Akin

Akin Intelligence

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Welcome to the September edition of Akin Intelligence. As the U.S. Congress reconvenes after the August recess, we continue to see bipartisan interest in artificial intelligence (AI) regulation. In the executive branch, President Biden has issued an Executive Order (EO) regarding outbound investment in AI and other critical technologies. Meanwhile, rules and rulings related to AI continue to percolate in U.S. state legislatures, governors' offices and in the U.S. court system. To ensure continued receipt, please subscribe to future issues **here** if you have not already done so.

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Akin Spotlight

Fall Congressional Outlook

Congress returns from the August recess with a robust agenda and limited time to pursue it. The calendar is further constrained by the September 30 deadline to pass appropriations packages or a continuing resolution (CR) to avoid a shutdown of the federal government.

Link to Article

Federal Action

White House Secures Voluntary Commitments from Eight Additional AI Companies

On September 12, 2023, the White House announced the Administration secured voluntary commitments from eight additional AI companies—Adobe, Cohere, IBM, Nvidia, Palantir, Salesforce, Scale AI, and Stability—mirroring those made by Amazon, Anthropic, Google, Inflection, Meta, Microsoft and OpenAI in July. The voluntary commitments include ensuring internal and external testing before product release, investing in cybersecurity and insider threat safeguards, labeling AI-generated content using watermarking or other technology, and sharing information about risks and vulnerabilities.

Concurrently, the Biden Administration is developing an executive order (EO) and will pursue bipartisan legislation to help the U.S. lead in AI innovation.

President Biden Signs Executive Order on Outbound Investment

On August 9, 2023, President Biden released a long-awaited EO establishing an outbound investment screening mechanism that would impose notification requirements and prohibit U.S. persons from engaging in certain transactions involving "countries of concern." The EO tasks the U.S. Department of the Treasury ("Treasury"), in consultation with other federal agencies, to issue regulations that would identify prohibited transactions in key technology industries—semiconductors, quantum computers and AI—that "pose a particularly acute national security threat because of their potential to significantly advance the military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern." Akin's assessment of the EO is available here.

CFPB Unveils Plans for Data Broker Rulemaking; White House Convenes Roundtable

Alongside a White House roundtable on August 16, 2023, Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra unveiled the agency's plans to propose rules requiring data brokers and other companies in the surveillance industry to be covered by the Fair Credit Reporting Act (FCRA). The agency plans to first seek feedback from a group of small businesses before issuing a formal rulemaking. In particular, the proposal would address use of such data to train AI, including the development of generative AI chatbots, among other things. According to a White House readout, a number of privacy and civil rights groups also participated in the meeting, including the Center for Democracy and Technology (CDT), Public Citizen, the Electronic Privacy Information Center (EPIC) and the Leadership Conference.

White House Launches AI Cyber Challenge

The White House on August 9, 2023, launched its "AI Cyber Challenge"—a two-year competition led by the Defense Advanced Research Projects Agency (DARPA) that aims to

incentivize competitors to "identify and fix software vulnerabilities using AI." The White House has highlighted its collaboration with Anthropic, Google, Microsoft and OpenAI to launch the challenge, which includes almost $20 million in prizes.

DoD Unveils Generative AI/LLM Task Force

On August 10, 2023, the U.S. Department of Defense (DoD) announced a new Generative Artificial Intelligence and Large Language Models (LLM) Task Force. The new group—Task Force Lima—will be led by the Chief Digital and Artificial Intelligence Officer. In her memorandum, Deputy Secretary of Defense Dr. Kathleen Hicks explained that Task Force Lima will "develop, evaluate, recommend, and monitor the implementation of generative AI technologies across DoD to ensure the Department is able to design, deploy, and use generative AI technologies responsibly and securely." Information received by the task force will be sent to the Responsible AI Working Council, where the Office of the Secretary of Defense and DoD will incorporate the findings in their initiatives and policy developments.

