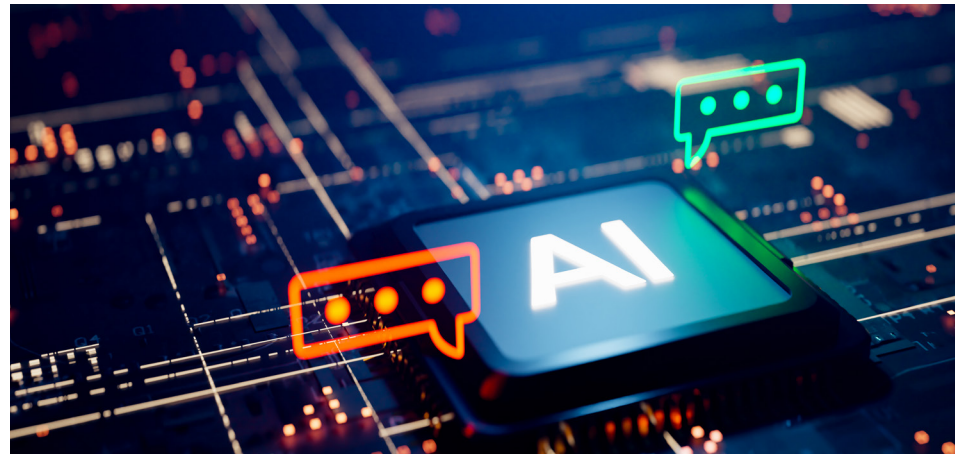


**ALL EYES ON AI: REGULATORY, LITIGATION, AND
TRANSACTIONAL DEVELOPMENTS****In This Issue**

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Tennessee Passes the “ELVIS” Act

In March 2024, Tennessee broadened the state’s already robust right of publicity statute by passing the [Ensuring Likeness Voice and Image Security Act](#) (ELVIS Act). The ELVIS Act, which goes into effect on July 1, breaks new ground by specifically targeting generative artificial intelligence (AI) platforms and services that potentially enable the use of people’s likeness without permission.

The ELVIS Act explicitly extends liability under state law to generative AI technology services that mimic a known individual’s persona. Section 6(a)(3) of the act creates liability where someone:

1. “distributes, transmits, or otherwise makes available an algorithm, software, tool, or other technology, service, or device”;
2. “the primary purpose or function” of which “is the production of a particular, identifiable individual’s photograph, voice, or likeness”;
3. with knowledge that the use was not authorized.

While it remains to be seen how courts will interpret what constitutes a “primary purpose or function,” AI-enabled platforms should take preemptive steps to avoid potential liability. Companies offering generative AI tools for content creation will need to be proactive—for example, through the use of contractual terms prohibiting unauthorized use of another’s likeness and managing how such tools are marketed and used—in clearly demonstrating the tools’ designed, legally permissible purpose and function.

Not only does the ELVIS Act narrow the fair use exemption under Tennessee’s previous right of publicity law, but it also narrows possible defenses by attaching liability to advertisers that publish an advertisement or solicitation featuring cloned voices if the publisher “reasonably should have known” about the unauthorized use. In some cases, this means that generative AI companies could potentially be liable under the act if they are publishing advertisements—even if they don’t have actual knowledge of the unauthorized use.

Continued on page 2...

Tennessee Passes the “ELVIS” Act *(Continued from page 1)*

While the remedies are mostly the same as those provided by Tennessee’s current right of publicity law, one significant change is that record companies will now be able to seek relief under the ELVIS Act on behalf of a recording

artist. This could lead to an increased number of right of publicity lawsuits in Tennessee, as the act enables third-party enforcement and no longer puts the burden to file suit squarely on the individual artist. Technology companies

that incorporate AI-generated voice or a celebrity’s persona into their services should consider taking preemptive measures, particularly as other laws similar to the ELVIS Act are enacted.

Utah Law Requires Disclosures Related to Generative AI Use

On May 1, 2024, the [Utah Artificial Intelligence Policy Act \(UAIP\)](#) came into effect. The UAIP states that entities cannot defend themselves against a consumer protection action by saying that the violative statement or act was made by generative AI and includes certain disclosure requirements for providers of generative AI tools.

There are two different disclosure requirements under the UAIP, which are based on the activity in which the generative AI tool is engaged:

1. If the generative AI tool is being used in the provision of services for which a license or state certification (e.g., healthcare or legal services) is required, then the provider of the generative AI tool must “prominently” disclose that the consumer is interacting with a generative AI tool at the beginning of the consumer interaction.



2. For all other uses, the provider must “clearly and conspicuously” disclose the use of the generative AI tool if the individual asks.

The UAIP does not clarify what it means for a disclosure to be made “prominently” versus “clearly and conspicuously.”

Additionally, the UAIP establishes an Artificial Intelligence Learning Laboratory which functions as a kind of regulatory sandbox for AI tools by permitting entities to apply for

regulatory mitigation agreements which would provide them with certain legal protections for their activities as part of the program.

The UAIP is new, and we have yet to see how these requirements will be enforced. However, its distinction between the use of generative AI for regulated occupations/services and the general use of generative AI indicates that companies whose services touch on regulated spaces (e.g., developers of health care-related applications) should tread especially lightly.

Colorado Passes Comprehensive Artificial Intelligence Act

On May 17, 2024, Governor Jared Polis made Colorado the first state to enact comprehensive artificial intelligence legislation when he signed the [Colorado Artificial Intelligence Act \(SB 24-205\)](#) (“CAIA”), regulating the development,

deployment, and use of AI systems. The law becomes effective February 1, 2026.

