# AI IN PRACTICE:

## STRATEGIES FOR ADDRESSING LEGAL RISKS WITH AI GOVERNANCE

**Kate Campbell** | Special Counsel, CIPP/US, CIPPE, CIPM

# AGENDA

AI Background

Legal Landscape & Risks

Best Practices in AI Governance

# AI BACKGROUND

# WHAT IS AI?

"In its simplest form, artificial intelligence is a field that combines computer science and robust datasets to enable problem-solving."
– IBM.com

# TWO TYPES OF USE CASES

## Publicly available generative AI

- Use of generative AI by employees to assist in job functions

## AI-based applications, programs, solutions

- Using/developing AI-based solutions in order to address business-specific problems or creating such solutions for sale

# REWARDS

- Efficiency and faster results
- Reduction in human error
- Ability to perform tasks with voice commands
- Ability to track, analyze and understand behavior
- Assuming routine tasks and creating time for other work

# LEGAL LANDSCAPE AND RISKS

# PRIVACY

- How was input data collected?
- How are you allowed to use it?
- How is input and output regulated?
- Is the model able to comply with regulations?
- Are you aware of cybersecurity risks?

# PRIVACY REGULATIONS AFFECTING AI

State Privacy Laws

GDPR

EU AI Act

Section 5 of the FTC Act

# STATE PRIVACY LAWS

- Govern Data Collection and Use
- Comply with Data Rights
- Conduct Risk Assessments
- Draft Regulations in Progress

# GDPR

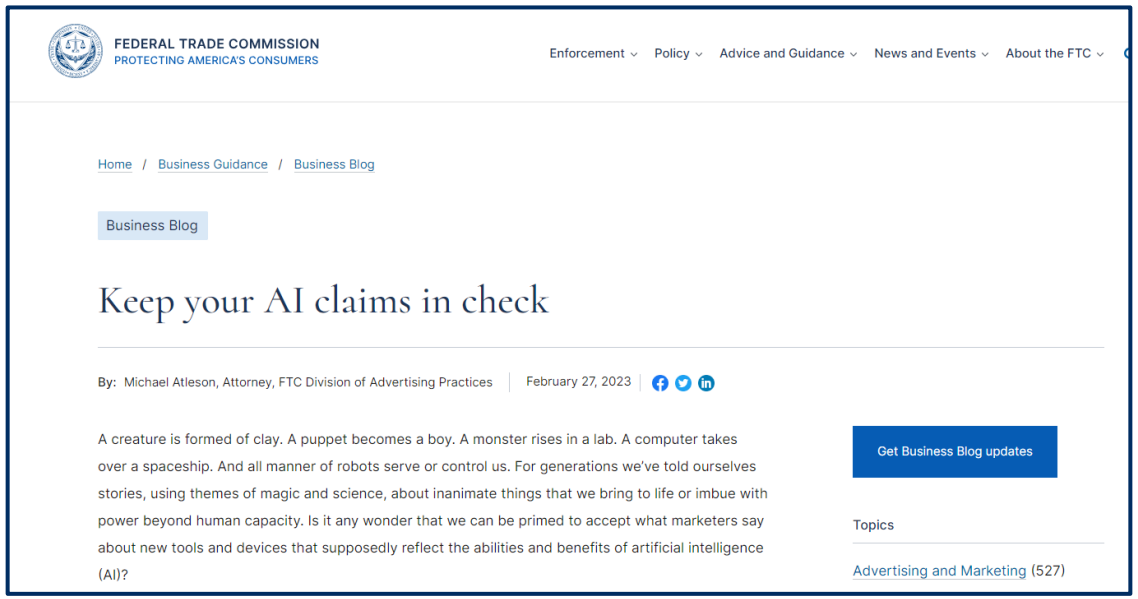
- Regulations on Automated Decision-Making
  - Human Involvement
  - Consent
  - Performance of a Contract
  - Authorized by Law
- Transparency and Explainability

# EU AI ACT

- Main elements:
  - Bans certain uses of AI
  - Requirements for high-risk AI
  - Post-market monitoring for high-risk AI
  - Obligations for limited-risk AI
  - Creates a European AI Board
- Extraterritorial applicability

# SECTION 5 OF THE FTC ACT

- Prohibits “unfair or deceptive acts or practices in or affecting commerce.”



