

Introducing AI to the World of Aviation Consumer Protection Regulation (April 2024)

With the integration of artificial intelligence technologies (“AI”) into everyday life, AI presents unique opportunities for airlines and ticket agents to enhance customer service offerings and reduce expenditures on customer service personnel. AI tools, with their predictive capabilities, can streamline many customer service tasks and create efficiencies for airlines, ticket agents, and customers. However, AI technologies like chatbots and voice assistance can also present compliance pitfalls if they are integrated without consideration of regulatory and legal requirements. In this article, we provide an overview of promising AI technologies and provide a summary of legal and regulatory considerations that airlines and ticket agents should consider as they adopt AI tools to assist customers.

Although other U.S. federal agencies have warned regulated entities within their jurisdiction,¹ the U.S. Department of Transportation’s Office of Aviation Consumer Protection (“OACP”) has not issued guidance or regulations regarding the use of AI tools in the sale of air transportation. However, DOT’s broad authority to prohibit unfair and deceptive practices in air transportation and the sale of air transportation undoubtedly will be an important enforcement tool when OACP turns its focus towards AI compliance.² AI tools integrated into carrier or ticket agent websites undoubtedly will receive the most scrutiny from OACP. OACP has the authority to investigate and penalize unfair and deceptive practices of U.S. and foreign airlines as well as ticket agents. A ticket agent is a “person...that as a principal or agent sells, offers for sale, negotiates for, or



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with the DOT’s regulations and policies. For further information regarding the matters discussed in this article, please contact any of the following attorneys:

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holds itself out as selling, providing, or arranging for, air transportation.”³ OACP has traditionally interpreted this definition broadly, to encompass any entity that receives any form of compensation for “arranging” the purchase of air transportation, whether or not the customer books directly with the agent. This broad definition of a “ticket agent” could apply to AI tools maintained by non-air carrier or non-traditional travel agent entities and could subject independent AI tools to DOT scrutiny. As the tools are developed and tested, they must be developed keeping compliance with federal requirements related to consumer protection in mind.

Booking assistance

Travelers are increasingly turning to AI tools to help plan their travel, asking AI chatbots to assist with everything from identifying flights, to help finding hotels and planning activities. Air carriers and ticket agents are also turning to AI tools to assist customers in personalizing recommendations and providing offers for booking flights. DOT regulation regarding the advertisement of total airfare inclusive of taxes and mandatory fees broadly applies to “any advertising or solicitation” for passenger air transportation.⁴ (Emphasis added). This includes any form of advertisement from social media postings to the subject header of emails.⁵ Given this broad wording of the regulation and DOT’s historically broad view of its authority, it is likely DOT would take the position that airfare quotations provided to customers through an AI tool are subject to DOT advertising regulations. All quoted fares must be current and available in reasonable quantities. So, any AI tool that provides airfare quotations must be updated regularly. Even if an AI tool is developed independently of carrier or ticket agent involvement, if it quotes an airfare price and refers the customer to a booking platform to complete the purchase, if the entity building the AI tool is compensated in any manner, DOT may take the position that the company that developed the AI tool is “arranging” air transportation under the statutory definition of ticket agent and, thus, hold the company responsible for compliance under the regulation.

Additionally, the DOT’s codeshare disclosure rule would apply to schedule listings provided by AI tools.⁶ The notice requirement for codeshare flights applies to “mobile websites and applications.” Though DOT does not define an “application,” in the rule text, even if an entity successfully argued that an AI tool is not an “application,” DOT could rely on the statutory requirement for codeshare disclosure which requires appropriate disclosure in all forms of “electronic communication.”⁷

Itinerary management and refund assistance

AI tools are especially beneficial when a customer needs assistance to change or cancel an itinerary or request a refund. Chatbots can process simple requests online. Voice assistants can directly provide the service to customers who call the carrier or agent directly. Such transactions can be time-consuming over the phone with a live agent and may be subject to a surcharge for phone assistance. AI tools can easily and efficiently assist customers who may have questions about their itinerary and who do not wish to pay a surcharge for using a live phone agent.

