Having trouble reading this email? View it in your browser

October 2023

Subscribe | Share this

Welcome to the October edition of Akin Intelligence. We continue to see bipartisan and international interest in artificial intelligence (AI) regulation. In the executive branch, agencies are working towards developing standards in accordance with previous executive orders and soliciting comments from stakeholders on proposed AI rules and policies. Meanwhile, AI continues to be a focal point in U.S. state legislatures, governors' offices and in the U.S. court system. This month's edition also features extensive updates on AI developments in the healthcare sector. To ensure continued receipt, please subscribe to future issues here if you have not already done so.

In This Issue

- Akin Spotlight
- Federal Action
- Congressional Action
- Health Care
- Judicial Action
- State Action
- Industry Action
- U.K. Updates
- EU Updates
- China Updates
- Akin Thought Leadership
- Events

Akin Spotlight

AI Concerns of WGA and SAG-AFTRA: What Is Allowed?

The rise of the use of generative artificial intelligence (GAI) to produce original written material has left authors and writers across industries feeling threatened. This was one major factor that led to the Writers Guild of America (WGA) strike after failed negotiations with the Alliance of Motion Picture and Television Producers (AMPTP). The strike, which began on May 2, 2023, came to an end on September 24, 2023, when a tentative agreement between the WGA and the AMPTP was reached.

Link to Article

Federal Action

U.S. Space Force Temporarily Bans Artificial Intelligence (AI) Usage

On September 29, 2023, the U.S. Space Force reportedly issued an internal memorandum to Space Force members banning the use of generative AI and large language models (LLM). Lisa Costa, the U.S. Space Force's Chief Technology and Innovation Officer noted that while AI will revolutionize the workforce, there are also concerns regarding "cybersecurity, data handling and procurement requirements" and the adoption of AI and LLMs needs to be done responsibly. New guidance is expected to be released within 30 days of the memorandum's publishing.

Department of Defense Will Establish AI Battle Labs at EUCOM and INDOPACOM

On September 27, 2023, the Department of Defense (DOD) announced its plan to implement two BRAVO AI Battle Labs at U.S. European Command (EUCOM) and U.S. Indo-Pacific Command (INDOPACOM). The laboratories will share "operational theater data—including logistics, cyber and telemetry" with the DOD and will act as "hubs for digital integration among federal entities, industry, coalition partners and American citizenry." The labs will be operating throughout the next year, in coordination with the Chief Digital and Artificial Intelligence Office's Algorithmic Warfare Directorate and the Defense Innovation Unit.

Department of Defense (DOD) Plans AI Symposium

On September 29, 2023, the DOD's Chief Digital and Artificial Intelligence Office (CDAO) released the dates for its AI symposium. The Advantage DOD 2024: Defense Data & AI Symposium will be hosted on February 20-22, 2024 at the Washington Hilton in Washington, D.C. The event will be attended by government, industry and academia data professionals and will focus on the DOD's technological needs, including data, analytics, and AI development and usage. Other relevant topics will be AI scaffolding, data mesh services, strategy and policy issuances, digital workforce, and updates on Task Force Lima, the DOD team at the center of large language models. This announcement also includes registration forms for external speakers who wish to present during the event.

Federal Trade Commission (FTC) Opens Applications for PrivacyCon 2024 Presentations

On September 27, 2023, the FTC announced that it has opened its application for presentations for its annual PrivacyCon event. The seminar will be hosted virtually on March 6, 2024, and will focus on a variety of AI and health privacy topics, including automated systems; health-related surveillance; children's and teens' privacy; deepfakes and voice clones; worker surveillance; and ecosystem and surveillance advertising. The deadline for submitting

presentations is December 6, 2023 and further information on submissions is located on the Call for Presentations page.

Stakeholders Eagerly Await President Biden's AI Executive Order

The Biden administration is expected to release an executive order (EO) on AI in the coming weeks. The EO is expected to address concerns around individual rights and anticipated harms, and stakeholders anticipate the order will address issues such as copyright, recruitment of AI talent from overseas, domestic AI education, and national and cybersecurity. The EO is also expected to include directives pertaining to the federal government's procurement of AI, and a requirement that cloud computing providers monitor and track customers whose usage of compute resources suggests that the customers are developing AI systems. The White House is also coordinating with the National Institute of Standards and Technology (NIST) on industry guidelines for testing and evaluation of AI systems, and with the Office of Management and Budget (OMB) regarding federal agencies' acquisition and use of AI.

Copyright Office Denies Copyright to Award-Winning Art (Again)

On September 5, 2023, the Review Board of the United States Copyright Office denied a second request for reconsideration of the refusal to register *Théâtre D'opéra Spatial*—a work that won a fine art competition—because AI-generated content "remains in substantial form in the final" and does not meet the human authorship requirement. The creator, Jason M. Allen, argued that the AI-generated content was the result of his "creative input," including hundreds of revisions to his input prompts and further manual processing in image editing software.

The Review Board determined that *Théâtre D'opéra Spatial* contains more than a *de minimis* amount of AI-generated content that must be disclaimed under its current guidance. Mr. Allen's prompts, according to the Copyright Office, do not make him the author of the AI-generated image because the AI model "does not treat text prompts as direct instructions" and then determines the "traditional elements of authorship" instead of the user doing so. The Review Board did not decide whether the additional processing done in editing software is copyrightable.

