AI and Risk Mitigation for Design Professionals

Learning Objectives

- Discussing the Way Things Used to be Done for Design Professionals
- The Future of Professional Liability Standard of Care
- Pros in Use of AI
- Negatives in Use of AI
- What the Future May Hold as AI is Here to Stay

Artificial Intelligence is the Wave of the Future

- Artificial Intelligence creator, James Winkler said, “The future of professional services lies at the intersection of technological innovation and human intent. Ultimately, human agency—civil society, politicians, and stakeholders—holds significant influence. The course of history is not written in stone, but shaped by decisions made today, especially if AI affects our pockets.”

- Professional services then, becomes a result of collective decisions, where the advancements of AI intersect with the aspirations and values of society. It's within this interplay that the evolution and impact of architecture find their resonance and significance.

Artificial Intelligence and Architecture

- A new study published by the American Institute of Architects (AIA) quantifies current adoption and use of artificial intelligence (AI) across the profession, as well as the opportunities and concerns about its increased use in the design and construction sector.

Standard of Care of Professionals

- The common law standard of care for performance of services is generally defined as the ordinary and reasonable care usually exercised by one in that profession, on the same type of project, at the same time, and in the same place, under similar circumstances and conditions. Perfect performance is not required by the common law.
- As explained by one court: “As a general rule, a professional [whether it be architect, real estate broker, accountant, lawyers, etc.] is tested by the rule of ordinary and reasonable skill usually exercised by one of that profession… [I]n the absence of a special agreement, he does not imply or guarantee a perfect plan or satisfactory result. Architects, doctors, engineers, attorneys and others deal in somewhat inexact sciences and are continually called upon to exercise their skilled judgment in order to anticipate and provide for random factors which are incapable of precise measurement. The indeterminate nature of these factors makes it impossible for professional service people to gauge them with complete accuracy in every instance.”

The Way Things Used To Be Done

- Boxes of Documents
- In-person Meetings and In-person Problem-Solving
- Design Questions Were Based Upon Paper
- Computers and the Like Were the Exception Not the Rule

The impact of artificial intelligence is incredibly profound, which is why AI in the professional liability market is expected to be worth **$151.1 billion** by 2032.

Current Regulatory Framework for AI

There are no specific federal regulatory frameworks in place addressing the use of AI by professionals or any other professional community.

Regulation is still under significant development.

Trust, but Verify

As noted by the Professional Engineers of Ontario, “Professional engineers are responsible for all aspects of the design or analysis they incorporate into their work, whether it is done by an engineering intern, a technologist, or a computer program. Therefore, professionals are advised to use the data obtained from engineering software judiciously and only after submitting results to a vigorous checking process.”

Ensure That the AI You Use is Transparent and Accountable

Transparency is the ability to understand information regarding the AI system and the ability to distinguish whether query results generated are in fact AI-generated, versus human-generated.

Accountability is a related principle, holding both the AI vendor and the user responsible for its implementation. For self-hosted and self-developed AI models, it is prudent to have an independent committee review the model to ensure accountability.

Secure and Safeguard Confidential Information

Generative AI tools often use information input by users to continuously train the large language models that power them, which means that without proper safeguards, anything you input into open systems such as ChatGPT can potentially be accessed by others.

This information cannot be clawed back once it is released. Professionals' use of AI should be restricted to tools operating on a closed system such that inputs are not released "into the wild" where they may be accessed by the general public.

Pros of AI in Professional Liability Cases

Increased Efficiency and Accuracy

- AI allows professionals to answer clients' questions in a quicker, more efficient manner.
- Streamline processes such as answering clients' questions, and material procurement.

Pros of AI in Professional Cases

Improve Time to Inspect and Costs Involved

- AI algorithms along with drones can see and observe the condition. Same can be said for the estimated costs as well as determining the responsible party.

Two key benefits – TIME and MONEY

Industry Concerns with AI

- Inaccuracy
  - This is the biggest concern.
- Cybersecurity
- Explainability
  - Capacity to express why an AI system reached a particular decision, recommendation, or prediction.
- Privacy

Issues to Keep in Mind

Misuse of AI tools, like the misuse of any other tool, may result in legal, regulatory, technical, or other issues for the firm. Firms may want to keep the following precepts in mind when incorporating AI into their business practices.

- **Ethical Use:** Misleading, malicious, or inappropriate content can create liability for firms, as can personal use of AI by employees.
- **Accuracy or Lack Thereof:** AI is known to make mistakes; firms may wish to apply their existing QA/QC processes before substantive AI-generated content is incorporated into their work product. AI is frequently used to record or summarize project and other meetings. A firm's QA/QC will likely include checking AI-generated minutes for accuracy the same way conventional, analog minutes are reviewed.

Issues to Keep in Mind

- **Limitations:** AI may have unpredictable limitations.
- **Bias:** It has been shown that biases in AI algorithms can lead to skewed and discriminatory results.
- **Cross-Border Implications:** There are concerns that still need to be addressed regarding the flow of AI-generated data across national borders.

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