# POTENTIAL CONSEQUENCES OF NON-COMPLIANCE

- Algorithmic disgorgement and data deletion

**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KURBO INC., a corporation,

and

WW INTERNATIONAL, INC., a corporation,

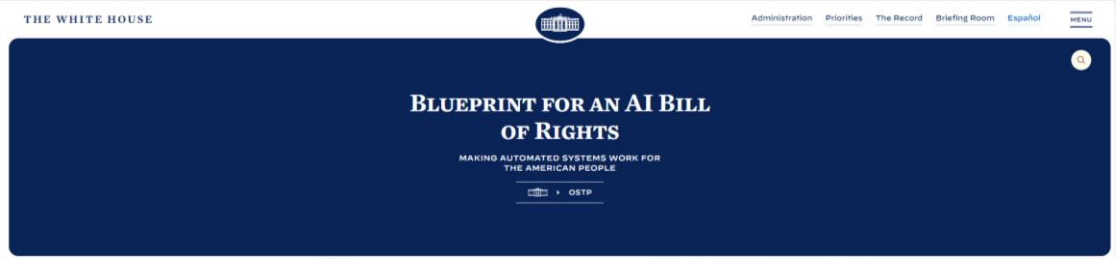
Defendants.

**Case No**: 3:22-cv-00946-TSH

~~[PROPOSED]~~ STIPULATED ORDER FOR PERMANENT INJUNCTION, CIVIL PENALTY JUDGMENT, AND OTHER RELIEF

# BLUEPRINT FOR AN AI BILL OF RIGHTS

- White paper from the White House Office of Science and Technology Policy; non-binding, not a statement of government policy, and compliance is not required
- Describes **five principles** to be used as guidance when automated systems can meaningfully impact the public's rights, opportunities, or access to critical needs
  - Safe and Effective Systems
  - Algorithmic Discrimination Protections
  - Data Privacy
  - Notice and Explanation
  - Human Alternatives, Consideration, and Fallback




- Provides examples of how principles can be moved into practice and what should be expected of automated systems.

# PRESIDENT BIDEN'S EXECUTIVE ORDER ON AI

- Consensus Industry Standards
- Intellectual Property Guidance
- AI for Small Business
- Employer Best Practices
- Civil Rights Enforcement
- Prompt Agency Action
- Government Agency Compliance

# LABOR & EMPLOYMENT

Initiatives Announced By Federal & State Agencies

Federal Agency Guidance Documents Published

City and State Laws Taking Lead

# INTELLECTUAL PROPERTY

COPYRIGHT

PATENT

TRADEMARK & ADVERTISING

TRADE SECRET

# REGULATION OF FINANCIAL SERVICES

- Limited adoption to specific use cases
- Increased regulatory interest and scrutiny
  - Model risk management guidance
  - Credit discrimination
  - Collateral valuation models
  - SEC's conflict of interest rules for advisers and broker-dealers
- Examples and best practices for non-regulated businesses

# BEST PRACTICES IN AI GOVERNANCE

GODFREY KAHN

# WHAT IS AI GOVERNANCE?

"AI Governance translates espoused ethical principles and good data science practice into repeatable, reliable, repositories of evidence about the risks and benefits of AI."

# KEY ISSUES TO ADDRESS FOR INTERNAL USE OF AI

Bias & Discrimination

Compliance with Regulations

Inaccuracy

Loss of proprietary and confidential information

Misuse of others' proprietary and confidential information

Inferior work product

# BEST PRACTICES FOR INTERNAL USE POLICIES

Understand if AI is being used, how, when, where, and why

Develop internal policies governing use, including consideration of use-specific risks and benefits

Partner with procurement, IT, HR and IP teams to identify risks, review vendor agreements, request audits, and explore alternatives

