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## Akin Intelligence



June 2023

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Welcome back to Akin Intelligence!

May featured major congressional hearings and state action in the United States, calls from industry and lawmakers for artificial intelligence (AI) regulation, and significant developments in the EU's efforts to implement the world's first comprehensive AI regulation.

The week of May 15 was particularly busy in the U.S., featuring congressional hearings on "Oversight of A.I.: Rules for Artificial Intelligence," "Artificial Intelligence and Intellectual Property" and "Artificial Intelligence in Government." In addition to the short summaries below, [we provide here more detailed summaries of each of these important hearings.](#)

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## Federal Action



## Administration Unveils New AI R&D Efforts

On May 23, 2023, the Biden administration announced a number of actions intended to bolster research, development, and deployment of responsible AI. Most notably, the White House's Office of Science and Technology Policy (OSTP) has issued a Request for Information (RFI) to inform the administration's development of a National AI Strategy. Comments will be accepted until July 7, 2023.

As part of this announcement, OSTP also released an updated National AI R&D Strategic Plan, a blueprint outlining key objectives for federal investments in AI R&D. The plan, updated for the first time in four years, reaffirms eight prior strategies (e.g., “make long-term investments in fundamental and responsible AI research” and “develop effective methods for human-AI collaboration”) and adds a new ninth strategy—prioritizing international collaboration in AI research.

Moreover, the U.S. Department of Education's Office of Educational Technology released a report on “Artificial Intelligence (AI) and the Future of Teaching and Learning: Insights and Recommendations.” The 70-page report outlines key issues related to AI in educational settings, including algorithmic bias, and underscores the importance of appropriate guardrails.

## Administration Meets with AI Leaders

On May 4, 2023, Vice President Harris and senior administration officials met with the CEOs of OpenAI, Anthropic, Microsoft, and Alphabet to discuss current and future risks that may arise from the advancement of AI. Discussion focused on three points: (1) the need for increased transparency regarding AI systems; (2) the importance of the evaluation, verification and validation of the safety, security and efficacy of AI systems; and (3) the security of AI systems against malicious actors and attacks. White House officials also stressed that companies should comply with the administration's Blueprint for an AI Bill of Rights and the National Institute of Standards and Technology's (NIST) AI Risk Management Framework. The meeting complimented the administration's previously announced steps to “promote responsible American innovation in [AI]” and independent commitments from Anthropic, Google, Hugging Face, Microsoft, NVIDIA, OpenAI and Stability AI to “participate in a public evaluation of AI systems.”

## Administration Announces Generative AI Working Group

On May 13, 2023, the President's Council of Advisors on Science and Technology (PCAST) announced a new working group on generative AI. The PCAST Working Group on Generative AI will help assess key opportunities and risks with AI, and provide input on how best to ensure that these technologies are developed and deployed as equitably, responsibly and safely as possible. The working group will identify additional AI needs and opportunities and make best practices recommendations to the President.

## AI Funding and Investment Announcements

On May 12, 2023, the Biden administration launched the first Regional Technology and Innovation Hubs (“Tech Hubs”) competition. The program aims to advance technology in Key Focus Areas, including AI, machine learning and autonomy. The program was authorized by the CHIPS and Science Act of 2022 and will provide \$15 million in grant funding for qualifying applicants.

On May 4, 2023, the National Science Foundation (NSF), along with other federal agencies, higher education institutions, and stakeholders, invested \$140 million for seven new National Artificial Intelligence Research Institutes. The funding is intended to advance

foundational AI research promoting “ethical and trustworthy AI systems and technologies” and develop novel approaches to cybersecurity, climate change, neuroscience, and education and public health.

## Proposed Health Care AI Requirements

On April 18, 2023, the U.S. Department of Health and Human Services (HHS) Office of the National Coordinator for Health Information Technology (ONC) published a far-reaching proposed rule, [Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing](#). This proposed rule includes sweeping requirements related to algorithmic transparency and risk management for “predictive decision support interventions,” including AI-based health care decision support tools, that are enabled by or interfaced with ONC-certified health information technology, such as electronic health records (EHRs). Comments on this proposed rule may be submitted until June 20, 2023.

