WINSTON & STRAWN
LLP

Artificial Intelligence (AI)

Winston's Artificial Intelligence (AI)-focused attorneys share a deep commitment to the development and adoption of new technologies that propel businesses forward. We assist clients in coordinating the full spectrum of transactional, regulatory, litigation, and counseling services across industries as it relates to the adoption, use, commercialization, and regulation of AI, including generative AI.

The group features attorneys and technologists with a wide array of experience in the application of AI in the provision of legal services. We take a cross-disciplinary approach to representing clients regarding AI. This approach includes providing legal services in the fields of e-discovery, information governance, legal ethics, policy drafting, intellectual property, privacy, data security, regulatory compliance, and antitrust; representing clients in commercial, intellectual property, privacy, data security, regulatory, and technology antitrust-related disputes; and representing clients in transactions involving AI.

Key Contacts

Bobby Malhotra

Krishnan Padmanabhan

John Rosenthal

Areas of Focus

Adoption & Integration

Winston's AI-focused attorneys feature lawyers and technologists across all our core practices with experience in both the application of AI in providing legal services and counseling clients on its use. We draw on our experience to monitor legal and technological developments in the sector to help clients meet a wide range of needs such as:

- Drafting policies and procedures to leverage AI and integrate it into business workflow

- Providing education on AI's benefits and risks, and assisting in managing related business and legal issues

- Tracking regulatory developments relating to AI to ensure our clients' policies and practices incorporate regulatory requirements and guidance

- Providing practical guidance on integrating these developing technologies into legal departments while meeting industry ethical standards

Development & Protection of AI Technologies

Our Intellectual Property (IP) and Privacy teams work closely together to counsel clients in building, protecting, and commercializing proprietary AI technologies and data; the use of third party or open source AI technologies and data; and the implications that these activities may have under privacy laws. This comprehensive approach enables our clients to leverage the benefits of AI innovation while mitigating potential legal risks and ensuring compliant practices within evolving legal frameworks.

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Regulatory Compliance Counseling

With AI development occurring at an unprecedented pace, businesses integrating AI solutions must be vigilant in adhering to the evolving regulatory frameworks governing this transformative technology. Our attorneys are available to help clients not only harness the full potential of AI but also operate within the bounds of existing and developing international laws and regulations, including:

- Regulatory laws (e.g. U.S. Executive Order on AI, EU AI Act)

- Ethical guidelines (e.g. United Nations Principles for the Ethical Use of AI)

- Privacy regulations including health care privacy laws (e.g. HIPAA)

- Labor and employment laws (NYC's AI Employment Law)

Licensing, Contracts & IP Transactions

We routinely help clients protect and commercialize their IP assets and provide due diligence on complex technology and IP transactions. We also provide risk management counseling in connection with AI open source software agreements. Our team focuses on licensing, copyright, and other IP matters, and includes attorneys with technical backgrounds and practical experience in computer programming. On behalf of companies licensing their AI IP or contracting with AI software we:

- Negotiate and draft IP licenses and transfer agreements, including the scope of use, royalties, and duration

- Provide strategic guidance on optimal structures for IP transactions

- Evaluate IP portfolios and related due diligence activities in connection with commercialization and corporate transactions

- Document due diligence to understand safeguards that a third-party company has in place to mitigate risks

- Review IP provisions of internal Service Agreements/Terms and Conditions

- Negotiate and review AI contracts and service agreements, including updating vendor master services agreements and engagement letters to address AI issues

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Intellectual Property Litigation & Disputes

As AI technology develops, protecting associated IP assets is increasingly important. Our nationally recognized IP attorneys, including those in the country's technology hubs—Silicon Valley, San Francisco, and New York—provide clients with unmatched insights and experience at the intersection of technology and IP. This allows us to effectively navigate patent heavy districts throughout the country as well as handle cases before the International Trade Commission – Section 337. Further, as one of the premier copyright litigation teams in the country, we have handled hundreds of cases involving the defense of billions of dollars in liability and the recovery of massive awards for our clients. Our lawyers also have extensive experience prosecuting and defending significant matters involving trade secrets, confidential and/or proprietary information, restrictive covenants, and related issues.

