AI Risks: Court Holds Attorney Client Privilege Waived By Client's Use of AI App



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A federal judge last week held that the output from a Generative-AI App is not protected by the attorney-client privilege even if the query had been made for the purpose of assisting with legal advice. *United States v. Heppner*, No. 25-cr-00503-JSR (S.D.N.Y. Feb. 6, 2026).

We published a Legal Alert about this issue only a few weeks ago, cautioning readers about the risks with funneling confidential information through a Generative AI App. We wrote that the use of an AI App in this fashion is "tantamount to client waiver of the attorney-client privilege." Now a highly regarded federal jurist from the Southern District of New York has so held.

Heppner is not an outlier. The federal prosecutor in *Heppner* explained the U.S. government's position:

The defendant chose to share his prompts with an AI tool created by a third-party company that is publicly accessible. He further chose to receive AI-generated responses drawing upon a wide range of underlying sources. And this was not a mystery to the defendant: Anthropic explicitly advises its users in its Privacy Policy . . . that it collects data on the "prompts" entered and "outputs" generated; that it uses this data to "train" its AI tool; and that it may disclose this data to "governmental regulatory authorities" and "third parties." For these reasons, users have a diminished privacy interest in "conversations with [an AI tool] which users voluntarily disclosed to [an AI company] and which [the AI company] retains in the normal course of business.

Join us on February 25, 2026 at 12:30 ET for Part 2 of our 3-part, complimentary webinar series about effective strategies for managing AI in the workplace. We will discuss the need for a holistic approach to impress upon employees the risk of feeding

confidential information through an AI App and how best to launch that effort. We will also reiterate the importance of having legal counsel scrutinize the terms of service from any AI App vendor.

REGISTER NOW for Part 2: Building an AI Governance Structure

WATCH Part 1: The Risks of Unmanaged Use

SAVE THE DATE for Part 3: March 25, 2026 from 12:30pm-1:30pm.

For questions about AI governance, workplace compliance, or developing an AI use policy tailored to your organization, please contact:

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**This is an informational session only and is not intended to create an attorney-client relationship with attendees.*

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