful for a workplace, based on the "Plan-Do-Study-Act" model. A knowledge management professional could practice on his or her own, or within a firm-authorized system. He or she could identify a use-case that could be demonstrated effectively. Essentially, one could start with a proof of concept and introduce it in "baby steps," such as a quality draft email or summarization of a recent case decision. Simon, on the other hand, noted that, despite the potential opportunities, it could be worthwhile to wait. If a firm or institution were to wait until the second or third generation of these products, it is likely that a lot of the issues would have been worked out.

Job security for KM professionals. The impact of Gen AI on KM professionals was addressed in a number of sessions. Warren asked the panelists in the July 17 session whether job security should be a concern. They felt emphatically that generative AI was not a threat to the knowledge management field in general. They stressed that getting on top of this new tool was in fact the key to job security. Not adapting would be the factor that caused people to lose their jobs. Warren predicted that, if someone is not using the new technology, he or she will be replaced by someone who does.

O'Grady also felt that, rather than being a source of insecurity, this new tool could make law librarians and KM professionals even more in demand. She noted that law librarians are experts at evaluating the quality of a source, and that that ability would be helpful in using ChatGPT properly and not accepting its output at face value. She added that the fear and uncertainty around Gen AI

reminded her of some of the same concerns she saw when the internet first became available, with internet use forbidden at some law firms. She noted that this development is just the tip of the iceberg, and no one knows for certain what will come next.

Agnihotri also emphasized the important role that education will play with Gen AI and how necessary it is. She noted that librarians are the original prompt engineers, and she saw a lot of similarities with the original online searches. As in those early days of the internet, she predicted, law librarians will be the first experts in how to effectively write prompts for Gen AI to receive reliable, quality results, and how to improve on initial drafts with follow-up prompts. She also emphasized how important it will be for KM professionals to train the attorneys at their firms in safe and effective use of these tools, noting that it would be valuable to create a simple explanation for the lawyers of how it works.

Several panelists also stated that their organizations had committees or groups

in place to examine and evaluate the potential uses of AI and to provide company rules and guidelines, as well as to provide ethical standards and ensure transparency. They stressed the importance of doing this, for consistency across an organization.

ChatGPT is just the tip of the iceberg. No one knows for certain what will come next, Jean O’Grady noted.

Participants in all panels emphasized the fact that Gen AI was simply a new tool and one that needed to be used responsibly with human oversight. No one should expect to be able to use the output of Gen AI without checking it carefully. Toiaivao noted that these products are collaborations between humans and machines, which is how the U.S. Patent and Trademark Office sees it, and that the users must be sure that they do their part.

Future of Gen AI. In another July 17 session, “A Robot Wrote This Session Proposal,” with coordinator Jason Eiseman, Associate Director of Administration at Yale Law School, and speakers Greg Lambert, Chief Knowledge Services Officer at Jackson Walker, Lisa Lee, Senior Electronic Services Librarian at O’Melveny & Myers LLP, and Nor Ortiz, a Fellow at Yale Law Library, the panelists hypothesized about the future of Gen AI and where we will go from here. Lambert predicted that we will see a proliferation of Gen AI legal products and that this will be followed by mergers, culminating in perhaps two or three products that dominate the market.

The panel also predicted that, eventually, Gen AI will be the default setting that is incorporated into all of the applications and products we use. Much like Google searches, voice recognition, and tailored ads—other AI-powered capabilities that used to seem revolutionary and are now commonplace—generative AI will become an everyday part of our lives.