

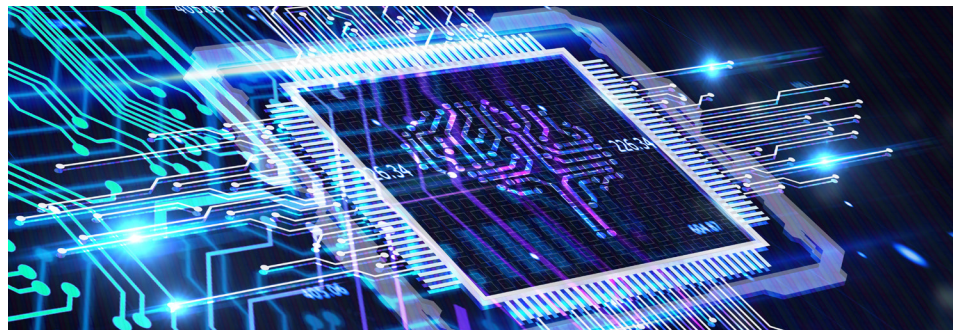
ALL EYES ON AI: REGULATORY, LITIGATION, AND TRANSACTIONAL DEVELOPMENTS

Evolving Regulatory Landscape in the U.S.

NIST Releases Its Artificial Intelligence Risk Management Framework

On January 26, 2023, the National Institute for Standards and Technology (NIST), an agency of the U.S. Department of Commerce, released its [AI-Risk Management Framework \(AI RMF\)](#). The AI RMF is intended as a set of guidelines for organizations developing or deploying artificial intelligence (AI) systems to do so in a responsible and trustworthy way while managing risks associated with those systems. NIST is a nonregulatory agency, and compliance with the framework is voluntary. However, the framework can serve as a useful guide for organizations seeking to keep pace of increasing regulatory scrutiny of AI.

The AI RMF identifies categories of harm that AI risk management systems



should address, including harm to business operations and security, ecosystems and the global supply chain, and people including their civil liberties, while also describing key characteristics of trustworthy systems. It also details the “AI RMF Core,” a collection of functions to guide companies’ implementation of AI risk management strategies. Under the Core, companies should “govern, map, measure, and manage” AI systems on a continuous basis to appropriately manage risk.

NIST will also soon publish the [AI RMF Playbook](#), a companion resource for the AI RMF which will provide suggested actions, references, and documentation guidance for companies to implement the principles of the framework. For a more comprehensive summary and analysis, see our client alert [here](#).

White House Blueprint for an AI Bill of Rights

In October 2022, the White House Office of Science and Technology Policy [published](#) the Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People,

a nonbinding white paper intended to support the development of policies and practices that protect civil rights and promote democratic values in the development, deployment, and governance of automated systems.

The Blueprint includes a set of five principles to help guide the design and deployment of AI to protect the rights of the American public in the age of AI. The five main principles are: 1) safe and effective systems, 2) algorithmic discrimination protections, 3) data privacy, 4) notice and explanation, and 5) human alternatives, considerations, and fallback.

Considered together, the five principles and associated practices form an overlapping set of backstops against potential harms associated with automated systems. While some of these protections are already required by existing laws and regulations, continued development and adoption of new laws and policies in this space are anticipated, and future sector-specific guidance will likely be necessary and important for guiding the use of AI in certain settings.

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Evolving Regulatory Landscape in the U.S. *(Continued from page 1)*

EEOC Declared Eliminating Barriers in Recruitment a Top Enforcement Priority

On January 9, 2023, the U.S. Equal Employment Opportunity Commission (EEOC) published its Draft Strategic Enforcement Plan for 2023–2027 (SEP) in the Federal Register. This SEP updates the EEOC's subject matter priorities to reflect progress in achieving its vision of fair and inclusive workplaces, while also recognizing the significant challenges that remain.

Among other priorities, EEOC will focus on recruitment and hiring practices and policies that are discriminatory, including the use of AI or machine learning “to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups,” and “screening tools or requirements that disproportionately impact workers based on their protected status, including those facilitated by artificial intelligence or other automated systems, pre-employment tests, and background checks.”

