WSJ PRO

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit https://www.djreprints.com.

https://www.wsj.com/articles/wanted-lawyers-who-understand-ai-11562664604

Wanted: Lawyers Who Understand AI

Law firms are preparing for more legal cases involving artificial intelligence as the technology grows ubiquitous

Washington-based law firm Covington & Burling LLP in 2017 created an initiative to coordinate AI services that now includes more than 40 of its roughly 1,000 lawyers. PHOTO: COVINGTON & BURLING LLP

By John Murawski

July 9, 2019 5:30 am ET | WSJ PRO

Law firms, anticipating more cases involving artificial intelligence, are bulking up their ranks with AI experts in an effort to secure new business as the technology becomes ubiquitous across industries.

Among the issues firms are handling: rights to the datasets used for training machine-learning algorithms, ownership of the algorithms created from third-party data, and liability for property damage or personal injury caused by an autonomous system.

"AI is going to become more embedded in all industries...and the practice will require more attorneys to become well-versed in the fundamentals of the technology," said Matt Sullivan, an AI legal expert who was named two weeks ago as special counsel in Kelley Drye & Warren LLP's Washington office. The New York-based firm employs about 350 lawyers, with fewer than 10 advising clients on AI issues.

Businesses that rely on AI are seeking legal advice before an anticipated wave of lawsuits over algorithms. In the absence of regulations specific to AI, such suits would be based on consumer-protection and product-liability laws, said David Freeman Engstrom, a law professor at Stanford University. Many AI issues will be hashed out in the courts, he said.

"There's going to be a lot of litigation over this stuff," he said. Big law firms will "provide prophylactic advice on how you can avoid litigation. Once litigation does arise, they help companies out in jams," he added.

Mr. Sullivan said he now spends between 25% and 30% of his time on AI matters after an uptick in such business over the past two years. One issue he sees frequently is negotiating contracts to give software companies the sole ownership of algorithms developed from third-party data.

Data is the fuel that drives artificial intelligence, but it can come with legal restrictions. Companies acquiring datasets need to be sure their contracts give them the right to use the data to train algorithms, said Lindsey Tonsager, a San Francisco partner at Washington-based Covington & Burling LLP who said she spends 40% to 50% of her time advising on legal issues pertaining to AI. In 2017, the firm created an initiative to coordinate AI services, which now includes more than 40 of its roughly 1,000 lawyers.

Ms. Tonsager said the law firm has seen deals fall apart because a company being sold claimed its algorithms were created using data to which it had a legal right, but a due diligence legal analysis showed the company didn't have the right to the data. Some companies, Ms. Tonsager said, are acquired in large part for their datasets, and one deal that fell through involved "a substantial amount of data."

Ethics and bias are other common concerns, Ms. Tonsager said, adding that in the absence of laws governing ethical AI, companies are looking for best practices to protect their brands. She said the business risk of using algorithms that go rogue and become inadvertently discriminatory goes beyond the legal arena.

"It's more making sure your product works well and doesn't have damaging reputational results," she said. "I'm not an ethicist. I won't tell them what's right and wrong. What I can say is, 'Here are the steps you can take to avoid overlooking something.'"

Robert Kantner, a Dallas-based partner at Jones Day, represents a half-dozen clients who use AI for autonomous vehicles, medical devices and robots. Mr. Kantner said his clients worry about the legal liability arising from an AI decision that causes harm. He advises clients on how to prepare for possible lawsuits and investigations by creating and retaining documentation on how the algorithms were trained, as well as managing other risks.

"It gets a bit tricky because at some point if it is unsupervised learning that's used to train the computer, the computer is in essence training itself," said Mr. Kantner, who is co-leader of the

Robert Kantner, a partner at Jones Day, represents a half-dozen clients who use AI for autonomous vehicles, medical devices and robots. He says his clients worry about the legal liability arising from an AI decision that causes harm. PHOTO: JONES DAY

firm's AI team and said he spends 25% to 30% of his time advising clients on AI-related issues.

Write to John Murawski at john.murawski@wsj.com

Copyright 2019 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.