FEC Takes Action to Prevent AI-Generated Campaign Ads

On August 10, 2023, the Federal Election Commission (FEC or the "Commission") accepted a petition filed by Public Citizen on July 13, 2023, to amend laws regarding the agency's authority in forbidding misrepresentation in campaign advertisements created with AI. The announcement comes after the agency was stuck on a 3-3 vote last month when determining whether they had jurisdiction over the matter. The FEC has issued a Notification of Availability seeking comment on whether the Commission should issue a full rulemaking on the petition. The public comment period will close on October 16, 2023.

SEC Eyes Potential Challenges Accompanying AI

U.S. Securities and Exchange Commission (SEC) Chair Gary Gensler recently outlined his concerns regarding the potential financial consequences of AI in an interview with *The New York Times*, including concerns that AI models used to study investor behavior may put companies' interests ahead of investors. Chair Gensler also raised the question of who would bear the responsibility if generative AI provides faulty financial advice. Reports have also surfaced in recent weeks that the agency sent request letters to a number of private funds to inquire about their use of AI, including details about their "models and techniques" and "any incidents where AI use raised any regulatory, ethical, or legal issues."

CISA Unveils Cybersecurity Strategic Plan

On August 4, 2023, the Cybersecurity and Infrastructure Security Agency (CISA) released its Fiscal Year (FY) 2024-2026 Cybersecurity Strategic Plan. In particular, the plan outlines the need to look ahead to reduce the risks and leverage the benefits posed by AI and the advancement of quantum-relevant computing.

FCC Launches Notice of Inquiry into Spectrum Usage Data

On August 3, 2023, the Federal Communications Commission (FCC) announced a Notice of Inquiry (NOI) "designed to advance its understanding of non-federal spectrum usage and take advantage of new data sources, methods, and technologies to do so in a cost-effective, accurate, scalable, and actionable manner." The agency wishes to use advancing technologies, such as AI, to better comprehend spectrum usage and receive feedback from datasets to make the usage efficient. The NOI was also one of the subjects considered during the FCC's Open Commission Meeting earlier in the month.

USPTO Holds Meeting on AI Tools and Data

The U.S. Patent and Trademark Office (USPTO) will hold the fourth meeting of its AI/ET Partnership Series on Wednesday, September 27. At the meeting, presenters from the USPTO, other federal agencies, and stakeholder representatives will discuss intellectual property policy issues relating to AI tools and data. Those interested in participating may register here.

U.S. Copyright Office Inquires on Copyright and AI

On August 30, 2023, the U.S. Copyright Office issued an NOI in the *Federal Register* regarding "a study of copyright law and policy issues raised by generative AI" and "whether legislative or regulatory steps are warranted." The Copyright Office specifically 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. Comments are due Wednesday, October 18, 2023.

Congressional Action

All Eyes on Senate AI Forums

- Senate Majority Leader Chuck Schumer (D-NY) worked throughout the summer to spearhead discussions on comprehensive AI legislation, including via closed member-level briefings. As lawmakers return from August recess, the Majority Leader—alongside Sens. Martin Heinrich (D-NM), Todd Young (R-IN) and Mike Rounds (R-SD)—plans to maintain momentum on AI, including by convening "AI Insight Forums" to seek stakeholder input.

- The first closed-door forum was held on September 13, 2023, and featured attendance by over 60 senators and a number of top 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 another session in September, followed by two in October.

- Ahead of the September 13 forum, Sen. Martin Heinrich (D-NM)—a member of the "Big Four" AI leadership in the Senate and Chair of the Joint Economic Committee (JEC)—released a new report on "Maintaining American Leadership in Artificial Intelligence Through Public Investment and Workforce Development." The report broadly outlines the need for the U.S. government to "dramatically" increase investments in AI education, reskilling, and training, in addition to working with technologists to establish a safe and ethical structure for AI development.

- Sen. Young recently discussed Leader Schumer's efforts to craft new AI laws in the Senate on a *POLITICO Tech* podcast, where he stated that he does not anticipate the enactment of sweeping AI legislation. Instead, he projected that the chamber will move to equip federal agencies with the staff and resources needed to implement existing laws, stating, "Many of these laws we have merely need to be applied to current and to future circumstances. That's going to require ongoing vigilance from the agencies."

