

MAY 9, 2023 | ROUNDTABLE

Navigating AI Risk Management from an ESG Perspective

On May 9, Paul, Weiss's ESG and Law Institute and Deloitte hosted a senior level roundtable on "Navigating AI Risk Management from an ESG Perspective" in person at Paul, Weiss's New York office. The program featured a learning session addressing core Artificial Intelligence (AI) concepts, including use cases and definitions for different AI modeling approaches and the various risks created by AI. The learning session was followed by an off-the-record, roundtable discussion with AI experts focused on the value of risk management in addressing legal, ethical and reputational implications of AI, particularly given the rise of generative AI.

The learning session was led by experts from Deloitte's Forensics and AI practice, Don Williams and Satish Lalchand. Dave Curran, executive director of the ESG and Law Institute and co-chair of the Paul, Weiss Sustainability & ESG Advisory Practice, facilitated the roundtable discussion. They were joined by Paul, Weiss Litigation Partner Katherine Forrest, co-chair of the firm's Digital Technology Advisory Group; Corporate Partner Jonathan Ashtor, member of the firm's Digital Technology Advisory Group; and Kevin Fumai, Assistant General Counsel at Oracle, who shared their unique insights on the challenges facing companies as they increasingly leverage AI tools in their operations. Attendees included General Counsel and senior level executives across ESG, sustainability, technology, legal, supply chain, human rights, compliance and risk functions from top companies.

Throughout the session, the group discussed questions addressing how to define AI – what it is, how it is trained, how it evolves, how the different modeling approaches differ, as well as common risks associated with AI use, and generative AI tools in particular. One risk area identified is the ability of AI programs to perpetuate biases found in the underlying data sources. The speakers shared a few approaches that companies can take in order to mitigate this risk, including developing a strategy to create robust, representative training and testing data sets; creating guardrails for the algorithm; and mitigating the output. Mitigation may include developing automated or human checks or single purpose models that work on top of the foundational model, acting almost as a filter, to analyze outputs and detect bias. Other common risks the group discussed include model hallucination, in which generative AI programs may produce outputs that are entirely fabricated and presented as accurate, and tampering risk, particularly as it relates to the rise of deep-fake phishing scams that use generated audio, video and images that appear to be realistic in order to deceive recipients.

The speakers shared their insights on how to triage and troubleshoot some of these common risks, and shared better practices for integrating oversight of AI programs into a company's risk management structure. Key focal points include establishing

trustworthy AI through fundamental principles such as safety, security, reliability, transparency and explainability. They emphasized the importance of translating these principles into practice through operational policies and controls.

The speakers also explained the importance of understanding and cataloguing the AI tools used by an organization. Having an accurate repository of what each tool does, how it is used, the value it provides, where it fits into the company's structure, who is the internal contact that has oversight and who is the external contact or vendor, if applicable, allows for greater visibility into the programs being leveraged and the ability to quickly address issues as they arise.

Furthermore, the speakers highlighted the importance of engaging cross functionally, with relevant departments, senior management and the board to implement necessary oversight and internal controls. Various departments may leverage different tools to help automate their operations, and having cross functional awareness can help increase transparency, promote consistency and efficiency and reduce exposure to potential risks. Involving technology, legal, risk, compliance, procurement, finance, human resources and investor relations teams in decision making can ensure appropriate oversight of new AI tools as they are integrated. In closing, the speakers mentioned that many companies have begun to develop Centers of Excellence, management level or board committees tasked specifically with oversight of AI, which allows for a centralized team to strategize appropriate controls and measures that align with the company's vision, culture, structure and operations.

Having an accurate repository of what each tool does, how it is used, the value it provides, where it fits into the company's structure, who is the internal contact that has oversight and who is the external contact or vendor, if applicable, allows for greater visibility into the programs being leveraged and the ability to quickly address issues as they arise.

The ESG and Law Institute cultivates and expands discussion on the intersection of ESG and the law, and provides a centralized forum of solutions-oriented ESG intelligence for boards, executives, institutional investors and the legal community.

<https://www.esglawinstitute.com/>

Paul, Weiss's Sustainability and Environmental, Social and Governance (ESG) Advisory practice provides clients with the critical support they need to build and strengthen their ESG programs, strategy and governance. As one of the first fully dedicated ESG practices at a U.S. law firm, our multi-disciplinary team collaborates with clients to develop tailored, holistic solutions that mitigate legal risk and promote long-term success.

<https://www.paulweiss.com/practices/sustainability-esg>

<https://www.paulweiss.com/insights/esg-thought-leadership>