The public comment period ended February 9, 2023.

EEOC Hearing Explores Potential Benefits and Harms of AI in Employment Decisions

The EEOC held an extensive public hearing on January 31, 2023, on navigating employment discrimination in AI and automated systems, in expounding upon their work with the

prior announced AI and Algorithmic Fairness Initiative. In front of a public audience of 3,000 members, various stakeholders presented their perspectives upon furthering the framework of this topic with respect to civil rights, diversity, equity, inclusion, accessibility principles, and goals of justly fair outcomes.

DOJ and Commerce Department's New Disruptive Technology Strike Force Highlights Potential AI Threats

On February 16, 2023, the U.S. Department of Justice and the U.S. Department of Commerce announced the launch of a Disruptive Technology Strike Force to bring together experts throughout U.S. government to target illicit actors, strengthen supply chains, and protect critical technological assets from being acquired or used by nation-state adversaries. The announcement highlights the use of AI as a threat to U.S. national security when used by adversaries such as China, Iran, Russia, and North Korea for disruptive purposes such as improving calculations in weapons design and testing, improving the speed and accuracy of military or intelligence decision-making, and breaking or developing unbreakable encryption algorithms that protect sensitive communications and classified information.

The Disruptive Technology Strike Force will be co-led by Assistant Attorney General Matthew G. Olsen of the Justice Department's National Security Division and Assistant Secretary for Export Enforcement Matthew Axelrod

of the Commerce Department's Bureau of Industry and Security, and it will be comprised of officials from designated U.S. Attorneys' Offices throughout the country, the FBI, and the Department of Homeland Security's Homeland Security Investigations. It will operate in 12 metropolitan regions across the United States, with oversight and support from the local U.S. Attorneys' Offices. The team will reportedly focus on “investigating and prosecuting criminal violations of export laws; enhancing administrative enforcement of U.S. export controls; fostering partnerships with the private sector; [and] leveraging international partnerships to coordinate law enforcement actions and disruption strategies,” among other areas.

New State and Local Laws on Use of AI in Employment

State and local governments have continued to introduce new measures that seek to restrict certain uses of AI. On February 2, 2023, two Washington, D.C., councilmembers reintroduced the Stop Discrimination by Algorithms Act, which would impose restrictions on business using algorithms to make decisions ranging from credit eligibility to targeting for marketing solicitations. New York City's Department of Consumer and Worker Protection has delayed the enforcement of a local law which will place limits on AI tools used in employment. The Department of Consumer and Worker Protection also issued revised rules which determine how the law will be enforced. Those rules have not yet been finalized.

New EU Regulations

Council of the EU Proposes Amendments to Draft AI Act

In December 2022, the European Union's Regulation on Artificial Intelligence ([AI Act](#)) progressed one step towards becoming law after the Council of the EU made amendments to the draft act proposed by the European Commission (EC) in 2021. The first iteration of the draft adopted a cross-sector and risk-based approach that would apply to all AI systems on the EU market. The most harmful AI applications would be banned, and "high-risk" systems would need to comply with strict requirements. Applications with low risk would need to comply with transparency requirements and those with low or minimal risk would have no obligations.

The latest iteration of the act drafted by the Council of the EU made several business-friendly adjustments, including narrowing the scope of AI systems that must be compliant with the AI Act and amending what systems are considered "high-risk." It also, however, strengthens the AI Act by adding more social and economic groups to the list of vulnerable groups that AI businesses may not manipulate or exploit.

The European Parliament must now finalize their amendments before the next phase of the legislative process can begin. It is possible that the law could enter into force by the end of 2023. Once the text passes into law, companies will likely have two-to-three years to comply.

Formal Publication of the DMA and Timelines for Compliance

On October 12, 2022, the [EU Digital Markets Act](#) (DMA) was published in the Official Journal of the European



Union. The DMA is a new form of *ex-ante* regulation that imposes far-reaching obligations on the largest digital platforms: the so-called "gatekeepers." It gives the EC significant new enforcement powers, including the ability to impose severe fines and remedies for noncompliance.

