The image features a complex digital interface with various data visualization elements such as bar charts, line graphs, pie charts, and circular progress indicators. A robotic hand is visible on the right side, interacting with a glowing blue circular element. In the background, a person's hands are seen typing on a laptop keyboard. The overall aesthetic is high-tech and blue-toned.

# Industry Focus

Being smart about artificial intelligence



## Being smart about artificial intelligence

Artificial intelligence will continue to grow in its usefulness but will always rely on the creative input and vast real-world experience of lawyers and General Counsels – not merely to avoid mistakes, but also to propel companies to the next level.

Within two months of its November 2022 launch, the ChatGPT chatbot was being used by 100 million people, one of the fastest adoptions of a new consumer application ever. This AI language model developed by OpenAI is essentially a computer program designed to help you generate natural language, replicate human-like text-based conversations, and retrieve information. A recent study of 4,000 respondents in the U.S., UK, Australia, and India by Israeli CRM platform developer Salesforce revealed that such 'Generative' AI has been embraced by an astounding 49% of respondents - in less than a year. A recent article in the Jerusalem Post asked if corporations were going to ban the use of ChatGPT, after a recent survey showed businesses in the U.S. have begun to question the extent to which ChatGPT should be embraced.

Generative AI has already attracted regulatory scrutiny, particularly in Europe, where data collection practices have come under the microscope of privacy watchdogs. Particular fears relate to potential data security breaches and intellectual property leaks.

As the speed of change accelerates, both private practice lawyers are weighing up the benefits and risks associated with the integration and use of AI in their practices, and GCs are also increasingly exploring how AI tools can enhance legal operations within their companies.

In this broader discussion, experts from Arnon, Tadmor-Levy, Shibolet, Lipa Meir & Co., The Luzzatto Group, Dechert, and Penteris shared their thoughts and experiences with us, how this field is impacting or beginning to impact clients, as well as the great opportunities and immense challenges for companies, governments, and consumers.

## What is AI and what do lawyers use it for?

At its most basic level, AI is the ability of machines to carry out intelligent tasks typically performed by humans, using algorithms (a series of rules written into computer code) and combining computer science with data to



solve problems or make predictions. Generative AI takes vast amounts of raw data, learns the patterns within it, in order to generate the most likely correct response when prompted with a question. In Israel, in August, AI21 Labs- the only company in Israel developing a "large language model" based on AI, became a unicorn after it raised USD155m in a Series C financing round, giving it a valuation of approximately USD1.4 billion (Meitar acted for AI21 Labs, Herzog and H-F & Co. represented flagship investors, Nvidia and Google respectively).

Generative models have been used on numerical data for several years. However, as deep learning and natural language processing have become more advanced, Generative AI has been applied to images, audio, and text. The term became more well known after OpenAI released its chatbot ChatGPT at the end of last year.

## **Lawyers are familiar with AI; but today's changes unparalleled**

Lawyers have been deeply familiar with AI for some time. AI-powered software has been widely adopted for managing and reviewing documents, as well as due diligence tasks, with machine learning algorithms capable of analyzing reams of documents, helping lawyers identify relevant information more efficiently during legal research and discovery processes. Other software allows for the analysis of market trends, tracking of legal developments, and identification of potential business opportunities. Some law firms are also using AI to predict case outcomes and assess potential risks. By analyzing past legal cases and relevant data, AI algorithms can provide insights that assist lawyers in making strategic decisions for their clients.

However, caution was thrown to the wind when, in June, a New York lawyer used ChatGPT to help with a brief for his case against the Colombian airline, Avianca. It provided him with entirely fictitious case law and was immediately called out by opposing counsel and the judge. After several humiliating headlines, the lawyer was fined, underlining the dangers of relying on Generative AI.

As this one case highlighted, there are many legal issues arising from the prolific use of such technologies. In addition to the inaccuracies through an improper review of AI's output, Generative AI raises a number of complex legal issues around data privacy, intellectual property and the potential leakage of confidential information, as well as compliance violations, breach of contract, copyright infringement, as well as damaging communications with customers, and more.



It is very important for clients to understand how it affects their obligations and contracts in potentially new ways. Other issues that have surfaced also relate to trade secrets - how to keep prompts and Generative AI workflows secret; ethics - how to supervise someone else using gen AI if you yourself have never used it; and the comingling of client data.