CAIA applies generally to developers and deployers of “high risk AI systems”, which are defined as AI systems that

make, or are a substantial factor in making, a “consequential decision.” It imposes a duty of reasonable care on developers and deployers to avoid “algorithmic discrimination” in high-risk AI systems. If a developer or

Colorado Passes Comprehensive Artificial Intelligence Act *(Continued from page 2)*

deployer complies with the disclosure, risk assessment, and governance requirements in the statute, there will be a rebuttable presumption that the developer or deployer has used reasonable care to avoid algorithmic discrimination.

The law is largely limited to AI systems that involve automated decision making about consumers; most requirements under CAIA do not apply to general purpose AI systems (which are not considered high-risk AI systems). One requirement that does apply to these general-purpose AI systems is the obligation to transparently disclose

the use of AI. CAIA is similar to the EU AI Act in that it uses a risk-based approach and imposes data governance and transparency obligations. However, the EU AI Act applies more broadly and includes obligations not found in the CAIA.

CAIA establishes an affirmative defense to enforcement for companies that have 1) cured violations as a result of external feedback or red teaming; and 2) complied with the latest version of the NIST AI risk management framework or an equivalent framework. The law does not include a private right of action; Colorado's attorney general will be

able to enforce the law as an unfair or deceptive trade practice, with a penalty of up to \$20,000 per violation.



Biden-Harris Administration Announces First-Ever Consortium Dedicated to AI Safety



On February 8, 2024, Gina Raimondo, the U.S. Secretary of Commerce, [announced](#) the establishment of the U.S. AI Safety Institute Consortium (AISIC). The AISIC is designed to bring together

artificial intelligence (AI) innovators and users, educational scholars, government and industrial researchers, along with civil society organizations to bolster the creation and implementation of safe, reliable AI technology.

Housed under the U.S. AI Safety Institute (USAISI), the consortium will play a crucial role in executing priority actions stated in President Biden's October 30, 2023 [Executive Order](#) on AI including crafting guidelines for red teaming and watermarking synthetic content.

The AISIC consists of over 200 [member](#) companies and organizations, including AI companies, academic and civil society teams, state and local governments, and nonprofit organizations. The consortium aims to lay the groundwork for a novel approach for measuring AI safety and will liaise with organizations from like-minded nations. The goal of this international collaboration is to develop interoperable and effective tools for ensuring global AI safety.

Executive Order Seeks to Protect Americans' Sensitive Personal Data from High-Risk Countries

On February 28, 2024, President Biden signed an [Executive Order](#) (EO) aimed at protecting Americans' personal data and government data from exploitation by countries such as China, Russia, and others deemed threats to U.S. national

security. This action represents a major shift in how the U.S. will regulate data transfers going forward. The EO instructs the U.S. Department of Justice (DOJ) to establish new regulations prohibiting or restricting U.S. companies

and persons from transferring bulk personal data of Americans or sensitive government data to these "countries of concern" and companies controlled by them. Many AI companies depend on personal and government data streams

Executive Order Seeks to Protect Americans' Sensitive Personal Data . . . *(Continued from page 3)*



that will likely be covered by these forthcoming regulations and would be well-advised to monitor how such regulations may impact the methods by which they train their models. Once implemented, these rules will constitute a comprehensive regulatory structure that is likely to have a substantial impact on international commercial technology transactions and related investments involving sensitive personal and government data.

The EO defines sensitive personal data to include personal financial records, personal health data, geolocation data, human genomic information, biometric

identifiers such as fingerprints, and other personal identifying information, and includes a separate definition for “U.S. government-related data” to cover sensitive personal data related to U.S. government employees. Under the proposed rules outlined in the DOJ’s recent [Notice](#), certain data transactions and transfers would be completely prohibited, such as a U.S. data broker selling a database of U.S. persons’ personal financial records, health information, or geolocation data to a Chinese company. A second set of transactions will be subject to restrictions unless certain security requirements are met. For example, a U.S. entity entering into a vendor agreement with a Russian entity may be required to implement certain organizational, transactional and compliance requirements before the transaction may occur. The Notice also proposes some exemptions—e.g., data shared for financial-services transactions, or sharing data with auditors and law firms for regulatory compliance purposes.

Though the written regulations are unlikely to be finalized until later this year, this new EO will likely have a major impact on many companies’ operations, compliance practices, and future business transactions involving international data transfers. The DOJ has discussed implementing civil monetary penalties for noncompliance, as well as a program for seeking the DOJ’s interpretive guidance to understand how these regulations may affect business. Companies will need to review data transfer practices, implement safeguards, carefully assess future cross-border deals, and set up a rigorous compliance system to identify any transfers that could violate these new data security regulations from the government. In particular, AI companies that rely on training sets that include personal and government data covered by the rules should make themselves aware of their obligations when it comes to the handling of that data.

Bipartisan Collaboration: The Formation of the House Task Force on AI

On February 20, 2024, the House of Representatives [launched](#) a bipartisan task force on AI to address the growing impact of AI technology on society and the economy. The formation of this task force reflects Congress’s increasing recognition of the importance of AI and the need for a collaborative and bipartisan approach to address its challenges and opportunities.

The task force is co-chaired by Representative Ted Lieu, a Democrat from California, and Representative Jay Obernolte, a Republican from California. Members of the task force have AI expertise and represent the relevant committees of jurisdiction. The

task force will study the current state of AI development, its potential benefits and risks, and the policy implications for regulating and harnessing AI technology.