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However, even tools that ostensibly create customer efficiency can run afoul of DOT requirements. DOT has detailed regulations regarding flight status notifications and accuracy.⁸ If the AI tool provides flight status updates, it would likely be subject to the same regulations. Change and cancel fees are considered material terms by DOT. Failing to disclose those fees if a customer wishes to change a flight, including the availability of a refund if requested from the airline within 24 hours of booking,⁹ could be considered an unfair and deceptive practice. The more complex a change requested by the customer, the more potential there is for AI tools to provide incorrect or incomplete information. Finally, DOT requires carriers and ticket agents to provide “prompt” refunds, when due.¹⁰ A refund is “due” when it would be an unfair or deceptive practice to not provide a refund. Separate from AI, DOT has taken the position that when tools are built to assist customers with submitting refund requests, if the tools do not adequately process refund requests or notify customers if the refund requests did not go through, then the carrier engaged in an unfair and deceptive practice.¹¹ Therefore, AI tools should be exhaustively tested to ensure that, if a request to change an itinerary or a request for a refund cannot be processed by the system, the customer and the airline receive appropriate notifications regarding the failure.

Information sharing

Another concern is if the AI tool “hallucinates” incorrect information in response to a consumer request. AI “hallucinations” are when AI tools generate false information.¹² Recently, a Canadian court held Air Canada responsible when its AI chatbot “hallucinated” a bereavement fare policy that did not align with Air Canada’s actual bereavement fare policy. In the United States, DOT considers a practice “deceptive” if the practice is “likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter.”¹³ Moreover, there are specific regulations requiring that carriers and ticket agents provide accurate information to consumers, for example, in the area of disability accommodation.¹⁴ DOT has made the disclosure of ancillary service fees and family seating policies a regulatory priority in 2024.¹⁵ Therefore, any AI tool designed to assist customers, including providing general information about carrier services, must be tested and designed to ensure that its responses are accurate. For areas that are highly regulated, such as disability services, it may be advisable for AI tools to refer the questioner to up-to-date online resources or the company’s disability services desk so that the customer is assured of getting a correct response.

Conclusion

AI technology is here, and carriers and ticket agents should explore the ways that AI can help customers book tickets, change itineraries, and generally get information in a fast, efficient, and customizable way — as well as save carriers money. However, AI tools are subject to the same regulatory requirements as other carrier tools, including live human beings. Therefore, the design and implementation of AI in the air transportation services sector must be done cautiously and with rigorous testing and monitoring. Air carriers and

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ticket agents should seek the advice of experienced counsel to ensure that in adopting new technologies, they are not adopting an expensive regulatory compliance issue.

¹ See Consumer Financial Protection Bureau: Chatbots in Consumer Finance (June 6, 2023) (available at <https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/>) (warning that “[f]inancial institutions risk violating legal obligations, eroding customer trust, and causing consumer harm when deploying chatbot technology”).

² 49 U.S.C. § 41712.

³ 49 U.S.C. § 40102(a)(45).

⁴ 14 C.F.R. § 399.84(a).

⁵ See, e.g., Frontier Airlines, Violations of 14 C.F.R. § 399.84(a) and 49 U.S.C. § 41712, Order 2016-12-5 (Dec. 9, 2016) (assessing a civil penalty of \$60,000 for failing to disclose the total price of air transportation in emails and social media posts).

⁶ 14 C.F.R. § 257.5.

⁷ 49 U.S.C. § 41712(c).

⁸ 14 C.F.R. § 259.8.

⁹ See Guidance on the 24-hour Reservation Requirement at 3 (May 31, 2013) (available at <https://www.transportation.gov/airconsumer/notice-24hour-reservation>) (advising airlines that failure to disclose the availability of a refund within the 24-hour booking window would be a deceptive practice).

¹⁰ 14 C.F.R. § 259.5(b)(5) and § 399.80(l).

¹¹ See, e.g., Southwest Airlines, Violations of 49 U.S.C. § 41712 and 14 C.F.R. Part 259, Order 2023-12-11 (Dec. 15, 2023) (due to a high influx of refund requests, Southwest built a microsite to help prioritize and process refund requests, but DOT determined the site’s technical limitations resulted in regulatory violations for failing to provide prompt refunds).

¹² See “What are AI hallucinations?” at <https://cloud.google.com/discover/what-are-ai-hallucinations>.

¹³ See Melnick, Kyle, “Air Canada Chatbot promised a discount. Now the airline has to pay it,” Washington Post (Feb. 18, 2024) (available at <https://www.washingtonpost.com/travel/2024/02/18/air-canada-airline-chatbot-ruling/>).

¹⁴ 14 C.F.R. § 382.41.

¹⁵ See, e.g., <https://www.transportation.gov/airconsumer/airline-family-seating-dashboard>.