NIST Request for Information on AI Standards Strategy

NIST requested information to support efforts for "a private sector-led, open, consensus-based international standards system, to which the U.S. Government is an active stakeholder and

participant." as part of the White House's National Standards Strategy for Critical and Emerging Technology (NSSCET). This request for information (RFI) asks 22 questions around critical and emerging technologies (CETs), including AI and machine learning. Those 22 questions cover four primary objectives: investment in innovation and development of standards; public and private sector participation; developing a workforce for developing standards; and integrity and inclusion of international stakeholders.

Comment submissions are due on Monday, November 6, 2023.

Public Listening Session on AI Standards and Intellectual Property

On September 20, 2023, the United States Patent Office (USPTO), in collaboration with the International Trade Administration (ITA) and NIST, held an event to discuss the standardization of CETs and standard essential patents (SEPs). This event discussed key standards-setting objectives including participation in international efforts, long-term investment, and the creation of fair standards.

Extension of Comment Period for U.S. Copyright Office Inquiry on Copyright and AI

On September 21, 2023, the U.S. Copyright Office extended the comment period for its August 30 Notice of Inquiry (NOI) regarding its "study of the copyright law and policy issues raised by artificial intelligence," which seeks factual information on the use of copyrighted works to train AI models, transparency and disclosure regarding the use of copyrighted works, the legal status of AI-generated outputs, and the treatment of AI outputs mimicking the personal attributes of human artists.

Initial comments are now due on Monday, October 30, 2023, and reply comments are due by Wednesday, November 29, 2023.

USPTO Artificial Intelligence and Emerging Technologies Partnership Series Continues

The USPTO held the fourth event in its Artificial Intelligence (AI) and Emerging Technologies (ET) Partnership Series on September 27, 2023. This event was focused on intellectual property (IP) issues that arise in conjunction with AI tools and related data. Panels included discussions and demonstrations of AI tools at the USPTO, including the Virtual Assistant and a patent similarity search, as well as broader topics on generative AI and risk management.

FTC Holds "Creative Economy and Generative AI" Roundtable

On October 4, 2023, the Federal Trade Commission (FTC) held a roundtable discussion seeking "to better understand the impact of generative artificial intelligence on creative fields." The roundtable included speakers from a range of creative industries and associated organizations, such as negotiators from the Writers Guild of America and Screen Actors Guild, members of the Authors Guild, and a Policy Fellow at the Software Freedom Conservancy.

In her opening remarks, Chair Lina Khan noted that "there's no AI exemption, so all of the laws that already prohibit unfair methods of competition or collusion or discrimination or deception, all of those laws still entirely apply." The following discussion largely focused on the risks AI poses to artists and creatives, along with calls for regulation to protect them. A recording of the roundtable is available here.

NSA Announces Creation of AI Security Center

The National Security Agency (NSA) has announced it will launch an AI Security Center to manage the development and utilization of AI tools within U.S. national security systems. The Center will be tasked with "developing best practices, evaluation methodology and risk frameworks with the aim of promoting the secure adoption of new AI capabilities across the national security enterprise and the defense industrial base." The Center is expected to closely collaborate with industry, national labs, academia, the U.S. Department of Defense (DoD), and certain foreign partners.

CIA Preps Rollout of AI Tool Across Intelligence Community

The Central Intelligence Agency's (CIA) Open-Source Enterprise division is reportedly preparing to roll out its own AI tool across the intelligence community to provide analysts with better access to open-source intelligence. The tool will not be available to policymakers or the public.

Congressional Action

Schumer Convenes First AI Forum; Second Forum Slated for October 24

On September 13, 2023, Senate Majority Leader Chuck Schumer (D-NY) convened the chamber's first closed-door "AI Insight Forum," which featured attendance by over 60 senators and several executives, including Tesla CEO Elon Musk, Meta CEO Mark Zuckerberg, OpenAI CEO Sam Altman, Google CEO Sundar Pichai and Microsoft CEO Satya Nadella. In remarks following the forum, Leader Schumer highlighted several areas of consensus among participants, including the need for the government to play a role in regulating AI; federal assistance to encourage sustainable innovation; and implementation of guardrails to address issues like bias and worker education. While the Majority Leader pointed to some participants' voluntary commitments made with the White House, he outlined the need to implement rules of the road for "rogue companies" who will "seek the lowest common denominator." The series is expected to include more sessions in October.

The second AI Forum is scheduled for October 24 and is expected to focus on innovation, including "both the transformational innovation that pushes the boundaries of medicine, energy, and science, and the sustainable innovation necessary to drive advancements in security, accountability, and transparency in AI," according to the invite. Over 20 individuals from a range of backgrounds are expected to be in attendance, including leaders of AI companies such as SeedAI and Cohere, venture capitalists Andreessen Horowitz and Kleiner Perkins, academics and labor leaders.

Senate Lawmakers Appoint Technical AI Advisors

Moreover, to assist with lawmakers' efforts to regulate AI in the Senate, several offices in the chamber recently appointed scientists to year-long AI fellowships, administered by the American Association for the Advancement of Science, to help deepen lawmakers' understanding of the technology. The six fellows previously held positions in academia, federal agencies, and tech companies, including Microsoft, Meta and Google, and are now working for Sens. Bill Cassidy (R-LA), Mark Kelly (D-AZ), Ron Wyden (D-OR), Martin Heinrich (D-NM), Mike Rounds (R-SD), and the Senate Banking Committee.