## Congressional Action



### Comprehensive AI Legislation

On May 18, 2023, Senate Majority Leader Chuck Schumer (D-NY) met with a bipartisan group of Senators to chart a path forward on comprehensive AI legislation. The lawmakers outlined the need for Congress to move quickly on a bipartisan approach using the CHIPS and Science Act ([P.L. 117-167](#)) as a model. The Majority Leader was subsequently joined by Sens. Martin Heinrich (D-NM), Mike Rounds (R-SD), and Todd Young (R-IN) in unveiling a slate of AI-focused, Member-only briefings in June. The briefings, unveiled via a [Dear Colleague letter](#), aim to serve as a forum for senators to examine a range of issues, with the first session focusing on the current the status of AI and recent policy developments. In the second briefing, senators will assess how to maintain U.S. leadership in the space, while the third, classified briefing will explore the ways in which federal agencies such as the U.S. Department of Defense (DoD) and the Intelligence Community, as well as American adversaries, use the technology.

### Congressional Committees Convene Oversight Panels

- **Senate Judiciary Subcommittee on Privacy, Technology and the Law’s hearing on Oversight of A.I.: Rules for Artificial Intelligence:** On May 16, 2023, OpenAI CEO Sam Altman [testified](#) before the Senate Judiciary Committee’s Privacy, Technology and the Law Subcommittee. In his opening remarks, Chair Richard Blumenthal (D-CT) played an AI-generated audio recording that mimicked his voice. Sen. Blumenthal outlined the need to impose restrictions on the use of AI systems, or even ban certain systems in instances of “commercial invasions of privacy for profit.” Sens. Dick Durbin (D-IL) and Lindsey Graham (R-SC) also discussed the merits of creating a national regulator for AI— an idea that Altman voiced support for. Christina Montgomery, Chief Privacy & Trust Officer, IBM, and Gary Marcus, Professor Emeritus, New York University, were also witnesses at this hearing.
- **House Judiciary Intellectual Property Hearing:** On May 17, 2023, the House Judiciary Committee’s Subcommittee on Courts, Intellectual Property and the Internet held a [hearing](#) on AI and intellectual property. During the hearing, members voiced concern about creator compensation and credit, potential AI involvement in deep fakes and misinformation, and the challenges in applying copyright laws to AI. Witnesses

advocated for artist protection and creator involvement in the construction of potential AI regulations.

- **Senate Homeland Security Hearing:** Finally, the Senate Homeland Security and Governmental Affairs Committee (HSGAC) held a [hearing](#) on May 16, 2023, to examine the use of AI in government. During the hearing, Lynne Parker, former assistant director for AI at OSTP, recommend that each agency designate a “chief AI officer,” while other witnesses and members outlined the need to first improve AI literacy.

## Senate Intelligence Chair Calls on AI Companies to Prioritize Security and Prevent Misuse

Senate Intelligence Committee Chair Mark Warner (D-VA) recently sent [letters](#) to several technology companies, including Apple, Google, Meta, Microsoft and OpenAI, voicing concern about the unique set of security concerns posed by AI. Chair Warner’s concerns included the data supply chain, data poisoning attacks and “adversarial examples.” Chair Warner also requested answers to a broad range of questions regarding the limits these companies impose on third-party access to their models, and how these companies monitor for non-compliant uses.

## California Democrat Questions White House AI Directive

On May 10, 2023, The House Science, Space, and Technology Committee held a [hearing](#) to examine the fiscal year (FY) 2024 budget for the National Institute of Standards and Technology (NIST). During the hearing, Rep. Ted Lieu (D-CA) questioned why the White House recently directed the Office of Management and Budget (OMB) to publish guidance for federal agencies’ use of AI given NIST’s existing [AI Risk Management Framework](#), cautioning against “reinventing the wheel.”

## Homeland Security Committee Passes AI Training Act

On May 17, 2023, the Senate HSGAC Committee passed the AI Leadership Training Act ([S. 1564](#)) shortly after the legislation was [introduced](#) by Chair Gary Peters (D-MI) and Sen. Mike Braun (R-IN). The bill would require the Office of Personnel Management (OPM) to provide and regularly update an AI training program for federal government supervisors and management officials.