The DMA became law on November 1, 2022, and it will become fully applicable in May 2023 due to a transition period. By July 2, 2023, companies must have notified the EC if they meet the relevant thresholds of "gatekeeper" and decisions regarding gatekeeper status will be given by the EC in fall of 2023. Six months following the designation decision, in the spring of 2024, the gatekeepers will be required to comply with the DMA.

For more information on the DMA, please see Wilson Sonsini's [DMA Fact Sheet](#).

European Union Adopts Flagship Digital Services Act

On October 27, 2022, the Digital Services Act (DSA) was published in the [Official Journal of the European Union](#), sweeping in a new era in the regulation

of digital services. The DSA applies to providers of digital services, including those based outside the EU that provide services to users in the region. At more than 100 pages, the legislation imposes a raft of obligations on these companies, with some of the most burdensome relating to content moderation, online advertising, and trader transparency.

Most companies will have until February 17, 2024, to comply with the DSA. However, for very large online platforms (VLOPs) and very large online search engines (VLOSEs), the DSA will apply four months after their designation by the EC, which could take place as early as in the first half of 2023.

The DSA complements the DMA. Together, the DSA and the DMA are designed to regulate digital services in the EU, along with existing laws.

For more information on the DSA, please see Wilson Sonsini's [DSA Fact Sheet](#).

International Developments

UK Launched Inquiry into AI Governance

On October 20, 2022, the House of Commons Science and Technology Committee of the UK Parliament launched an inquiry regarding governance of AI. Through November 25, 2022, the Committee accepted evidence related to concerns about the use of AI, such as the lack of transparency or explanation for its decision-making. The UK Government is expected to publish a white paper on AI governance later this year.

Release of EU-U.S. Joint AI Roadmap

The United States and European-Union Trade and Technology Council (TTC) issued a joint statement on December 1, 2022, outlining a roadmap plan for the proper evaluation of AI risk management in the EU and the United States. The TTC is a mechanism to support stronger transatlantic relations in approaching trade, technology, and innovation—i.e., an ongoing series of discussions between the U.S. and EU to find ways to integrate more tightly across those domains. The joint roadmap is intended to advance the shared interest in developing international standards and promote trustworthy AI based on the dedication to democratic values and human rights.

While acknowledging that risk-based approaches taken by both parties can guide the advancement of emerging technologies like AI, the roadmap also stresses the importance of the EU and the United States approaches being supported by “science, international standards, shared terminology, and validated metrics and methodologies.”

The roadmap suggested potential mechanisms to implement the objectives described in the document, including long-term goals ranging

from establishing cooperation channels to inform leadership in international standards, to the building and maintenance of a common repository of tools, including metrics and methodologies for measuring AI trustworthiness and risk management methods.

U.S. and EU Announce TTC Initiative to Formally Collaborate on AI Research

On January 27, 2023, the U.S. National Security Advisor Jake Sullivan announced that the U.S. and EU signed



an AI collaboration agreement to bring together experts from across the U.S. and Europe to focus on research on AI, computing, and related privacy protecting technologies, as underscored in the U.S.–EU TTC’s joint roadmap.

The White House indicated that it hopes the joint AI effort will drive responsible advancements in AI to address major global challenges through five key areas of focus: Extreme Weather and Climate Forecasting, Emergency

Response Management, Health and Medicine Improvements, Electric Grid Optimization, and Agriculture Optimization. In his statement, Sullivan conveyed confidence that “the results of [this] research will extend beyond [the U.S.-EU] partnership to benefit additional international partners and the global science community.”

EU and International Partners Published Declaration for the Future of the Internet

On January 27, 2023, the United States Department of State and the Directorate-General for Communications Networks, Content, and Technology of the EC signed an “Administrative Arrangement on Artificial Intelligence for the Public Good.” The agreement builds on the Declaration for the Future of the Internet and will focus on increased collaboration on AI research that could result in broad societal interests such as health, medicine, and climate change. For more information, please see the EC’s press release here.”