Bipartisan Senate Pair Unveil AI Framework

- Sens. Richard Blumenthal (D-CT) and Josh Hawley (R-MO) have unveiled a framework detailing principles for comprehensive AI legislation ahead of a Senate Commerce hearing on the need for transparency in AI and a Senate Judiciary oversight hearing. At a high level, the framework calls on Congress to (1) require companies developing sophisticated AI models, or those used in high-risk situations, to register with an independent oversight body; (2) provide for oversight body enforcement and private rights of action; (3) utilize export controls, sanctions and other legal restrictions to limit the transfer of technologies to adversary nations; (4) require transparency; and (5) require companies deploying AI in high-risk or consequential situations to implement safety controls, including by providing notice when AI is used to make decisions and providing for the right to a human review.

- The Senate Commerce hearing featured testimony from BSA | The Software Alliance and the Information Technology Industry Council (ITI). During the hearing, Sen. John Hickenlooper (D-CO), Chair of the Subcommittee on Consumer Protection, outlined the benefits of AI but also outlined the need to confront misuse by bad actors and set rules of the road. Subcommittee Ranking Member Marsha Blackburn (R-TN) outlined the need to mitigate consumer harm, promote trust and transparency, and identify risks, including the threat posed by China's advancement of AI. Both the Chair and Ranking Member also called for the enactment of comprehensive data privacy legislation alongside movement of any AI proposals. A full summary of the hearing is available here.

- The Senate Judiciary oversight hearing featured testimony from Microsoft President Brad Smith, who outlined the need to use federal procurement rules to facilitate innovation and called for "requiring federal contractors to self-attest, as a condition of bidding on federal contracts." Moreover, Smith outlined the need to license cloud infrastructure providers to ensure safe deployment of AI models. A full summary of the hearing is available here.

Chair Cantwell Preps Legislation to Address AI-Manipulated Content/Workforce Issues

At the latest Senate Commerce AI hearing, Chair Maria Cantwell (D-WA) also announced her plans to introduce a bill to address the risks posed by AI-manipulated content, as well as legislation to address the potential workforce disruptions of AI. Regarding the Committee's broader approach to the technology, Chair Cantwell drew comparisons between the panel's role for AI and its role for the CHIPS and Science Act given that it has primary jurisdiction over the U.S. Department of Commerce and the National Institute of Standards and Technology (NIST). Chair Cantwell also highlighted other forthcoming tech priorities, including passing comprehensive data privacy legislation and reining in foreign-owned technologies of concern.

Senators Introduce Bipartisan Bill to Ban Deceptive AI-Generated Content in Elections

On September 12, 2023, Sens. Amy Klobuchar (D-MN), Josh Hawley (R-MO), Chris Coons (D-DE), and Susan Collins (R-ME) introduced the Protect Elections from Deceptive AI Act (S. 2770), which would prohibit the distribution of materially deceptive AI-generated audio, images, or video relating to federal candidates in political ads or certain issue ads to influence a federal election or fundraise. Under the bill, federal candidates targeted by such content would be enabled to have the content taken down and seek damages in federal court. The ban would extend to a person, political committee, or other entity that distributes materially deceptive content intended to influence an election or raise money fraudulently.

Sen. Cruz Probes FTC on AI Disinformation/Bias

Senate Commerce Committee Ranking Member Ted Cruz (R-TX) recently, with the assistance of ChatGPT, drafted a letter to Federal Trade Commission (FTC) Chair Lina Khan seeking answers regarding her plans to regulate AI for disinformation and bias. The letter specifically voices concern that the agency's review of large language models used to train AI may "infringe on constitutionally-protected speech." The letter requests responses to a range of questions by September 25, 2023, including whether the FTC has statutory authority to review prompts submitted by users to generative AI systems.