## Senators Introduce Legislation to Regulate AI-Generated Content

Sens. Peter Welch (D-VT) and Michael Bennet (D-CO) have [reintroduced](#) the Digital Platform Commission Act ([S. 1671](#)), which would establish a five-member federal commission that would be empowered to hold hearings, pursue investigations, conduct research, assess fines and promulgate rules for digital platforms, including with respect to harmful algorithmic processes. The bill, which was first introduced last Congress, has been amended to clarify that the definition of “algorithmic process” includes algorithmically generated content and decision-making algorithms, as well as to require certain digital platforms to conduct auditing and public risk assessments on the potential harms from algorithms.

Further, a bicameral group of Democratic lawmakers, led by Rep. Yvette Clarke (D-NY) and Sens. Amy Klobuchar (D-MN), Cory Booker (D-NJ) and Michael Bennet (D-CO), have [introduced](#) the REAL Political Ads Act ([H.R. 3044/S. 1596](#)). The bill would require a disclaimer on political ads that use AI-generated images or video.



## Section 230 Scope

On May 18, 2023, the Supreme Court sidestepped the question of Section 230 liability, ruling in favor of social media companies in *Twitter v. Taamneh* and *Gonzales v. Google LLC* in two unanimous decisions. The Supreme Court “decline[d] to address the application of Section 230.” Instead, the Court considered algorithms in the context of aiding and abetting under the Section 2333(a) of the Anti-Terrorism Act, noting that “algorithms appear agnostic to the nature of the content” and that any harmful match of content to a user “more likely to view that content” does not “convert passive assistance into active abetting.”

These decisions do not directly address the question of whether Section 230 protections would extend to, e.g., content selected or produced by generative AI models. However, if the court had explicitly ruled that Section 230 protections do **not** extend to, e.g., algorithmically generated recommendations or content, it would likely have weakened the argument that Section 230 protections apply to generative AI content. Notably, many lawmakers and industry representatives, along with Justice Gorsuch in oral arguments, have expressed skepticism that Section 230 would apply to AI.

## Rules on Use of AI in Federal Court

Certain federal courtrooms are beginning to mandate disclosure regarding the use of AI. Judge Brantley Starr of the U.S. District Court for the Northern District of Texas requires certifications that “no portion of any filing will be drafted by generative artificial intelligence . . . or that any language drafted by generative artificial intelligence will be checked for accuracy” using traditional means. Judge Starr cautioned that the dangers of AI (including “hallucinations and bias”) and the lack of accountability on AI platforms (observing that, unlike lawyers, AI platforms and their creators do not “swear an oath” to the Constitution and set aside biases) would justify sanctions and the removal of filings. Similarly, Magistrate Judge Gabriel Fuentes for the U.S. District Court for the Northern District of Illinois issued a standing order requiring parties using generative AI tools to disclose (1) that an AI tool was used, (2) the specific AI tool and (3) the manner in which it was used. Judge Fuentes emphasized that reliance on AI tools may “jeopardize the mission of federal courts” and encouraged attorneys to exercise due diligence.

## Unauthorized Practice of Law Class Action Filed Against “Robot Lawyer”

A class action complaint was filed in San Francisco Superior Court against DoNotPay Inc., a company initially premised on using AI to automate parking ticket disputes. The complaint alleges that DoNotPay’s branding as “the world’s first robot lawyer” and DoNotPay’s use of a “Robot Lawyer” to “draft demand letters, an independent contractor agreement, a small claims court filing, two LLC operating agreements, and an Equal Employment Opportunity Commission job discrimination complaint” constitutes the unauthorized practice of law. The case has since been removed to federal court and awaits further proceedings. Independent of this case, in January 2023, DoNotPay’s founder offered \$1 million dollars to an attorney willing to let the service argue at the Supreme Court (through a human attorney wearing AirPods).

## State Action



Looking to the California Legislature, [Senate Bill 313](#), which would have established a new Office of Artificial Intelligence within the California Department of Technology, failed to advance ahead of the May 18 deadline for suspense file votes. However, the following AI-related bills passed and advanced to the floor:

- [Senate Bill 296](#), which would require a manufacturer of a new motor vehicle that is equipped with one or more in-vehicle cameras to disclose that fact. The bill was amended to allow review of an owner’s manual prior to purchase/lease.
- [Senate Bill 721](#), which would create a California Interagency AI Working Group.

