Is Your Company Ready For Artificial Intelligence?

By **Erin Bosman, Julie Park, Kimberly Gosling and Austin Marsh**
December 8, 2017, 1:25 PM EST

"The rise of powerful AI will be either the best or the worst thing ever to happen to humanity. We do not know which." –Stephen Hawking

Artificial Intelligence (AI) and autonomous technology will shape the future, affect how people live and do business, and impact the legal landscape. While the scope of these technologies remains uncertain, numerous industries are already feeling their impact, including drones, autonomous vehicles and consumer products.

AI has tremendous potential to simplify our lives by shortening various decision trees, but consumer product companies ceding control to technology should weigh efficiencies against the risks posed by such novel movements.

What Is AI?

AI — an increasingly hot topic — is defined as "a branch of computer science dealing with the simulation of intelligent behavior in computers" or "the capability of a machine to imitate intelligent human behavior." Commentators dispute the scope of AI, and the bar for what qualifies as AI keeps rising.

As machines and technology advance, tasks once considered to require "intelligence" are now deemed standard technology. For example, a decade ago, a phone that included facial-recognition software and could verbally answer questions may have qualified as AI; now, most experts view this technology as standard and not amounting to AI. As one commentator has succinctly stated, "AI is whatever hasn't been done yet."

We live in a time where connected devices, complex algorithms and autonomous objects affect our day-to-day lives and continue to impact business operations. In an effort to increase efficiencies and expand growth potential, many companies are automating processes and relying on technology to accomplish tasks previously completed by human workers.

The Tradeoff for Increased Efficiency

Erin Bosman

Julie Park

Kimberley Gosling

Austin Marsh

Advances in technology generally focus on increasing efficiency — eliminating delays, decreasing downtime and cutting out intermediaries. Corporations using AI or autonomous technology can accomplish these goals by collecting massive amounts of data from connected devices, technology platforms or information-sharing agreements. AI provides seemingly infinite opportunities to use this data and connect various business departments to maximize efficiencies.

However, not all efficiencies are viewed as desirable. Despite recent advancements in AI technology, one consistent critique has been its failure to thus far connect numerous dedicated data points to one another.

Take, for example, Company A, which develops novel home appliances (e.g., a smart refrigerator that coordinates fresh produce delivery when the vegetable drawer is emptied). Historically, it wouldn't have had access to data harnessed by Company B, which develops autonomous vehicles. But as companies connect and share more data through the exponential growth of connected devices, they will soon have access to all kinds of information with interesting and useful applications.

If Company A and Company B share data, Company A could program its refrigerator to monitor the location of the homeowner's car, manufactured by Company B. As a result, the refrigerator could wait to deliver fresh produce until the homeowner arrives home so that the produce isn't left outside and the homeowner receives the best service.

But data sharing may not always be for the best. AI technologies (especially those given complete autonomy) may misinterpret or misuse information. This could result in corporate liability. AI technology's logical processes — while efficient — may not grasp all legal or ethical factors that human judgment can account for.

This may be most evident when dealing with customers' personal health or other sensitive information to which corporations may have access. Companies should be cognizant of how they record and handle sensitive information to ensure that even AI-driven uses of such information comply with state and federal privacy laws, as well as internal privacy policies.

The potential risks associated with AI can be mitigated by anticipating them, building in safeguards and defining limits for AI to operate within. Isaac Asimov's "Three Laws of Robotics," eloquently captured these considerations back in 1942:

1. A robot may not injure a human being or, through inaction, allow a human being to come to harm.
2. A robot must obey orders given it by human beings except where such orders would conflict with the First Law.
3. A robot must protect its own existence as long as such protection does not conflict with the First or Second Law.

Consumer product companies and legal counsel should consider the appropriateness of such "laws" (or analogous safeguards) when deciding to use AI in their businesses. Working with counsel to anticipate potential risks posed by using novel technologies and prepare for potential legal consequences is crucial to limiting future liability.

Maintaining the Nexus of Corporate Decision Making (and Limiting Liability)

AI may affect a company's decision-making framework and where responsibility lies. In traditional corporate models, executive-level actors (directors and officers) make decisions and direct a company's activities. For example, executives in a company may decide to create a new product, its engineers design the product and its laborers make the product. If the product has a defect, the company can examine the process to figure out the problem and fix it.

However, when an evolving algorithm, coded by a lower-level software engineer, integrates all three stages (decision-making, design and manufacturing), corporate executives may not be able to appreciate a defective product's impact, preventing them from intervening if something goes awry.

When yielding control to AI, one risk-mitigation strategy is to define clearly who is making decisions about product features, and keep those individuals informed when there is a potential problem or red flag issue. Informed corporate decision makers can intervene to evaluate potential issues before a crisis occurs. Practically, this may involve programming AI to detect risks and report them back in a digestible form to the corporate decision makers.

Courts weighing policy considerations may favor companies that have a reasonable process for identifying and remedying AI related product issues. Conversely, a company that collects data and either chooses or fails to monitor and respond to that data may face greater exposure for related product liability claims.

Conclusion

Evolving technologies such as AI will change how companies operate their businesses. Consumer product companies implementing AI or autonomous technologies should work closely with counsel to identify risks and incorporate appropriate limitations in order to minimize litigation risk.

Erin Bosman and Julie Park are partners and Kimberly Gosling and Austin Marsh are associates at Morrison & Foerster LLP in San Diego.