AI Provisions Slated for NDAA Negotiations

Outside of those discussions, lawmakers in the House and Senate continue to work to advance their own, more narrow AI priorities, including via their respective versions of the FY2024 National Defense Authorization Act (NDAA). The Senate bill includes a range of AI provisions, including language requiring notification to Treasury of a range of transactions in countries of concern related to "covered sectors," which broadly include AI. The House version would, among other things, direct DoD to develop and implement a process to assess whether its AI technology is functioning responsibly and establish a Department-wide classification framework for autonomous capabilities. Lawmakers will now kick off bicameral negotiations over a compromise version of the bill. Akin's summary of the provisions under consideration is available here.

Senate Republican Explores Health Care AI Regulation

Sen. Bill Cassidy (R-LA), Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Committee, has begun to consider changes to how AI in health care is regulated. Ranking Member Cassidy is accepting feedback on how to regulate AI in health care until September 22, 2023, at HELPGOP_AIComments@help.senate.gov. In particular, the Ranking Member has discussed the need for "targeted updates" to medical device regulations, including with regard to the transparency of algorithm development and the effectiveness of such applications.

New Dems Convene AI Working Group

On August 15, 2023, the New Democrat Coalition Vice Chair for Policy Derek Kilmer (D-WA) announced the formation of the Coalition's AI Working Group. In addition to Rep. Kilmer, the group will be led by Vice Chairs Don Beyer (D-VA), Jeff Jackson (D-NC), Sara Jacobs (D-CA), Susie Lee (D-NV) and Haley Stevens (D-MI), and the Coalition plans to use the working group to engage with the Biden administration, stakeholders, and lawmakers to "develop and advance sensible, bipartisan policies to address this emerging technology."

House Republican Proposes Creation of DoD Pilot to Calculate BAH

Rep. Don Bacon (R-NE) has introduced the Basic Allowance for Housing Calculation Improvement Act (H.R. 5230), which would direct DoD to carry out a pilot program to use industry standard machine learning and AI algorithms to calculate the monthly rates of basic allowance for housing (BAH) for certain military housing areas.

Congressional Staff Briefed on AI at Stanford

As August recess convened, 28 Capitol Hill staffers attended a three-day workshop hosted by Stanford's Institute for Human-Centered AI to examine the benefits and risks of AI technologies. Attendees included staff for Rep. Ted Lieu (D-CA) and Sen. Rick Scott (R-FL), as well as staff for House and Senate committees on commerce, foreign affairs and strategic trade with China.

Senate Intelligence Chair Probes AI Companies

Senate Intelligence Committee Chair Mark Warner (D-VA) in mid-August sent a series of underline letters to CEOs of 13 AI companies—including the seven that committed to AI safety principles with the White House—urging them to take additional steps to ensure their products are deployed safely and used responsibly. The letters particularly voice concerns about the scope of the voluntary commitments and applicability only to more robust models instead of applying to models of all sizes, stating that "less capable models not covered by the commitments are susceptible to misuse, security compromise, and proliferation risks." Sen. Warner also called on some companies that did not participate in the administration's announcement—including Midjourney, Scale AI, Apple, Stability AI, Databricks and Mistral AI —to provide information on their efforts to prioritize safety, security and transparency.

Chair Warner also recently sent a letter calling on Google to increase transparency, protect patient privacy and ensure ethical guardrails with regard to Med-PaLM 2—the company's medical large language model.

Chair Cantwell Touts Privacy Bill at AI Forum

On August 21, 2023, Senate Commerce Chair Maria Cantwell (D-WA) provided remarks at Washington State's Future of AI Forum, where she spoke to the ability of her previously-introduced privacy legislation—the Consumer Online Privacy Rights Act (S. 3195)—to help protect people from discrimination fueled by AI. She highlighted several areas of concern posed by AI, including the potential for bias/discrimination with regard to job opportunities or loans.

Judicial Action

SEC Secures Preliminary Injunction Related to Alleged AI Investment Scam

On August 22, 2023, the Securities and Exchange Commission (SEC) secured a preliminary injunction against Mina Tadrus and Tadrus Capital LLC in connection with an alleged Ponzi scheme that targeted members of a religious community. The SEC's complaint alleges that the defendants told investors their funds would be invested in a hedge fund using "artificial intelligence-based high-frequency trading models," ultimately raising more than $5 million. Among other things, the SEC is seeking permanent injunctive relief, disgorgement, and civil penalties against both defendants.