One of the key goals of the task force is to create a comprehensive report that will include guiding principles, forward-looking recommendations, and bipartisan policy proposals developed in consultation with committees of jurisdiction.

Overall, the formation of the task force signals a commitment to addressing the opportunities and challenges of AI technology in a collaborative and



bipartisan manner. By working together across party lines and leveraging their collective knowledge, members of the task force aim to develop informed policy recommendations that promote the responsible and beneficial use of AI for the betterment of society.

Treasury Releases Report on Managing AI Risks in the Financial Sector

On March 27, 2024, the U.S. Department of the Treasury released a [report](#) on managing AI-specific cybersecurity risks in the financial services sector. The report was written at the direction of Presidential Executive Order 14110 on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, which we previously [summarized](#). Based on interviews with financial services and technology companies, the report gives an overview of current AI use cases for cybersecurity and fraud prevention. Among the report's top-line conclusions, Treasury recommends that financial institutions expand and strengthen their risk management and cybersecurity practices to account for AI systems' advanced



and novel capabilities, consider greater integration of AI solutions into their cybersecurity practices, and enhance collaboration, particularly threat information sharing. The report also acknowledges the importance of data for AI technology and the complexity

of AI technology development, which Treasury anticipates would very likely increase financial institutions' reliance on third-party providers of data and technology.

USPTO Inventorship Guidance Emphasizes Human Contribution in AI-Assisted Inventions

On February 13, 2024, the United States Patent and Trademark Office (USPTO) published [Inventorship Guidance for AI-Assisted Inventions](#) (the "February Guidance") in response to President Biden's October 30, 2023 Executive Order calling for guidance toward resolution of open questions on patent eligibility of AI-assisted inventions. The February Guidance provides a preliminary framework for assessing inventorship and patentability of AI-assisted inventions.

As an initial matter, the February Guidance notes that any inventor or joint inventors named on U.S. patents and patent applications must be natural persons, consistent with the Federal Circuit's decision in *Thaler v. Vidal* and its applicability to inventorship. A machine, for example an AI system, cannot be an inventor on U.S. patents and patent applications.

The USPTO explains that while AI-assisted inventions are not categorically unpatentable, the inventorship analysis should focus on human contributions and conception of inventions, since patents serve to incentivize and reward human ingenuity. If a person has provided a significant contribution to an AI-assisted invention, the person may qualify as an inventor, and patent protection may be sought for such invention.

The February Guidance outlines a set of guiding principles to assist in determining whether a person has made a significant contribution to an AI-assisted invention, for purposes of inventorship analysis. As an example of the guiding principles, a person may not qualify as an inventor if the person merely presents a problem to an AI system and the AI system develops an invention as a solution to the problem.

However, a person may qualify to be an inventor if the person makes a significant contribution to an output of the AI system or during the use of the AI system to elicit a particular solution. As another example of the guiding principles, mere possession or use of an AI system, without any significant contribution by a person, is insufficient to confer inventorship to that person.

While the February Guidance sets out the USPTO's policy and interpretation of the statutes and U.S. case law around inventorship of AI-assisted inventions, the February Guidance does not constitute substantive rulemaking. The USPTO may issue supplemental guidance or revise the February Guidance, in response to future changes in legislation or jurisprudence directed to AI-assisted inventions as AI technology continues to evolve.

FTC Proposes New Prohibition including Platform Liability for AI Impersonation of Individuals, Whether Real or Fictitious



The Federal Trade Commission (FTC) is seeking public comment on its [supplemental notice of proposed rulemaking](#) (SNPRM), which would amend its trade regulation rule, Rule on Impersonation of Government and Businesses (Impersonation Rule or Rule).

The SNPRM proposes a few changes to the Impersonation Rule. It amends the title of the Rule to “Rule on Impersonation of Government, Businesses, and Individuals” and adds a prohibition on the impersonation of individuals in connection with commerce, where an “individual” is defined as “a person, entity, or party, whether real or fictitious, other than those that constitute a business or government.” Further, it extends liability for Rule violations to parties who provide goods and services with knowledge or reason to expect that those goods or services will be used to perpetuate impersonations that the Rule prohibits. This means that AI platforms that know, or have reason to

expect, that their tools are being used for impersonation fraud by others, would be in violation of the Rule.

These proposed changes were precipitated by comments to the Rule highlighting the prevalence of individual impersonation fraud, such as romance scams. In its press release on the SNPRM, the FTC emphasized how AI tools can be used to “turbocharge” impersonation fraud and noted that the proposed changes to the Rule would give the FTC another tool for addressing AI-enabled scams.

The public comment period for the SNPRM closed on April 30, 2024.

FTC Launches Inquiry into Generative AI Investments and Partnerships

On January 25, 2024, the FTC [issued](#) orders to Alphabet, Inc., Amazon.com, Inc., Anthropic PBC, Microsoft Corp., and OpenAI, Inc. seeking information about recent investments and partnerships between generative AI companies and major cloud service providers.

The FTC issued the orders under Section 6(b) of the FTC Act, which authorizes the FTC to conduct studies to gain a better understanding of market trends



and business practices. These orders will permit the FTC to scrutinize the corporate partnerships between cloud

service providers and generative AI companies to build a better internal understanding of their relationships and potential impact on competition.

The orders seek information such as the strategic rationale for each investment or partnership, its practical implications on issues like new product releases and oversight rights, and an analysis of the investment or partnership’s competitive impact.

