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ChatUSG: What Government Contractors Need To Know About AI

*By Townsend L. Bourne, James G. Gatto & Daniel Alvarado**

In response to the rapid growth of generative artificial intelligence (generative AI or GAI), several federal government agencies have announced initiatives related to the use of artificial intelligence (AI) and automated systems and efforts to minimize the potential threats stemming from the misuse of this powerful technology. As the use of AI becomes integrated into our daily lives and employee work routines, and companies begin to leverage such technology in their solutions provided to the government, it is important to understand the developing federal government compliance infrastructure and the potential risks stemming from the misuse of AI and automated systems.

This BRIEFING PAPER will cover some of these agency initiatives and some of the broader issues with the use of GAI. Some of these issues are specific to doing business with the government and others relate to all companies. As many employees are experimenting with AI in connection with their work, it is important for companies to set some guard rails to avoid unwanted legal issues. Many companies are developing a corporate policy on employee use of AI. This PAPER will discuss why companies need one and what they should include.

Federal Government Initiatives

Federal government agencies have announced initiatives that seek to leverage their collective authorities to monitor the development and use of AI and automated systems. On April 21, 2023, the Secretary of Homeland Security, Alejandro N. Mayorkas, announced a new initiative that seeks to combat evolving threats, including the revolution created by GAI.[1] The Secretary announced the first-ever Department of Homeland Security (DHS) AI Task Force, which will drive specific applications of AI to advance critical homeland security missions including:

- Integrating AI to enhance the integrity of supply chains and the broader

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trade environment, such as deploying AI to improve screening of cargo and identifying the importation of goods produced with forced labor;

- Leveraging AI to counter the flow of fentanyl into the United States by improving detection of fentanyl shipments, identifying and interdicting the flow of precursor chemicals worldwide, and targeting for disruption key nodes in the criminal networks;

- Applying AI to digital forensic tools to improve identification, location, and rescue of victims of online child sexual exploitation and apprehend the perpetrators of this heinous crime; and

- Collaborating with government, industry, and academia partners to assess the impact of AI on DHS's ability to secure critical infrastructure.[2]

Additionally, on April 25, 2023, officials from the Federal Trade Commission (FTC), the Department of Justice (DOJ), the Consumer Financial Protection Bureau (CFPB), and the U.S. Equal Employment Opportunity Commission (EEOC) released a joint statement on "Enforcement Efforts Against Discrimination and Bias in Automated Systems."[3] The joint statement outlines each respective agencies' commitment to enforce their respective legal and regulatory authority to ensure responsible innovation in the AI space.[4] As described below, the agencies are taking a broad interpretation of the term "automated systems" for the purposes of their respective efforts:

> Today, the use of automated systems, including those sometimes marketed as "artificial intelligence" or "AI," is becoming increasingly common in our daily lives. We use the term "automated systems" broadly to mean software and algorithmic processes, including AI, that are used to automate workflows and help people complete tasks or make decisions. Private and public entities use these systems to make critical decisions that impact individuals' rights and opportunities, including fair and equal access to a job, housing, credit opportunities, and other goods and services. These automated systems are often advertised as providing insights and breakthroughs, increasing efficiencies and cost-savings, and modernizing existing practices. Although many of these tools offer the promise of advancement, their use also has the potential to perpetuate unlawful bias, automate unlawful discrimination, and produce other harmful outcomes.[5]

The joint statement reiterates that these agencies "take seriously our responsibility to ensure that these rapidly evolving automated systems are developed and used in a manner consistent with federal laws, and each of our agencies has previously expressed concern about potentially harmful uses of automated systems."[6] The joint statement also describes recent efforts by these agencies, including:

- The DOJ's recent filing of a "statement of interest in federal court explaining that the Fair Housing Act applies to algorithm-based tenant screening services";

- The CFPB's publication of "a circular confirming that federal consumer financial laws and adverse action requirements apply regardless of the technology being used";

