Data Centers, ESG and the Law: 10 Key Takeaways

UC Berkeley Center for Law and Business

A featured event of the Berkeley Corporate + Climate Summit (May 2026)

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During **Berkeley Law's 2026 Corporate + Climate Summit on May 28, 2026**, panellists from Google, Microsoft, Equinix, and Weil were invited to provide insights in response to a central question: **how can we scale data center infrastructure and investment in a way that advances sustainability progress, while mitigating legal risk?** Below are 10 key takeaways.

1. Market Activity and Investment Trends

- **Market appetite remains extremely strong, driven by AI and cloud demand.** AI has accelerated what was already a major cloud and digital-infrastructure growth story. Long gone are the days of data centers being regarded as passive commercial real estate. They are strategic infrastructure – often seen as geopolitical assets, with links to energy security, national security and resilience.
- **The market is constrained by execution, not just capital.** There is plenty of capital looking for exposure to this sector, but the hard part is execution. In the U.S. in particular, investors are underwriting whether a site has deliverable power, a realistic interconnection timeline, viable permitting, community acceptance, and a credible construction path.

> *"Data center investment has become a convergence point for real estate, private equity, infrastructure, finance, energy procurement, and sustainability."*

- **Deal activity is spreading across the full infrastructure stack.** From investing in the data center shell, to the broader power and grid infrastructure, "picks and shovels" and services that move and manage electrons – there are many opportunities and innovative deal structures in the data center ecosystem.

For more information on how sponsors are underwriting, structuring and scaling their investments, please see Weil's special feature on Data Centers in its **Spring 2026 Private Equity Sponsor Sync**.

2. Power Demand

- **AI is adding a new layer of power intensity.** Large model training and inference require significantly higher compute density per rack than traditional workloads – pushing energy and cooling demands to unprecedented levels. Hyperscalers are uniquely placed to work across the entire technology stack: from chip design and physical construction, to efficiency measures, cooling infrastructure, and grid-level power procurement.

> *"It's a privilege and responsibility that hyperscalers get to work across all the layers of the stack – from the chips, to the construction of the data centers, to how you power them from the electricity grid, to the hidden layers of software running them."*

- **Efficiency gains alone are not sufficient.** Making the right bets on innovation across every layer of the stack – simultaneously – is essential to meaningful progress.

3. Embedding Sustainability Across Operations

- **Consumption-side.** Sustainability measures include reducing energy use through efficiency improvements and carbon-aware design. However, efficiency gains often free up capacity later rapidly absorbed by growing demand. So in practice, absolute consumption may not actually decline.
- **Generation-side.** Sustainability efforts include sourcing cleaner power through renewable energy procurement, and first-of-a-kind innovations; and financing infrastructure expansions by entering into capacity offtake agreements and taking equity stakes – to signal long-term demand and catalyse the development of new clean energy capacity.

4. Potential Deal-breakers and Solutions

- **Environmental litigation risk.** The NAACP has filed a **lawsuit** against xAI over nearly 50 unpermitted, mobile methane-gas turbines in Mississippi powering its Memphis data centers, alleging federal Clean Air Act violations. The case highlights conventional pollutant emissions – particularly NOx – as an emerging environmental law flashpoint for data center development.
- **A wave of creative deal and legal solutions.** Constraints around power permitting and sustainability are driving a wave of innovation: behind-the-meter generation, waterless and liquid cooling technologies, modular development strategies, battery storage, renewable and nuclear-powered solutions, GPU-backed financings, and novel procurement structures are all gaining traction as operators look to accelerate timelines and improve reliability.
- **Redevelopment.** In January 2026, the U.S. EPA published **guidance** on redeveloping brownfield sites as AI data centers. These sites may offer built-in grid adjacency, established rights of way, and existing infrastructure – but contractual liability, risk allocation, and cleanup obligations require careful management before projects can proceed.

5. Direct Legal Obligations

The decision of where a data center gets built or leased, is increasingly driven by regulation – particularly in the EU, where law is actively shaping permitting strategies and site selection. The legal landscape is developing in several interlocking directions:

- **Operational mandates.** Facilities may be required to reuse waste heat, where feasible. It is no longer enough to find suitable land and power, you also need proximity to district heating or industrial users to take excess heat, and grid conditions which can support renewable energy integration. These operational requirements impact engineering design, utility and local authority contracts, and operating costs.

> *"The regulatory overlay can make one data center site viable and another completely unworkable – even if the underlying business case looks identical across two locations."*

- **Mandatory disclosures.** Under the EU Energy Efficiency Directive, data center operators must collect and report on standardised KPIs annually, including on energy consumption, Power Usage Effectiveness (PUE), water usage, renewable energy share, waste heat utilisation, and facility characteristics like capacity and location.
- **Commercial sensitivity.** Mandatory disclosures are being compiled in a centralised database, for the European Commission to create market comparability ahead of its forthcoming sustainability rating scheme. While data may be aggregated to protect commercial sensitivity, a direct tension remains between companies' transparency obligations and protection of proprietary data.
- **Global divergence.** Regulatory fragmentation across jurisdictions creates operational and compliance risk. Cross-border treatment of perfluoroalkyl and polyfluoroalkyl substances (PFAS) is an example: the EU is moving toward broad bans under its REACH regime, while the US Environmental Protection Agency is requiring PFAS reporting pursuant to the Toxic Substances Control Act. Companies cannot rely on a single global compliance approach. Weil has published a **Data Center Sustainability Checklist** to help map cross-border regulatory divergences.

