

Benesch's San Francisco Office Presents the AI Reporter

A publication of Benesch's AI Commission

Introducing Benesch's AI Reporter

As Benesch's multidisciplinary AI Commission continues to stay abreast of AI-related developments and legal implications our clients should be aware of, we are proud to debut the firm's AI Reporter: a monthly roundup of need-to-know information brought to you by Benesch's San Francisco office. In these reports, you will find the latest in AI litigation and legislation, as well as recent industry and business-related news.

As this newsletter continues to grow, we want to hear from you. How is your organization innovating with AI? Let us know for a chance to be featured.

The AI world is constantly changing, and we are committed to helping you stay on top of it.



Happy reading,
Kris Chandler
Chair, Benesch AI
Commission

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AI Insights

As innovations in AI technology occur at a breathtaking pace, U.S. regulators are racing to keep up. The FTC proposed a rule prohibiting AI impersonation of individuals, businesses and government officials. Elsewhere, the DOJ named its chief science and technology advisor to advise its leadership on technology issues including how to integrate AI into the department's investigations and criminal prosecutions. The SEC is also warning public companies that use AI to specifically disclose the extent to which AI plays a role in its operations to avoid running afoul of securities laws. The warning underscores the need for transparency about AI use in business operations. This is crucial for investor decision-making and maintaining trust in financial markets.

In response to the increased regulatory focus, industry players are self-policing. Meta's own independent Oversight Board criticized the company's "manipulated media" policy, saying it is confusing to users and lacks specificity. The social media giant also revealed plans to embed invisible markers into images generated by other AI services to mitigate their potential harm. This could help in tracking and controlling the spread of deepfakes or manipulated media.

Independent organizations also weighed in on AI, with an IMF study revealing that AI could impact almost 40% of jobs worldwide. The organization is calling on governments around the world to establish social safety nets to counter this impact.

In the retail space, Walmart has taken steps to automate online shopping by integrating AI technology into its website's search function, allowing shoppers to search for products based on specific use cases rather than brand names or items. The retail giant also plans to develop tools to automate the process of re-ordering frequently purchased items.

Following are recent highlights in litigation and enforcement, legislation and business innovation.



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AI Litigation & Enforcement

[News outlets file suit against OpenAI for reproducing copyrighted articles in ChatGPT](#)

News organizations The Intercept, Raw Story Media and AlterNet Media have filed suit in the Southern District of New York against OpenAI over the alleged misuse of the organizations' articles to train the system behind its chatbot, ChatGPT. The two lawsuits include allegations that articles from the news outlets were used to "train" the chatbot and that copyrighted material from the articles is reproduced "verbatim or nearly verbatim" when ChatGPT responses are prompted. The news outlets further argue that by omitting identifying information and attribution for the copyrighted material from the articles, OpenAI is violating the DMCA and committing copyright infringement. This follows a trend of similar lawsuits from news outlets including the New York Times.

SOURCE: Reuters

[Innodata facing lawsuit over false AI technology development claims](#)

Software and data engineering company Innodata is facing a class action lawsuit filed in New Jersey federal court for alleged violations of the federal securities laws after its stock price dropped more than 30% following a report stating that its AI technology was "smoke and mirrors." The investor lawsuit also alleges defendant misrepresented or failed to disclose that it did not have any viable AI technology and that defendant falsely marketed its Goldengate AI platform as rudimentary software, and that it wasn't going to use AI in any significant way to gain new Silicon Valley contracts. Plaintiffs are seeking damages, attorney fees and a jury trial.

SOURCE: Law 360 (sub. req.)

[OpenAI obtains partial dismissal of authors' copyright suit](#)

A Calif. federal judge [rejected](#) arguments by Sarah Silverman, Michael Chabon and other authors that the content generated by ChatGPT infringes their copyrights and that OpenAI unjustly enriched itself with their work. While other federal judges have also rejected claims that the output of generative AI systems violates the rights of copyright holders, they have yet to address the core question of whether tech companies' unauthorized use of material scraped from the internet to train AI infringes copyrights on a massive scale.

SOURCE: Reuters (reg. req.)

