Monitoring Compliance in the Age of Artificial Intelligence: Lessons from Caremark

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Three Topics Today

1. How Human is “Artificial Intelligence”?  
2. What is a Compliance Program, Really? Lessons from In re Caremark  
3. Compliance in the Era of “Artificial Intelligence”

Three Takeaways

1. The technology of AI seems magical – as a compliance officer you can cut through the magic quickly.  
2. In many ways, AI is just another set of employees and agents working for the organization.  
3. Don’t let your Chief Technology Officer take over hiring from Human Resources!
How Human is Artificial Intelligence?

Algorithms, In a Nutshell

Learning Source Final Algorithm
- Prior Human Action - Human Defined
- Objective Criteria - Machine Defined

Example: Learning to Play Space Invaders

Learning Source Final Algorithm
- Prior Human Action - Human Defined
- Objective Criteria - Machine Defined
Example: Criminal Sentencing

How Human is Artificial Intelligence?

Criminal Sentencing

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How Human is Artificial Intelligence?

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A Compliance and Ethics Program?

According to In re Caremark:
A director's obligation includes a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists, and that failure to do so under some circumstances may, in theory at least, render a director liable for losses.

Seven Elements of a Compliance and Ethics Program

1. Need standards and procedures to prevent and detect criminal conduct.
2. Management needs to engage with overall program and with people who are delegated to actually manage the program.
3. Don't hire people lacking integrity into management.
4. Communicate, train, and share information so people are aware.
5. Don't set it and forget it! Monitor and audit; evaluate the effectiveness of the program, and have a hotline that actually means something.
6. Bring your compliance program to life (not on paper); use incentives to guide behavior and carry out appropriate disciplinary measures even for non-action.
7. Address known, non-compliant conduct and make adjustments to the program as needed.

What is a Compliance and Ethics Program, Really?

A semi-complex adaptive algorithm that learns from positive and negative feedback to achieve a goal.

Sound familiar?
What is a Compliance and Ethics Program, Really?

A semi-complex adaptive algorithm that learns from positive and negative feedback.

And the individual sub-algorithms (whether human or machine) should also learn from positive and negative feedback.

Compliance in the Era of Artificial Intelligence

As Caremark anticipated?

The corporate information and reporting system applies to the corporation as a whole, including any use of artificial intelligence.

Compliance in the Era of Artificial Intelligence

As the Seven Elements of a Compliance and Ethics Program instruct:

- Management needs to engage and
  - monitor
  - prevent and detect,
  - make adjustments,
  - and train using incentives and appropriate disciplinary measures even for non-action.
Compliance in the Era of Artificial Intelligence

Require that both the AI algorithms and the AI developers appropriately receive positive and negative input like any other employee or agent of your organization's Compliance and Ethics Program.

Don’t let your IT department run

◦ Human Resources or
◦ Your Compliance and Ethics Program!

Final Thoughts

If technology can learn, it is a desired addition to your organization’s workforce and your compliance and ethics program.

If it can’t, then the human that created it is the next best candidate.

I hope this helps you cut through the magic and mystery of AI.

Thank you