The last day to pass bills introduced in the first house will be June 2. A number of other bills are currently on the Assembly floor, including [Assembly Bill 1546](#), which would require an action by the Attorney General to enforce the California Consumer Privacy Act of (CCPA) to be commenced within five years after the cause of action accrued. TechNet, NetChoice, the Computer and Communications Industry Association (CCIA), and several other industry groups recently sent a [letter](#) opposing the bill, arguing that by extending the statute of limitations, it “would impose additional burdens on businesses while also failing to provide any additional benefit to consumers.”

On May 6, 2023, California’s Reparations Task Force released a draft report on “[Policies to Address Mental and Physical Harm and Neglect](#),” identifying issues associated with “racially biased” algorithms and “medical artificial intelligence” in health care. The report raises concern that such algorithms lack “data diversity, whether by race, sex, or other factors,” and calls on the Legislature to direct the California Department of Public Health to issue guidance to hospitals to ensure that commercial algorithms and AI-enabled medical devices “are not used for clinical applications without FDA approval or clearance.”

## New Jersey

On May 11, 2023, Assembly Majority Leader Louis Greenwald [proposed](#) legislation criminalizing the use of deceptive AI audio or video in political campaigns. The bill would further authorize charging a candidate who uses deceptive audio or visual media with a disorderly person offense if they “knowingly or recklessly distribute deceptive audio or visual media with the intent to deceive a voter with false information about the candidate or election.”

## Other U.S. Developments



### New York City Regulations on Hiring and Promotion

On April 5, 2023, the New York City Department of Consumer and Worker Protection published [final rules](#) implementing a new law regulating the use of AI in hiring and promotions, which will take effect on July 5, 2023. The law prohibits NYC employers or employment agencies from using an automated employment decision tool (AEDT) to make hiring or promotion decisions, unless (1) the tool undergoes an independent annual bias audit; (2) the employer publishes a public summary of the audit; and (3) the employer notifies employees and job applicants that these AI tools are being used to evaluate them. Akin’s labor and employment team discussed this new law in a Laborspeak video [here](#).

## International Developments

## EU AI Act

On May 11, 2023, key committees in the EU Parliament approved compromise amendments to the draft AI Act, clearing the way for a plenary vote in the Parliament in mid-June and, should it be approved, finalization of the Act's provisions. The EU Parliament has stated that the amendments were designed to "ensure that AI systems are overseen by people, are safe, transparent, traceable, non-discriminatory, and environmentally friendly." In particular, the compromise amendments include new provisions limiting AI systems' application to biometric identification and categorization, scraping of biometric data from social media or CCTV footage, emotion recognition and predictive policing. The amendments also expand the definition of high-risk areas to include "harm to people's health, safety, fundamental rights or the environment" and "systems to influence voters in political campaigns."

The amendments also include stricter transparency measures that would likely apply to general-purpose AI systems (e.g., ChatGPT, Bard, Claude), including obligations to disclose that content was created by AI, to design models to prevent "generating illegal content" and to publish "summaries of copyrighted data used for training." Once finalized and adopted, the Act will become applicable 24 months after entry into force (i.e., mid-2025 given current timelines).

## U.K. Competition and Markets Authority Review of AI Models

On May 4, 2023, the U.K. Competition and Markets Authority (CMA) announced an initial review of AI foundation models (including large language models and other forms of generative AI). The CMA's announcement states that the initial review will:

- examine how the competitive markets for foundation models and their use could evolve[;]"
- "explore what opportunities and risks these scenarios could bring for competition and consumer protection[;]" and
- produce guiding principles to support competition and protect consumers as AI foundation models develop."

The CMA intends to publish a report on its findings in September 2023, and updates on the CMA's work can be found on its [artificial intelligence case page](#).