AI Litigation & Enforcement

[FTC proposes rule protecting individuals, businesses from AI impersonation](#)

The FTC is seeking public comment on a proposed [rule](#) prohibiting the impersonation of individuals, as well as businesses and government officials. The agency is taking action following a deluge of complaints surrounding impersonation fraud and concerns regarding the potential harms caused to consumers and to impersonated individuals. The Commission is also seeking comments on whether the rule should declare it unlawful for a firm to provide goods or services that they know or have reason to know are being used to harm consumers through impersonation.

SOURCE: FTC

[USPTO emphasizes patents for AI-assisted inventions require significant human input](#)

To address an emerging issue in IP law, the USPTO [clarified](#) a person can receive a patent for an AI-assisted invention if they make a significant contribution. While such a determination may be difficult to ascertain, the agency said a significant contribution could be shown by the way the person constructs the prompt in view of a specific problem to elicit a particular solution from the AI system. The agency added that a person who provides an essential building block for an AI-assisted invention could obtain a patent even if they weren't present for, or a participant in, each activity that led to its creation.

SOURCE: Reuters (reg. req.)

[SEC warns publicly traded companies not to make hyped-up AI claims](#)

Publicly traded companies that misleadingly promote their use of AI risk engaging in "AI-washing," which can harm investors and run afoul of U.S. securities law, SEC Chair Gary Gensler [warned](#). Instead of using boilerplate language to disclose risks associated with their use of AI, companies should consider whether the technology plays a significant part in their business and craft specific disclosures that speak to those risks. The warning highlights a growing push by federal agencies to underscore how many of the country's existing laws apply to AI, even as policy experts call for regulations for the technology.

SOURCE: CNN



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AI Legislation

CALIFORNIA LEGISLATIVE ROUND-UP

There was a flurry of activity in the California Legislature seeking to establish guardrails around the use of AI:

2023-2024R Cal. A.B. 2058

(February 1, 2024)

[A.B. 2058](#) was introduced by Asm. Akilah Weber (D-District 79). The bill would state the intent of the Legislature to enact legislation relating to commercial algorithms and AI-enabled medical devices.

2023-2024R Calif. S.B. 1047

(February 7, 2024)

[S.B. 1047](#) was introduced by Sen. Scott Wiener (D-District 11) and would enact the Safe and Secure Innovation for Frontier Artificial Intelligence Systems Act. Among other things, the bill would require a developer of a covered model to determine whether it can make a positive safety determination before initiating training. It would also require the Department of Technology to commission consultants to create a public cloud computing cluster known as CalCompute, with the primary focus of conducting research into the safe and secure deployment of large-scale AI models and fostering equitable innovation that includes, among other things, a fully owned and hosted cloud platform.

PENDING: Senate Rules Committee

2023-2024R Cal. A.B. 2355

(February 12, 2024)

[A.B. 2355](#) was introduced by Asm. Wendy Carrillo (D-District 52). The bill would require a person, committee or other entity that creates, originally publishes or originally distributes a qualified political advertisement to include a specified disclosure that the advertisement was generated, in whole or in part, using AI.

2023-2024R Cal. A.B. 2370

(February 12, 2024)

[A.B. 2370](#) was introduced by Asm. Sabrina Cervantes (D-District 58). The bill would prohibit AI from being used

to replace community college faculty for purposes of providing academic instruction to, and regular interaction with, students in a course of instruction. The bill would also authorize AI to only be used as a peripheral tool to support faculty in carrying out those tasks for uses such as course development, assessment and tutoring.

2023-2024R Cal. S.B. 1120

(February 13, 2024)

[S.B. 1120](#) was introduced by Sen. Josh Becker (D-District 13). The bill would require a health care service plan or health insurer to ensure that a licensed physician supervises the use of AI decision-making tools when they are used to inform decisions to approve, modify or deny requests by providers for authorization prior to, or concurrent with, the provision of health care services to enrollees or insureds.