- The FTC's issuance of a report "evaluating the use and impact of AI in combatting online harms identified by Congress" that "outlines significant concerns that AI tools can be inaccurate, biased, and discriminatory by design and incentivize relying on increasingly invasive forms of commercial surveillance"; and

- The EEOC's issuance of "a technical assistance document explaining how the Americans with Disabilities Act applies to the use of software, algorithms, and AI to make employment-related decisions about job applicants and employees."[7]

Although it is unclear which of these agencies will take the lead in terms of publishing AI regulations for companies

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developing AI and companies using or leveraging AI in their systems, each of these agencies is determined to assert itself within the bounds of current authorities, which may result in compliance headaches for companies, and especially companies regularly doing business with the federal government.

These efforts follow publications by the federal government in 2022 and early 2023 acknowledging that AI is here to stay and, as such, we should be mindful of the risks and pitfalls associated with its continued use. In October 2022, the White House Office of Science and Technology Policy published a document titled, "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People," identifying five principles to "guide the design, use, and deployment of automated systems to protect the American public in the age of artificial intelligence."[8] The foreword states:

> The Blueprint for an AI Bill of Rights is a guide for a society that protects all people from these threats—and uses technologies in ways that reinforce our highest values. Responding to the experiences of the American public, and informed by insights from researchers, technologists, advocates, journalists, and policymakers, this framework is accompanied by a technical companion ["From Principles to Practice"]—a handbook for anyone seeking to incorporate these protections into policy and practice, including detailed steps toward actualizing these principles in the technological design process. These principles help provide guidance whenever automated systems can meaningfully impact the public's rights, opportunities, or access to critical needs.[9]

The AI Bill of Rights includes the following five principles:

1. *Safe and Effective Systems*: The American people should have appropriate protection from unsafe or ineffective systems and automated systems should be developed with consultation from diverse communities, stakeholders, and domain experts.

2. *Algorithmic Discrimination Protections*: Individuals should not face discrimination by algorithms, and systems should be developed and utilized in an equitable manner.

3. *Data Privacy*: Systems should be developed with built-in protections from abusive data practices for individuals and the ability for individuals to have agency over how their data is used.

4. *Notice and Explanation*: Individuals should be notified regarding when an automated system is being used and provided information regarding how and why the automated system will contribute to outcomes that impact the individual.

5. *Human Alternatives, Consideration, and Fallback*: Individuals should be able to opt out, where appropriate, and have the ability to discuss with another individual any considerations and remedies encountered.[10]

The AI Bill of Rights is a voluntary, non-binding framework, but federal agencies likely will consider it as they craft guidance and requirements regarding the development and use of AI.

Additionally, on January 26, 2023, the National Institute of Standards and Technology (NIST) released the first version of its "Artificial Intelligence Risk Management Framework" (AI RMF 1.0).[11] NIST, a part of the Department of Commerce, publishes standards and materials on a variety of topics, but currently is most commonly known to federal contractors through its Special Publication 800 series, which presents information of interest to the cybersecurity community. These Special Publications provide guidance, recommendations, and technical specifications for federal contractors regarding security and privacy controls for information systems,[12] protecting controlled unclassified information in nonfederal systems and organizations,[13] and cybersecurity supply chain risk management programs.[14]

Like the AI Bill of Rights, compliance with the AI RMF 1.0 is voluntary. The purpose of the AI RMF 1.0 is to "offer a resource to the organizations designing, developing, deploying, or using AI systems to help manage the many risks of AI and promote trustworthy and responsible development and use of AI systems."[15] The AI RMF 1.0 equips federal contractors with guidance regarding approaches for increasing the trustworthiness of AI systems and fostering the development, deployment, and utilization of AI systems over time.[16] The NIST AI RMF 1.0 is a "living document," which suggests NIST will continue monitoring the evolving landscape of AI and provide updated guidance when appropriate.

The potential threats stemming from the use of AI systems could affect cybersecurity, fair competition, consumer protection, equal opportunity, and civil rights. Therefore, it is crucial for companies, including federal contractors, to understand and keep in mind these federal government frameworks and initiatives when developing, deploying, and using AI systems.