While embracing the latest generation of AI technology, the vast majority of lawyers appear to be proceeding with caution.

## The impact of AI on the lives of lawyers and their clients

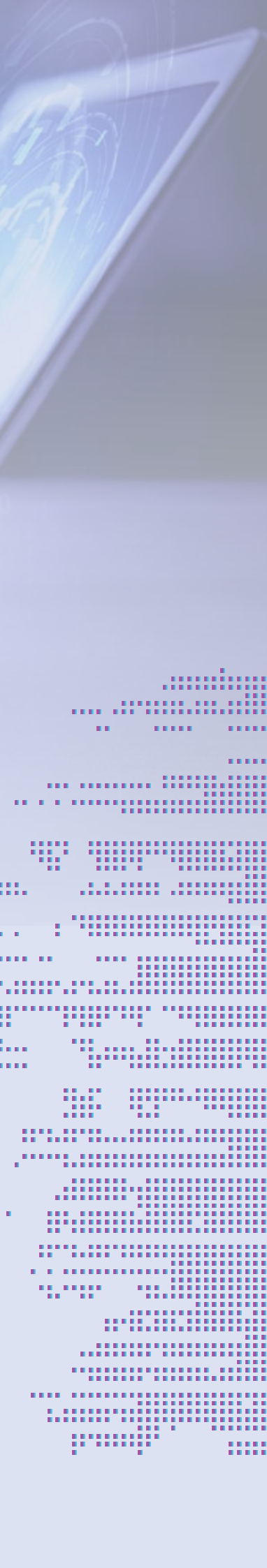
Eyal Oren, partner at Shibolet & Co: *"We have already established an AI team to monitor closely the evolution of AI in terms of technology, the regulatory landscape and that of the judiciary to be able to give advice in an uncertain environment. In addition, the firm is working on the constant review of AI tools for internal implementation."*

Partner, Roy Keidar, who heads the Emerging Technologies practice at Israeli law firm, Arnon, Tadmor-Levy adds: *"We see the impact across the board. The growing use of Generative AI tools by lawyers entails significant benefits for lawyers which are still at its nascent stages, but also poses significant challenges to protect privileged information of clients, to ensure adequate use to avoid issues of professional liability, and to develop the right program for training the future generation of lawyers."*

### ***"A real game-changer for clients"***

*"Before the use of AI-assisted diligence technology, we would frequently be asked to just review the top material contracts, says Adam Levin, co-head of Dechert's corporate group in London. "Now, we can have our AI check every single agreement in a transaction. It's a real game-changer for clients to be able to have that extra level of comfort."*

Keidar of Arnon, Tadmor-Levy, adds: *"Generative AI won't replace lawyers so quickly in the crucial crossroads of a company (such as strategic deals, regulation analysis or litigation). But it can influence some of the clients' willingness to pay lawyers by the hour, for services they can get almost free, even if they are of inferior quality. General counsels were looking for guidance on how to formulate internal policies for their companies. Such policies should be tailor-made for each organization, as the use of AI varies across*



organizations. For some, it's integral in what they make or sell, some use it as input for decision-making (e.g., employment, customer service), and in many others, it is used sporadically by employees for smoother operations."

"Also, the risks and potential liabilities are already drawing the attention of investors and potential buyers in financial rounds and M&As, and we encourage companies, even startups, to be ready with solutions to some of the risks AI, and specifically Generative AI poses to their operation," he adds.

## Do these trends concern you or excite you?


Keidar of Arnon, Tadmor-Levy points out: "Excitement and concern may strangely come together. We are excited by these tools and are still in the process of learning how to best utilize them, for the best of the firm and for the benefit of the clients. The use of Generative AI in drafting papers, analyzing documents, Due-Diligence, legal research, E-discovery, and data management addresses many pain points in our legal day-to-day. At the same time, we need to be concerned about how we train the next generation of top legal professionals who would grow into this world where AI is going to be embedded in almost all of our platforms. We already understand that some tasks could be given to AI and make associates' lives easier and more efficient, yet we also bear in mind that adequate training requires maintaining some types of assignments which are essential for making them into excellent professionals."

