

A Double-Edged Sword: The Benefits and Risks of AI in Business

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Artificial intelligence (AI) is rapidly becoming a transformative force in business. AI is a powerful technology that can be incorporated into a wide array of software and applications to: automate tasks; improve data analysis and decision making; interact with customers and personalize their experiences; and even create original content that can be used in day-to-day business operations. Major financial firms project that AI will generate trillions of dollars to the economy within the next decade.¹ Businesses that are quicker to incorporate AI effectively into their operations will likely gain a significant advantage over their competitors. Yet, any business considering adopting technologies that use AI should also consider the attendant risks related to ethical concerns, data privacy, security, government intervention, intellectual property, products liability, and the proprietary or privileged nature of their information.

I. Background

The success of AI in high-profile applications like self-driving cars, facial recognition, and virtual assistant technologies² over the past several years has raised awareness of the massive potential it has for businesses. The recent release of chatbots like ChatGPT and Bard³ has propelled AI to the forefront of business news and into the minds of entrepreneurs and business executives across all industries. Unsurprisingly, the race is on to capitalize on AI technologies.⁴

II. Benefits of Artificial Intelligence

1. **Increased Efficiency and Productivity** – AI can streamline processes and enable faster decision-making, ultimately leading to increased efficiency and productivity. By leveraging machine-learning algorithms, businesses can optimize supply chain management and customer service, as well as predict demand and identify fraud.

¹ See “Generative AI could raise global GDP by 7%,” Goldman Sachs Insights, Goldman Sachs © 2023, 05 April 2023, <https://www.goldmansachs.com/insights/pages/generative-ai-could-raise-global-gdp-by-7-percent.html>. (AI could drive a 7% (or almost \$7 trillion) increase in global GDP over next 10 years). See also “Sizing the prize – What’s the real value of AI for your business and how can you capitalise?” PwC Global, available at <https://www.pwc.com/gx/en/issues/data-and-analytics/publications/artificial-intelligence-study.html> (last accessed April 14, 2023) (AI could contribute up to \$15.7 trillion to the global economy in 2030).

² Virtual assistant technologies such as Amazon’s Alexa, Apple’s Siri, and Google Assistant.

³ ChatGPT and Bard are AI programs created by OpenAI and Google, respectively, that use vast amounts of human-authored text data from the internet, books, and other sources to understand and generate language in a manner similar to the way humans communicate with one another. “GPT” stands for “Generative Pre-trained Transformers,” a family of deep learning language models developed by OpenAI.

⁴ Reese, Hope, “How to Survive the A.I. Revolution,” Insights by Stanford Business, Stanford Graduate School of Business © 2022, October 14, 2022. See also, Brynjolfsson, Erik, “The Turing Trap: The Promise & Peril of Human-Like Artificial Intelligence,” *Daedalus*, Vol. 151 Issue 2 Pages 272–287 (May 1, 2022).

2. **Data-Driven Decision Making** – AI empowers businesses to effectively utilize the enormous quantities of data they generate. By analyzing and processing such data in real time, AI can help businesses identify patterns and insights that would be difficult or impossible for humans to identify. In turn, businesses will be able to make more informed data-driven decisions.
3. **Personalization and Customer Engagement** – Businesses can use AI to analyze customer data and behavioral patterns, which will allow them to create personalized marketing campaigns and product recommendations that are specifically tailored to each customer's needs and/or preferences.
4. **Automated Tasks** – AI can automate tasks across all sectors of business from computer-based applications, such as data warehousing and analytics, to physical applications, such as autonomous vehicles and medical devices, freeing up employees to focus on more complex and value-adding activities.
5. **Innovation and Competition** – AI can help businesses innovate by designing new products, testing prototypes, and identifying patterns and trends in data, enabling them to stay ahead of the competition and respond more effectively to changing market conditions.

III. Risks of Artificial Intelligence

1. **Ethical Concerns (Bias, Accuracy, Transparency and Accountability)** – Use of AI raises ethical concerns of bias, accuracy, transparency, and accountability. AI programs may adopt the biases of the data on which they are trained. For example, an AI system that is trained on a dataset of resumes that is disproportionately male may be more likely to recommend male candidates for jobs. This is a concern, especially since AI is increasingly being used in human resources (HR) technologies to assist companies with decisions related to hiring, firing, and promotions. In this way, a potential algorithmic bias of AI could lead to an increased risk of discrimination and wrongful termination lawsuits. Similarly, the ability of these systems to be personalized, based on the data they are provided or on which they are trained, raises concerns about the accuracy, transparency, and accountability of the AI. Publishing inaccurate information generated by AI could lead to increased risk of defamation lawsuits against the creator of the AI or the business using it.⁵
2. **Privacy and Security** – Business uses of AI may result in the intentional or inadvertent collection or dissemination of business or personal data and could lead to a violation of various statutes like the Federal Trade Commission Act, the Defend Trade Secrets Act, or the Economic Espionage Act, or privacy laws such as the U.S. Privacy Act or the European Union's General Data Protection Regulation.⁶ Further, like any software, AI systems can be hacked and used for malicious purposes. This vulnerability could lead to data breaches, financial losses, or even physical harm, and thus lead to an increased risk of various types of tort and privacy infringement lawsuits.
3. **Government Intervention** – Governments around the world are starting to regulate AI with an aim to mitigate the risks of AI and ensure that it is used responsibly. However, government regulation of AI also increases the risk for early adopters of AI, as they may ban the use of certain AI technologies or impose

⁵ See Prakash, Prarthana, "ChatGPT falsely accused a mayor of bribery when he was actually the whistleblower—now he wants to sue in what could be the first defamation case against a bot," Fortune Media IP Limited (April 5, 2023), available at <https://fortune.com/2023/04/05/chatgpt-falsely-accused-australian-mayor-bribery-openai-defamation> (last accessed on April 14, 2023).