IEEE Introduced New GET Program for AI Ethics and Governance Standards

IEEE, the world’s largest technical professional organization dedicated to advancing technology for the benefit of humanity, and the IEEE Standards Association recently launched the GET Program, which provides free access to global socio-technical standards in AI Ethics and Governance. The selected standards are intended to support efforts around AI ethics and governance literacy and raise awareness and understanding around trustworthy AI design.

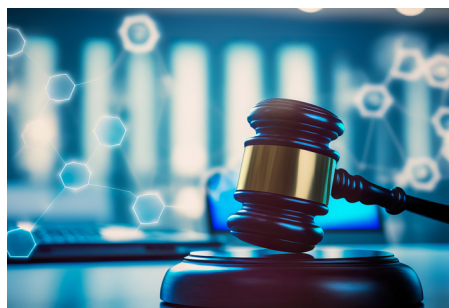
The IEEE Standards documents are made available free of charge on the IEEE GET Program’s website.

Litigation

Copyright Infringement Claims Target AI Companies

Three artists recently filed a [copyright infringement suit](#) against Stability AI, Midjourney, and DeviantArt. All three companies offer AI art tools which the artists claim have infringed the rights of artists across the internet by scraping images from the web without artist consent.

The plaintiffs are represented by Matthew Butterick and Joseph Saveri Law Firm, who in November filed a [class action lawsuit](#) against GitHub, Microsoft, and OpenAI, over GitHub's Copilot coding assistant. Copilot is trained on public code repositories, and the plaintiffs in the Copilot suit claim that the tool's outputs infringe copyrights and violate open source licenses. Microsoft and OpenAI recently filed [motions to dismiss](#), and a hearing



on the motions is scheduled for May 2023.

Stability AI is also defending a copyright infringement suit recently filed in London by Getty Images. Getty Images claims that Stability AI used photos owned by Getty Images to train the company's art generator tool, Stable Diffusion, and that outputs from that tool constitute copyright infringement. The suit was filed on January 17, and Stability AI has not yet responded.

Federal Judge Urged to Deny Copyright to AI-Generated Art

In a response brief and cross-motion for summary judgment, Copyright Office Director Shira Perlmuter defended the Copyright Office's [decision](#) last year to reject computer scientist Stephen Thaler's copyright application to register his AI-generated artwork "A Recent Entrance to Paradise," urging the federal judge to give deference to the Copyright Office's judgment due to its "extensive expertise."

The brief argued that copyright protection does not extend to non-human authors and such determination "was based on the language of the Copyright Act, Supreme Court precedent, and federal court decisions refusing to extend copyright protection to non-human authorship."

Recent Deals Highlights

Wilson Sonsini Advises Yakoa on \$4.8 Million Fundraise for NFT fraud detection

On November 15, 2022, NFT fraud detection network Yakoa [announced](#) that it had raised \$4.8 million to help the company in its mission to protect creators and brands from misuse of their IP and helping identify and remove misleading or inappropriate content from Web3 platforms. Wilson Sonsini Goodrich & Rosati advised Yakoa on the transaction.

The funding was led by Collab+Currency, Volt Capital, and Brevan Howard Digital with additional participation from Alliance DAO, Uniswap Labs

Ventures, Orange DAO and several other investors. Yakoa indexes NFTs across major blockchains and analyzes them with state-of-the-art AI to catch fraud and keep unsafe assets from Web3 platforms. The technology is designed to give creators and brands a map of where copies of their content are being used. For more information, please see additional coverage in [TechCrunch](#).

Wilson Sonsini Advises Insilico Medicine on \$1.2 Billion Research Collaboration with Sanofi

On November 8, 2022, Insilico Medicine, a clinical-stage artificial intelligence-driven drug discovery company, [announced](#) a multi-year, multi-target

strategic research collaboration with Sanofi. The collaboration will leverage Insilico Medicine's AI platform, Pharma. AI, to advance drug development candidates for up to six new targets. Wilson Sonsini Goodrich & Rosati advised Insilico Medicine on the transaction.