We assist clients developing cutting-edge algorithms, machine learning models, and pioneering AI applications in the patent, copyright, trade secret, and trademark legal issues surrounding their use or invention of AI, such as:

- Authorship and ownership of AI-generated works

- Defense of claims related to the use or deployment AI in tools, products, and platforms

- Reviewing and writing user-indemnity clauses in Terms & Conditions

- Fair use issues

- Trade secrets

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Commercial Litigation & Disputes

Winston represents technology clients and clients who use technology in their core business applications in virtually every type of dispute that can arise from operating a business. As a litigation powerhouse, we offer deep bench strength and experience to handle complex disputes—through both litigation and arbitration or trial and on to appeal—across the full range of legal issues.

At the core of our complex commercial litigation practice, we defend and prosecute contractual claims and related tort, fraud, and statutory actions arising from all types of business agreements—such as purchasing and licensing deals, trade secret and non-compete accords, among others. We represent clients in negotiating, interpreting, terminating, and—when necessary—litigating and arbitrating contracts involving competitors, distributors, customers, vendors, and myriad other parties and counterparties. We also have deep experience litigating matters involving claims of breach of non-compete and non-disclosure agreements that often involve related trade secret claims.

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eDiscovery & Information Governance

Winston's eDiscovery & Information Governance Practice is one of the United States' largest and most experienced. Per the *The Legal 500 US* 2022, "Winston has one of the most impressive e-discovery practices in the world." As part of that practice, we assist our clients in designing litigation response programs that include whether and how to integrate technologies into the litigation and discovery process, including AI. We can help your organization evaluate newer AI technologies in a manner that reduces the tremendous costs of e-discovery and does so in a manner that appropriately protects your confidential and trade secret information. To that end, we have designed, negotiated, and litigated best practices, protocols, and orders around the use of AI in litigation and arbitration to include:

- Predictive classifiers, clustering, and conceptual algorithms

- Entity, sentiment, and visual analytics

- AI tools designed to facilitate and streamline the review of chats, e-mails, and other ESI, as well as to identify PII and privileged content

Our attorney and technologies are currently evaluating a wide variety of generative AI tools to expedite the search, identification, and review of ESI. We are also involved in several efforts regarding thought leadership around the adoption and use of AI in the conduct of e-discovery and managed review.

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Privacy & Data Security

Winston takes a strategic approach to privacy and data security, integrating our cross-practice capabilities to help our clients protect their valuable data with proactive strategies. Our IP lawyers bring technical know-how to help our clients protect the technology, while our data-security team helps meet the challenge of applying best practices and reasonable security. In the AI sector, we provide clients with:

- Privacy and cybersecurity counseling to ensure compliance with the various domestic and foreign data protection and AI regulations

- Vetting and deployment of AI technologies, including guidance on data collection and algorithm training

- Development of data use strategies, such as the intellectual property implications of using customer data for artificial intelligence purposes.

- Implementation of HIPAA compliance frameworks in conjunction with the use of AI

- Development, negotiation, and execution of major contracts that implicate the use, sharing, disclosure, and safeguarding of personal information

- Defense against class actions and other privacy and consumer protection actions, including those resulting from data breaches

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Technology Antitrust

Our Technology Antitrust Group combines the cross-practice and cross-office experience of our attorneys to assist AI clients and clients implementing AI in successfully navigating the dynamic convergence of technology, antitrust, and IP law. We advise on business strategy and transactions, help identify and mitigate litigation and enforcement risks, and provide vigorous representation in antitrust disputes—including unflinching trial and government advocacy. On behalf of clients we:

- Assist companies in developing new technologies while minimizing antitrust risks

- Provide antitrust counseling and training to companies in the use of AI to minimize risks

- Represent companies in antitrust litigations relating to the alleged anticompetitive use of technology

