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AI Workshop – Session 1

The AI Regulatory Landscape in the U.S. and EU and Current Efforts to Strike a Balance Between Supporting Innovation with the Need for Safety, Security, and Privacy



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AI Technology & Definitions

AI Regulatory Landscape in the U.S.

- Federal level – Current Developments
- State level – Current Developments

AI Regulatory Landscape in the EU

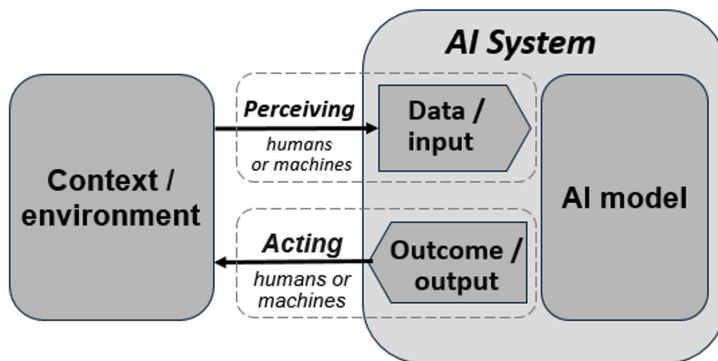
- EU AI Act

Crystal Ball & Key Takeaways

Q&A

Organization for Economic Cooperation and Development (OECD)

An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.



2023 Executive Order on AI

“AI system” means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.



EU AI Act

“AI system” (in Article 3) is “a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.”



U.S. Federal

- **No** comprehensive substantive legislation to govern the use of AI has been passed at Federal level
- **Significant activity** towards some form of regulation at Federal level
- Application of existing laws, rules, and regulations

U.S. States

- **No** U.S. state has yet enacted comprehensive AI legislation
- **Many states** have enacted privacy laws or are in the process of considering legislation regulating the use of AI
- Other states have established commissions, task forces, or advisory boards focusing specifically on AI



AI Regulatory Landscape – U.S. Federal



NIST
National Institute of
Standards and Technology



Legislative and Regulatory Activities

- Biden Administration – White House OSTP: Executive Order on Safe, Secure, and Trustworthy Development and Use of AI; Blueprint for an AI Bill of Rights
- US Congress: Future of AI Innovation Act; National AI Advisory Committee (NAIAC); SAFE Innovation Framework for AI Policy, AI Insight Forums; American Privacy Rights Act of 2024 (APRA)
- NIST: AI Risk Management Framework (RMF); Generative AI Public Working Group (GAI PWG); U.S. AI Safety Institute (USAISI)
- NTIA: RFC on Dual Use Foundation Models
- FTC/DOJ/EEOC/CFTB: Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems
- PTO/CO: Inventorship guidance for AI-assisted inventions; Registration Guidance: Works Containing Material Generated by AI
- Commerce: NPRM on IaaS Product-Related Customer Identification and AI-Related Reporting Requirements

Existing Laws, Rules, & Regs

- FTC: Enforcement based on Section 5 of the FTC Act, Fair Credit Reporting Act, and Equal Credit Opportunity Act
- Pending Lawsuits/Legal Theories:
 - Copyright infringement / fair use defense
 - Violation of the Digital Millennium Copyright Act (DMCA)
 - Trademark Infringement
 - Unfair Competition (Lanham Act / State)
 - Deceptive Trade Practices (State)
 - Unjust Enrichment
 - Breach of Contract (licenses)
 - Violation of Privacy (State)
 - FTC (unfair or deceptive practices)

Laws and Regulation – Mix of Comprehensive & Sectoral

- Privacy-Based – 16 States with a comprehensive privacy law; many with provisions on "AI"
 - Notice and Consent (i.e. VDCPA) – widely adopted framework that provides consumers with certain opt-out rights including profiling and ADMTs
 - Data Minimization (i.e. MODPA) – unique framework that would require companies to only collect data necessary to perform its intended purpose
- Issue-Specific – specific rules for the use of AI-related technology in certain contexts
 - Elections and Deepfakes, Algorithmic Discrimination/Bias, Automated Decision Making, and AI Working and Research Groups

Current Developments

- Over 550 state bills regarding AI introduced in 2024
- California – CPPA rulemaking on ADMTs
- Connecticut – SB 2
 - Creates various obligations for developers and deployers of “high-risk” systems including increasing transparency requirements
 - Provides additional consumer rights including notice and right to appeal any adverse consequential decision to a human reviewer
 - Promotes interoperability between U.S. government efforts around AI
- Current Challenges – algorithms and online safety (CA AB 2877), training data and CSAM, technical limitations with watermarks, and conflicts of law

AI Regulatory Landscape – EU

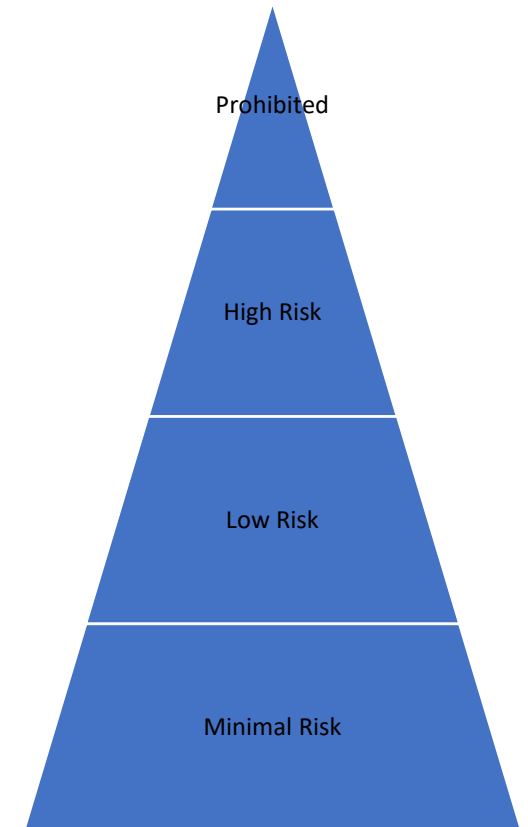
The EU AI Act includes specific categories of risk as well as requirements to assess and record aspects of an AI.

Will require a “conformity assessment” at high risk

- Also need to register with the EU commission

Focused on mitigating harms to humans or their rights

Training data, in particular when used for generative purposes, should be reviewed to avoid copyright issues



AI Regulatory Landscape – EU

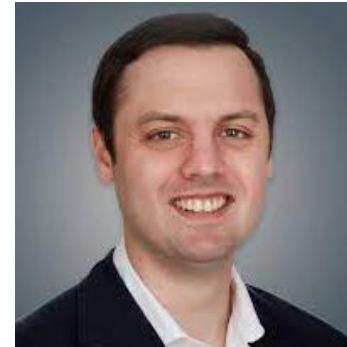


Questions & Contacts



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