Under the terms of the agreement, Sanofi will pay Insilico Medicine a total of up to \$21.5 million covering the upfront and target nomination fees to benefit from Insilico's end-to-end Pharma. AI platform and gain access to a team of interdisciplinary drug discovery scientists to identify, synthesize, and advance high-quality lead therapeutic compounds up to development candidate

Recent Deals Highlights *(Continued from page 5)*

stage. Additional payments will be made if key research, development, and sales milestones are met, and could total up to \$1.2 billion. The collaboration also establishes mid-single to up to low double-digit tiered royalties for any products developed.

Wilson Sonsini Advises Stability AI on \$101 Million Funding for Open-Source Artificial Intelligence

On October 17, 2022, Stability AI, one of the world's first community-driven,

open-source artificial intelligence (AI) company announced \$101 million in funding. The oversubscribed round was led by Coatue, Lightspeed Venture Partners, and O'Shaughnessy Ventures LLC. Wilson Sonsini Goodrich & Rosati advised Stability AI on the transaction.

Stability AI is the company behind Stable Diffusion, a powerful, free, and open-source text-to-image generator that launched in August 2022. Since launching, Stable Diffusion has been downloaded and licensed by more

than 200,000 developers globally. Stability AI's consumer-facing product DreamStudio quickly grew to well over a million registered users from more than 50 countries who collectively have created more than 170 million images. Stability AI will use the latest funding to accelerate the development of open AI models for image, language, audio, video, 3D, and more, for consumer and enterprise use cases globally.

Firm Publications

Wilson Sonsini Alert

[NIST Releases Its Artificial Intelligence Risk Management Framework \(AI RMF\)](#)

By Washington, D.C., Partner Maneesha Mithal, Brussels Partner Laura De Boel, and Washington, D.C., Law Clerk Stacy Okoro
January 30, 2023

Wilson Sonsini Alert

[European Union Adopts Flagship Digital Services Act](#)

By Brussels Partners Cédric Burton and Laura De Boel, Washington, D.C., Partner Lydia B. Parnes, London Associate Tom Evans, and Brussels Associate Mia Gal
October 31, 2022

WSGR Data Advisor Blog

[Council of the EU Proposes Amendments to Draft AI Act](#)

By Brussels Partner Laura De Boel
December 22, 2022

WSGR Data Advisor Blog

[Formal Publication of the DMA and Timelines for Compliance](#)

By Brussels Partner Cédric Burton, London Partner Beau Buffier, Brussels Of Counsel Deirdre Carroll, Brussels Associates Rossana Fol, Roberto Yunquera Sehwaní, and Laurine Daïnesi Signoret
October 13, 2022

Wilson Sonsini AI and Machine Learning Practice Highlights

An Emerging Leader in an Emerging Field

Wilson Sonsini continues to demonstrate its legacy of representing leading innovators and investors in emerging fields of technology, including AI and machine learning. The firm has represented one-third of the [Forbes 2022 AI 50](#).

Cédric Burton Presents at IAPP Europe Data Protection Congress 2022

Brussels Partner Cédric Burton participated in the panel, “DMA, DSA, DA, DGA, AI Act: How to Navigate a Soup of New EU Data Regulations,” at the IAPP Europe Data Protection Congress 2022, Europe’s primary gathering of data protection professionals. Other discussion topics at the Congress included policy and governance, AI, General Data Protection Regulation enforcement, mergers and acquisitions, and privacy in technology.

Laura De Boel Participates in Panel Discussion at AI & Big Data Expo

Brussels Partner Laura De Boel participated in the panel, “Keeping It Ethical in AI,” at the [AI & Big Data Expo](#) in Amsterdam, a cross-industry, commercially focused gathering of over 6,000 professionals. In addition to the “Keeping it ethical in AI” panel, the expo featured discussions about enterprise adoption of AI, data monetization, and other AI- and data-related topics.

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