Broader Issues With Generative AI

The "generative" aspect of GAI implies that something new is being created. New creations implicate intellectual property (IP) issues, including the protection of what is created, potential infringement of preexisting IP, and ownership

and licensing issues of the output. These creations can include text, images, music, computer code, and other types of content.

Both the U.S. Copyright Office and the U.S. Patent and Trademark Office (USPTO) have developed initiatives to focus on IP issues with AI.

Copyrights

The Copyright Office has taken action in two high profile registration matters. These matters make clear the requirement that authors must be humans. Where AI-generated works lack sufficient human authorship they will not be protectable.

In the first matter, a Copyright Office Review Board Decision rejected an application that attempted to obtain a copyright registration for an AI-generated work.[17] The copyright application listed the AI tool as the sole author. This application is now the subject of a lawsuit in U.S. district court seeking to overturn this refusal (pending).[18]

In the second matter, the Copyright Office initially granted a registration to Kristina Kashtanova for the comic book "Zarya of the Dawn." It later learned (apparently through social media posts) that the work included some AI-generated content. On its own, it decided to reconsider the registration. After providing Kashtanova an opportunity to supply additional information, the Copyright Office issued a registration decision that maintained the registration for the human-authored components (the text and the selection, coordination, and arrangement of the work's written and visual elements) but canceled coverage for "the AI-generate images" based on its determination the images had insufficient human control over the expressive content.[19]

On March 16, 2023, the Copyright Office issued Guidance on the examination and registration of works that contain material generated by AI technology.[20] This Guidance covers some important topics. Key points include the following:

- Copyright can protect only material that is the product of human creativity—the term "author," which is used in both the Constitution and the Copyright Act, excludes non-humans.[21]
- In the case of works containing AI-generated material, the Office will consider whether the AI contributions are the result of "mechanical reproduction" or are, instead, of an author's "own original mental conception, to which [the author] gave visible form." The answer will depend on the circumstances, particularly how the AI tool operates and how it was used to create the final work.[22]
- If a work's traditional elements of authorship were produced by a machine, the work lacks human authorship and the Office will not register it (e.g., when AI technology receives solely a prompt from a human and produces complex written, visual, or musical works in response).[23]
- In cases where a work containing AI-generated material also contains sufficient human authorship to support a copyright claim, copyright will only protect the human-authored aspects of the work, which are "independent of" and do not affect the copyright status of the AI-generated material itself (e.g., a human may select or arrange AI-generated material in a sufficiently creative way that the resulting work as a whole constitutes an original work of authorship or an artist may modify material originally generated by AI technology to such a degree that the modifications meet the standard for copyright protection).[24]
- This policy does not mean that technological tools cannot be part of the creative process—what matters is the extent to which the human had creative control over the work's expression and "actually formed" the traditional elements of authorship.[25]
- Applicants have a duty to disclose the inclusion of AI-generated content in a work submitted for registration and to provide a brief explanation of the human author's contributions to the work. For pending applications and registrations that have already issued, the applicant must update them to meet the duty of disclosure.[26]
- AI-generated content that is more than *de minimis* should be explicitly excluded from the application.[27]

There is no black-and-white test for the level of input a human must provide to be deemed an author of the output. From the Guidance, it is reasonable to conclude that merely influencing the output is not enough. Rather, the human must "dictate or control" the output.[28]

The key takeaway here is if your employees are using AI to generate content that you would normally want to ensure is copyright protectable, you need to give them guidance and develop policies for such use cases.

Patents

Similar to the Copyright Office, the USPTO has rejected

patent applications that resulted from the output of an AI tool.[29] The USPTO refused to even examine two patent applications where an AI system was listed as the sole inventor, rather than a human inventor.[30] The Patent Office based this decision on the fact that an inventor must be a human (a "natural person").[31] This decision was confirmed on appeal to a federal district court[32] and the U.S. Court of Appeals for the Federal Circuit.[33] A petition for certiorari was denied by the U.S. Supreme Court.[34]

AI tools and technology are patentable under the same test as other technology. However, AI cannot be listed as an inventor on a patent application. Only humans can be listed as inventors. What is not clear is, if a human co-invents with an AI tool, whether that invention can be patented.