## The industries most affected

"Most affected are the industries based on copyright paradigm, most notably software, music, visual, and so on" adds Oren of Shibolet. AI could also help people with improved healthcare, safer cars and provide tailored, longer-lasting products and services. It can also facilitate access to information, education and training. AI can also make workplaces safer as robots can be used for the more dangerous parts of jobs, and open new job positions as AI-driven industries grow and change. AI used in public services might also reduce costs and offer new possibilities in public transport, education, energy and waste management and could also improve the sustainability of products.

## Data privacy is a real concern

AI can play a crucial role in enhancing cybersecurity measures and protecting sensitive client data. It can detect and respond to potential security breaches



more effectively – and yet, with this advance comes a myriad of concerns. GenAI applications leverage extensive sets of data, carrying the potential for unauthorized access and breaches of privacy regulations, data loss, and subsequent legal consequences.

In a recent GC survey conducted by Nishlis, data privacy and security were high on the list of concerns, especially with regards to data protection when using AI tools and ensuring compliance with relevant regulations like GDPR or HIPAA.

[Vered Zlaikha](#), partner and head of the Cyber Affairs & Artificial Intelligence practice at [Lipa Meir & Co.](#), says: *"I believe that in order to mitigate privacy and data protections challenges, organizations would, firstly, prefer using closed and separate technological environments (of AI systems) for their activities, and secondly, we may see further development of de-identification and anonymization methods, and more organizations implementing them for their AI activities. Moreover, organizations should adopt dedicated policy and internal guidance for employees, in relation to privacy and data protection, tailored to their activities and the AI system they use."*

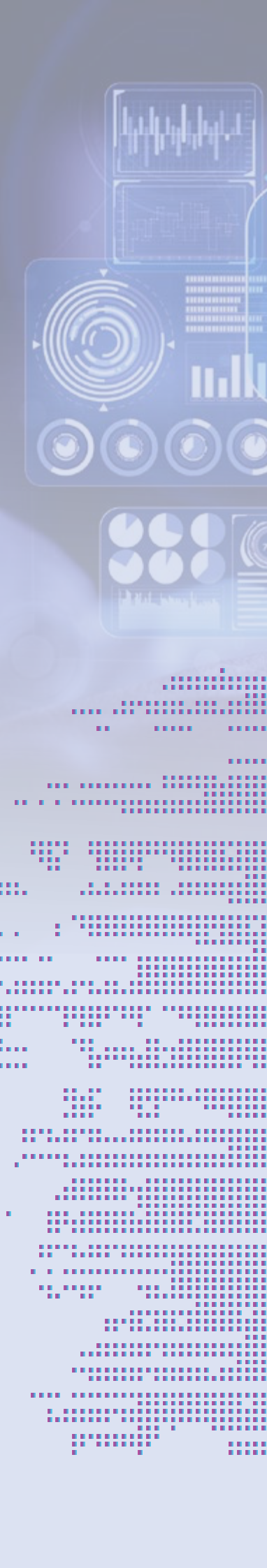
[Shibolet's Oren](#) adds: *"When it comes to our clients, some of them are worried about the implications of their employees using GEN-AI tools in the framework of their duties and wish us to develop rules of conduct, and others want to take advantage of these tools while doing so carefully. When it comes to us as a firm, we are already in the midst of reviewing diverse levels of AI tools to be implemented in our work."*

Training both management and staff to understand and use the tools effectively and understand the potential on the work and caseload will be vital, as firms will increasingly look at the cost-benefit analysis of the time, accuracy and operational efficiencies involved.

## Fears surround intellectual property

GenAI has the capability to produce content that closely emulates the creations of content creators, raising the possibility of intellectual property conflicts. This, in turn, could trigger legal disputes and potential harm to one's reputation. In August in the U.S., in *Thaler v. Perlmutter*, the U.S. District Court for the District of Columbia affirmed the Copyright Office's decision that a work generated entirely by AI with no human input is not copyrightable.