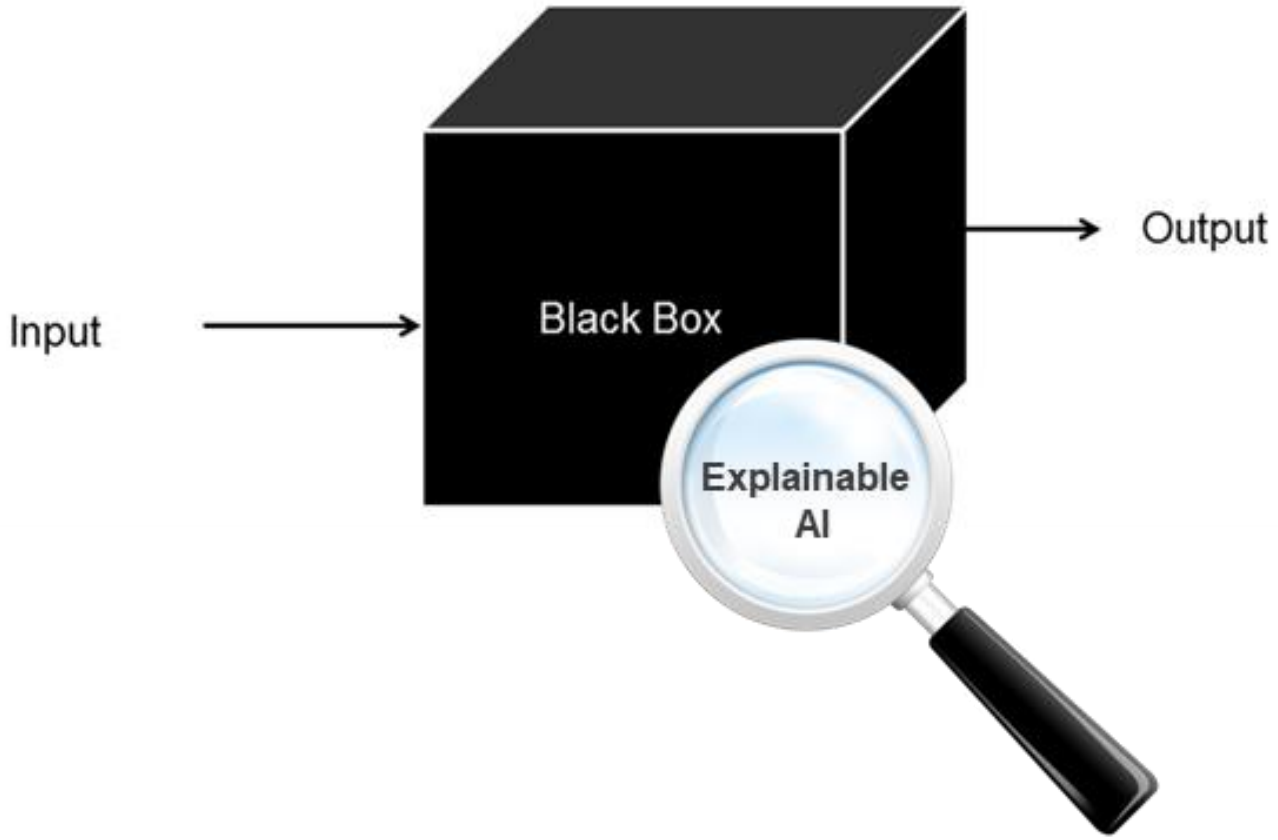
Train employees on AI risks and company policies

# KEY ISSUES TO ADDRESS FOR DEVELOPMENT OF AI

- Bias & Discrimination
- Compliance with Regulations
- Inaccuracy
- IP Ownership
- Transparency, Explainability and Provability
- Ethical Use

# Transparency, Explainability, Provability

- Understand how the AI model makes decisions
- Understand the reasoning behind the decisions
- Confirm the decisions are mathematically provable



# BEST PRACTICES FOR AI GOVERNANCE IN PRODUCT DEVELOPMENT

Align all stakeholders from data scientists, business teams, legal and privacy teams from the beginning on strategy, risk tolerance, and desired outcomes

Identify guiding principles and standards at the outset

Understand data sources and data flows and analyze various legal risks

Measure and monitor AI outcomes, maintaining documentation throughout

# RESOURCES ON AI GOVERNANCE

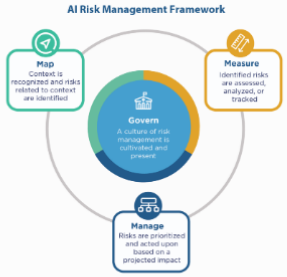
- NIST AI Risk Management Framework and Playbook

## NIST AI RMF Playbook

The Playbook provides suggested actions for achieving the outcomes laid out in the AI Risk Management Framework (AI RMF) Core (Tables 1–4 in AI RMF 1.0). Suggestions are aligned to each sub-category within the four AI RMF functions (Govern, Map, Measure, Manage).

The Playbook is neither a checklist nor set of steps to be followed in its entirety.

Playbook suggestions are voluntary. Organizations may utilize this information by borrowing as many – or as few – suggestions as apply to their industry use case or interests.




Govern | Map | Measure | Manage

**Download the NIST AI RMF Playbook**

Playbook CSV | Playbook Excel | Playbook JSON

**Community feedback**

The playbook is a living resource and is expected to evolve as AI technology advances — Individuals are encouraged to provide feedback about the content of the Playbook by emailing AIframework@nist.gov. Playbook updates will be released approximately twice per year.

# QUESTIONS?

GODFREY & KAHN

MILWAUKEE | MADISON | GREEN BAY | APPLETON | EAU CLAIRE | WASHINGTON, D.C.

## Kate Campbell

414.287.9529

kcampbell@gklaw.com