Leading with Legal: AI Design Tips to Get Customers Faster

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RE-WORK | AI In Finance Summit
April 19, 2024

Overview

I. General Framework for Constructing an AI Application

II. Part 1 - Design Considerations for a B2B AI-powered Application

    A. Contract Principles

    B. Pressure Points

III. Part 2 - Design Considerations for a B2C AI-powered Application

    A. Terms and Conditions

    B. Privacy Policy

IV. Part 3 - The Intersection between Business Concerns and Government Regulation

    A. The AI Bill of Rights

    B. What does the future look like?

Tech Stack for an AI Application

1. **Application**

   -The actual product that interacts with the end user, utilizing model outputs

2. **AI Model**

   -The AI model that powers the Application (e.g., the LLM)

3. **Data Set**

   -The data upon which the model is trained

4. **Hardware**

   -The computer processors, servers, etc. that are used to power the above

   (<u>Note</u> - this should look familiar if you watched the FTC's tech summit in Jan 2024)

Part 1 - B2B Contracts

Question: How do you design a B2B product utilizing artificial intelligence that is "easier" to market to potential customers?

<u>Keep the following things in mind</u>:

1. You will likely be viewed as a vendor marketing a product that will be providing a service to your customer, so you'll have to get through heavily regulated procurement channels.
2. You need to provide a reasonable degree of certainty around a new, rapidly developing technology concerning performance and compliance.
3. You need to satisfy potential higher bars to entry in heavily regulated industries (e.g. Finance)
4. You need to exude confidence that you can comply with existing <u>and</u> future laws and regulations.

So, how do I actually build an application that meets these requirements???

B2B Design Principle #1 - The Benefits of Inhouse Development

- Each subcontractor that you use is going to increase the overall level of operation complexity.
- You will always have the most control over your own operations, employees, policies, etc.
  - You dictate the policies and procedures that your own team will follow
  - You understand that capabilities of your own technologies
  - You can be as transparent as you desire about the how/why/when you do things
  - Finally, you can change the way your business operates as you deem necessary
- Each subcontractor is an additional variable over which you only have a limited amount of control.

B2B Design Principle #2 - Choose Subcontractors with Intention

- To the extent you are utilizing subcontractors, can you limit the impact by selecting the most versatile vendors?

Application

⬇

AI Model

⬇

Data Set

⬇

Hardware

1. Is there a cloud vendor attached to one component that you can use for other/all your components?
    a. If your AI model is tied to particular cloud platform, can you use it for your entire stack?
    b. If your data set already lives in a particular location, can you host everything in that location?
2. Make sure that when you are shopping, you weigh both hard costs ($$$) as well as there structural costs inherent in your design.

B2B Design Principle #3 - Control with Your Contracts

- Your can't agree to provide something to a customer unless you can get it yourself or from a subcontractor.
    - What can you offer regarding application outputs?
        - Protection over your existing IP in creating the Application (do you own your process?)
        - Ownership of work product created by Application (who owns the work product?)
    - What can you offer regarding compliance?
        - Audit rights (direct, pass through)
        - Notices
        - Certifications/Questionnaires
        - Policies and Procedures
        - Compliance with laws
        - Other documentation

B2B Design Principle #4 - Subject Matter Specific Concerns

- You have to make sure you can follow all relevant laws concerning your product
- You should be building your application with a solid contractual foundation (see step #3) so that you can make your customers confident that you will fulfill all of your legal obligations.
- For AI-elements, these will need to follow existing laws, as well as any AI specific concerns that may arise.
  - Consider current guidance from the CFPB, FTC, the White House, etc.
  - Think more generally about governmental communications such as the AI Bill of Rights
  - Bring a common sense approach to the development table

B2B Design Principle #5 - Identify/Prevent "Bad" Outcomes

- Considering the overall risk inherent to a particular subject matter and the needs of your prospective clients, are there specific outputs/applications where AI functionality should be disabled or otherwise limited?
- The risks of AI technology may include:
  - Financial
  - Reputational
  - Ethical
- Put yourself in the shoes of your desired customers and think about what sort of application they want to use

B2B Design Principle #6 - Conform to Geographic Requirements

- Where will your company operate?
  - What rules/regulations apply to running a business in that location
- Are there specific geographic areas where your customer will exist?
  - What rules/regulations will apply to your clients (and maybe to your own business as well)
- What other jurisdictions may impact your product performance and business negotiations?
  - Where is your data stored/processed?
  - Where are your subcontractors located?
  - Are their other geographic considerations (safety, sanctions, governmental affairs, FCPA, etc.)
- Data Privacy
  - GDPR, CPRA, etc.