Coons, Blackburn, Klobuchar, Tillis Unveil Discussion Draft to Protect Voice and Visual Likenesses

On October 12, 2023, Sen. Chris Coons (D-DE), Chair of the Senate Judiciary Subcommittee on Intellectual Property, and Sens. Marsha Blackburn (R-TN), Amy Klobuchar (D-MN), and Thom Tillis (R-NC) unveiled a discussion draft of their *Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES) Act*, which would prohibit producing or distributing an unauthorized AI-generated replica of an individual performing in an audiovisual or sound recording without the consent of the individual being replicated. The person creating or sharing the unauthorized replication would be liable for the damages caused by the AI-generated fake. A one-pager on the draft is available here.

Thune-Klobuchar Team Up on Self-Certification Legislation

Senate Minority Whip John Thune (R-SD) has announced his collaboration with Senate Antitrust Subcommittee Chair Amy Klobuchar (D-MN) on legislation that would require companies to assess the impact of AI systems and self-certify the safety of certain systems. Sen. Thune discussed the legislation's contrast to Leader Schumer's approach to AI, stating, "I think it'll be a bill that will be a good marker out there and be unlike some of the more heavy-handed regulatory approaches I suspect will be suggested by Sen. Schumer and others who have designs on this issue."

Lawmakers Continue Slate of AI Hearings

- On September 20, 2023, the Senate Banking Committee held a hearing to examine AI in financial services. During the hearing, Chair Sherrod Brown (D-OH) outlined the need to examine what actions Congress and regulators should take to protect peoples' right to privacy. Witnesses called for a holistic look at federal data privacy rules writ large but specifically outlined the need to reexamine the Gramm-Leach-Bliley Act, including what the law does not cover, such as small businesses. A full summary of the hearing is available here.
- The Senate Intelligence Committee also recently held a hearing to examine the national security implications of AI. The hearing featured testimony from Dr. Yann LeCun, Meta's Chief AI Scientist, who underscored the need for governments to work together to set common AI standards and governance models, outlining the merits of U.S.-led frameworks in driving global consensus. A full summary of the hearing is available here. Prior to the hearing, Chair Mark Warner (D-VA) sent a letter to the White House urging the administration to strengthen the federal government's AI workforce to better examine "opportunities to harness AI technologies to meet federal objectives, while also working collaboratively with agencies to guard against AI-generated risks within their purview."
- On September 27, 2023, the Senate Rules Committee convened a hearing to examine the impacts of AI in elections. The hearing featured testimony from Trevor Potter, Former Commissioner and Chairman of the Federal Election Commission (FEC), who outlined the need to (1) use and enhance the FEC's existing authority to protect elections against fraud; (2) pass new legislation prohibiting the most pernicious uses of AI to influence elections; and (3) expand existing statutory disclosure and disclaimer requirements to ensure voters know when AI is used in election-related communications. Looking ahead, the House Energy and Commerce (E&C) Committee will launch a series of hearings to examine how AI will affect "every sector of the economy," beginning with the first hearing on October 18, 2023. The Akin team will be closely monitoring the series and keeping clients apprised of key takeaways.

Senate Committee Questions FTC Nominees on AI Regulation

On September 20, 2023, the Senate Commerce Committee held a hearing to consider President Biden's nominations to the FTC—Rebecca Kelly Slaughter, Melissa Holyoak, and Andrew Ferguson. During the hearing, Sen. John Thune (R-SD) inquired about the agency's authority to regulate AI, asking if the FTC or Congress should take the lead. While Slaughter noted that existing applies to new technologies, she called on Congress to determine whether new authorities or laws are needed. Ferguson stated that a "grand regulatory framework for AI" is squarely within the purview of Congress but asserted that the FTC should act in instances where the use of AI violates the agency's existing rules. Holyoak specifically highlighted concerns related to fraud and scams. A full summary of the hearing is available here.

Congressional Democrats Urge Biden to Include AI Bill of Rights in His Upcoming Executive Order

On October 11, 2023, Sen. Ed Markey (D-MA) and Rep. Pramila Jayapal (D-WA) led a bicameral group of Democratic lawmakers in sending a letter urging President Biden to incorporate the five principles outlined in the White House Blueprint for an AI Bill of Rights into his upcoming AI Executive Order. The principles include safe and effective systems, algorithmic discrimination protections, data privacy, notice and explanation, human alternatives, consideration, and fallback. Other members signing onto the letter include Sens. Chris Van Hollen (D-MD), Ron Wyden (D-OR), Cory Booker (D-NJ), and Elizabeth Warren (D-MA), and Reps. Lori Trahan (D-MA), Jamaal Bowman (D-NY), Yvette Clarke (D-NY), Suzanne Bonamici (D-OR), Barbara Lee (D-CA), Katie Porter (D-CA), Sara Jacobs (D-CA), Cori Bush (D-MO), Delia Ramirez (D-IL), and Ilhan Omar (D-MN).

Ranking Member Cruz Calls for U.S. Leadership on AI

In an interview with Bloomberg, Senate Commerce Committee Ranking Member Ted Cruz (R-TX) recently commented on the congressional push for AI protections, stressing the importance of U.S. leadership in the space and cautioning against "heavy-handed" regulations. He specifically voiced concern about requiring prior approval for AI innovations, acknowledging that the technology comes with risks but that Congress lacks the understanding to properly adjudicate them.

Senate Intelligence Chair Calls for Narrow AI Reforms Before Comprehensive Efforts

In an interview with Politico, Senate Intelligence Committee Chair Mark Warner (D-VA) recently outlined the need for lawmakers to first tackle narrowly focused AI issues, including the potential for AI-generated deepfakes to disrupt elections and financial markets. Chair Warner specifically discussed implementing new regulations to address concerns about bias or require labels for AI-generated deepfakes, although he also outlined the need to closely examine any issues associated with allowing companies to apply labels.

