BLOG

AI Transforms the National and International Regulatory Landscape

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KEY TAKEAWAY

Generative AI, which generates different forms of content when prompted, is a form of artificial intelligence that both small and large companies are capitalizing on across all industries. Indeed, the technology is transforming the way companies do business, and in tandem, opening a Pandora's box of new regulatory frameworks and sprouting putative class actions across the United States.

The growth of generative artificial intelligence (AI) has led to novel class action lawsuits, implicating disputes over, among other things, intellectual property, invasion of privacy, and facial recognition.[1] These class actions raise questions regarding how AI systems are developed and trained, including whether the use of large amounts of copyrighted material to train large language models (LLMs) and generative AI tools constitute infringement.[2]

Class representatives are also asserting unconventional and trailblazing causes of action. For example, a class action lawsuit against health insurer Humana Inc. alleges that it used artificial intelligence to improperly deny elderly patients care.[3] These actions generate new legal uncertainty for companies because they must now take steps to defend against an omnipresent threat of class action litigation. But with proper foresight, savvy companies can adapt to better understand the regulatory AI framework and how it might affect corporate AI-related policies and procedures.

Companies should stay up to speed on this AI regulatory framework, which is transforming at the federal, state, and international level. Examples of emerging changes at the national level include President Biden's October 30, 2023 Executive Order on AI, which "places the highest urgency on governing the development and use of AI safely and responsibly [by] advancing a coordinated, Federal Government-wide approach to doing so."[4] The Order implements a myriad of new national policies and principles such as: (i) "standardiz[ing] evaluations"; (ii) "addressing . . . security risks"; (iii) developing "labeling" for AI-generated content; and (iv) investing in AI to "unlock the technology's potential to solve some of society's most difficult challenges."[5]

Several federal agencies have also been active in this space. Congress has actively investigated AI, holding meetings with stakeholders, proposing a variety of legislation, and forming an Artificial Intelligence Caucus to "ensure that rapid innovation in AI [. . .] benefits Americans as fully as possible". [6] oncurrently, several states have

passed and proposed AI-related legislation, adopting laws addressing deceptive media and their role in election interference. In January 2024, Senator Bill Dodd introduced the California AI Accountability Act "to ensure state agencies advance safeguards and consumer protections."[7]

International bodies have also taken an active role in the space. On March 13, 2024, the European Commission passed the "EU AI Act," described as the "first comprehensive law on AI by a major regulator anywhere,"[8] by a 523-46 vote.[9] The AI Act introduces a sweeping regulatory and legal framework for AI across a broad range of sectors. Other countries, notably China, have begun implementing AI-related regulation.[10]

Companies should keep up to speed on these rapidly changing frameworks and any potential regulatory obligations that arise as a result. AI will continue to rapidly change all sectors and lead to new, exciting opportunities for growth and change. Along with these practical benefits, Winston & Strawn LLP can assist companies to mitigate the risks of class actions lawsuits claiming, among other things, infringement of intellectual property rights, bias, or breach of privacy or security.

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[1] *See, e.g., P.M. v. OpenAI LP*, Case No. 3:23-cv-3199 (N.D. Cal. 2023); *J.L. v. Alphabet Inc*., Case No. 3:23-cv-03440 (N.D. Cal. 2023); *Young v. NeoCortext, Inc*., Case No. 2:23-cv-02496 (C.D. Cal. 2023); *Flora v. Prisma Labs, Inc*. Case No. 3:23-cv-00680 (N.D. Cal. 2023); *Andersen v. Stability AI Ltd*, No. 3:23-cv-00201 (N.D. Cal. 2023).

[2] *See, e.g., Basbanes et al v. Microsoft Corporation et al*, No. 1:24-cv-00084 (S.D.N.Y. 2024); *Doe 1 v. GitHub, Inc*., No. 4:22-cv-06823-JST (N.D. Cal, 2022); *Huckabee et al v. Bloomberg L.P. et al*, No. 1:23-cv-09152 (S.D.N.Y. 2023); *Kadrey v. Meta Platforms Inc*., No. 3:23-cv-03417 (N.D. Cal. 2023).

[3] *Barrows and Hagood v. Humana, Inc*., No. 3:23-cv-654-CHB (W.D. Ky. 2023).

[4] Joseph R. Biden, Jr. "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence". Oc. 30, 2023. https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.

[5] *Id.*

[6] Congressional Artificial Intelligence Caucus. "Our Mission." https://artificialintelligencecaucus-eshoo.house.gov/.

[7] "Sen. Dodd Introduces California AI Accountability Act." (01/03/2024). https://sd03.senate.ca.gov/news/20240103-sen-dodd-introduces-california-ai-accountability-act.

[8] The EU Artificial Intelligence Act. Future of Life Institute. https://artificialintelligenceact.eu/.

[9] Gilchrist Karen. "World's first major act to regulate AI passed by European lawmakers." March 13, 2024. https://www.cnbc.com/2024/03/13/european-lawmakers-endorse-worlds-first-major-act-to-regulate-ai.html.

[10] Sheehan Matt. "Tracing the Roots of China's AI Regulations." Feb. 27, 2024. https://carnegieendowment.org/research/2024/02/tracing-the-roots-of-chinas-ai-regulations?lang=en ("These regulations target recommendation algorithms, deep synthesis, generative AI, and most recently facial recognition. China is now debating whether to create an overarching national AI law that could be written and rolled out in the years ahead."); Paul Mozur, John Liu and Cade Metz. "China's Rush to Dominate A.I. Comes With a Twist: It Depends on U.S. Technology." Feb. 28, 2024. https://www.nytimes.com/2024/02/21/technology/china-united-states-artificial-intelligence.html.

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