

AI's Impact on Litigation

Niall McMillan: Welcome back to Litigator's Lounge, devoted to exploring timely commercial litigation topics with Offit Kurman's commercial litigators.

I'm Niall McMillan. Joining me today is Anders Sleight. Anders, welcome.

Anders Sleight: Thank you, Niall. How you doing?

Niall McMillan: Doing well. So today I understand we're talking about AI and how it's reshaping the legal landscape and what legal disputes it's bringing up.

Anders Sleight: Yeah. You know, AI isn't just a tech buzzword anymore. Of course, everybody has heard about how they can use AI in their day-to-day tasks, whether it's on the personal front or on the business front, right?

AI is being used in hiring decisions, marketing, customer service, and even in decision making. And it is creeping into the legal world as well. But every time that there's an innovation or a new product or a new marketplace emerges typically litigation catches up [00:01:00] to it and quickly.

You'll find lawyers can be creative in trying to find an angle or an opportunity to pursue on behalf of a client. And it's no surprise that that is happening in today's world, particularly with the amount that AI is being implemented into every facet of the business sphere and on the personal front as well.

Niall McMillan: We've all heard about the plaintiffs per se sometimes who use AI or a fake case, something like that. But I guess what other issues is it raising outside of that for the actual clients?

Anders Sleight: First it's coming up in a couple of different ways. First would be AI driven hiring tools. Companies using AI to screen resumes, to screen through job applicants. And we're seeing a litigation trend where plaintiffs, particularly in employment context, are filing suits, claiming that the algorithms or the AI tools being used are unfairly discriminating against job applicants, whether it be based on race or gender or other protected factors, right? And the AI tools may not be able to [00:02:00] properly take that into context if it's only looking for certain keywords. Another way is in the intellectual property disputes, IP disputes are huge. So particularly in the world as content is being scraped, you may have an AI provider go out and scrape content or borrow content.

What if it's being borrowed from a competitor? And I've seen cases like that recently where a competitor has used another provider's content. That might be a patent or an intellectual property or trademark related dispute or infringement. So that could lead to litigation and has led to litigation by various different companies going through those disputes, whether their image or likeness or their proprietary information is being used without their consent.

The last one that I would mention is data privacy violations. Particularly as AI systems will go out and try to find data or scrape it from anywhere they can find it. If it's out there, or your

company or organization may have put information out [00:03:00] there . An AI tool or system can get its hands on it.

So you need to be really, really careful. The regulators are paying attention as well. The state attorney generals are looking at these issues. And will be continuing to expand access and to expand a focus. As the world pivots in one way, then the regulators and the legislators will take a closer look at that as well, especially as new unexpected areas emerge.

So definitely something to pay attention to, particularly if you're a business owner or an operations and you're using AI and your business operations or day-to-day.

Niall McMillan: What type of steps could an attorney use for the be helpful here? It seems like there's a risk that you would be harmed by the AI, but also that if you're using it, you need to be cautious.

Anders Sleight: Absolutely. I don't think that the message is you shouldn't use AI, right? It can help everyone in their day-to-day tasks and their day-to-day workflow, but you've gotta be cautious and be aware of the risks. Most people have heard about the stories of [00:04:00] AI hallucinations.

Case law or other things being made up. So if you're using your AI in your day-to-day and you're in your business world. Check it. Verify, right? If you're using it in something that you have an expertise in, you should be able to know when to be circumspect about that. If you have questions, don't be afraid to ask within your organization or others just to make sure that it looks legitimate.

Do your own independent research. If you're using AI systems internally, check those systems. Check the providers, know what data they're using and how decisions are made. Update your policies and your procedures that are out there. Make sure that your customers, your clients are aware that you may be using AI tools in your day-to-day so that that is out there.

And then thirdly, make sure that you're training your team members to understand the benefits, and the risks. Where you should be cautious with using AI. It's not something that necessarily you need to avoid, but just be cautious because people are already out there looking to make a case about [00:05:00] AI related uses. So definitely something to be aware of.

Niall McMillan: Thank you, Anders. It's a brand new world, but we're glad to have your advice on that. And thank you all for joining us today on Litigator's Lounge. Offit Kurman is a full service law firm, offering services, intellectual property, commercial litigation, business matters, real estate matters, and all other kinds of litigation. So thank you.

Anders Sleight: Thank you, Niall.