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# TECHNOLOGY MARATHON

**Lessons From the Blog: AI Developments  
and Contracting Pointers**

Mike Pierides & Peter Watt-Morse  
June 26, 2023 | 11:00-12:00 pm ET



# Technology Marathon 2023

Our Technology Marathon is an annual series of tailored webinars focused on hot topics, trends, and key developments in the technology industry that are of essential importance to our friends and clients. Now in its 12th year, our expansive curriculum kicks off in May and continues into June.

For more information:

<https://www.morganlewis.com/events/technology-marathon>

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# Presenters



**Mike Pierides**  
*Partner*  
London



**Peter M. Watt-Morse**  
*Partner*  
Pittsburgh

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# AGENDA

**1** Chat GPT - Introduction

**2** Chat GPT – Legal Issues

**3** Chat GPT – Use in Legal Practice

**4** European Union Reaches Agreement on Digital Services Act

**5** Commercial Sponsor Rights in Sports

**6** Important Considerations for Limitation of Liability Carveouts

**7** Sole and Exclusive Remedy Provisions

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# ChatGPT – Introduction

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# What is Chat GPT?

- Chat GPT is built on an artificial intelligence software architecture developed by the start-up OpenAI, which stands for "Generative Pre-trained Transformer." It is not a search engine but instead is a language processor that uses deep learning techniques to generate human-like responses based on input text.



# What is Chat GPT?

- Chat GPT operates on a neural network computer system that has layers that process and learn from input data, recognize patterns and make predictions much like the neurons in a human brain.
- Chat GPT was trained by entering in user prompts and the desired response and comparing the results of the neural network's predicted response to the desired response. Chat GPT uses the feedback (both computer and human-generated) to adjust the neural network to improve the predicted response.
- Chat GPT digested an enormous amount of text (basically the content of the Internet for the ten years prior to September 2021) to build the chatbot that would produce natural language responses to inputs and was first made available to the public on November 30, 2022.
- Chat GPT went viral gaining 1 million users in the first 5 days. Currently, Chat GPT generates 1.8 billion visitors per month.



# Chatbot Growth

- Chatbots are being incorporated throughout industry. Microsoft is working on integrating OpenAI technology into its core products such as Bing, Word and Excel. Google has launched its own Chatbot “Bard” and many other technology companies are looking to integrate the technology in their products.
- Chatbots are already being used extensively:
  - Creation of content: Draft e-mails, articles, stories, scientific content and poetry.
  - Customer service: Automates chat responses for customer inquiries.
  - Software: Generating software code (GitHub)
  - Schools: Creates systems that can provide on-line interactive tutoring for students

# Chatbot Example

Peter: "How do I explain Chat GPT to a group of lawyers?"

Chat GPT:

When explaining Chat GPT to a group of lawyers, it's important to emphasize its capabilities and limitations as an AI language model. Here's a suggested explanation: "Good morning, everyone. Today, I'd like to introduce you to Chat GPT, an advanced AI language model developed by OpenAI. Chat GPT is designed to generate human-like responses based on the input it receives. It has been trained on a vast amount of text data, including books, articles, and websites up until September 2021. One of the key strengths of Chat GPT is its ability to understand and generate natural language. It can answer questions, provide explanations, and engage in conversations on a wide range of topics. As lawyers, you may find it useful for conducting legal research, drafting documents, or obtaining quick information."

# Chatbot Example

However, it's important to note that Chat GPT has its limitations. While it strives to provide accurate and helpful responses, it may occasionally produce incorrect or incomplete information. It's crucial to verify and cross-reference the information it provides, especially when dealing with legal matters. Additionally, Chat GPT doesn't possess real-time awareness, meaning it lacks the ability to consider recent events or developments that have occurred after its knowledge cutoff date of September 2021. Therefore, it's essential to stay up to date with current legal practices and consult authoritative legal sources when needed.

Furthermore, although Chat GPT can understand the context of a conversation, it may not have a full understanding of the specific legal jurisdictions or local laws that pertain to your work. It's always recommended to consult with legal professionals who are familiar with the relevant jurisdiction for accurate advice. Lastly, while Chat GPT can assist with legal research and provide general information, it should not replace the expertise, judgment, and ethical responsibility of a human lawyer. It's merely a tool to aid in your work and enhance efficiency.





# Chat GPT – Legal Issues

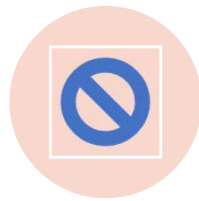
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# What are the potential legal issues from using Chat GPT?