As [Shimon Maman](#), associate in [The Luzzatto Group](#), a specialist IP firm in Israel, pointed out: *"It should be noted that, unlike the United States, there is no official Copyright Registry in Israel, but, if a similar question of copyright*



*ownership is discussed in Israel through a copyright infringement litigation case, the decision will likely be similar as well, that AI alone cannot be considered a creator under the current Israeli copyright law.”*

Shibolet’s [Oren](#) added: *“The future of copyright in relation to GEN-AI tools is indeed a new terrain, and the regulatory and judicial authorities should balance carefully between all the players in order to keep incentives for human creators while pushing forward the benefit we all can gain from AI tools.”*

[Keidar of Arnon, Tadmor-Levy](#) notes: *“The reality is that there is little guidance by regulators or case law as to the legal norms in this space. Clients would typically look for certainty and risk management. We are investing efforts to assist client in a creating an AI legal-safe environment within the organization mainly through working with the GC or management. Usually, it involves AI risk mitigation policy, internal monitoring to ensure AI usage aligns with existing policies, tracking high-risk activities, ensuring proper disclosures and representations, adjusting commercial agreements and proper training for management and employees.”*

## **Current regulatory landscape: EU; UK; US and Israel**

While there is widespread agreement on the need for protective measures, finding the right balance between innovation and safety, ethics and accountability is a real challenge. Debate remains ongoing on how best to regulate these innovative technologies. As the world’s regulators grapple with concerns such as algorithmic bias, misinformation from chatbots like ChatGPT, and misuse of personal data, there is a lack of consensus on a regulatory framework. The result: the regulatory landscape surrounding AI varies by country and region.

*“The EU has taken a leading-edge approach in shaping the regulatory landscape for AI in recent years,”* says [Jeremiasz Kusmierz](#), Head of Compliance at Warsaw-based international law firm [Penteris](#).

*“Central to this effort is the proposed "Artificial Intelligence Act," which is a framework designed to establish unified rules for the development and deployment of AI. Key to this framework and a defining characteristic of the EU's approach is the adoption of a risk-based paradigm, which involves regulating the diverse applications and functionalities of AI systems rather than the technology itself. This strategy sees technology as a versatile tool that can be beneficial, neutral, or even harmful to society depending on its*



application. This approach, often referred to as “narrow” regulation, focuses on identifying potential benefits and risks,” he adds.

ChatGPT triggered a debate whether “narrow” regulation is sufficient to mitigate the risks associated with this technology, with such concerns leading to key amendments to the proposed AI Act, which were agreed upon and adopted by the European Parliament this past June. Striking the right balance is vital.

The UK and U.S. have adopted a more permissive approach to AI regulation. According to the UK’s House of Lords Library in July: *“Ministers contend that UK laws, regulators and courts already address some of the emerging risks posed by AI technologies. However, they also concede that, while AI is currently regulated through existing legal frameworks like financial services regulation, some AI risks have arisen and will arise across, or in the gaps between, existing regulatory remits.”*


Writing in April 2023, the U.S. think tank, the Brookings Institute contends that the U.S. federal government’s approach to AI risk management can broadly be characterised as risk-based, sectorally specific, and highly distributed across federal agencies. While this can be advantageous, this approach also contributes to the uneven development of AI policies.

Israel has also followed a sectoral approach. *“Israeli Governments took a conscious decision not to develop a comprehensive regulatory framework towards AI, but rather, adopted a “sectorial approach” allowing each regulator to monitor and enforce AI activities in their respective fields,”* said [Keidar of Arnon, Tadmor-Levy](#).

He goes on: *“Such approach was anchored in a policy paper titled “Draft Regulation and Ethics Policy in the Field of Artificial Intelligence”, published by both the Ministry of Innovation, Science, and Technology and the Ministry of Justice in October 2022. We believe this approach is a good reflection of Israel’s position as a hub for technology start-ups, where innovation should not be stifled by strict regulation. However, while Israel is indeed a technological leader in several domains, when it comes to AI development, permissive regulation is not enough, and there are expectations from the government to address market failures (one of which is training foundation models in Hebrew) and incentivize more AI innovation across industries for the benefit of Israelis and the entire industry.”*

*“Israel is quite behind when it comes to regulatory advancements in the field of AI, however,”* adds [Oren of Shibolet](#). *“However, a few principal papers*





*were published by the Ministry of Justice and the Ministry of Health which can serve as a benchmark, although the advancement in the EU and U.S. is also a strong point of reference.”*

Although global consensus is needed, it is unlikely to emerge any time soon with a fragmented approach likely for some time. Staying updated on local laws and international developments is crucial.

There is cautious optimism about AI overall, presenting many possibilities but as firms continue to navigate this new landscape, continued vigilance and proactivity in managing the associated cybersecurity risks will be part and parcel of life in this new era.