


# AI Law and Policy

Legal Considerations Involving Artificial Intelligence

## M&A Playbook for Acquiring AI-Powered Companies



By Stephanie Zeppa & Maximilian Fuery on March 3, 2025

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As artificial intelligence (AI) continues to transform the business world, acquirors need to prepare for a deep dive when evaluating companies that use AI to enable their businesses or create proprietary AI. Key considerations for buyers targeting AI-driven companies include understanding how AI is being used, assessing the risks associated with AI creation and use, being mindful of protecting proprietary AI technology, ensuring cybersecurity and data privacy, and complying with the regulatory landscape.

### Risk Allocation

When acquiring a company that utilizes AI, it is vital to assess the potential risks

associated with the AI technologies and their outputs. Buyers should review the target's third-party contracts to understand how risks are allocated, including warranties, limitations of liability, and indemnification obligations. Buyers should also evaluate potential liabilities by considering where AI-generated content might infringe on copyrights or where AI malfunctions could lead to breaches of commitments or cause harm. Finally, buyers should analyze the target's insurance coverage to ensure the company has adequate policies in place to cover potential third-party claims related to AI usage.

### **Protection of Proprietary AI Technology**

For companies that have developed proprietary AI technologies, understanding how these assets are protected is essential. Buyers can take steps to mitigate liabilities associated with this area by reviewing the target's intellectual property strategies. This can include a review of the target's approach to protecting AI technologies, including patents, copyrights, and trade secrets. Additionally, the target's security measures should be thoroughly analyzed so the buyer can confirm that reasonable measures are in place to maintain the secrecy of AI models, such as robust information security policies and nondisclosure agreements.

### **Cybersecurity and Data Privacy**

If the target company uses personal or sensitive data in their AI technologies, buyers need to take a closer look at the target's data protection practices. For example, buyers should assess the target's compliance with applicable privacy laws and regulations, as well as conduct an evaluation of the target's compliance measures with respect to data-transfer requirements in applicable jurisdictions. Further, the target's third-party vendor contracts must include appropriate obligations for data privacy and cybersecurity.

### **Compliance Support and Regulatory Landscape**

Finally, a rapidly evolving regulatory environment around AI requires M&A buyers to ensure that target companies can adapt to new regulations. Buyers can examine the target's systems for overseeing AI use and addressing regulatory challenges, such as minimizing bias and ensuring transparency. Organizational support is also essential, and the buyer should consider what resources the target company has in place to address compliance issues related to AI that may arise.

## **Implications for M&A Buyers**

As AI continues to advance and integrate into various sectors, M&A buyers need to stay ahead of the game when it comes to the unique challenges of acquiring AI-driven companies. By conducting thorough due diligence in the areas addressed above, buyers can better assess potential liabilities and ensure a smoother integration process. By focusing on and understanding these key areas, buyers not only mitigate risk but also position themselves to capitalize on the strategic advantages of AI technologies. In turn, buyers can make informed decisions that protect their investments and leverage AI for future growth.

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