FTC Action Halts the Operations of Automators AI

As a result of an FTC lawsuit, the U.S. District Court for the Southern District of California has temporarily shut down the operations of Automators AI, who claimed to use AI to ensure success and profitability for consumers who agreed to invest with Automators. The temporary restraining order specifically enjoins Automators AI from making earnings claims and statements that specify guaranteed levels of profits by way of AI machine-learning to maximize revenues. Automators AI will also be subject to an asset freeze and additional, expedited disclosure requirements.

Federal Court Rules AI System Cannot Hold Copyright

On August 18, 2023, Judge Beryl Howell of the U.S. District Court for the District of Columbia ruled against Stephen Thaler and his computer system, "the Creativity Machine." Mr. Thaler alleged that the Creativity Machine independently generated visual art, which

Thaler submitted to the U.S. Copyright Office noting the computer system as the author. The Copyright Office denied the application "on the grounds that the work lacked human authorship," which Thaler challenged. The court decided in favor of the Copyright Office, concluding that "copyright has never stretched so far. . . as to protect works generated by new forms of technology operating absent any guiding human hand."

AI Tutoring Company Settles Allegations of Age Discrimination

On August 9, 2023, iTutorGroup Inc. settled claims with the U.S. Equal Employment Opportunity Commission regarding the company's use of AI to make employment decisions. The AI software allegedly was programmed to automatically reject female applicants older than 55 and male applicants over than 60. The company agreed to pay $365,000 to the qualified and rejected job applicants passed over due to their age.

Cigna Faces Class Action Lawsuit Regarding Automated Claims Decisions

Cigna, a health and life insurance company, is facing a class action lawsuit filed in California federal court. The complaint alleges that Cigna's automated decision system enables doctors to systematically deny batches of insurance claims at a time, which circumvents the "legally-required individual physician review process," and violates federal and California law. Plaintiffs claim that the rate of denials enabled by the Cigna PxDx system, with an alleged average time of consideration being 1.2 seconds, is evidence that Cigna does not individually assess claims in accordance with California law.

OpenAI Responds to Author Copyright Class Action Lawsuit

On August 28, 2023, OpenAI sought to dismiss most of the claims in the lawsuits fronted by Sarah Silverman and other authors alleging copyright infringement. OpenAI alleges that the plaintiffs' vicarious copyright infringement claims impermissibly broaden the scope of copyright law to encroach on fair use and other exceptions that "leave room for innovations," such as ChatGPT.

State Action

State AGs Press Congress on CSAM

On September 5, 2023, more than 50 state attorneys general sent a letter urging Congress to study how AI can and is being used to exploit children through child sexual abuse material (CSAM) and to propose legislation to protect children from such abuses. In particular, the letter calls for the establishment of an expert commission, which would be tasked with providing recommendations to Congress, as well as an expansion of existing restrictions on CSAM to explicitly cover AI-generated content.

National Conference of State Legislatures Examines AI Impact

On August 10, 2023, the National Conference of State Legislatures (NCSL) released a report on approaches to regulating AI. NCSL subsequently convened its annual Legislative Summit, which included a session on AI and its potential impact on businesses and governments and a training session on Google's Bard.

California

On September 6, 2023, Gov. Gavin Newsom (D-CA) issued an executive order that requires various state agencies and departments to evaluate, report and take other actions in relation to generative AI, including:

- Analyzing risks to California's critical energy infrastructure presented by generative AI.
- Issuing guidelines for public sector procurement of generative AI.
- Supporting the state government workforce in developing "the next generation of skills needed to thrive in the GenAI economy[.]"
- Pursing a formal partnership with California universities to "consider and evaluate the impacts of GenAI on California and what efforts the State should undertake to advance its leadership in this industry."\

On August 14, 2023, the California Legislature adopted the country's first AI-drafted resolution (Senate Concurrent Resolution 17). The resolution emphasizes the challenges that exist because of the use of technology, data and automated systems that can result in ineffective or biased systems. However, the measure also recognizes the possible benefits of AI, including "increased efficiency in agriculture and data analysis that could revolutionize industries."