## Updates from China

### Administrative Measures for Generative AI Services

On April 11, 2023, the Cyberspace Administration of China (CAC) issued its [Administrative Measures for Generative Artificial Intelligence Services \(Draft for Comments\)](#) (the "Draft"). According to the Draft, entities and individuals using, or supporting others' use of, generative AI products to provide services such as chats and texts, images and sound generation via programmable interfaces are responsible for the content generated by the products. If personal information is involved, the providers must fulfill the statutory obligations of a personal information processor and protect personal information

accordingly. The Draft further states that the providers must be responsible for the legality of the pre-training data and optimized training data sources of generative AI products. Comments on the Draft were due on May 10, 2023.

## **Guidelines for Filing Standard Contracts for Cross-Border Transfer of Personal Information**

On May 30, 2023, CAC issued the first edition of its [Guidelines for Filing Standard Contracts for Cross-Border Transfer of Personal Information](#) (the “Guidelines”). The Guidelines specify that personal information processors who provide personal information overseas by entering into a standard contract with overseas recipients should file the relevant materials with the local bureau of CAC in accordance with the Guidelines. Cross-border collaborations on AI R&D activities might fall within these requirements if personal data is involved.

## **Information Security Technology AI Computing Platform Security Framework**

On May 15, 2023, the National Information Security Standardization Technical Committee issued the [Information Security Technology - Artificial Intelligence Computing Platform Security Framework \(the “Draft”\)](#) to seek public comments by July 14, 2023. The Draft provides guidance for the design and implementation of AI computing platforms, and sets out reference for platform users in applying the security features of AI computing platforms, including but not limited to security modules and service interfaces of the AI computing platform security framework.

## **Industry Action**

### **Microsoft Unveils AI Priorities**

On May 25, 2023, Microsoft president Brad Smith unveiled [a list of five AI priorities](#), including (1) broad adoption of NIST’s AI Risk Management Framework; (2) greater AI transparency and access to advanced computing infrastructure for academic and nonprofit researchers; (3) development of a legal and regulatory framework, including new licensing requirements for large language models; (4) guardrails for AI tools that control the operation of designated critical infrastructure; and (5) the creation of new public-private partnerships to address the societal implications of AI systems.

### **Shell Deploys AI for Deep Sea Exploration**

On May 17, 2023, Shell, alongside software firm SparkCognition, [announced](#) a partnership to deploy generative AI technology in Shell’s deep sea exploration in an effort to “improve the efficiency and speed of exploration workflows, leading to increased production and higher success rates.”

### **Trade Groups Launch AI Initiatives**

The International Association of Privacy Professionals (IAPP) has launched the [AI Governance Center](#) to provide privacy and AI governance professionals with resources, training and a certification course.

Further, the Information Technology Industry Council (ITI) has launched the [AI Futures Initiative](#) to research and propose AI-focused policy recommendations to lawmakers. The Initiative will explore a range of topics, including “the role of standards and conformity assessments in establishing AI trustworthiness, the relationship between algorithms and AI, and foundation models and the allocation of responsibilities in the AI value chain.”



## Trade Group Advocates for New Rules on AI

Ahead of the slate of AI-focused Congressional hearings, [Chamber of Progress](#) sent a [letter](#) to the Senate Judiciary Committee’s Privacy, Technology and the Law Subcommittee advocating for new rules on AI to mitigate potential bias and discrimination.

## Akin Thought Leadership

[Akin’s Garrod, Arlington, Gleeson Pen Article for Law360 on UK Proposals for AI](#) (May 12, 2023)

[UK CMA Review of Competition and Consumer Protection Considerations in Artificial Intelligence Foundation Models](#) (May 9, 2023)

[ONC Proposes Sweeping Health IT Certification Program Requirements for “Predictive Decision Support Interventions”–Featuring FDA-Like Standards](#) (May 8, 2023)

[LaborSpeak: Update on Sexual Harassment and AI Laws Affecting New York Employers](#) (May 8, 2023)

[Akin Intelligence - May Newsletter](#) (May 1, 2023)

[Federal AI Developments: Leader Schumer Unveils AI Legislative Framework, Reintroduction of AI for National Security Act and FTC Interest](#) (April 25, 2023)

[UK Government Proposes New AI Regulatory Regime](#) (April 14, 2023)

[FDA Gets Digital, Agency Issues Digital Health Policies on PCCP, Cybersecurity and Drug Development](#) (April 4, 2023)



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