⁶ On March 30, 2023, a non-profit tech ethics group, Center for Artificial Intelligence and Digital Policy (CAIDP), filed a complaint with the U.S. Federal Trade Commission (FTC), asking the FTC to investigate OpenAI and bring to a halt OpenAI's development of large language models, like GPT-4, for commercial purposes. CAIDP accuses OpenAI of violating Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive business practices.

strict regulations on the way AI is used.⁷ As a result, businesses that quickly incorporate AI technology into their operations may risk losing significant capital investments if the specific technology in which it invests does not comply with evolving government regulations.

4. **Intellectual Property** – AI can also be used to create content, such as articles, blog posts, social media posts, software code, business development proposals, contracts, art, and even music. However, if a business’s AI-generated content infringes someone’s intellectual property (IP) rights, the business risks IP litigation.⁸ Relatedly, any content created using AI tools may not be eligible for IP protection, thus reducing the asset value of any such content.⁹ Similarly, if a business owns valuable trade secrets – whether or not protected by confidentiality agreements – care should be taken that employees do not disclose these trade secrets (in whole or in part) to an AI tool for any reason, such as trying to solve a business problem or developing portions of deliverable content or software code (or otherwise). Many of these AI tools retain certain amounts of data that could put these trade secrets at risk of further disclosure if they were to be shared with the AI tool for any reason. Robust consideration of the risks versus benefits should be undertaken before using these tools for any core business functions or mission-critical content.
5. **Products Liability** – Businesses that create or use AI to design, build and operate products also face the legal risks associated with the failure of AI to design or build a safe product, as well as the failure of AI to properly operate a product, such as an autonomous vehicle or medical device.¹⁰
6. **Risks related to Proprietary or Privileged Information** – Businesses that use AI for technology assisted review (TAR) risk that the AI may inadvertently produce privileged documents potentially preventing the business from subsequently claiming privilege. Similarly, as discussed above, businesses that use AI in developing core business assets may accidentally risk losing IP protection

⁷ See for example, the Italian Data Protection Authority (Garante) banned the use of ChatGPT on March 31, 2023. Garante cited concerns about ChatGPT’s data collection practices and its potential to generate harmful content. The agency said that ChatGPT had collected personal data from Italian users without their consent and that it had used that data to generate content that was offensive, discriminatory, and harmful. OpenAI has said that it is working with Garante to address the agency’s concerns. See also, New York City Local Law 2021/144 and Accompanying Final Rules. The NYC local law, which goes into effect on May 6, 2023, imposes restrictions on an employer’s or employment agency’s use of automated employment decision tools (“AEDTs”) to make employment-based decisions pertaining to candidates and/or employees residing in New York City.

⁸ In one case filed in the United States District Court for the Northern District of California (4:22-cv-06823-JST), Matthew Butterick, a software developer and lawyer, on behalf of himself and a class of other software programmers, filed suit against GitHub Copilot, an AI-powered coding assistant developed by OpenAI and Microsoft, alleging that it infringes on the copyrights of prior programmers.

⁹ On February 21, 2023, the Copyright Office cancelled the copyright registration owned by the creator of a graphic novel on the grounds that the illustrations contained in the graphic novel were generated by an AI tool, called “MidJourney” and thus did not embody sufficient human creation to be protected by copyright law. The Copyright Office re-issued a copyright registration that covered only the text embodied in the work and expressly exclude the illustrations generated by the AI tool using the prompts provided by the human author. Feb. 21, 2023 Decision, available at <https://copyright.gov/docs/zarya-of-the-dawn.pdf>. Further, on March 16, 2023, the U.S. Copyright Office (the “Office”) issued an advisory to clarify its practices for examining and registering works that contain material generated by AI technology. The Office emphasized that copyright can only protect material that is the product of human creativity. However, the Office acknowledged that the analysis is not always cut and dry. The Office must ultimately determine whether a “work” is primarily one of human authorship, with the computer or other machine merely assisting; or whether the traditional elements of authorship in the work were conceived and executed by a computer or other machine. Similarly, the Patent Office has long held that inventions capable of protection under the Patent Act must be created by a human inventor but recently issued a Request for Public Comment on this issue.

¹⁰ Song, Malek, Tanenbaum, “Theories of AI liability: It’s still about the human element,” Reuters Legal News (Sept. 20, 2022), available at <https://www.reuters.com/legal/litigation/theories-ai-liability-its-still-about-human-element-2022-09-20/> (last accessed on April 14, 2023), .

over those assets. Further, businesses risk losing control of their proprietary information, if their data is intentionally or inadvertently disclosed via use of AI tools.¹¹

Accordingly, the integration of AI into business operations presents both massive benefits and significant risks. To harness AI's full potential, businesses must carefully consider the ethical, proprietary, social, and economic implications of AI adoption, as well as prepare for the evolving regulatory landscape. By embracing a responsible approach to AI implementation, businesses can unlock the transformative power of AI, mitigate the apparent risks, and navigate potential government intervention.

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¹¹ Jeong, Doo-yong, "Concerns turned into reality... As soon as Samsung Electronics unlocks ChatGPT, 'misuse' continues," Economist Korea (March, 30, 2023), available at <https://economist.co.kr/article/view/ecn202303300057?s=31> (last accessed April 14, 2023).