6. Applicability of Other Sustainability Laws

- **Layers of legal obligation.** Sustainability-related compliance extends well beyond data center-specific legislation. Additional disclosure, diligence, operational, contractual requirements may bite at any stage of a data center's lifecycle – from planning to building, maintaining, retrofitting or decommissioning. How these broad sustainability laws will impact a company will depend on where data centers fit within its operations and supply chain. Even activities related to leasing sites and investing in AI infrastructure can create exposure.

- **Disclosure requirements and supply chain.** Data center-related activities could be subject to disclosure requirements and included in SEC filings (e.g., in the Business Section, Risk Factors, MD&A and financial statements), as well as EU reporting requirements. Emissions associated with data centers may require reporting under law. Supply chain due diligence obligations extend to input components (chips, batteries, cooling equipment, cables, timber construction) as well as the human workforce across the full lifecycle.

> *"Not only hyperscalers fall in scope of the EU Corporate Sustainability Reporting Directive. While Omnibus created uncertainty, the directive's spirit is still important: to generate comparable, defensible, investor-grade sustainability data that meets the growing demands of stakeholders."*

- **Critical infrastructure and cybersecurity.** A 'critical national infrastructure' or other 'essential services' designation may trigger resilience and continuity obligations. For example, the EU Network and Information Security Directive 2 (NIS2) imposes strict cybersecurity measures and incident-reporting requirements with hefty liabilities for breach.

7. Maintaining a Social Licence to Operate

- **Promoting a 'just transition'.** A significant ESG challenge facing the sector is maintaining community trust and social licence to operate. There has been a shift from a predominantly carbon-centric movement focused on emissions reduction and energy transition, towards a sector that is becoming considerably more people-centred.
- **Cost of community backlash.** Organised opposition and local resistance can delay projects by billions of dollars (e.g., by $98bn in three months according to one 2025 **report**). Concerns typically relate to electricity costs, water use, noise, and the perceived inequity of development that consumes community resources, without delivering commensurate local benefit or infrastructure upgrades (road, utilities, local services) which locals need to absorb large-scale data center development.
- **Changes in corporate strategy.** One hyperscaler has ended the practice (typical in the industry) of requiring NDAs from local governments during early-stage data center development – a practice long defended as protecting commercially sensitive site information, in favour of building greater trust with local communities in which it operates.

> *"Social licence sits outside of regulation. You might be fully compliant with all the necessary permits – but if community trust has broken down around transparency or resource use, or the perceived fairness of the deal or development, you can be dead in the water.*
>
> *Companies that build trust proactively – through transparency, community engagement, and tangible local benefit – will be better positioned than those that rely on compliance alone."*

8. Cooling, Capture and Capital

- **Cooling technology.** Complementary engineering approaches are emerging. Microsoft **deploys** chip-level, closed-loop liquid cooling in new data centers; circulating liquid coolant (not water) between servers and chillers without drawing on any water supply. Google has **rolled out** advanced air-cooling technology that limits water consumption to only critical campus operations.
- **Carbon removal offtake agreements.** These help data center operators address residual emissions and advance net-zero commitments. Microsoft's **agreement** with Alt Carbon (June 2026) illustrates the model: Alt Carbon spreads waste basalt rock across agricultural land in India's Darjeeling region, where it reacts with CO_2 dissolved in rainwater to form stable bicarbonate that is carried by rivers to the ocean and stored as calcium carbonate for over a thousand years. The deal will see Alt Carbon deliver up to 36,920 tonnes of durable carbon dioxide removal to Microsoft, its first enhanced rock weathering purchase in Asia.
- **Green bonds.** These have become a primary financing instrument for funding the capital-intensive sustainability improvements that data centers require. Equinix is one of the most active issuers in the sector, **raising** approximately $9.5 billion since 2020 with proceeds deployed across innovative cooling technologies, renewable energy infrastructure, and resource conservation programmes.

9. Good Governance

- **A board must understand the company's data center-related strategy and provide effective oversight of related risks.** Directors should ask themselves: (1) how exposed are the company's data center operations to climate, water scarcity, and energy volatility, as well as (2) what risks does the company's own demand for power, water, and land create for the grids, communities, and supply chains on which it relies? Boards must understand the full extent of the company's data center strategy and operations, including risk oversight, disclosure controls, regulatory compliance, sustainability targets, delegation of authority, government relations, training and shareholder engagement. Weil has published a set of **10 governance questions** that boards should be asking with respect to data centers.

10. Collaboration

- **Innovation across the stack must happen concurrently.** No single technology or approach will be sufficient, especially as the growth cycle and technology cycle are not yet aligned.
- **The challenges are systemic, and shared.** They can only be addressed through genuine multi-stakeholder engagement across the grids, governments, customers, communities, value chain actors, and investors/financial markets. Each actor can only play a small part; the system requires collective action.
- **A once-in-a-generation opportunity.** The launch by nonprofit Elemental Impact of the **Data Center Innovation Initiative supported by Amazon, Google, Meta, and Microsoft** (among others), signals a crucial shift towards collaborative problem-solving at scale on shared sustainability challenges – a recognition that no single industry player can solve these alone.

For More Information

To learn more about Weil's Data Center x Sustainability capabilities, please reach out to our contacts below:

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