Senate Democrat Urges Creation of Independent AI Agency

On September 19, 2023, Sen. Michael Bennet (D-CO) sent a letter to Leader Schumer calling for the creation of an independent regulatory agency to oversee AI. Sen. Bennet, along with Sen. Peter Welch (D-VT), has introduced the *Digital Platform Commission Act* (S. 1671), which would establish a commission specifically to regulate digital platforms. The legislation would provide the new commission with rulemaking, investigative, and related authorities to regulate access to, competition among, and consumer protections for digital platforms.

Congressional AI Caucus Convenes Panel on Advancing AI

On September 21, 2023, the Congressional AI Caucus held a panel discussion on "Advancing AI: Real-World Applications." The panel included remarks from C3 AI CEO Tom Siebel, who

discussed how the government can navigate the risks surrounding AI and underscored the need for "straightforward legislation" to ensure safe AI.

Democrats Reintroduce Bicameral Algorithmic Accountability Bill

Sen. Ron Wyden (D-OR) and Rep. Yvette Clarke (D-NY) have reintroduced the *Algorithmic Accountability Act* (S. 2892/H.R. 5628), which would direct the FTC to require impact assessments of automated decision systems and augmented critical decision processes. A full summary of the bill is available here.

Senate Democrat Presses Meta on AI Chatbots

Sen. Ed Markey (D-MA) recently sent a letter to Meta CEO Mark Zuckerberg voicing concern about the company's reported plan to integrate new AI chatbots into its social media products, highlighting the potential for such chatbots to exacerbate children's privacy harms.

Lawmakers Caution Against Allowing AI to Detract from Privacy Discussions

On September 19, 2023, House Energy and Commerce (E&C) Chair Cathy McMorris Rodgers (R-WA) provided remarks at Forum Global's Data Privacy Conference USA, where she cautioned against allowing federal privacy discussions to fade in the wake of Congress' AI focus. She particularly voiced concern that the state privacy laws passed in the absence of federal action "fail to adequately protect people's privacy equally," and she said is committed to "doing everything in [her] power" to reach a consensus.

The need for a continued focus on privacy was underscored by Sen. Marsha Blackburn (R-TN) as she took to the floor to address the Senate's inaugural AI Insight Forum, voicing concern about executives' lack of attention to data privacy at the event.

House Lawmakers Propose Creation of Task Force on AI in the Financial Services Sector

On September 28, 2023, Reps. Brittany Pettersen (D-CO) and Mike Flood (R-NE) introduced the *Preventing Deep Fake Scams Act* (H.R. 5808), which would create a Task Force on Artificial Intelligence in the Financial Services Sector to examine AI's potential benefits for and uses in financial institutions, as well as the risks it poses to consumers, and report to Congress within one year of enactment. In developing the report, the Task Force would be required to consult with industry stakeholders and solicit public comments.

Health Care

White House Roundtable on Artificial Intelligence and Health

On October 6, 2023, the White House Office of Science and Technology Policy (OSTP) held a roundtable discussion "on how artificial intelligence can be safely deployed to improve health outcomes for all Americans" with a group of leaders from a variety of fields including healthcare, academia, industry, and patient advocacy.

The roundtable emphasized both that AI can provide powerful tools for improving healthcare and the need for responsible development. The discussions included sessions specifically focused on AI uses in:

- Clinical settings to improve individual patient care

- **Drug development to streamline the discovery and testing of new drugs**
- **Public health to mitigate public health challenges and improve access**

In his remarks, Arati Prabhakar (Director of the OSTP) noted that the Biden administration is "currently developing an executive order that will ensure the federal government is doing everything in its power to advance safe and rights-respecting AI.

Senate HELP Committee Seeks Public Comment on AI/Health Privacy Protections

Sen. Bill Cassidy (R-LA), Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, issued a request for information (RFI) seeking stakeholder feedback on modernizing health data privacy protections. The RFI specifically seeks information on how to define health data, potential modifications to the Health Insurance Portability and Accountability Act (HIPAA), the role of various entities in data handling, and the impact of AI and international privacy laws.

Separately, Ranking Member Cassidy is also considering changes to how AI in health care is regulated. In September, Sen. Cassidy solicited feedback on how to regulate AI in health care. In particular, he has discussed the need for "targeted updates" to medical device regulations, including regarding the transparency of algorithm development and the effectiveness of such applications.

FDA Expresses Need for Greater Post-Market Visibility to Regulate AI/ML-Enabled Medical Devices

An official from the U.S. Food and Drug Administration (FDA), which has regulatory oversight of medical products that employ AI, recently indicated that the agency needs to implement a process for long-term, post-market surveillance of AI/ML health technologies. Dr. MiRa Jacobs, who is the Assistant Director of Digital Health Policy at the FDA's Digital Health Center of Excellence, spoke during an Alliance for a Stronger FDA webinar on September 19, 2023, about the FDA's progress in regulating AI/ML-enabled medical devices. Dr. Jacobs explained that AI is "uniquely and extremely dependent on the data that is used to develop the models," which implicates concerns regarding bias and requires the FDA to tailor its approach to measuring safety and effectiveness.

She expressed confidence that the FDA's existing approach to premarket review can adequately account for these technologies, but that the review process for post-market surveillance requires further development. Regulators and developers must consider how the models operate as they are clinically integrated and respond to changes in their populations and other factors, which requires long-term visibility post-market.

