

Developing your company's generative AI policy: Start with an Agile "5Ws" framework

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NOVEMBER 18, 2024

There's little doubt that your company's unlocking of the opportunities of Generative Artificial Intelligence will also present nerve-racking issues for businesses over the next decade, regardless of your industry or niche. The opportunities are vast from our vantage point today impacting human capital, content creation, software development, automation, use of predictive analytics, to touch just the tip of the iceberg. The concerns, from IP infringement to privacy, from regulatory to reputational, can cause even the most risk-tolerant business leaders to flinch.

It is never easy to develop an all-encompassing, forever policy for key business issues, but for AI, with its uncertain future and even more uncertain legal challenges, this would be both time-prohibitive and an impediment to growth.

For many new innovations you adopt, your company will need to pave its own unique path and to expect your decisions, both for enablement and compliance, provide far more positive than negative results.

For the next 10 years or so, this will be no different for fast-moving growth companies or slower-moving conservative businesses, except that growth companies will, as always, incur more of the risk.

So what do you do?

Start by exploring use cases, not by creating a full policy

It is never easy to develop an all-encompassing, forever policy for key business issues, but for AI, with its uncertain future and even more uncertain legal challenges, this would be both time-prohibitive and an impediment to growth. You will almost certainly not get it right, and there is great potential you will debilitate progress.

So what can you do now?

Here are some move forward tips:

- Recognize that creating a global policy at the outset is more wishful thinking than possibility.
- Formalize the governance and approvals for application of AI in your business, but do not create a global policy.
- Involve your stakeholders to explore potential use cases, including their opportunities and risks.
- Hire expertise as needed for these "piece parts" and to help you review the overall governance and approval process, not to create the overall policy. They do not know your business as well as your staff and customers.
- Evolve the governance and approval policies for these specific use cases over time, spending more effort on those that are being used the most.
- Adopt a communications and training strategy to disseminate these use cases, the specific policies for their adoption and monitoring, as well as any relevant best practices and legal challenges outside your own four walls.
- Keep your D&O insurance up-to-date.

Having a "5Ws checklist" can help

The 5Ws we're talking about here are the same ones you learned during your expository writing courses in college or high school: Who, What, When, Where, and Why.

This framework, which you can turn into a handy, customized checklist, as seen in the box at the end of this article, can provide significant guidance and governance when exploring use cases and how (or if) to enable AI for these business strategies, and what guardrails to put into place.

- **Who** ... can select or update technologies, use and apply them, and/or approve the applications of AI.
- **What** ... is the need of the application, parameter, connectivity to other business applications and data.
- **When** ... will the application be submitted for approval, when will the specifically approved use case policy be updated, and when will expected milestones be monitored.

- **Where** ... will this be applied internally and externally, evaluated, and added to insurance.
- **Why** ... are we taking this risk, creating this ourselves vs. using a third-party, etc.

Getting started on your 5Ws checklist and AI framework

Your company's own 5Ws Governing AI Adoption framework, again, will provide governance process guidelines for adoption of generative AI for use cases. It's not a final all-encompassing global AI policy. It's a rubric that provides organizationally tailored structure for your leadership team, your staff, and your other stakeholders to better assess the needs, risks, benefits, potential outcomes and ongoing governance of AI's many use cases.

>> *Your company's own 5Ws Governing AI Adoption framework will evolve as you move forward, facilitating development of more comprehensive policies over time that are more custom-fit to your business, resource allocation, risk-tolerance and growth strategy.*

By building out the 5Ws framework, you can better equip your business to explore the risk:reward of the company's specific generative AI implementations, instead of creating a morass of policy documentation or, potentially even worse, stalling the usage of AI in your business.

It can also allow your organization to leverage outside risk management resources such as from NIST's Artificial Intelligence Risk Management Framework: Generative Artificial Intelligence Profile (<https://bit.ly/3ObUnxq>).

The good news is that your business and technology teams should be able to write much of your company's 5Ws Governing AI Adoption framework on their own, though it's advised that you have the framework and subsequent policy segments and updates reviewed by legal counsel.

In short ...

- Focus first on the process governing adoption of generative AI for specific use cases, rather than developing an all-encompassing global AI policy.
- Start applying your 5Ws framework to specific use cases, evaluating them on a case-by-case basis.

About the author



Arthur E. Mertes is a corporate attorney with 25-plus years' experience counseling growing middle market and public companies, investors, boards, and earlier stage companies on complex transactions, M&A and securities, finance and investment transactions, corporate governance, intellectual property/data/privacy/licensing matters, corporate disputes, share capital structure and incentives, and related areas of law serving the needs of these growth-oriented companies. He is a partner with **Tucker Ellis LLP** and can be reached at arthur.mertes@tuckerellis.com.

Development of the Company AI Use Policy: The 5Ws Framework

Who...?

- Can select AI platforms and tools
- Can use AI platforms and tools to create applications or solutions
- Can apply the solution in practice within the organization
- Can approve use or application of the creative and application of AI

What...?

- Is the need application and solution
- Will/can the AI platform or solution be used for
- Data and information will/can AI be used with
- Licenses (AI platforms, data sets) are required

When...?

- Has a 'use case' been formally submitted, vetted and approved
- Some AI platforms and tools might be given advance approval for specific organizational use or application
- Have the right technical decisionmakers approved the use and application
- Have the right governance decisionmakers approved the use and application

Where...?

- Are the internal vs. external sources of information
- Are the internal vs. external applications of the AI
- Are the evaluations of stakeholder interests and risks
- Will insurance cover areas of potential claims due to failures

Why...?

- Should this be internally created
- Have benefits vs. risks been properly analyzed
- Does the use/applications align with core competencies/core business strategy
- Are there proven/reliable/cost effective/safer third-party alternatives

Source: Arthur E. Mertes, Esq.

This article was first published on Reuters Legal News and Westlaw Today on November 18, 2024.

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