FCC Relaunches Panel to Evaluate AI’s Impact on Telecom Industry

On February 20, 2024, the Federal Communications Commission (FCC) [announced](#) its decision to relaunch a consumer advisory panel whose top

priorities will include evaluating AI’s effects on the telecom industry. This decision comes in response to the rapid advance of AI and its impact on everyday

communications tools. It also follows the FCC’s recent finding that under the Telephone Consumer Protection Act, AI-generated voices are deemed “artificial”

FCC Relaunches Panel to Evaluate AI's Impact on Telecom Industry *(Continued from page 6)*



(see the newsletter entry below). The panel is already focused on tackling the malicious use of generative AI to mimic real voices in robocall scams. The panel includes representatives from nonprofit organizations, communications companies and trade associations, and individuals, all coming together to represent consumer interests in telecommunications.

On April 4, 2024, the panel [held](#) its first meeting to discuss (among other things) the FCC's current proceedings related to AI. Most of that discussion focused on the FCC's 2023 Notice of Inquiry into the impact of AI on robocalls and robotexts, which sought comment on a range of issues related to AI.

FCC Submits Declaratory Ruling on AI-Generated Robocalls



On February 8, 2024, the FCC submitted a [declaratory ruling](#) confirming that current AI technologies, including “voice cloning,” that resemble human voices or generate call content using a prerecorded voice do fall within the meaning of “artificial or prerecorded voice” under the Telephone Consumer Protection Act (TCPA). The FCC explained that voice cloning and other similar technologies are “artificial” voice messages because a person is not speaking, and they are therefore the types of calls from which the TCPA seeks to protect consumers. Going forward, businesses and callers who use AI-generated voices may need to ensure they first obtain, at a minimum, prior express consent from the receiving

party and otherwise comply with the requirements of the TCPA.

This declaratory ruling arose out of FCC Chair Jessica Rosenworcel's proposal on January 31, 2024, to outlaw AI-generated robocalls using cloned voices of celebrities or recipients' family members. The proposal was unanimously adopted only two days after the Chair made her proposal.

The implications of the FCC's Declaratory Ruling are significant for businesses using AI-generated voices in marketing and promotional efforts, or to communicate with consumers even for informational purposes

only. Because these technologies now clearly fall within the purview of the TCPA, companies should be aware that they may be required to obtain at least prior express consent from the recipient, absent an emergency purpose or statutory exemption, as well as to comply with any other relevant TCPA requirements based on the substance of the call. Additionally, as with any calls or messages that use artificial or prerecorded voices, when using AI-generated voices, businesses must disclose their identity at the beginning of any such call or message, and clearly state their telephone number during the call or message. When these types of calls or messages include an advertisement, promotion, or otherwise constitute telemarketing, callers must also obtain prior express written consent, and provide an opt-out mechanism for the called or texted person to make a do-not-call request within two seconds of providing the required disclosures.

Failure to comply with the requirements of the TCPA can leave companies vulnerable to distracting and expensive litigation by consumers, the FCC, and state attorneys general, as well as high statutory fines.

SEC Chair Promises to Scrutinize Financial Firms for AI Fraud



The potential for AI-based fraud in the private fund industry has become a topic of concern for the U.S. Securities and Exchange Commission (SEC). In [remarks](#) earlier this year, SEC Chair Gary Gensler identified both the growing opportunities and significant challenges that are being raised by incorporating and depending on AI in the financial

sector. Gensler put out a clear warning that the agency is intent on scrutinizing financial firms that utilize AI and the efficacy of their antifraud guardrails. Gensler stated that when putting in place an AI model, investor protection requires that those who “deploy a model put in place appropriate guardrails.”

SEC AI Enforcement Actions

On March 18, 2024, the SEC [announced](#) settled charges against two investment advisers, Delphia (USA) Inc. and Global Predictions Inc. in connection with their false and misleading statements regarding their use of AI. The SEC alleged, among other things, that neither invest-

ment adviser had the AI capabilities that they claimed to have in their marketing and regulatory filings. The SEC alleged the advisers violated the antifraud provisions of the Investment Advisers Act of 1940. These charges, both announced on the same day, underscore the SEC’s

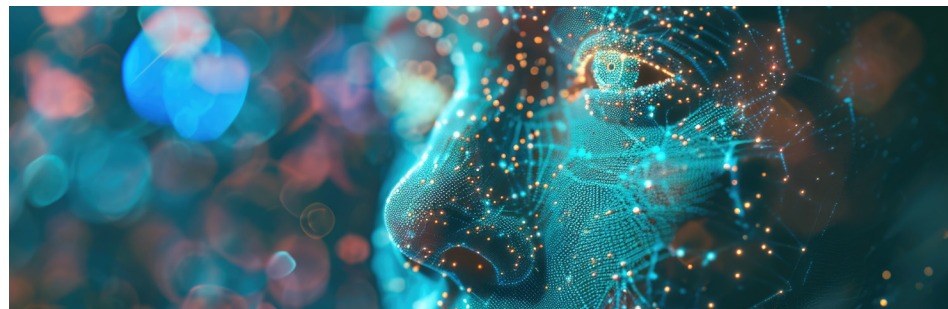
scrutiny of the use of AI and statements about AI by investment advisers and other regulated entities and may be a harbinger of more activity by the SEC in connection with AI. For additional insights, please see our [Fintech in Brief post](#) on these actions.