Jacobs added that the agency supports increased harmonization across federal agencies. This sentiment contrasts with recent calls from Senate Health Committee ranking Republican Bill Cassidy (LA) for a sector-by-sector approach to regulating AI/ML technologies.

FDA Seeks Input on Use of AI/ML Technologies in Pharmaceutical Manufacturing

The FDA has reopened its Request for Information (RFI) for its Discussion Paper on the use of AI in drug manufacturing. The FDA originally issued the Discussion Paper on March 1, 2023, and the comment period was set to end on May 1, 2023, but stakeholders now have until November 27, 2023, to submit feedback. The FDA specifically requests input regarding what types of AI systems should be used in drug manufacturing, aspects of the current regulatory framework that may affect the implementation of AI in drug manufacturing, what guidance would be helpful, and common practices for validating and maintaining self-learning AI models that should be included in best practices, among other topics.

Judicial Action

Copy/Paste Copyright Suits Continue

New complaints were filed by a group of authors against OpenAI and Meta in the Northern District of California on September 8 and 12, respectively. These complaints were nearly identical—containing only minor differences in phrasing—to those filed by a group of authors including Sarah Silverman (as discussed in Akin's September newsletter). These new cases make the same allegations around training large language models with copyrighted material, including use of the books data set.

Authors Guild Brings Class Action Copyright Suit Against OpenAI

On September 19, the Authors Guild filed a class action case against OpenAI in the Southern District of New York. Like the cases above, the complaint makes similar allegations regarding the training of large language models with copyrighted materials.

State Action

New York

On October 16, 2023, New York City rolled out its first-ever Artificial Intelligence Action Plan. The plan will provide a guide for city agencies when evaluating AI tools and their associated risks. The action plan also aims to help increase city government employees' knowledge and skillset pertaining to AI. As the city continues to incorporate AI into its resources for New Yorkers, Mayor Eric Adams said the city has thirty-seven different uses planned for AI technology, twenty-seven which officials hope to have implemented within the following year.

On October 3, 2023, Senate Labor Chair Jessica Ramos (D) introduced S. 7676 to amend the general obligations law to ensure that workers have proper representation, by legal counsel of a labor organization, when negotiating the use of digital replicas, with the goal of protecting a performer's digital voice and likeness.

On September 29, 2023, New York Gov. Kathy Hochul (D) signed into law Senate Bill S1042A, which prohibits the dissemination of pornographic images made with AI without the consent of the subject.

New Jersey

On October 12, 2023, Governor Phil Murphy signed Executive Order 346, which establishes an Artificial Intelligence Task Force. The task force will study emerging AI technology and will analyze potential impacts AI may have on society. They will also prepare recommendations for government actions that can be taken to encourage the ethical use of AI. The task force will be comprised of several state departments and the Governor may appoint additional members. In formulating their recommendations, members of the task force will consult with industry leaders, AI experts, consumer advocates, and government innovators. The Office of Information Technology will evaluate tools and strategies to improve government services through artificial intelligence. The Co-Chairs will issue a report with the Task Force's findings and recommendations to the Governor.

On October 10, 2023, New Jersey Gov. Phil Murphy issued Executive Order No. 346, which establishes an Artificial Intelligence Task Force to study the potential impacts of AI on society and recommend ways in which the state's government can encourage its ethical use. The order names the state's chief innovation officer, the chief technology officer of the Office of Information Technology and the chief executive officer of the Economic Development Authority as co-chairs of the task force.

California

Ahead of the Governor's deadline to sign or veto bills on October 14, 2023, California Gov. Newsom signed into law a number of bills, including Assembly Bill 302, which requires the Department of Technology to, before September 2024, conduct a comprehensive inventory of all high-risk automated decision systems use by state agencies, or those that have been proposed for use, development, or procurement by state agencies.

Looking ahead to next year, State Sen. Scott Wiener (D) has outlined the need to implement a safety framework around "frontier" AI models by enacting Senate Bill 294, which would establish a framework that requires companies to submit potential risks and safeguards to public safety for their AI operations. Notably, Sen. Wiener's outline does not propose a definition of "frontier" models, a term that generally refers to the next generation of AI models. Industry groups, such as the Frontier Model Forum, have defined frontier models as, e.g., "large-scale machine-learning models that exceed the capabilities currently present in the most advanced existing models, and can perform a wide variety of tasks."

Colorado

On September 21, 2023, the Colorado Division of Insurance released a notice of new regulation that establishes "governance and risk management requirements for life insurers that use external consumer data and information sources (ECDIS), as well as algorithms and predictive models that use ECDIS." The regulation is part of the Division's effort to combat unfair discrimination against insurers. According to the regulation, life insurers in Colorado that use ECDIS or algorithms that use ECDIS would be required to perform annual quantitative testing to evaluate whether the insurers' use of ECDIS are unfairly discriminatory based on the race or ethnicity of proposed insureds. The rule will become effective on November 14, 2023.

BSA Releases State Research

According to a 2023 State AI Legislation Summary published by BSA | The Software Alliance, there has been a 440% increase in the number of AI-related bills introduced at the state level this year, totaling 191 measures across 31 different states. A total of 14 AI-focused laws have been enacted in 2023 across nine states.

Industry Action

Amazon and Anthropic Announce Generative AI Collaboration

On September 25, 2023, Amazon and Anthropic announced a strategic collaboration to promote safer generative AI and accelerate the development of Anthropic's future foundation models to make them more accessible to Amazon Web Services (AWS) customers. As part of the collaboration, AWS will become Anthropic's primary cloud provider for mission-critical workloads, and Amazon will invest up to $4 billion in Anthropic and have a minority ownership position in the company.