New York

On August 4, 2023, Senate Bill 7623 was introduced in the Senate. The measure would restrict the use by an employer of electronic monitoring or an automated employment decision tool to screen a candidate for an employment decision, unless such tool has been the subject of a bias audit within the last year. The legislation would also require notice to employment candidates of the use of such tools.

Connecticut

Sen. James Maroney (D-Milford) recently discussed plans to work this fall on model AI legislation with lawmakers in Colorado, New York, Virginia, Minnesota and elsewhere, noting that the legislation will establish "broad guardrails," address product liability issues and require impact assessments of AI systems.

Massachusetts

Massachusetts Secretary of the Commonwealth William Galvin issued inquiry letters to Morgan Stanley, JP Morgan Chase, E*Trade and other firms regarding their usage of AI technologies in interactions with Massachusetts investors. The letters sought information on how the firms were using AI in business, as well as any supervisory procedures in place that "ensure that the AI will not put the interests of the firm ahead of the interests of the clients." Firms were given until August 16, 2023 to respond to the inquiries.

Industry Action

ABA Launches AI Task Force

The American Bar Association (ABA) has announced its creation of an AI Task Force, whose mission is three-fold: (1) to address the impact of AI on the legal profession, (2) to provide insights on developing and using AI in a trustworthy and responsible manner, and (3) to explore ways to address AI risks. The Task Force will focus on a range of specific issues, including risks such as bias, cybersecurity, and privacy and how to mitigate them; emergent

issues with generative AI; use of AI to increase access to justice; AI governance; and AI in legal education. The group will be comprised of 17 members and chaired by Lucy L. Thomson, an attorney and cybersecurity engineer in Washington, D.C.

Creative Commons Urges Congress to Bring Artists to the Table

On September 11, 2023, Creative Commons published an open letter to Congress outlining the need for artists to have a seat at the table as lawmakers, particular those in the Senate, convene discussions on regulating generative AI systems. The letter particularly states, "All too often, major corporations and other powerful entities use technology in ways that exploit artists' labor and undermine our ability to make a living. If you seek to ensure generative AI's revolutionary trajectory benefits humanity as a whole, it would be a gross oversight to exclude those in our society who are working within its potential and its limitations."

BSA Launches AI Policy Resource Center

BSA, The Software Alliance, recently launched a campaign pushing Congress for action on AI legislation this fall, unveiling a new policy resource center to "highlight the transformative benefits of AI, and the policy solutions that can build trust and confidence in responsible AI."

Civil Rights Groups Press White House on AI

At the outset of August, a group of civil rights and tech groups sent a letter calling on the White House to make the five principles outlined in last year's AI Bill of Rights the centerpiece of the President's EO to protect the public from potential harms of AI.

Google Invests $20 Million in Responsible AI

Google is reportedly investing $20 million in a new Digital Futures Project to "support researchers, organize convenings and foster debate on public policy solutions to encourage the responsible development of AI." The project's initial recipients include the Aspen Institute, Brookings Institution, Carnegie Endowment for International Peace, the Center for a New American Security, the Center for Strategic and International Studies (CSIS), the Institute for Security and Technology, MIT Work of the Future, R Street and SeedAI.

ITI Publishes Global Guide on AI Foundation Models

The Information Technology Industry Council (ITI) has published a new guide for global policy-makers on AI foundation models. The document offers a number of policy recommendations, including (1) recognizing an element of shared responsibility between stakeholders in the value chain; (2) avoiding overly prescriptive, ex-ante risk management obligations; (3) facilitating transparency in the AI value chain; (4) taking a risk-based regulatory approach; and (5) avoiding an outright ban on the development of foundational models.

Tech Groups Respond to White House Request for Comment on Generative AI

In response to the White House's request for public comments on identifying and promoting the beneficial deployment of generative AI, industry and advocacy groups submitted their input ahead of the August 1 deadline.