Reps. Salazar and Dean Introduce “No AI FRAUD Act”

On January 10, 2024, Reps. María Elvira Salazar and Madeleine Dean introduced the [No Artificial Intelligence Fake Replicas And Unauthorized Duplications \(No AI FRAUD\) Act](#). The bill establishes a federal framework to protect an individual’s right to their likeness and voice against AI-generated fakes and forgeries.

The No AI FRAUD Act emerges against a backdrop of recent incidents highlighting the alarming misuse of AI technology. These incidents underscore growing concerns surrounding the creation of fake replicas and unauthorized copies of individuals’ likeness and voice through the manipulation of AI.

The Act addresses these pressing issues by providing a comprehensive framework for safeguarding individuals’



rights in their likeness and voice. Central to the Act is the assertion that individuals possess intellectual property rights in their likeness and voice, rights that persist beyond their lifetimes and which can be transferred or passed on to heirs. The Act prohibits various forms of unauthorized use of individuals’ likeness and voice. In particular, it prohibits making available to the public a digital voice replica or digital replication, with the knowledge that such replication was not authorized. Further, the Act

forbids making a personalized cloning service available to the public, which is defined as “an algorithm, software, tool, or other technology, service, or device the primary purpose or function of which is to produce one or more digital voice replicas or digital depictions of particular, identified individuals.” This provision enables the Act to target not only those making the digital replicas but those who enable others to create such replications.

Reps. Salazar and Dean Introduce “No AI FRAUD Act” (Continued from page 8)

On the other hand, the Act incorporates a defense grounded in First Amendment principles, which requires the balancing of public interest in access to information with the protection of individuals’ intellectual property rights. The suggested factors to be considered in the evaluation of the defense include whether the use is commercial, whether the individual whose voice or likeness is at issue is necessary for and relevant to the primary expressive purpose of

the work in which the use appears, and whether the use competes with or adversely affects the value of the work of the owner or licensee of the voice or likeness rights at issue.

The Act signals a proactive approach to addressing the challenges posed by AI-driven replication in an increasingly digitized world and offers a comprehensive framework to combat the proliferation of AI-generated fakes and

forgeries. A similar bipartisan proposal was introduced by the Senate last year, titled the Nurture Originals, Foster Art, and Keep Entertainment Safe Act 7 of 2023 (NO FAKES Act), which would protect the voice and visual likeness of all individuals from unauthorized recreations from generative AI. A hearing to examine the NO FAKES Act was held on April 30, 2024.

Court Sanctions for AI Use in Briefs



In February 2024, a Missouri appellate court [sanctioned](#) an appellant for generative AI use in legal briefs. In *Kruse v. Karlen*, the owner of a Missouri-based tech company appealed pro se to

defend against a wage claim. However, his appellate brief included numerous errors such as omitting brief requirements like an adequate Statement of Facts, an Appendix, and a section listing Points Relied On. Furthermore, the brief cited overwhelmingly to authorities that were “not only inaccurate but entirely fictitious.”

In addressing the 22 fictitious cases cited, the Missouri Court of Appeals for the Eastern District quoted from the Southern District of New York’s opinion in *Mata v. Avianca* from June 2023. *Mata* was the first case of its kind in which a party filed a brief with bogus legal citations generated

by AI. The *Mata* court held that reliance on fake opinions constitutes an abuse of the judicial system. Consequently, it sanctioned the party for using them, regardless of whether the fake opinions originated from AI or not.

Although the tech company owner apologized, and alleged he was unaware that his hired legal consultant used AI to draft the brief, the Missouri court nevertheless found the *Mata* decision persuasive. The court dismissed his appeal as frivolous, awarded attorneys’ fees to the respondent, and imposed an extra \$10,000 in damages.

European Antitrust Regulators Focused on AI

On January 9, 2024, the European Commission (EC) [published](#) two calls for contribution, focused on competition in virtual worlds and in generative AI. In addition, the EC stated that it will look at the agreements between “large digital market players” and “generative AI developers and providers.” Interested parties had until March 11, 2024, to submit contributions, which will be published on the EC’s [website](#).



European Antitrust Regulators Focused on AI *(Continued from page 9)*

On February 8, 2024, the French Competition Authority (FCA) announced that it had also [launched](#) an inquiry into the competitive functioning of the AI sector. Like the EC, the FCA is interested in the investments of large digital players into AI companies, as well as the importance of cloud computing infrastructure, data, and skilled workforces. Interested parties had until March 22, 2024, to provide input with the FCA's opinion due before the summer. The FCA's opinion is due before the summer and the head of the agency [stated publicly](#) that the inquiry had already identified initial concerns around "major digital players ... consolidating – or leveraging – their current market power upstream in the generative AI value chain."

In the UK, the Competition and Markets Authority (CMA) is [reviewing](#) AI

Foundation Models and has engaged with stakeholders across the UK, U.S., and elsewhere. It published an [updated report](#) in April 2024, outlining its concerns around consolidation, access to critical inputs, and leveraging of market positions—similar to the EU agencies. It will also publish a joint statement with the UK's privacy regulator, the Information Commissioner's office, in Spring 2024, covering areas of crossover between competition, consumer, and data protection objectives.

In addition, competition agencies continue to closely assess whether investments by large tech companies in AI companies constitute reviewable mergers. Both the EC and the UK's CMA are assessing whether Microsoft's investment in OpenAI is reviewable under their rules, and the German

agency noted that while it does not have jurisdiction currently, it would "keep a very close eye" on developments in Microsoft's influence. The CMA also contacted Amazon over its investment in Anthropic, but it did not initiate a formal review. After Microsoft announced a partnership with French AI company Mistral on February 26, 2024, the EC [confirmed](#) it would scrutinize this deal as part of its consultation on competition and generative AI, but recently noted it does not raise competition concerns. After Microsoft hired the co-founders and most of the employees of generative AI start-up Inflection, EU regulators noted that this, too, did not constitute a notifiable merger. They added that if such occurrences were systematically repeated to circumvent merger rules, changes to the merger rules could be required.

