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ROUNDTABLE DISCUSSION: INTERNATIONAL PERSPECTIVES ON A.I.

**MSI Regional
Conference**

Technology S.I.G.

THE U.S. PERSPECTIVE

- AI law in the US is a patchwork of federal and state laws, with no national (i.e., federal) law in place to date
- U.S. approach differs from the EU in that because AI is still developing, different portions of U.S. governments adopted nuanced approaches
- AI is differently regulated in different industrial sectors, usually subject to the expertise of the applicable regulatory agency
- The possibility persists of adoption of a national law, that will inevitably take into account the EU's AI Act.

PROPOSALS FOR NATIONAL REGULATION

- With no national (i.e., federal) A.I. legislation in the USA, there is no shortage of proposed federal legislation:
 - the “CREATE AI Act,” introduced in the Senate
 - the “Bipartisan Framework On AI Legislation,” introduced in the US Senate, includes a proposal for an AI-specific regulatory agency
- The Biden Administration AI Executive Order (Order 141110) directs over 50 federal government agencies to create standards for the development and deployment of AI systems for each agency
 - The Executive Order is not federal legislation, and does not directly apply to private companies

- At the federal level, 14 sector-specific laws currently impose requirements on the use of AI as part of their coverage. Examples:
 - cybersecurity requirements
 - genetic information
 - employment
 - civil rights
 - and many others.
- How those laws apply to AI is not yet clear.
 - For example, employment laws prohibit many forms of discrimination, regardless of whether AI is how that discrimination is applied
- Such laws also interact with local laws
 - e.g. local prohibitions on “automated decision making in employment.”

STATE LAWS FILL IN GAPS

- At the state level, coverage of AI is generally part of state-specific privacy laws, which vary in scope and coverage
- Six states have comprehensive privacy laws that apply in some fashion to AI
- 14 states have legislation that has been introduced or proposed that could cover AI

LOCAL LEGISLATION PROVIDES MORE SPECIFICS

- Ten states have proposed local or state-level legislation on algorithmic discrimination
- New York City has enacted legislation imposing restrictions on the use of automated employment decision-making technology
- Five states have proposals for similar legislation
- Illinois prohibits use of biometric information without written consent
- Illinois prohibits use of AI in video interviews without written consent

BIDEN FEDERAL EXECUTIVE ACTION

- The Biden Executive Order directs the U.S. Patent and Trademark Office and the U.S. Copyright to study the effect of AI on:
 - the protection of inventions and
 - works of authorship

LITIGATION MULTIPLIES

- Multiple cases in multiple states challenge both ingestion, use to train, and output
- Plaintiffs include Sarah Silverman, Getty Images, The New York Times, many others
- Copyright owners lost prior litigations over “non-display uses”:
 - Authors Guild v. Google
 - HaithiTrust v. Google
- “Fair use” = complete defense to copyright for specific uses



Questions? Discussion!

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Questions? Discussions!

1. Have firms encountered legal challenges in the use of AI in their day-to-day practice activities or supporting clients?
2. How are firms protecting their data in the use of their AI tools, and are they having to justify this to clients?

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Thank you for your attention!

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