- In particular, ITI submitted comments outlining the need for companies to disclose a model's intended use, limitations and level of accuracy, without exposing proprietary information or network security issues. ITI also points to disclosures, such as

watermarks, as possible solutions to help consumers identify AI-generated content, although the group adds that more research and development (R&D) into watermarking is needed.

- Further, the Center for Democracy and Technology (CDT) submitted comments calling for mandatory independent testing of AI systems and transparency reporting from companies, including disclosing how systems are developed and designed.

- In its comments, Public Knowledge outlined the need to provide financial support to local news outlets, such as through tax credits, to keep smaller outlets up and running and ensure access to reliable information.

Accountable Tech Issues AI Governance Framework

On August 10, 2023, Accountable Tech, in partnership with the AI Now Institute and Electronic Privacy Information Center (EPIC), released its "Zero Trust AI Governance" framework for addressing the societal risks posed by advanced AI systems. Centered on three principles—(1) enforcement of existing laws; (2) easily administrable, bright-line rules; and (3) placing a burden on companies to prove their systems are not harmful—the framework provides a number of policy recommendations, including requiring large-scale AI models and automated decision systems to abide by a strong set of pre-deployment and post-deployment requirements.

New AI Think Tank Releases Poll on AI Regulations

The Artificial Intelligence Policy Institute (AIPI), a new think tank, has released a poll of U.S. voters' thoughts on AI regulations. The survey, which polled 1,001 voters, found that 76% of respondents support policy requiring disclosures on AI-generated images, and 58% of respondents support thorough federal regulation of AI; 64% of respondents also support policies requiring firms developing AI models to obtain a license and be audited by independent experts.

Mozilla Publishes Policy Recommendations for EU AI Act

Mozilla recently published policy recommendations for EU legislators to consider as they work to finalize the EU AI Act before the end of the year. In particular, the company has outlined the need for (1) greater clarity on what the Act means by "open source" and related terms; (2) greater clarity on the criteria by which a project will be judged to determine whether it has crossed the "commercialization" threshold; and (3) the establishment of proportional obligations in the case of open-source projects.

Nonprofit Publishes Generative AI Recommendations for DoD

As part of its broader examination of AI and other new technologies, the Special Competitive Studies Project (SCSP) has issued a report outlining four AI-focused recommendations for DoD, including (1) the creation of an AI "copilot" for decision making; (2) greater incorporation of AI into military operations, such as in logistics and sustainment and investment and divestment decisions; (3) development of more AI workforce talent in the military; and (4) identification of expected threats and additional defensive measures that should be undertaken to counter attacks by adversaries.

Amazon Announces Rollout of AI-Generated Product Review Summaries

On August 14, 2023, Amazon announced the rollout of AI-generated summaries of customer product reviews, which compile customers' pros and cons of a product into a one-paragraph blurb.

Zoom Updates Terms of Service for Training AI Models

On August 6, 2023, the <u>Stack Diary</u> reported that Zoom's <u>terms of service</u> had been changed to give Zoom the right to leverage all user "service generated data" any way it wants, including for training AI models. The following day, the company published a <u>blog post</u> clarifying that the terms of service had been updated to state that Zoom "will not use audio, video or chat Customer Content to train our artificial intelligence models without your consent."

U.K. Updates

Report on UK Spending on AI Research and Resources

On August 20, 2023, the Guardian <u>reported</u> that the U.K. government will spend 100 million GBP to build an "AI research resource," with the funds spent to order key components from chipmakers Nvidia, AMD and Intel. Specifically, the U.K. government plans to order up to 5,000 graphics processing units (GPUs) from Nvidia for use in AI applications. However, some U.K. officials have expressed worries that the investment is far too low to keep up with the United States, European Union (EU) and China. In response, a U.K. government spokesperson stated that the United Kingdom is "committed to supporting a thriving environment for compute in the UK which maintains our position as a global leader across science, innovation and technology."

UK "Global AI Summit" Update

On August 10, 2023, the U.K. government <u>announced</u> Jonathan Black and Matthew Clifford as Prime Minister Rishi Sunak's special representatives to the U.K.'s proposed global AI summit this November. Billed as the world's "first major global summit on AI safety," the conference has not yet finalized its date or invite list, leading many to worry that it will not happen within the announced timeline. Beyond the date, key questions remain about the summit, such as who within the U.K. government is in charge of the event, the concrete deliverable to be achieved, how to harmonize its agenda with the work of other allies and organizations, the inclusion of civil society and whether China will be allowed to participate in some form.