The EU AI Act Is About to Become Law



The European Union's (EU) Artificial Intelligence Act (AI Act) is the first comprehensive legislation that intends to regulate AI horizontally across all sectors in the EU. On May 21, 2024, the Council of the European Union (the Council) formally signed off on the latest draft of the AI Act (see the press release [here](#)). This marks the final seal of approval from the EU legislators. The text will officially become law once it is signed by

Presidents of the European Parliament and of the Council and published in the Official Journal of the EU. This could take place within the next two to four weeks. However, the law will have phased effective dates, with the first obligations (i.e., the rules on prohibited AI systems) becoming effective at the end of this year.

Once the AI Act starts to apply, it will progressively introduce a swathe of

new obligations for companies providing and deploying AI systems and general-purpose AI (GPAI) models in the EU. The obligations will start to apply in phases. Most requirements for new high-risk AI systems and GPAI models will start to apply over the next two years, with some requirements already expected to kick in by the end of this year. Noncompliance with the AI Act risks hefty fines of up to EUR 35 million or seven percent of the total worldwide annual turnover, whichever is higher. For more information on the AI Act, its obligations and when they will start to apply, please see our latest [FAQ on the 10 Things You Should Know About the EU Artificial Intelligence Act](#).

Key European Data Protection Authorities Are Developing Guidance on Data Protection and AI

The EU AI Act Is About to Become Law . . . (Continued from page 10)

Companies that develop or deploy AI using personal data of individuals located in the EU or UK will be subject to the General Data Protection Regulation (GDPR), or the UK equivalent (UK GDPR). Data protection authorities (DPAs) responsible for enforcing the UK GDPR are increasingly active in the AI sphere and some have started enforcing against companies developing and deploying AI. DPAs are also beginning to publish guidance on how companies can comply with the UK GDPR while developing and deploying AI systems and models.

In April 2024, the French DPA (CNIL) published a first set of recommendations designed to guide players in the AI ecosystem on how to apply the GDPR when developing AI systems. The CNIL will publish a second set of recommendations on deploying AI systems. In the UK, the Information Commissioner's Office (ICO) has launched a consultation series on generative AI and how aspects of

data protection law should apply to generative AI models. To date, the series has covered i) the lawful basis for web scraping to train models, ii) purpose limitation in the generative AI lifecycle, and iii) accuracy of training data and model outputs. Future consultations are expected to cover how AI companies can comply with individuals' rights.

UK Approach to Regulating AI Is Evolving

The UK government is developing a flexible regulatory framework that is underpinned by cross-cutting principles rather than legislation. In February 2024, certain regulators in different sectors were tasked with outlining their strategic approach to AI. Key regulators including the ICO, Competition Markets Authority (CMA), Ofcom (the UK communications and online safety regulator), and the Financial Conduct Authority (FCA) have all recently responded. A full list of regulators which have published their strategic approach to AI can be

found [here](#). The strategic approaches revolve around five central principles set by the UK government, and the UK government will use the regulators' input to help inform the next steps. Recent reports suggest that the UK government is exploring legislative options for regulating LLMs but no bill has been published yet.

Cooperation between regulators is a key pillar of the UK AI strategy. Together, the ICO, CMA, Ofcom, and FCA form the Digital Cooperation Regulation Forum (DCRF). AI is a focus for the DCRF, and in 2024 the regulators will conduct joint research into topics related to generative AI and host joint workshops that will focus on AI transparency and accountability. An AI Safety Institute was also established in January 2024 to focus on advanced AI safety for the public interest. On April 1 2024, a formal U.S.-UK partnership for testing the most advanced AI models was announced.

Canadian Court Finds Air Canada Responsible for AI Chatbot's Misrepresentations

On February 14, 2024, the Civil Resolution Tribunal, Canada's first online tribunal for small claims, denied Air Canada's argument that its AI-powered chatbot for customers was a separate entity and solely liable for its own actions. The Tribunal required Air Canada to partially refund the customer's ticket in line with the information the chatbot provided to the customer.

In 2022, Jake Moffatt, an Air Canada customer, purchased a bereavement ticket for a last-minute trip. Moffatt purchased this ticket after asking Air Canada's chatbot whether bereavement fares could be applied retroactively. The chatbot suggested that he would be able to and linked Moffatt to Air Canada's bereavement policy. However, the linked Air Canada bereavement policy did not permit retroactive applications.



When Air Canada refused to honor the chatbot's response, Moffatt sued for damages on the basis that he had relied upon the chatbot's advice.

Moffatt claimed that Air Canada engaged in negligent misrepresentation, which occurs when a seller does not exercise reasonable care to ensure its representations are accurate and not misleading. Air Canada's primary

argument was that it could not be held liable for "information provided by one of its agents, servants, or representatives – including a chatbot." However, the Tribunal member, Christopher C. Rivers, dismissed this argument stating that while the chatbot was interactive in part, it was still "a part of Air Canada's website." Thus, Air Canada was responsible for managing the accuracy of the chatbot.