COPYRIGHT  
INFRINGEMENT



TRADEMARK  
INFRINGEMENT



DEFAMATION



PRIVACY AND DATA  
PROTECTION



ETHICAL  
IMPLICATIONS

# What are the potential legal issues from using Chat GPT?

Copyright infringement: If a language model generates text or content that is based on existing works, it is possible that the generated output could be considered a copy of the original work. This could result in a claim of copyright infringement if the generated content is published or distributed without the permission of the copyright owner.



# What are the potential legal issues from using Chat GPT?

Trademark infringement: If a language model generates content that includes trademarks or brand names, it is possible that the use of these marks could be considered infringing if it is done without the permission of the trademark owner.

# What are the potential legal issues from using Chat GPT?

Defamation: If a language model generates content that is false or misleading, and this content is published or distributed, it is possible that the person or entity responsible for the content could be sued for defamation.

# What are the potential legal issues from using Chat GPT?

Privacy and data protection: If a language model is used to collect or process personal information, it is important to ensure that this data is handled in accordance with relevant privacy laws and regulations.



# What are the potential legal issues from using ChatGPT?

Ethical implications: AI systems can potentially perpetuate or amplify existing biases, and it is important to consider the potential impacts of their use on society and individuals. It is important to consider the ethical implications of any technology or tool that you use, and to take steps to minimize the potential negative impacts of their use.



# Chat GPT – Use in Legal Practice

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# Litigation

- AI has many uses in litigation:
  - Major Discovery Tool – reviewing large amounts of electronic documents through digestion, coding, and summarization
  - Attorney-Client privilege review
  - Case management and organization.
  - Background research (factual and legal

# Litigation – Push Back

- Attorneys file a motion in which ChatGPT provided citations to non-existent case law
  - Mata v. Avianca, Inc., No. 22-cv-1461 (PKC), Order to Show Cause (S.D.N.Y. May 4, 2023)
- U.S. District Judge Brantley Starr requires all attorneys to certify whether they used generative AI to prepare filings, and if so, to confirm any such language prepared by the generative AI was validated by a human for accuracy.
  - Mandatory Certification Regarding Generative Artificial Intelligence [Standing Order],” (N.D. Tex.).



# Can Chat GPT draft your next contract?



Understanding of  
legal concepts



Context of the  
agreement



A human touch

# Can Chat GPT draft your next contract?



Understanding of legal concepts: Chatbots have been trained through machine learning algorithms that analyse vast amounts of text, including legal documents. It lacks the general understanding of legal concepts that impact interpretation of contract provisions. This can lead to errors and inconsistencies in the contracts it generates.

# Can Chat GPT draft your next contract?



Context of the agreement: contract drafting requires an understanding of the specific context in which the contract will be used. A contract that is appropriate for one situation may not be appropriate for another, even if the underlying legal concepts are the same..

# Can Chat GPT draft your next contract?



Contracts require negotiation and collaboration between parties. ChatGPT does not have the ability to negotiate or collaborate in the same way that humans can, which can make it difficult to generate contracts that are acceptable to all parties involved.



# Chat GPT – Example

- From *Tech & Sourcing @ MorganLewis*:
  - MLB requested ChatGPT to generate a rental property lease agreement
  - ChatGPT generated one page; 12 paragraph agreement covering generic terms including security deposits, late payments, subletting, etc.
  - Did not contain the context of actual rental situation or the terms that would be subject to agreement between the parties.

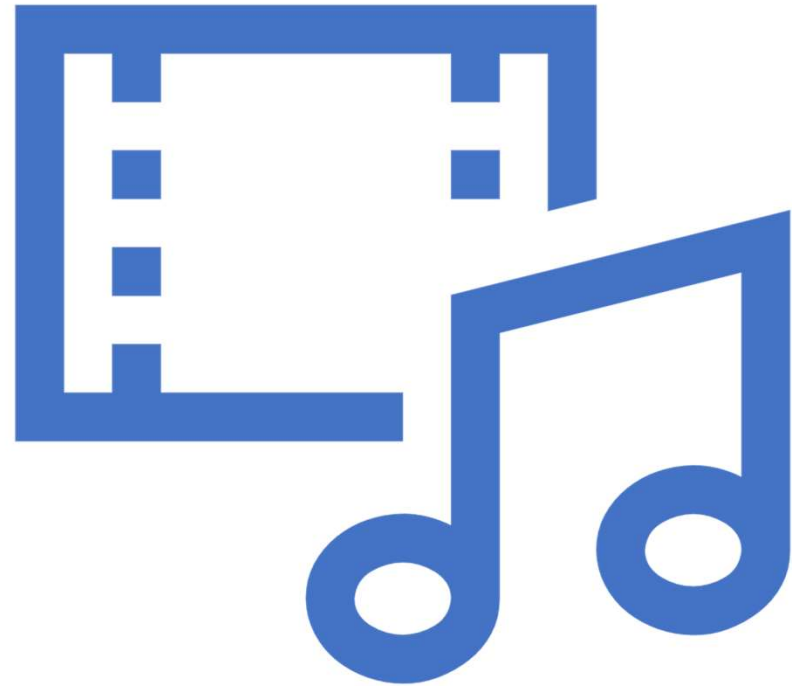


# European Union Reaches Agreement on Digital Services Act

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# Digital Services Act

- The DSA is a new regulation proposed by the European Parliament and Council, which seeks to regulate illegal content, advertising, and disinformation.