On February 14, 2023, the U.S. Patent and Trademark Office published a *Federal Register* notice requesting comments regarding AI and inventorship.[35] It also announced an AI Inventorship Listening Session—East Coast, which it held on April 25, 2023, in Alexandria, Virginia,[36] and a West Coast session, which was held on May 8, 2023, at Stanford University.[37] These listening sessions sought stakeholder input on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies.

There are significant questions about the ability to patent inventions that were conceived with the assistance of AI. Whether human-AI co-inventions should be patentable was one of the questions. It is important to consider AI-related inventorship issues in your patent process and address them in AI use policies.

Open Source

AI-based code generators (e.g., Copilot) are a powerful application of GAI. These tools leverage AI to assist code developers by using AI models to auto-complete or suggest code based on developer inputs. These tools raise at least the following potential legal issues:

- Does training AI models using open source code constitute infringement or, even if the use is licensed, does doing so require compliance with conditions or restrictions of the open source licenses?
- Does using the output of an AI code generator subject the developer and/or user to infringement claims? Can the developer's terms of service (TOS) effectively shift liability to the user as some try to do?
- How must the compliance obligations of open source licenses be met in this context and by whom (developer or user)?
- Does use of AI-generated code by developers creating a new software application require the application to be licensed under an open source license and its source code to be made available?

Doe v. GitHub is a putative class action alleging ongoing Digital Millennium Copyright Act (DMCA) and open-source code license violations (but not infringement) by AI tools (Copilot and Codex) that translate natural language requests into computer code.[38] The tools are allegedly trained by scanning billions of lines of open source computer code.[39] The DMCA claims are based on the allegation that copyright management information is removed and not included in the output.[40] The issue with license violations is based on the fact that the open source licenses have compliance obligations (e.g., requirements to give recipients a copy of the license, maintain copyright notices, give authors attribution) that allegedly have not been met.[41]

If your employee developers are using GAI code generators, you need to develop or update open source policies to prevent unwanted issues. If you deliver code to the government or other clients, representing that you are the author of the work, that representation may be called into question if there is AI-generated code therein.

Further, if you do not already have an open source policy, see our related article for why you need one and what it should include.[42] If you have not already updated your open source policies to address AI, you can also refer to our other recent articles for some of the issues to consider[43] and for some solutions to common legal issues that arise from use of AI code generators.[44]

IP Infringement

Various infringement lawsuits have been filed against AI tool providers alleging that the training of their AI models and/or the generated output are based on third-party IP-protected materials.

For example, in *Getty Images v. Stability AI*, Getty alleges misuse and copyright infringement of over 12 million Getty photos to train the Stable Diffusion AI image-generation system. Stable AI's platform allows users to input textual descriptions of images and then generate the corresponding images.[45]

In addition, in *Andersen v. Stability AI* a putative class of

visual artists are alleging copyright infringement for scraping billions of images to train AI models to create images and that the tools enable copying of those artists' styles without permission.[46]

Fair Use

Many of the AI tool providers will argue that training AI models constitutes fair use. Where applicable, fair use is a defense to copyright infringement. A fair use analysis requires consideration of and balancing of the following four factors:

1. The purpose and character of the use (e.g., is it transformative?).
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work.[47]

Some relatively recent decisions on fair use may be relevant to whether training AI models is fair use.

Authors Guild, Inc. v. Google Inc. resulted from Google scanning and digitizing printed, copyrighted books into an online searchable database.[48] When users searched the database, Google only output "snippet views" of the scanned pages in search results to users.[49] It did not reproduce new books. The district court found this to be transformative and that this did not impact the market for books.[50] In fact, the court indicated this might actually help the market by making more books findable. As a result, the court found this to be fair use. The U.S. Court of Appeals for the Second Circuit affirmed.[51] The Supreme Court denied a petition for certiorari.[52] If Google actually created new books or ebooks as the output the result may have been different.