Deals Highlights



Wilson Sonsini Advises ElevenLabs on \$80 Million Series B Financing

On January 22, 2024, ElevenLabs, a voice technology research company, announced an \$80 million Series B financing round co-led by Andreessen Horowitz, Nat Friedman, Daniel Gross, with participation from Sequoia Capital, SV Angel, Smash Capital, BroadLight Capital, and Credo Ventures. Wilson Sonsini Goodrich & Rosati advised ElevenLabs on the transaction.

Since its public launch, ElevenLabs has led the industry in natural speech synthesis, enabling users to create and design AI voices across a vast swathe of languages and accents, with the ability to deliver a wide range of emotions and intonations. With this Series B investment, ElevenLabs intends to cement its position as a global leader in voice AI research and product deployment. The capital will be put into advancing research, expanding infrastructure, developing new products for specific verticals, and enhancing safety measures to ensure responsible and ethical development of AI technology.

Wilson Sonsini Advises ArteraAI on \$20 Million Funding

On February 1, 2024, ArteraAI, developer of multimodal artificial intelligence (MMAI) based predictive and prognostic cancer tests, announced it has secured an additional \$20 million in capital fueled

by several prominent large investment funds. Less than a year ago, ArteraAI emerged from stealth mode with an initial funding of \$90 million. Since then, the company has made significant strides, obtaining a Medicare payment rate, growing distribution, and establishing a solid foundation for international expansion through strategic global partnerships to continue its research.

Wilson Sonsini Goodrich & Rosati has served as counsel to ArteraAI since its incorporation.

Wilson Sonsini Advises AiDash on \$50 Million Series C Financing

On January 23, 2024, AiDash, a San Jose, CA-based enterprise SaaS company making infrastructure industries climate-resilient and sustainable with satellites and AI, announced that it had raised \$50 million in an oversubscribed Series C funding round. Wilson Sonsini Goodrich & Rosati advised AiDash in the transaction.

The round was led by Lightrock, with participation from Schneider Electric-backed SE Ventures, G2 Venture Partners, Benhamou Global Ventures, National Grid Partners, Edison International, Shell Ventures, and additional strategic investors.

AiDash has created AI models that scan satellite images, searching for any problems or changes that might impact power utility electric transmission lines. For instance, it can identify where vegetation has grown to encroach upon power lines. Furthermore, its technology is being used to create surveys for companies facing new biodiversity reporting regulations, such as those in the United Kingdom.

Wilson Sonsini Advises Milu Health on \$4.8 Million Seed Round

Milu Health, a health tech company that uses AI to drive cost savings in healthcare

for employees and employers, announced both its Seed financing of \$4.8 million, led by Andreessen Horowitz (a16z) Bio + Health, and its launch with over a dozen employers to expand employee access to its platform. BoxGroup, PagsGroup, and 81 Collection, among other investors, also participated in the financing. Milu will use the funds to continue building out its technology platform and expand its operations.

Wilson Sonsini Goodrich & Rosati represented Milu Health in the transaction.

Wilson Sonsini Advises Bear Robotics on \$60 Million Investment from LG

On March 11, 2024, LG announced a \$60 million investment in Bear Robotics, a Silicon Valley-based start-up specializing in AI-driven autonomous service robots. Bear was founded in 2017 by John Ha, a former Google software engineer-turned-restaurateur. The start-up operates its indoor delivery robots in the U.S., South Korea, and Japan.

Wilson Sonsini Goodrich & Rosati advised Bear Robotics on the transaction.

Wilson Sonsini Advises Syrup on \$17.5 Million Series A Financing

On December 1, 2023, Syrup Tech, a start-up that provides AI-powered planning, buying, and inventory optimization for omnichannel commerce, announced its \$17.5 million Series A fundraising. The funding round is led by Accel with participation from existing investors Gradient Ventures and 1984 Ventures. Increased accuracy in forecasting takes the guesswork out of merchandise planning, helping reduce overproduction. Syrup connects inventory data with a unique mix of historical, transactional, and real-time data so that planning teams can make optimal decisions for their inventories. Wilson Sonsini Goodrich & Rosati advised Syrup Tech on the transaction.

Deals Highlights *(Continued from page 12)*

Firm Advises Onfido on Discussions to Be Acquired by Entrust

On February 7, 2024, Minneapolis, Minnesota-based Entrust, a global leader in trusted payments, identities, and data security, announced that it has entered into exclusive discussions to acquire London-based Onfido, a global leader in cloud-based, AI-powered identity verification (IDV) technology. Wilson Sonsini Goodrich & Rosati is advising Onfido on the transaction.

With this contemplated acquisition, Entrust would add a market-leading, compliant AI/ML-based biometric and document IDV tech stack to its portfolio of identity solutions. Additionally, Entrust would have the opportunity to advance the use of biometric-based, highly phishing-resistant authentication in high-value transactions and signing events. This potential acquisition would bring industry-leading technology together to provide enhanced identity-based solutions that enable more trusted and secure interactions at scale for people, enterprises, and institutions.

Founded in 2012, Onfido makes it easy for people to access services through digital verification. The company has over \$130 million in annually recurring revenue (ARR) and more than 500 employees. Onfido's over 1,200 customers globally include some of the world's leading financial institutions, e-commerce, gambling and gaming companies, and sharing economy platforms.

The entry into any definitive agreement remains subject to the completion of certain steps that are required in accordance with applicable laws and regulation.

Wilson Sonsini's involvement in the transaction illustrates its continued presence in the UK market representing UK companies in their M&A transactions, particularly those involving U.S. buyers.

