

Anticipating AI regulation: a few thoughts

Artificial Intelligence and advanced analytics were *the* buzzwords at the AASP Summit this year. In my presentations at Summit I encountered an interesting conundrum. In enthusiasm for embracing new technology there is the risk that some organizations are heading towards making privacy law mistakes with the data pools they use for AI models.

What can be done to avoid starting off on the wrong foot with AI? This document is a brief primer to what's happening with AI regulation in the US, the potential impact on privacy law and nonprofits, and some words of caution to prevent future disaster at your organization.

Disclaimer: I'm not a legal expert; you should seek advice specific to your organization for the recommendations discussed in this document.

Some definitions

For a definitive list of emerging terms check out the IAPP's excellent glossary: iapp.org/resources/article/key-terms-for-ai-governance/

What's happening with AI regulation and privacy law

The **Executive Order on Safe, Secure and Trustworthy AI** was released by President Biden on October 30th. There is a lot in it ([key facts here](#)), and of course its purpose is to direct the activities of federal agencies, but it will likely set precedents for all sectors. Of interest to nonprofits:

- Tools are being developed to label AI generated content from government so citizens can trust what they receive. It is hoped this will establish an approach that for-profits will follow.
 - If you are looking into using generative AI to create email content be aware that in future you may have to set up a labelling system for these. It may be prudent to do this now rather than wait and see what regulation comes down.
- The Order calls for an evaluation of the collection of “commercially available” data by federal agencies, and better guidance for them. This focus on use of data brokers and screening of personal information will no doubt echo into for-profit and nonprofit practices in this field.
 - Any screening and data acquisition you do should already be tightly guided and covered by your privacy policy and processes; if you've any doubts or cause for concern now is the time to fix problems before they become a legal issue.

- President Biden calls on Congress to pass comprehensive data privacy legislation. This has been in the works for years but expect the momentum to pick up (next year's elections notwithstanding).
 - Odds are federal legislation will mimic state and include thresholds (and maybe exclude nonprofits) but *do not rely on this*; it is an unknown.
 - Meanwhile, state momentum continues: new privacy bills are currently in process in Wisconsin, Michigan, New Hampshire and Maine.

A cautious approach for using AI for analytics

At Summit I was struck by the assumptions being relied upon by some nonprofits in their exploration of AI for analytics. There was an idea that because an organization holds a lot of data about current and former donors/supporters/alumni/whoever they can dump all of it into an AI system: that the more you put in, the more interesting and helpful the results.

But beware: you may hold a lot of data but what are the rights of the people whose information you hold? Have you made clear in your privacy policy that you are doing this kind of analysis?

As a rule I would caution against unleashing AI on your entire dataset. You risk putting in a lot of effort to build a useful model only to bump into regulation in the future that means you will have to discard this work and start over.

If you want to be cautious, exclude any data you bought, records of poor quality, of deceased individuals, from over 10 years ago or those that have never been cleaned. The old adage "garbage in, garbage out" really does apply to AI as much as it does CRMs.

Instead, take the long view. After determining what you want to achieve by unleashing AI on your dataset, be deliberate about which records are included. Start with your best quality data: recent, accurate, and from constituents who have been interacting with your organization since you had a clear privacy policy.

And if your privacy policy needs work, do that first.

Resources

- IAPP's AI topic page iapp.org/resources/topics/artificial-intelligence-1/
- Jeffrey S. Tenenbaum, "Five Key Legal Issues to Consider When It Comes to Generative AI", ASAE, April 27, 2023. asaecenter.org/resources/articles/an_plus/2023/4-april/five-key-legal-issues-to-consider-when-it-comes-to-ai
- Visit my [resources page](#) for more downloads and links on data privacy law.