# Scope



Online intermediary services such as internet providers



Hosted service providers



Online platform providers such as online marketplaces, app stores, and social media platforms. It applies to such entities that offer their services within the European Union, regardless of whether they are established inside or outside the European Union.



## Key provisions

Measures to counter illegal goods, services, or content online, including an ability for users to flag such content

Transparency requirements, including in relation to algorithms used to recommend content or products

A requirement for very large platforms to undertake independent audits of risk management systems

Bans on targeted advertisements to children and those based on special characteristics of users

Rights for users to challenge a platform's content moderation decisions and seek redress, either via an out-of-court dispute mechanism or judicial redress

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# Commercial Sponsor Rights in Sports



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# FIFA-Budweiser Deal

- On November 18, days before the FIFA World Cup Qatar 2022 was due to start, Anheuser-Busch InBev (the owner of Budweiser, a World Cup sponsor since 1985) was dealt an unexpected yellow card



**FIFA WORLD CUP**  
**Qatar2022**

# FIFA-Budweiser Deal

- FIFA issued a statement that appeared to renege on certain terms of their \$75 million (£63 million) commercial sponsorship agreement. When the Qatari government, FIFA announced that no alcohol would be available at any of the stadiums, other than in corporate suites



**FIFA WORLD CUP**  
**Qatar2022**

# Key Considerations



how revenue was structured under the commercial agreement



what, if anything, Budweiser can do with the surplus stock already in Qatar (is the announcement that Budweiser will gift the beer to the winning team to be believed?)



how quickly Budweiser can increase the locally held stock of non-alcoholic beer



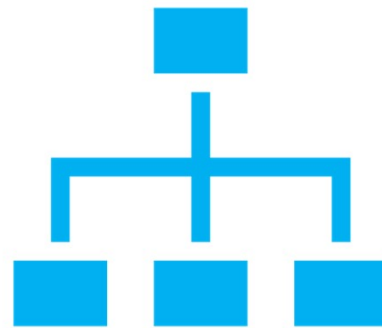
whether Budweiser will raise a dispute for breach of contract



what compensation might be negotiated with FIFA

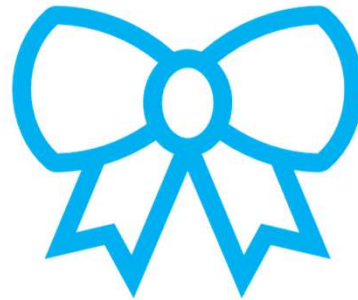


# Key Considerations



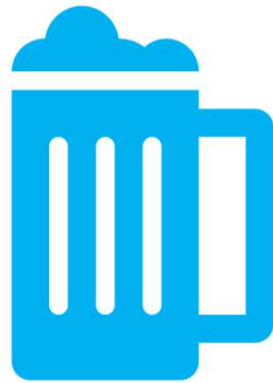
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# Key Considerations



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# Key Considerations



What compensation might be negotiated with FIFA





# Important Considerations for Limitation of Liability Carveouts

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# Limitation of liability

- Limitation of liability provisions are standard in many commercial contracts and are essential in helping the allocation the risks inherent in the agreement.
- These provisions most commonly contain a broad disclaimer of consequential damages and a cap on direct damages
- Negotiations regarding the disclaimers and/or caps frequently focus on the types of claims, liabilities and damages that are not subject to the consequential damage exclusion or the cap on direct damages (or alternatively, a different liability cap for certain consequential and direct damages).

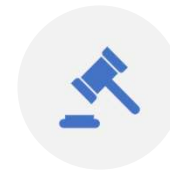
# Carveouts



Confidential Information  
and Breach of Data  
Security Obligations



Intellectual Property



Indemnification

# Carveouts



Confidential Information and Breach of Data Security Obligations: If confidential information is disclosed despite the confidentiality obligations and restrictions in an agreement, the confidential information may lose its inherent confidentiality and related protections.

Traditionally, exclusions and caps did not apply to these claims.

With advent of cyberthreats, these claims are subject to exclusions or caps although may be higher caps than other claims.