Wilson Sonsini Advises Owner.com on \$33 Million Series B Financing

On January 31, 2024, Owner.com, a restaurant-software start-up, announced that it had closed a new \$33 million Series B round to bring the company to a \$200 million valuation. The company's total capital raised is now \$58.7 million. Independent restaurant owners use Owner.com's tools to create websites with online-ordering features, as well as for other tasks such as running marketing campaigns and improving placement in online search results. Owner.com will use the financing to expand to more restaurants, as well as to enhance its product with generative AI and other technologies.

Wilson Sonsini Goodrich & Rosati represented Owner.com in the transaction.

Wilson Sonsini Advises Insilico Medicine on License Agreement with Menarini Group

On January 4, 2024, Stemline Therapeutics, Inc. (Stemline), a wholly owned subsidiary of the Menarini Group focused on bringing transformational oncology treatments to cancer patients, and Insilico Medicine (Insilico), a clinical-stage generative AI-driven biotechnology company, announced they have entered into an exclusive licensing agreement granting Stemline global rights to develop and commercialize a novel, small molecule KAT6A inhibitor designed using Insilico's AI platform as a potential treatment for hormone sensitive cancers and other oncology indications. Under the terms of the agreement, Stemline will pay to Insilico a \$12 million upfront payment; potential development, regulatory, and commercial milestones in excess of \$500 million; and royalties.

Wilson Sonsini Goodrich & Rosati represented Insilico in the transaction.

Wilson Sonsini Advises Hyperexponential on \$73 Million Series B Round

On January 11, 2024, London-based Hyperexponential, which offers pricing software for insurers, announced the close of a \$73 million Series B funding round led by Battery Ventures, with participation from Andreessen Horowitz (a16z) and existing Series A investor Highland Europe, which increased its holding. Wilson Sonsini Goodrich & Rosati represented Hyperexponential in the transaction.

The latest financing will be used to support the company's expansion plans, which include opening a New York office and doubling its headcount to more than 200. Additionally, the funds will enable greater investment in new product capabilities as Hyperexponential looks to meet growing client demand in adjacent insurance markets, including the SME space.

Founded in 2017, Hyperexponential's pricing decision intelligence platform, HX Renew, enables insurers to leverage large and alternative datasets, develop and refine rating tools rapidly, and employ sophisticated machine learning approaches to price risk and make data-driven pricing decisions at the portfolio and individual level. Some of its clients include Aviva, HDI, and Conduit Re.

Wilson Sonsini Advises Argmax on Seed Round

On November 14, 2023, Argmax, Inc., a company that aims to revolutionize how AI models are deployed by enabling LLMs to run directly on consumer devices, announced that it has successfully closed a \$3 million seed financing. The seed round was led by General Catalyst, with participation from other angel investors. Wilson Sonsini Goodrich & Rosati represented Argmax in the transaction.

Wilson Sonsini AI Advisory Practice Highlights



Wilson Sonsini hosted a series of AI-related webinars in Q1 2024, discussing new and evolving AI regulatory frameworks:

- On February 1, Andrea Linna, Rob Parr, Eva Yin, and Shawn Lichaa discussed evolving regulations concerning AI and the key commercial issues arising from use or deployment of AI in the healthcare space.
- On March 27, Laura De Boel and Yann Padova discussed the new assessment requirements for high-risk AI systems and general-purpose AI under the EU's Artificial Intelligence Act (AI Act).

Wilson Sonsini attorneys also provided AI-related guidance at the following events:

- On January 26, Maneesha Mithal led a panel discussion on the development and monitoring of AI systems for compliance with data privacy issues.
- On February 22, Ada Wang moderated a panel focused on AI-based pricing algorithms, specifically exploring whether algorithms can facilitate cartels,

the vulnerability of algorithms to bots, and how to ensure AI fosters innovation without creating entry barriers or bolstering monopolies.

- On February 22, Eva Yin joined Michelle Francis, Senior Corporate Counsel, Microsoft Health & Life Sciences from Microsoft at ACI's Inaugural Life Sciences AI Summit to discuss the use of AI by healthcare providers to make informed clinical decisions.
- On March 21, Barath Chari and Christopher Paniewski discussed the legal issues raised by Generative AI and steps developers can implement to address those issues.
- On March 22, Maneesha Mithal co-hosted a webinar discussing the latest actions and future directions of the FTC, including algorithmic deletion and the FTC's role in regulating AI.
- On March 14, Amy Candido discussed AI and trade secrets at the AIPLA Trade Secret Summit.
- On April 3, Laura De Boel led a panel discussion on recent AI-related regulatory action in Europe at the IAPP Global Privacy Summit.

Wilson Sonsini also sponsored and hosted a variety of events focused on AI, including:

- On January 17 and February 21, Wilson Sonsini co-sponsored AI LA Founders and Investors' mixers in the LA area alongside Stanford Angels and Entrepreneurs of SoCal and Emerging LA.
- On February 27, Wilson Sonsini co-hosted with Reconify a Generative AI Demo night showcasing the latest applications of Generative AI from Bay area start-ups.
- On March 7, Wilson Sonsini and Legaltech Hub co-hosted the Legaltech and AI for In-House event, which explored the future of legal departments in the face of the emergence of the AI revolution.
- On March 20, Wilson Sonsini and the NYU Law Institute for Corporate Governance and Finance hosted a conference on AI and the future of corporate governance.
- On March 28, Wilson Sonsini sponsored Stanford Byers Center for Biodesign, Innovator's Workbench Series, during which neurosurgeon Dr. Chris Mansi discussed his career journey that includes a pioneering medical AI company.



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