Another case, *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, involved the famous artist Andy Warhol.[53] Warhol applied his unique artistic style to some images of the musician Prince. The images were photos of Prince taken by Goldsmith, a professional photographer. Goldsmith succeeded in convincing a federal appellate court that Warhol's prints were infringing because they were "derivatives" of her copyrighted photographs.[54] The Andy Warhol Foundation argued that the prints were cropped and highly colorized and thus transformed the message and meaning of the original photographs. The Supreme Court confirmed this was not fair use because Warhol's works were not "transformative," and both targeted the same market—licensing prints to magazines.[55]

IP Indemnity

One issue that companies need to consider is that the terms of service for many of these AI tools try to shift liability to users. Some require users to indemnify the tool providers for infringement. This is one of the reasons that some companies judiciously decide which GAI tools the company will approve for employee use. Indemnity provisions in the terms of service and other liability issues are some of the factors considered.

Other Potential Liability

Infringement is not the only potential liability. Other issues can arise when training AI models based on copyrighted content. If the training is not lawful, any output based thereon may not be lawful either. Thus, both the AI tool provider and the user may have some liability. Depending on how and from where the content is obtained, additional issues may arise. The following are some of the factors to consider in assessing other potential liabilities.

- Web scraping content may violate the TOS of the site from which the content is scraped. Web scraping issues were recently addressed in *hiQ Labs, Inc. v. LinkedIn Corp.*[56]
- Open source code and/or data may be subject to license compliance obligations as mentioned above. The failure to adhere to compliance obligations/restrictions (e.g., copyright, attribution) may be breach of contract. Some open data licenses include restrictions (e.g., no commercial use).
- Many images/creative works are licensed under permissive licenses such as the Creative Commons licenses.[57] It is important to understand that there are many versions of these licenses. Some versions have limitations (e.g., no commercial use, no derivatives). Others are more permissive, but still require attribution. Exceeding the scope of these licenses, or failing to comply with the obligations, may be breach of the license and/or infringement.
- If the training content contains personal identifying information (PII) or biometric information, it is imperative to ensure that requisite permission exists to use the information for the intended purposes.

A pending lawsuit highlights the potential issues that can arise when using biometric information without the necessary permissions. *Flora v. Prisma Labs, Inc.* is a putative class action where plaintiff alleges that Prisma's mobile app's

"magic avatar" feature unlawfully captured, stored, and profited from users' biometric data. When using the magic avatar feature, users had to provide the app access to "every photo on their device" and upload at least 10 selfies.[58]

Remedies For Unauthorized Use

In addition to potentially being subject to a class action lawsuit, privacy violations may subject you to FTC enforcement. The FTC issued guidance in 2020 regarding the use of AI content and has engaged in some enforcement actions based on using personal information to train AI models without permission.[59] In some cases, the FTC has imposed a severe penalty known as "algorithmic disgorgement" for improperly using data to build algorithmic systems like AI/ML models.[60] Algorithmic disgorgement requires the destruction of ill-gotten data and deletion of the models/algorithms built with it. This results in a complete loss of the investment made to train the models.[61] Some companies try to use a "versioning" technique to minimize the potential impact of algorithmic disgorgement. Versioning keeps snap shots of models/algorithms prior to each new batch of training. If the data in a new batch is ever found to be used without permission, the company can "roll back" to a version of the models/algorithms that was not based on the problematic data.

Policies On Employee Use Of AI

Due to the array of legal issues and potential liabilities, prudent companies develop a policy on employee use of AI. Each company is developing its own criteria, but some of the key factors to consider are:

- The TOS for these tools vary widely and some companies are whitelisting the tools that the legal team approves after reviewing the TOS and prohibiting use of others. Often this is done on a per version basis, as each version of the same tool (e.g., ChatGPT 3.5 vs. 4.0) may have different features and often a different TOS.

