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2024: An Outlook on Artificial Intelligence

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By **Melissa Collins**

While 2023 was a breakout year for generative AI, we expect 2024 to bring even more adoption and novel uses of AI technology. This expected increase in AI development will likely lead to increased regulation, legislation and litigation. 2024 will also usher in a better understanding of AI with more education and better risk management for many companies implementing AI systems.

As AI tools become a part of everyday life for individuals and businesses, concerns over AI safety, bias and other risks will multiply, with increasing concerns about the potential for AI-generated disinformation and deepfakes, and lead to new or increased claims activity.

Regulatory

We expect 2024 to be a year of increased regulation and legislation, aimed at protecting individuals from the potential harms of AI.

Regulatory activity is likely to focus on principles including accountability, transparency, fairness and safety, accuracy, and human oversight. More specifically, we expect legislation relating to the use of AI in employment, including requiring notice to employees and other restrictions for its use in employment decisions. We will also likely see more laws and enforcement activities focused on preventing discriminatory harms in the context of credit scoring, hiring, insurance, health care, targeted advertising, and access to essential services and disproportionate impacts of AI on vulnerable persons, including children.

Regulators are likely to be interested in investigating the potential misuse of AI technologies and are likely to use their authority to investigate the development and use of AI technologies to determine

whether they harm consumers, investors, patients or others. For example, the United States Federal Trade Commission (US FTC)[1] has already begun an investigation of OpenAI and is likely to expand its investigation of potential unfair or deceptive use of AI to other businesses. The outcome of these early investigations could provide crucial guidance for AI developers and users.

In the United States, our view is that some regulators or legislatures may want to be seen as leaders and enact "outlier" state and local laws that are detailed in application and impose harsh penalties. Companies and individuals will need to study such laws and react with caution.

Litigation

A number of high-profile cases[2] are currently pending in the courts that will help to define the law around novel issues arising from the development and use of generative AI. These include: whether the training of large language models like OpenAI with large amounts of data scraped from the internet violates various privacy and intellectual property laws, whether the output of AI tools constitute intellectual property, and who can be held responsible for any harm caused by their output, especially when the harm results in bias. Answers to some of these questions will be decided by courts in 2024 and could have broad implications.

Intellectual Property

Numerous authors, including John Grisham and Sarah Silverman[3], as well as artists and image companies have filed lawsuits alleging that tech companies violated their copyrights as a result of the use of their copyrighted works as AI training data (AI "inputs") as well as the use of their works in the creation of allegedly derivative AI works (AI "outputs"). Courts in 2024 will be asked to decide whether the training of AI on copyrighted works constitutes "fair use" and will determine whether works created by AI (partially or in total) are eligible for copyright protection.

Privacy

"Data scraping" practices used to train large language AI models have come under scrutiny through both lawsuits and regulatory investigations[4]. Privacy concerns are the centerpiece of these suits, accusing tech companies of scraping the web to steal private information, including personally identifiable information, from millions of internet users, including children, without consent.

Algorithmic Bias

As more companies utilize AI to assist in decisions that impact individual's access to capital, health care, employment and more, they may face increased exposure to class action claims related to data privacy, discrimination, civil rights violations and related claims. Several notable lawsuits are already pending, including a putative class action against human resources software provider Workday[5], alleging that their software resulted in discriminatory hiring practices, and a putative class action against UnitedHealthcare[6] alleging that the

insurer knowingly used an AI tool with a high error rate to override physician recommendations and to deny elderly patients care owed to them through Medicare Advantage healthcare plans.

Decisions in these cases may begin to define the circumstances under which companies using AI systems are liable for the systems' mistaken decisions and may also define who can be liable.

As courts begin to resolve AI-focused cases, there will be greater clarity on how existing laws address these circumstances and whether legislatures could address any gaps in existing.

Lastly, we are watching for potentially large settlements. While some cases are too precedential and/or significant to settle, others are not. Given the potential money to be made or saved through AI in the coming years, the cost-benefit analysis may lean toward settling and moving on.

With high expectations for the expanding influence of AI in 2024, we'll continue to closely monitor and act on the evolving claims landscape.

1- FTC Investigating ChatGPT Developer Over Data Practices

2- These Are The High-Stakes AI Legal Battles To Watch In 2024

3- OpenAI gets partial win in authors' US copyright lawsuit

4- Five Key Points from the Invasion of Privacy Lawsuit Against OpenAI

5- Workday Defends AI, Software in Unconscious Hiring Bias Lawsuit

6- Lawsuit claims UnitedHealth AI wrongfully denies elderly extended care

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