REFERRED TO: Senate Rules Committee

2023-2024R Cal. A.B. 2602

(February 14, 2024)

[A.B. 2602](#) was introduced by Asm. Isaac Bryan (D-District 55), Asm. Laura Friedman (D-District 44), Asm. Ash Kalra (D-District 25) and Asm. Matt Haney (D-District 17). The bill would prohibit personal or professional services contracts from including provisions that meet specified conditions relating to the use of a digital replica of the voice or likeness of an individual in lieu of the work of the individual or to train a generative AI system.

2023-2024R Cal. A.B. 2652

(February 14, 2024)

[A.B. 2652](#) was introduced by Asm. AI Muratsuchi (D-District 66). The bill would require the Superintendent of Public Instruction to convene a working group for the purposes of exploring how AI is currently being used in education and identify how such technology may be used in the future.

AI Legislation

[2023-2024R Cal. A.B. 2811](#)

(February 15, 2024)

[A.B. 2811](#) was introduced by Asm. Josh Lowenthal (D-District 69). The bill would express the intent of the Legislature to enact legislation requiring legal professionals to disclose to the court whether they have used AI or machine learning to prepare any pleadings, motions or other documents filed with any court in the state.

[2023-2024R Cal. A.B. 2839](#)

(February 15, 2024)

[A.B. 2839](#) was introduced by Asm. Gail Pellerin (D-District 28). The bill would prohibit an individual from knowingly distributing an advertisement or other election communication containing materially deceptive and digitally altered or digitally created images or audio or video files within 120 of an election.

[2023-2024R Cal. A.B. 2885](#)

(February 15, 2024)

[A.B. 2885](#) was introduced by Asm. Rebecca Bauer-Kahan (D-District 16). The bill would state the intent of the Legislature to enact legislation to define the term “artificial intelligence.”

[2023-2024R Cal. A.B. 2930](#)

(February 15, 2024)

[A.B. 2930](#) was introduced Asm. Rebecca Bauer-Kahan (D-District 16). The bill would require a deployer of an automated decision tool to perform an impact assessment, outlining the purpose of the tool and its intended benefits, uses, and deployment contexts. It would also bar a deployer from using an automated decision tool in a manner that results in algorithmic discrimination.

[2023-2024R Cal. S.B. 1229](#)

(February 15, 2024)

[S.B. 1229](#) was introduced by Sen. Janet Nguyen (R-District 72). The bill would require a property and casualty insurer to disclose to an applicant or insured when it has used AI to make decisions on or make decisions that affect, applications and claims reviews.

REFERRED TO: Senate Rules Committee

[2023-2024R Cal. S.B. 1235](#)

(February 15, 2024)

[S.B. 1235](#) was introduced by Sen. Lena Gonzalez (D-District 33). The bill would establish the Artificial Intelligence and Deepfake Working Group to evaluate and advise the Legislature and the public on the relevant issues and impacts of AI and deepfakes.

REFERRED TO: Senate Rules Committee

[2023-2024R Cal. S.B. 1288](#)

(February 15, 2024)

[S.B. 1288](#) was introduced by Sen. Josh Becker (D-District 13). The bill would require the Superintendent of Public Instruction to convene a working group for the purpose of evaluating AI-enabled teaching and learning practices and report its findings to the Legislature.

Referred to: Senate Rules Committee

[2023-2024R Cal. A.B. 3050](#)

(February 16, 2024)

[A.B. 3050](#) was introduced by Asm. Evan Low (D-District 26). The bill would require the Department of Technology to issue regulations to establish standards for watermarks to be included in covered AI-generated material.



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AI in Business

[Expert says AI must be considered surveillance technology](#)

Mathias Pfau, co-founder of Tuta, a secure email service, believes AI must be considered a surveillance technology due to its ability to collect, analyze and interpret vast amounts of data. The developments in the training and use of AI have raised concerns about user consent, the ethical use of personal data and privacy rights in general. This comprehensive surveillance made possible by AI can lead to invasions of privacy. AI also facilitates the implementation of facial recognition technology. The widespread use of facial recognition raises concerns about the constant monitoring of individuals. Pfau says the future of data processing by AI software must be monitored closely and it must be made sure that peoples' right to privacy is not being harmed by this new technology.