- For some tools there are different methods of access (e.g., browser-based vs. API-based) and paid vs. free versions that can all involve different features and different legal terms. So for each version, the method of access and paid vs. unpaid use needs to be considered as well in whitelisting a tool.

- Which tools are permitted for which use cases (e.g., content for internal use only vs. external use)?

- The types of AI-generated content that can be used. For example, there can be different considerations when the content is text vs. images. AI code generators create a distinct set of issues as mentioned above and some of the policies separately address use of code generators.

- Some criteria are based on IP protection availability. For example, in many cases the GAI output may not be copyright protectable. So some companies are prohibiting use of GAI to produce works for which the company would traditionally want to obtain copyright protection.

- Companies should address the need to comply with the FTC guidance regarding the use of AI content.[62] Some companies are advising employees *not* to advertise the use of AI. There is a tricky balance between having employees not advertise that they are using AI, but being transparent and truthful where necessary per the FTC guidance.

For companies that use third-party contractors the policies need to address the third-party contractor's use of GAI. Companies need to make sure third parties do not use GAI to generate content for the company without prior knowledge and approval. Some companies' AI policies prohibit the use of AI by vendors and contractors that generate content for the company. Some companies require contractors to disclose if they have used GAI in the past. This is important because if the company has filed any copyright registrations based on contractors' work product that was generated via AI, the company may need to go back and disclose that to the Copyright Office or risk losing their copyright protection.

These are just some examples of the criteria that may be relevant. Often there are other company-specific issues as well.

Conclusion

Many companies are scrambling to understand the scope of the legal issues arising from the use of AI and develop policies that are consistent with guidance from the federal government. Often, a helpful first step is to have an in-house presentation on these issues by knowledgeable attorneys who have a deep understanding of AI legal issues and associated business risks. This better enables companies and their in-house counsel to discuss what their policies on use of AI should cover.

Guidelines

These *Guidelines* are intended to assist you in understanding what government contractors need to know about AI.

They are not, however, a substitute for professional representation in any specific situation.

1. If you or your employees are leveraging, or planning to leverage, AI and automated systems during performance of federal government contracts, it is important to review and understand the current guidance and regulatory framework applicable to your contracts. Currently, federal government agencies are leveraging their existing authorities to regulate AI and automated systems.

2. Monitor federal government initiatives and rulemaking processes as parameters relating to AI and automated systems develop. It remains unclear which federal agency or agencies will take the lead on publishing AI regulations.

3. If leveraging generative AI, it is important to analyze potential risks stemming from copyright, patent, and intellectual property infringement. Working with in-house or outside counsel early on in the development stage to establish guardrails or a framework regarding permissible use likely will reduce the potential infringement risks.

4. Ensure your company has corporate policies and procedures regarding employee use of AI and automated systems. A few key factors to consider are the terms of service applicable to these tools which may vary across each version of the same tool, methods of access, permitted uses, and IP protection availability, especially if your employees are leveraging these tools to develop their own tools.

5. Require your employees to complete necessary training regarding the use of AI, potential risks, and the corporate policies related to permitted use of AI.

ENDNOTES:

[1]Department of Homeland Security, Secretary Mayorkas Announces New Measures to Tackle A.I., PRC Challenges at First State of Homeland Security Address (Apr. 21, 2023), https://www.dhs.gov/news/2023/04/21/secretary-mayorkas-announces-new-measures-tackle-ai-prc-challenges-first-state.

[2]Id.

[3]Federal Trade Commission, Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems (Apr. 25, 2023), EEOC-CRT-FTC-CFPB-AI-Joint-Statement(final).pdf.

[4]Id. at 2–3.

[5] Id. at 1.

[6]Id. at 2.

[7]Id. at 2–3.

[8]The White House Office of Science and Technology Policy, Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People 3 (Oct. 2022), https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf; see also https://www.whitehouse.gov/ostp/ai-bill-of-rights/.

[9] Id. at 3.

[10]Id. at 5–7.

[11]National Institute of Standards and Technology, Artificial Intelligence Risk Management Framework (AI RMF 1.0) (Jan. 2023), https://www.nist.gov/itl/ai-risk-management-framework.