# Carveouts



Intellectual Property: Depending on the value of the intellectual property, breaches of intellectual property use restriction can have similar extensive damages to disclosures of confidential information and exclusions and caps would not be applicable to such claims.

Based on certain inhering risks of IP claims (such as unknown patent exposure), un-capped liability less common.

IP indemnification is frequent alternative to uncapped liability.

# Carveouts



Indemnification: Indemnification provisions act as a remedy for a non-breaching party against third-party claims brought against the non-breaching party based on something the party in breach is responsible for.

Common to exclude from cap (Non-breaching party relying on breaching party to fully protect from claims)

Can effectively eliminate liability caps if most likely damages are third party claims.



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# Sole and Exclusive Remedy Provisions



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# Sample Exclusive Remedy Clauses

**Sole and Exclusive Remedy.** THIS SECTION 10 STATES SUPPLIER'S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND CUSTOMER'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

# Sample Exclusive Remedy Clauses

**Exclusive Remedy for Breach of Warranty.** If Seller breaches any warranty set forth in clause (i) or clause (ii) of Section 10, Buyer's sole and exclusive remedy for such breach shall be the replacement of the affected Product and delivery of conforming Product, at Seller's sole expense.

# Key considerations



The buyer or customer in the transaction may be the party that is most likely to be damaged from activities under the contract. Therefore, removing or limiting any sole remedy provisions preserves its right to seek any and all damages beyond those stated under the contract.



The supplier or seller may want to limit its liability to specific warranty remedies (example – low cost computer program that can cause damages significantly in excess of price paid for software) - including a sole remedy provision in order to curtail what could potentially be wide-ranging damages available to the nonbreaching party can make a transaction economically viable for the supplier/seller.



Exclusive remedy clauses are permissible but a key consideration in ensuring the enforceability of a sole and exclusive remedy provision is to carve out the sole remedy clause from any cumulative remedies provision that exists in the agreement.

# Biography



## **Mike Pierides**

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Mike Pierides' practice encompasses a wide breadth of commercial and technology transactions. Mike advises on major outsourcings, strategic restructurings following divestments or acquisitions, and technology-specific transactions such as licensing and "as a service" arrangements. He is also active advising on new technologies such as blockchain and artificial intelligence.

His clients include companies across a multitude of sectors, including technology, financial services, aviation and telecommunications. Within the financial services sector, he advises a wide range of clients, including retail banks, investment banks, investment managers, payments providers, and others. Mike has also worked at the intersection of financial services compliance and technology, advising clients on their related systems and compliance procedures. Mike represents both customers and suppliers, allowing him to bring opposing parties' perspectives to transactions.

Mike is recognized by Chambers UK as an authority on outsourcing and information technology and is highly regarded for his work on complicated BPO and information technology outsourcing (ITO) transactions. Clients and sources told Chambers that Mike "[has] excellent understanding of our sector and the services we provide...", that "he is particularly strong around the negotiating table," and that "he leads from the front rather than merely offering opinion."

Mike was also nominated as an Acritas Star Lawyer, with a client noting he is "an expert in the industry and in the specific subject matter that we've asked advice on. He has really helped to move the deal forward by being proactive. Excellent project management skills as well."

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# Biography



**Peter M. Watt-Morse**  
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Peter M. Watt-Morse, one of the founding partners of the firm's Pittsburgh office, has worked on all forms of commercial and technology transactions for more than 40 years. Peter works on business and intellectual property (IP) matters for a broad range of clients, including software, hardware, networking, and other technology clients, pharmaceutical companies, healthcare providers and payors, and other clients in the life science industry. He also represents banks, investment advisers, and other financial services institutions.

Peter advises companies on business process (BP) and information technology (IT) outsourcing transactions. He also handles technology acquisition, development, licensing, and distribution agreements; strategic alliances and joint ventures; IP creation and strategy; university and governmental technology transfer issues; and general corporate and commercial matters.

Peter developed innovative outsourcing arrangements for essential back-office operations of banks and investment advisors and clinical trial services for major pharmaceutical companies and. The equity/license structure Peter developed helped launch the commercialization of revolutionary semiconductor technology for the networking industry. On behalf of consumer product and manufacturing clients, Peter has created long-term supply arrangements for essential commodities and components. He has also developed complex intellectual property agreements to carve up technologies in divestiture transactions, and cutting-edge agreements and procedures regarding e-commerce.

Peter is an adjunct professor at the University of Pittsburgh Law School, where he teaches classes related to technology transactions and IP. He frequently speaks and writes about outsourcing, IP, and technology-related topics. He also has an extensive background in technology use in the practice of law and is past chairman of Morgan Lewis's Technology Steering Committee.

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