SOURCE: Forbes

[Meta's Oversight Board claims deepfake rule incoherent, too narrowly focused on AI-generated content](#)

Meta's independently-run Oversight Board determined a Facebook video wrongfully suggesting that U.S. President Joe Biden is a pedophile doesn't violate the company's current rules. However, it claimed Meta's "manipulated media" policy lacks persuasive justification, is confusing to users and fails to clearly specify the harms it's seeking to prevent. The board suggested Meta update the rule to cover both audio and video content, regardless of whether AI is used, and to apply labels identifying it as manipulated. Yet, it didn't call for the policy to apply to photos as doing so may make it too difficult to enforce. The board's ruling was the first to address the policy, which Meta plans to update in response to the evolution of emerging and increasingly realistic AI.

SOURCE: Reuters (reg. req.)

[Meta to label AI-generated images from other companies](#)

To mitigate the potential harms associated with Generative AI, the tech firm will use a set of invisible markers built into the files of images generated by other companies' AI services to indicate digital creations. Once the system is running, Meta will do the same for images created on services run by Google, OpenAI, Microsoft, Adobe, Midjourney and Shutterstock. While the company may be confident in identifying AI-generated images, audio and videos still pose problems.

SOURCE: Reuters (reg. req.)

[AI could aid in transfer pricing tax transparency](#)

AI and machine learning have the potential to revolutionize transfer pricing regulations and compliance as they could provide consistent, accurate valuations for transfers between controlled entities, including intangible assets. These tools could simulate market conditions to predict arm's-length transaction values, offering a solution to the lack of a market transfers repository. An open-source AI model could ensure tax transparency and offer taxpayers a safe harbor if they adhere to its valuations. AI could also lower administrative overhead for both taxpayers and regulators, as well as improve tax justice by making data and models publicly available.

SOURCE: Bloomberg Law

AI in Business

[Banks finally pivoting to AI-driven cloud infrastructure](#)

Although 63% of banks operate on mainframe systems, NTT DATA [found](#) the same percentage confirmed generative AI is decisively facilitating the transition of banking applications to the cloud. This is indicative of a transformative phase where the resilience of mainframes meets the agility of cloud computing. The transformative power of generative AI is being rapidly embraced by banks, with nearly half (45%) having already integrated it into their technology stacks, while a further 30% are in the early stages of exploring its potential. In addition, 91% of banking decision-makers reported that the board endorses their AI and cloud initiatives, signaling strategic prioritization.

SOURCE: NTT DATA

[Google to relaunch Gemini AI image generations](#)

After pausing the offering due to inaccuracies in some historical depictions, the tech giant plans to begin offering image generation through its Gemini AI this month. Google is working on fixing the issue as it struggles to keep up with lead AI competitor, OpenAI.

SOURCE: Reuters (reg. req.)

Benesch AI Insights

European Union Artificial Intelligence Act: An Overview

Marking a historic moment as the world's first comprehensive regulation on artificial intelligence, the EU AI Act received its final approval from the EU Parliament on March 13, 2024. This groundbreaking legislation, which adopts a risk-based approach to regulate AI systems, aims to balance innovation with safety, transparency and non-discrimination. Set to apply broadly, similar to the EU GDPR, the AI Act will impact not only EU-based companies but also those outside the Union, including the US, enforcing compliance with its detailed provisions and imposing significant fines for violations.

Navigating the Intersection of Intellectual Property and Artificial Intelligence

As AI continues to revolutionize how companies innovate, create and operate, safeguarding intellectual property rights becomes more critical than ever. Navigating this complex intersection, however, requires a strategic approach and proactive measures to protect valuable assets while leveraging AI technologies for sustainable growth.

AI and IP: Leveraging Opportunities for Your Business

AI is reshaping intellectual property (IP) creation and management, offering innovative products and improved efficiency but also posing legal and ethical challenges. Benesch Intellectual Property Partner Eric Krischke highlights the benefits AI offers in building, managing and protecting IP assets, despite potential risks. Amidst rapid advancements, business leaders are advised to evaluate their IP portfolios, develop protection plans with legal experts, and stay informed on AI trends to leverage technology for growth and safeguard against infringement.

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