Tech Companies Unveil New AI Capabilities and Services

- On October 4, 2023, Google released a version of its virtual assistant powered by the company's Bard AI technology. Users may interact with Assistant with Bard through text, voice, or images, and in the coming months, the company will allow users to have access on Android and iOS mobile devices. YouTube also recently launched a range of AI features for creators, including Dream Screen, which utilizes generative AI to add video or image backgrounds to short-form videos.
- At the outset of October, Meta also unveiled new generative AI tools for advertisers in Meta's Ads Manager—Background Generation, Image Expansion, and Text Variations—expanding on an earlier test of the features. The company anticipates a global rollout by next year.
- Canva recently announced the release of Magic Studio, which utilizes the technology to allow users to create professional presentations, videos, or social posts.
- On September 26, 2023, Microsoft began its rollout of Copilot, the company's AI assistant for Windows, first as part of its free update to Windows 11, and then across Bing, Edge, and Microsoft 365 Copilot this fall.

Progressive Groups Release Framework to Guard Against Misinformation

On September 27, 2023, a group of tech accountability and progressive groups, including Accountable Tech and the Center for American Progress, released a framework for social media companies to bolster their resilience against misinformation, including AI-generated content.

AI Policy Institute Issues AI Policy Report Card

The AI Policy Institute released a report evaluating several AI policies, including Leader Schumer's SAFE Innovation framework. While the group notes the framework is focused on security from adversaries, it outlines the need to "take greater account of domestic accidental and purposeful misuse, as well as longer-term harms."

AI Now Institute Releases Report on Computational Power and AI

On September 27, 2023, the AI Now Institute released a report on computational power and AI. The report notes the design of the National AI Research Resource (NAIRR) will likely require a licensing contract with a cloud infrastructure provider, leading to "critiques that the NAIRR falls short of its promise to 'democratize' AI development processes." The report further notes that the NAIRR may come up for a vote in the fall through the *CREATE AI Act* (S. 2714/H.R. 5077).

Future of Privacy Forum Releases Guide on AI in the Workplace

The Future of Privacy Forum has released a guide on best practices for AI in the workplace. The guidelines outline the need for greater transparency in how companies use AI tools in hiring, as well as the development of the tools with human oversight and bias assessments. The guidelines also call on organizations to implement governance frameworks informed by the NIST AI Risk Management Framework.

Songwriters Push Lawmakers for AI Protections

Members of the American Society of Composers, Authors, and Publishers (ASCAP) recently met with lawmakers as part of "Stand with Songwriters" Advocacy Day to outline the need to protect the rights of American music creators in the age of AI. The group met with a range of offices, including House Intellectual Property Subcommittee Chair Darrell Issa (R-CA) and

Songwriters Caucus co-chair Ted Lieu (D-CA). During the meetings, ASCAP members highlighted six principles for AI adopted by the organization's board of directors this summer: (1) prioritizing human creators, (2) consent; (3) compensation; (4) credit; (5) transparency; and (6) global consistency. Following the event, ASCAP Executive Vice President Nick Lehman stressed that AI companies should obtain licenses to use musical works for training purposes.

ISO Definition of AI Systems

The International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) released their International Standard ISO/IEC 22989:2022 titled "Information Technology — Artificial Intelligence — Artificial Intelligence Concepts and Terminology." This standard is intended to establish terminology and common definitions of concepts to facilitate the development of other standards. In ISO 22989, an "artificial intelligence system" is defined as an "engineered system that generates outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives" The ISO provides a public version, available here.

The Rise of AI Insurance and Indemnification

Companies are beginning to offer ways for AI users to mitigate the risks associated with deploying generative AI. Microsoft announced a Copilot Copyright Commitment, which continues the company's AI Customer Commitments and protects users by extending IP indemnification coverage to include copyright claims. IBM confirmed that its standard intellectual property protections apply to its AI products, including contractual protection like IP indemnity for its customers. Similarly, Google Cloud launched a two-pronged IP indemnification approach covering both its use of training data and generated outputs. On a broader level, insurance companies are considering offering AI policies to address business risks associated with AI—particularly for risks that would not be covered by existing cybersecurity or similar policies.

Industry Groups Oppose Agencies' Proposals in Comments

Industry groups have responded to the U.S. Securities and Exchange Commission's (SEC) proposed rules on predictive analytics and the U.S. Treasury Department's proposed restrictions on outbound investment in Chinese AI. The Managed Funds Association (MFA) called for the SEC to withdraw the proposed rules because the rule is overbroad—it would extend to cover even basic tools like Excel models—and would effectively prevent using or developing technology. Other industry groups—including the Investment Adviser Association, the Investment Company Institute, and the Insured Retirement Institute—provided similar responses to the SEC, echoing the sentiment that the proposed rules go too far.

In response to the Treasury's proposal, the Information Technology Industry Council (ITI) similarly noted that the proposed restrictions are overbroad and would cover civilian uses—countering that a more targeted approach, such as relying on government blacklists, would better serve the purpose of the ban. Akin's analysis of the Treasury's proposal is here.

BSA Releases AI Cybersecurity Guide

BSA | The Software Alliance recently released an AI for Cybersecurity guide, which outlines a number of recommendations for policy-makers, including that they (1) require developers and deployers of AI intended for high-risk uses to establish risk management programs and conduct impact assessments; (2) promote using AI as a key cyber defense tool; (3) enable needed data flows; and (4) work with like-minded nations to ensure laws and policies advance the ability for cyber defenders to use AI for cybersecurity.