Part 2 - B2C Contracts

Question: How do you design a B2C product utilizing artificial intelligence that is "easier" to market to potential customers?

Keep the following things in mind:

1. Your operative customer "agreement" is likely to be comprised of: (i) Terms and Conditions, (2) a Privacy Policy (that may be included in the T&C's), and (3) possible a licensing agreement or similar document further dictating conditions of use.
2. Many of the B2B concerns are still relevant in this new context. In general, the more control that you maintain over your AI stack, the more certainty/clarity you can express in these agreements.

B2C Principal #1 - Considerations for T&C's

- As with B2B, simpler is always better
- Transparency is valuable - don't be afraid of plain English
- Identify your audience
    - Both (i) who they are, and (ii) why they are utilizing your application
    - The priorities and organization of your T&C's should reflect the priorities and needs of your expected users
- Changes should be made with clear intention
    - Give some thought to your runway during your initial draft so you don't have to tweak constantly
    - Any changes that you do make should be clearly explained, with context (can you give a "why")

B2C Principal #2 - Considerations for Privacy

- Your privacy policy should also be thoughtfully organized and easy to understand
- Everybody cares about data collection and ownership - address this head on!!!
  - If opt-out rights are involved, they should be explained clearly.
- <u>If you need certain data rights to be a viable, will your anticipated customer agree to them</u>?

B2C Principal #3 - AI Specific Considerations

- How does AI change the content of the T&C's/Privacy Policy
- For example, specific to LLM's, think about all the different types of information you will have and how you will treat each subcategory:
  - What information will be included in the underlying data set?
  - What will happen to user prompts?
    i. Where/how are they stored
    ii. How are you using them
  - What other categories of information are you collecting?
  - What about your subcontractors - what do they process/store?

The Intersection b/t Business Concerns & Laws/Regulations

- Are you building your application with an eye on future laws/regulations?
- What guidance have we received from regulators to date?
  - There is still substantial attention on the AI Bill of rights published by the White House Office of Science and Technology Policy in October 2022 - a LOT of development has happened since then.
    - i. As recent as the 3/28/24 OSTP presentation, still called a "fundamental distillation of our values"
  - The FTC broadcast a Tech Summit on January 25, 2024.
  - CFPB Guidance and Issue Spotlights featuring AI
    - i. Sample publications:
      1. June 6, 2023 - "Artificial Intelligence" Chatbots in Banking
      2. September 19, 2023 - Guidance on Credit Denials by Lenders Using Artificial Intelligence

Potential Design Notes Referenced in the AI Bill of Rights

- The AI Bill of Rights Five Pillars
  - I. Safe and Effective Systems
    - i. The technology should work as intended
  - II. Algorithmic Discrimination Protections
    - i. Protection from algorithmic discrimination; systems must be used/designed equitably
  - III. Data Privacy
    - i. Protection from abusive data practices via built-in protections; agency over how your data is used
  - IV. Notice and Explanation
    - i. Customers should get notice that AI is being used, and how/why it contributes to outcomes impacting you
  - V. Human Alternatives, Consideration and Fallback
    - i. You should be able to opt-out of AI outcomes in favor of a human alternative, or get a human appeal

Looking Forward

- The American Privacy Rights Act (draft legislation released earlier this month)
  - This is a new draft, bipartisan, bicameral federal privacy bill.
  - The first significant attempt to pass such a law in over 2 years.
  - Such a law would have broad implications across all industries, including AI/Finance
    i. See definition of "Covered Algorithm" as "a computational process, including one derived from machine learning, statistics, or other data processing or artificial intelligence techniques, that makes a decision or facilitates human decision-making by using covered data, which includes determining the provision of products or services or ranking, ordering, promoting, recommending, amplifying, or similarly determining the delivery or display of information to an individual."
- California Consumer Privacy Act - Draft regulations re Automated Decision Making Technology (ADT)
  - Existing draft ADT regs would require businesses to provide a pre-use notice to consumers regarding the use of ADT, an opt-out, and to access information about how the business uses ADT.