House of Lords Debates AI

On July 25, 2023, the U.K. House of Lords <u>held a debate</u> on AI and its associated risks. During the debate, Lord Ravensdale stated that AI regulation "should be right at the top of our agenda," while Lord Londesborough warned that "AI may ultimately lead to a few dominant tech giants with huge market share, and further skew the distribution of wealth." In response, Viscount Camrose, the U.K. Minister for AI and Intellectual Property, stated that the U.K. government was "taking action to establish the right guardrails for AI," including through its "AI regulation White Paper published this March." The Viscount further stated that the U.K. "will ensure that there are protections for the public without holding businesses back from using AI technology to deliver stronger economic growth."

EU Updates

Report Finds AI Improves Employment Prospects

On July 29, 2023, the Centre for Economic Policy Research (CEPR) published a <u>report</u> on the connection between AI and employment in 16 European countries from 2011-2019. The report found that, despite worries about loss of employment due to AI, "exposure to AI is estimated to be associated with an **increase** of sector-occupation employment" by 3.1-6.7% in high-skill labor occupations. Moreover, "AI-enabled automation appears to be more favourable for those occupations that employ relatively younger workers." This association with employment increases for high skilled and younger workers is at "odds with evidence from previous technology waves, when computerisation decreased relative share of employment of medium-skilled workers."

Tech Companies Address Open-Source Development in EU AI Act

On July 26, 2023, a group of tech companies, including GitHub, CreativeCommons, Open Future and others, published a <u>letter</u> to EU policy-makers urging more support for open-source AI development in the final draft of the proposed EU AI Act. The companies stated in the letter that the EU "AI Act holds promise to set a global precedent in regulating AI to address its risks while encouraging innovation . . . [b]y supporting the blossoming open ecosystem approach to AI, the regulation has an important opportunity to further this goal." Specifically, the letter suggests that EU lawmakers clarify definitions of AI components, emphasize that hobbyists and researchers using open-source models are not deriving a commercial benefit, provide for limited real-world testing of AI projects and account for proportional requirements for different types of AI models.

China Updates

Chinese Technology Companies Release AI Services to the Public

In late August, Chinese technology companies such as Baidu and ByteDance <u>released</u> their generative AI services to the public for the first time. This follows the Chinese government's <u>approval</u> of the release of these services to the public. News reports indicate that Chinese companies anticipate releasing additional models to the public in the future, and that the Chinese government will likely impose additional regulation on generative AI based on the country's experience with these initial releases.

Akin Thought Leadership

<u>Fall Congressional Outlook</u> (September, 5, 2023)

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

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

<u>Generative AI and Recent Copyright Developments</u> (July 26, 2023)

<u>Private Fund Management in the Age of AI</u> (July 26, 2023)

<u>Addressing AI in the Annual Compliance Review</u> (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.

AI Regulation Summit
October 5, 2023
London

Akin partners Davina Garrod and Hans Rickhoff will be speaking on a panel and Reggie Babin to be featured keynote speaker at the annual AI regulation summit.

WIPO Conversation on Intellectual Property (IP) and Frontier Technologies
September 20-21, 2023
Geneva, Switzerland (hybrid)

The eighth session in this series of World Intellectual Property Organization (WIPO) Conversations on AI and IP, this time on Generative AI. Speakers from governments, private sector and academia will discuss regulation, innovation enablers, legal implications, and practical utilization of various generative AI tools in the context of intellectual property. Registrations are open to public with a possibility to attend online.

[MFA Data & Technology 2023: The Future of Data Science & AI](#)
September 19, 2023
New York, NY

Akin partner Michael Kahn will moderate a panel titled "Protecting Data Assets in the Age of AI". This conference will focus on the rapidly evolving landscape of data management, operations, security, and technology.

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

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Questions?

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