U.K. Updates

Multi-Agency Pilot to Support Business Adoption of AI

On September 19, the United Kingdom announced a new advisory service to help businesses safely develop AI innovations. Set to launch in 2024, the "multi-agency advice service" will provide companies with "tailored support so they can meet requirements across various sectors while safely innovating" AI solutions. Along with the announcement, UK Technology Secretary Michelle Donelan stated "Digital technology and artificial intelligence are rapidly evolving, and regulation must keep pace - but we don't want it to be at the expense of stifling the launch of new innovations that can improve our everyday lives."

Competition and Markets Authority Expresses Concern Over Anti-Competitive Behavior

On September 18, 2023, the United Kingdom Competition and Markets Authority published a report warning that AI foundation models may "have a significant impact on competition and consumers." While these foundation models "could allow a wider range of firms to compete successfully," the report expresses concern that "people and businesses could be harmed . . . if a handful of firms gain or entrench positions of market power and fail to offer the best products and services." To mitigate these concerns, the report proposes a set of seven guiding principles for UK competition regulation concerning AI, such as encouraging the development of open-source models; supporting the interoperability of AI models so that consumers are not "locked into one provider or ecosystem;" prohibiting anti-competitive conduct like "self-preferencing" or "tying or bundling;" and more.

UK "Global AI Summit" Update: Focus on Potential Biological Threats

On September 15, 2023, details about the UK's upcoming AI summit in November came into clearer view. In particular, the summit will likely focus on the risks AI may pose to human life, especially as it relates to the development of biohazards and bioweapons. Additionally, several high-level officials have reportedly confirmed their attendance, including French President Emmanuel Macron, Canadian Prime Minister Justin Trudeau, President of the European Commission Ursula Von der Leyen, and U.S. Vice President Kamala Harris. However, it is unclear what concrete deliverables may emerge from the gathering.

EU Updates

EU Sees Common Ground with Japan over AI Regulation

On October 9, 2023, European Commission (EC) Vice President for Values and Transparency Věra Jourova stated that the European Union (EU) sees "convergence" with Japan in its thinking regarding generative AI. The statement comes at a time when Japan appears to be more interested in flexible approaches to AI than the EU's risk-based framework in the draft EU AI Act, and it may signal that the EU and Japan are coming closer to agreement on how to approach international guidelines to regulate the technology. However, Jourova cautioned that the two countries were not yet prepared to agree on a code of conduct for companies involved in AI.

EU AI Act Could Limit Competition

On October 6, 2023, a leaked analysis by the U.S. State Department of the emerging EU AI Act revealed the U.S. concern that the EU's proposed law may favor entrenched players with the resources to cover the cost of compliance at the expense of smaller entrants. As the U.S. analysis states, implementing a risk-based framework such as the one in the EU AI Act may also hinder "investment in AI R&D and commercialization in the EU, limiting the competitiveness of European firms" in the future.

European Commission Adopts AI Recommendation on Risk Assessment

On October 3, 2023, the European Commission adopted a recommendation on areas of critical technology for the EU's economic security that must undergo further risk assessment, including AI. The AI technologies to be assessed include "high-performance computing, cloud and edge computing, data analytics, computer vision, language processing, [and] object recognition", and the assessment will evaluate the "risks of technology security and leakage" from the EU. The assessment is scheduled to conclude by the end of 2023, and its recommendations will likely lay the basis for future EU measures to reduce technology leakage. It is expected that those measures will be announced in the spring of 2024.

Signatories to the Code of Practice on Disinformation Fight Online Disinformation

On September 26, 2023, European Commission Vice-President Věra Jourova commended major platforms, which signed the Code of Practice on Disinformation, for "starting to put in place safeguards to inform users about the synthetic origin of content posted online" in an attempt to combat election disinformation. At the same time, she urged platforms to "intensify" their efforts "considering the high potential of such realistic AI products for creating and disseminating disinformation," stating that those risks are "particularly high in the context of elections." Reports detailing the signatories' efforts over the last six months are expected soon.

Differing Views on Prohibiting Biometric Surveillance in the EU AI Act

On September 21, 2023, EU lawmaker Brando Benifei, the lead EU AI Act negotiator, highlighted the key outstanding areas of disagreement in the ongoing EU trialogue on the draft law. In particular, Benifei named AI-powered biometric surveillance and the use of copyrighted material by generative AI as the two largest outstanding issue areas. While some members of the European Parliament wish to implement a wholesale prohibition on biometric surveillance, France and other EU members are seeking to carve out a national security exemption. Two more rounds of talks are expected in the coming months, as the EU attempts to finalize the Act by the end of 2023.

China Updates

Cyberspace Administration Publishes Draft Policy on Facial Recognition

On August 8, 2023, the Cyberspace Administration of China (CAC) published the draft *Provisions on the Application Security Management of Face Recognition Technology (for Trial Implementation)*, available here in Chinese, to solicit public opinions by September 7. The draft stipulates that facial recognition technology can only be used to process face information when there is a specific purpose and sufficient necessity and with strict protection measures. If there are other non-biometric identification solutions that can achieve the same purpose or meet the same business requirements, such non-biometric identification technology solutions should be used first. Meanwhile, the draft clarifies that the use of face

recognition technology to process face information is subject to individual user's separate consent. It also stresses that those who use face recognition technology in public areas, or store face information of more than 10,000 individuals, must complete record-filing with the cyberspace authority.