- Defend companies in antitrust litigations relating to the alleged anticompetitive use of data and purported data monopolies

- Represent companies in government antitrust/competition investigations in connection with the use of technology

- Deliver comprehensive merger and acquisition and transactional guidance tailored specifically to high-tech markets and products
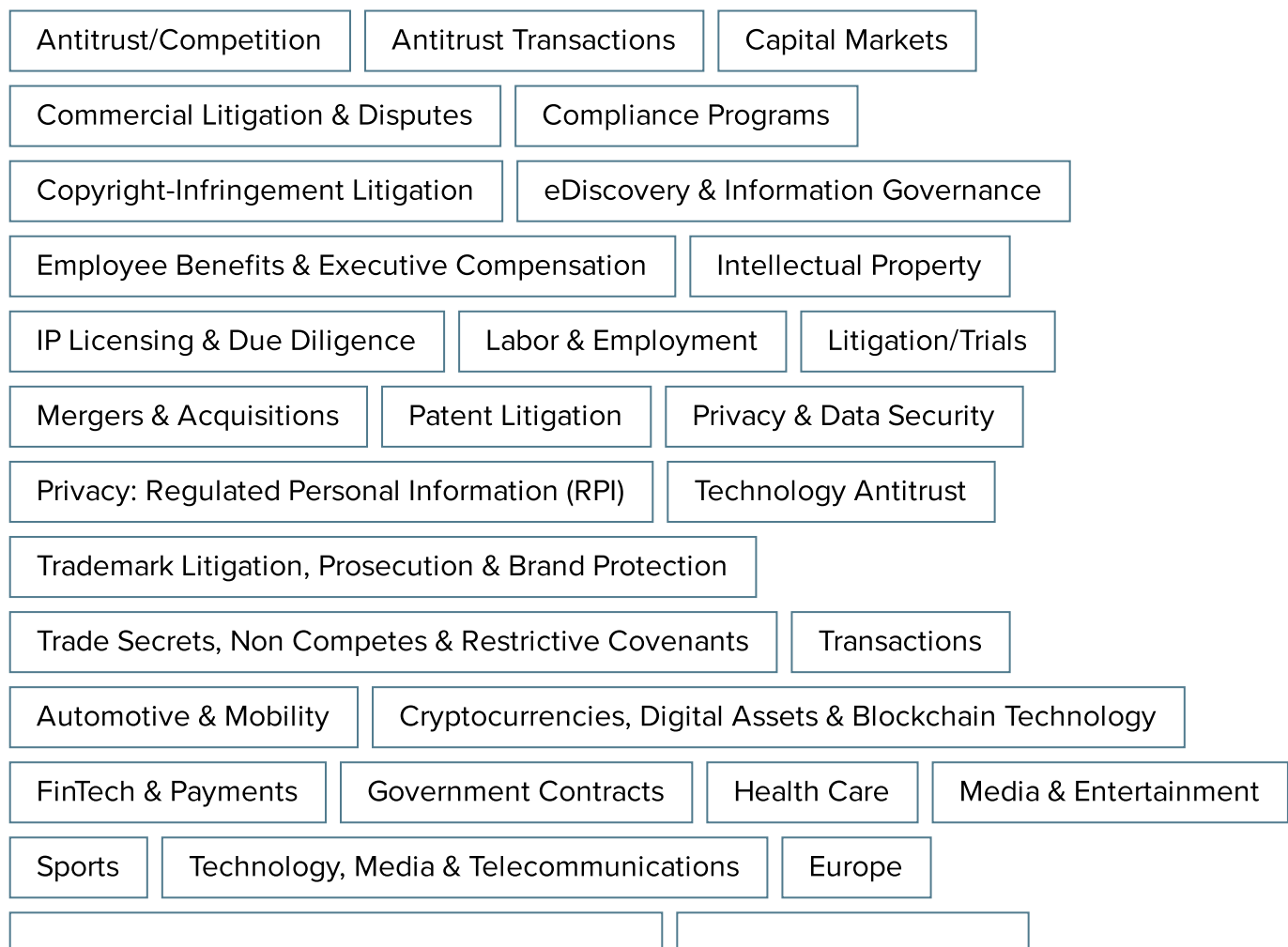
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Transactions

