5 KEY TAKEAWAYS

Open Source Software and Export Control in the Emerging Generative AI Space

Kilpatrick Townsend recently held its semi-annual KTIPS (Kilpatrick Townsend Intellectual Property Seminar) in San Francisco. Firm attorneys led two days of interactive discussions with clients on the latest developments in intellectual property law and any impact on the legal and business landscapes, potential challenges and opportunities, possible legislative reforms, and more. Patrick Njeim, MSc., joined other roundtable speakers from the firm for the session titled "Generative AI: Exploring and Understanding Potential Risk Factors in This Emerging Technology."

Mr. Njeim specifically presented on open source software (OSS) and export control in the emerging generative AI space.

His five key takeaways from the discussion, include:

1

Is it possible to train generative AI with OSS? Yes, but legal risks may arise depending on the OSS license(s) (permissive or non-permissive) and on whether training data is subsequently distributed.

2

What about software code as output of generative AI trained on OSS? Legal risks may arise depending on, for example, how substantially similar the software code is to OSS and whether software code is distributed. Whether the software code is derivative work has not been considered by Court yet in context of generative AI.

3

What about the generative AI model itself, can it be OSS too? Non-OSS AI trained with OSS training data is unlikely to be considered OSS. If OSS AI is trained, the trained OSS AI may also be considered OSS (however Court has not considered yet whether such trained OSS AI is considered to be derivative work).

4

ITAR and EAR export controls may apply to AI-related technology (including hardware and software) in situation where the technology is transferred outside of the U.S., or within the U.S. to non-U.S. persons. Heightened U.S. government scrutiny to AI export controls is in place and continues to evolve.

5

Uploading confidential information to a "public" generative AI may be considered as an export and can be subject to ITAR or EAR depending on nature of the information.

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