Technical Committee Issues Guidelines for Marking Generative AI

On August 8, 2023, the National Information Security Standardization Technical Committee issued the draft *Practical Guide to Cybersecurity Standards -- Method for Labeling Content in Generative Artificial Intelligence Services*, available here in Chinese, for public comments by August 11. The guidance provides that text, such as "Generated by Artificial Intelligence" or "AI-Generated" at a minimum, should be continuously displayed where AI-generated content is presented. The text should be located in the four corners of the screen, occupying an area of not less than 0.3% of the screen or a text height of not less than 20 pixels.

Akin Thought Leadership

Rising AI Use Paired With Layoffs Invites Age Bias Litigation (October 17, 2023) (Paywall)

Firms Taking Cautious Approach To AI-Assisted Lobbying (October 16, 2023) (Paywall)

Newsom on GenAI: Executive Order Mandates Ethical Innovation in View of Risk (October 5, 2023)

AI Concerns of WGA and SAG-AFTRA: What Is Allowed? (October 2, 2023)

NIST Zeroes In on AI: New Government Actions to Keep Up with Rapid Tech Advance (September 29, 2023)

EEOC Settles over Recruiting Software in Possible First Ever AI-related Case (September 21, 2023)

UK CMA Publishes Thoughtful Report on AI Foundation Models (September 21, 2023)

Brian Daly Quoted by PE Law Report on SEC Proposed Rules re: AI Conflicts of Interest (September 7, 2023)

Fall Congressional Outlook (September, 5, 2023)

Generative AI Cannot Meet Authorship Requirement for Copyright Protection, District Court Rules (August 23, 2023)

Lawmakers, White House and Industry Continue the Push for AI Regulation (July 31, 2023)

Generative AI and Recent Copyright Developments (July 26, 2023)

Private Fund Management in the Age of AI (July 26, 2023)

Addressing AI in the Annual Compliance Review (July 21, 2023)

New AI Guidance for Employers Issued (July 5, 2023)

For Export Controls on AI, Don't Forget the "Catch-All" Basics – Emily S. Weinstein and Kevin Wolf (July 5, 2023)

AI Regulations in Employment Decisions (June 27, 2023)

Senate Majority Leader Schumer Continues Push for AI Framework (June 23, 2023)

AI Risk Matrix for Private Funds (June 12, 2023)

Events

AI Governance Global 2023, an IAPP event
November 2-3, 2023
Boston, MA

An event for business leaders, tech and privacy pros who work with AI to learn about practical AI governance, accountability, fairness testing, AI law and policy, EU regulation, and so much more.

ACI National Conference on AI Law, Ethics and Compliance
October 31 – November 1, 2023
Washington, D.C.

Akin partner David Vondle will be speaking on a panel titled "Managing the Emergence of New AI Tools Affecting IP and Copyright Law, and the Hurdles to Obtaining Patent Rights for Invention". This conference is bringing together all key stakeholders for discussions on the most pressing, high stakes issues and uncertain risk factors surrounding AI.

Learn more about Akin's Artificial Intelligence & Machine Learning practice.

Learn More >

Questions?

If you have any questions, please contact:

Shiva Aminian
Email

Nathan A. Brown
Email

Los Angeles, CA
+1 310.552.6476

Washington, D.C.
+1 202.887.4245

Desiree E. Busching
Email
New York, NY
+1 212.872.1061

Cono A. Carrano
Email
Washington, D.C.
+1 202.887.4136

Davina Garrod
Email
London
+44 20.7661.5480

Jingli Jiang
Email
Washington, D.C.
+86 10.8567.2229

Jaelyn Edwards Judelson
Email
Los Angeles, CA
+1 310.552.6477

Michael P. Kahn
Email
New York, NY
+1 212.872.1082

Natasha G. Kohne
Email
San Francisco, CA
+1 415.765.9505

Lauren Leyden
Email
New York, NY
+1 212.872.8172

Ed Pagano
Email
Washington, D.C.
+1 202.887.4255

Michelle A. Reed
Email
Dallas, TX
+1 214.969.2713

Hans C. Rickhoff
Email
Washington, D.C.
+1 202.887.4145

Corey W. Roush
Email
Washington, D.C.
+1 202.887.4115

David C. Vondle
Email
Washington, D.C.
+1 202.887.4184

Lamar Smith
Email
Washington, D.C.
+1 202.716.9622

Reggie Babin
Email
Washington, D.C.
+1 202.887.4140

Jenny Arlington
Email
London
+144 20.7012.9631

Alan M. Hayes
Email
Washington, DC
+1 202.887.4272

Brooke Davies
Email
Geneva
+41 22.888.2041

Ryan Dowell
Email
New York, NY
+1 212.872.1028

Megan R. Mahoney
Email
New York, NY
+1 212.872.8143

Jaylia Yan
Email
Washington, D.C.
+1 202.887.4226

Jan Walter
Email
Geneva
+1 44 22.888.2042

Taylor Daly
Email
Washington, DC
+1 202.416.5541

Joseph Hold
Email
Washington, D.C.
+1 202.887.4007

akingump.com

© 2023 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Receipt of this information does not create an attorney-client relationship. Do not act upon this information without seeking professional counsel. All content is presented by Akin and cannot be copied or rebroadcasted without express written consent. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin network operates worldwide, please see our Legal Notices page.

Update Your Preferences | Subscribe | Unsubscribe | Forward to a Friend | Legal Notices | Privacy Policy

This email was sent by: 2001 K Street, N.W., Washington, DC 20006-1037