Our transactional attorneys represent established and emerging AI companies, leading financial institutions, private equity and investment funds, funding sources, and investors in cross-border acquisitions, divestitures, and mergers to joint ventures, spinoffs, and distressed acquisitions. We also serve as counsel to boards and special committees and advise issuers and underwriters in connection with initial public offerings (IPOs) and follow-on offerings. Recent transactions in the AI sector include:

- Jumio's US$150M Investment from Great Hill Partners

- Ark Global Acquisition Corp.'s Closing of Upsized US$345M IPO

- Tempus Labs' US$200M Series G-2 Financing

- ai Series B Round

Our transactional attorneys regularly work in tandem with our IP and Privacy attorneys on complex deals involving the acquisition or sale of AI technologies or in deals involving targets who use third party AI technologies in the operation of their businesses.

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Related Capabilities

Antitrust/Competition	Antitrust Transactions	Capital Markets

Commercial Litigation & Disputes	Compliance Programs

Copyright-Infringement Litigation	eDiscovery & Information Governance

Employee Benefits & Executive Compensation	Intellectual Property

IP Licensing & Due Diligence	Labor & Employment	Litigation/Trials

Mergers & Acquisitions	Patent Litigation	Privacy & Data Security

Privacy: Regulated Personal Information (RPI)	Technology Antitrust

Trademark Litigation, Prosecution & Brand Protection

Trade Secrets, Non Competes & Restrictive Covenants	Transactions

Automotive & Mobility	Cryptocurrencies, Digital Assets & Blockchain Technology

FinTech & Payments	Government Contracts	Health Care	Media & Entertainment

Sports	Technology, Media & Telecommunications	Europe

Recent Experience

Roadzen, Inc. Closes Business Combination with Vahanna Tech Edge Acquisition I Corp.

Zesty.ai Series B Round

TKB Critical Technologies 1 Closes US$230M IPO

WebFX's Capital Investment from Trilantic North America

Ark Global Acquisition Corp.'s Closing of Upsized US$345M IPO

Tempus Labs' US$200M Series G-2 Financing

Related Insights & News

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Spotlight on Regulatory Cross Border: AI Act Advances Through the European Parliament

MARCH 19, 2024

IN THE MEDIA

Sara Susnjar Discusses EU Artificial Intelligence Act with *Legaltech News*

MARCH 15, 2024

IN THE MEDIA

Krishnan Padmanabhan and John Rosenthal Discuss Winston AI Strategy Group with *The American Lawyer*

MARCH 11, 2024

BLOG

FTC Chair Khan Emphasizes Vigilance in Antitrust Oversight of AI Industry

FEBRUARY 6, 2024

IN THE MEDIA

John Rosenthal Discusses Winston's Artificial Intelligence Strategy Group with *Legaltech News*

FEBRUARY 6, 2024

IN THE MEDIA

Krishnan Padmanabhan Discusses Utilizing AI Tools with *The American Lawyer*
FEBRUARY 5, 2024

IN THE MEDIA

Bobby Malhotra Quoted in *Legaltech News* After Discussing Generative AI in the Legal Profession During Legalweek Panel
FEBRUARY 1, 2024

IN THE MEDIA

John Rosenthal Discusses How Law Firms Navigate AI Use with *The American Lawyer*
FEBRUARY 1, 2024

IN THE MEDIA

Winston & Strawn's AI Strategy Group Launch Covered in Multiple Media Outlets
JANUARY 26, 2024

WEBINAR

Decoding AI Law
JANUARY 24, 2024

PRESS RELEASE

Winston & Strawn Launches Artificial Intelligence Strategy Group
JANUARY 24, 2024

SEMINAR/CLE

Winston Hosts 2024 Financial Services Symposium in Charlotte
JANUARY 24, 2024