[12]National Institute of Standards and Technology Special Publication 800-53, Revision 5, Security and Privacy Controls for Information Systems and Organizations, https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final.

[13]National Institute of Standards and Technology Special Publication 800-171, Revision 2, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final. Note, Revision 3 was published in draft form on May 10, 2023, with comments due on July 14, 2023, so we expect a final version released in late 2023 or early 2024; see Bourne & Weiss, "NIST Releases Initial Public Draft of NIST SP 800-171, Revision 3 for Protection of Sensitive Government Information," SheppardMullin (May 24, 2023), https://www.governmentcontractslawblog.com/2023/05/articles/national-institute-of-standards-and-technology-nist/nist-releases-initial-public-draft-of-nist-sp-800-171-revision-3-for-protection-of-sensitive-government-information/.

[14]National Institute of Standards and Technology Special Publication 800-161, Revision 1, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations, https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final.

[15] National Institute of Standards and Technology, Artificial Intelligence Risk Management Framework (AI RMF 1.0) 2 (Jan. 2023), https://www.nist.gov/itl/ai-risk-management-framework.

[16]Id.

[17]See Copyright Review Board, Second Request for Reconsideration for Refusal To Register a Recent Entrance to Paradise (Correspondence ID 1-3ZPC6C3; SR # 1-7100387071) (Feb. 14, 2022), https://www.copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf.

[18]Thaler v. Perlmutter, No. 1:22-cv-01564 (D.D.C. filed June 2, 2022).

[19]See U.S. Copyright Office, Zarya of the Dawn (Registration # VAu001480196) (Feb. 21, 2023), https://www.copyright.gov/docs/zarya-of-the-dawn.pdf.

[20] See Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (Mar. 16, 2023).

[21]88 Fed. Reg. at 16191.

[22]88 Fed. Reg. at 16192.

[23]88 Fed. Reg. at 16192.

[24]88 Fed. Reg. at 16192–93.

[25]88 Fed. Reg. at 16193.

[26]88 Fed. Reg. at 16193.

[27]88 Fed. Reg. at 16193.

[28]See 88 Fed. Reg. at 16192 n. 28.

[29]See In re Application of Application No. 16/524,350, 2020 WL 1970052 (Comm'r Pat. Apr. 22, 2020) (DABUS) (inventorship limited to natural persons).

[30]2020 WL 1970052; see 35 U.S.C.A. § 100(f), (g) (defining "inventor" and "co-inventor" as an "individual" or "individuals").

[31]2020 WL 1970052.

[32]Thaler v. Hirshfeld, 558 F.Supp.3d 238 (E.D. Va. 2021), aff'd sub nom. Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022), cert. denied, 143 S. Ct. 1783 (2023).

[33]43 F.4th 1207.

[34]143 S. Ct. 1783.

[35]88 Fed. Reg. 9492 (Feb. 14, 2023).

[36] https://www.uspto.gov/about-us/events/ai-inventorship-listening-session-east-coast.

[37] https://www.uspto.gov/about-us/events/ai-inventorship-listening-session-west-coast.

[38]Doe v. GitHub, Inc., Case No. 22-cv-06823, 2023 WL 3449131 (N.D. Cal. May 11, 2023).

[39]2023 WL 3449131, at *2.

[40]Id. at *11–12.

[41]Id. at *13.

[42]Gatto, "Open Source Software Policies—Why You Need Them And What They Should Include," SheppardMullin (June 2019), https://www.lawoftheledger.com/wp-content/uploads/sites/15/2019/06/Notes-On-Open-Source-Policies-Article-0619.pdf.

[43]Gatto, "Solving Open Source Problems With AI Code Generators—Legal issues and Solutions (Part 1—Legal Issues)," SheppardMullin (Apr. 27, 2023) (https://www.lawoftheledger.com/wp-content/uploads/sites/15/2023/04/AI-Code-Generators-Article_Part-1-0423.pdf.

[44]Gatto, "Solving Open Source Problems With AI Code Generators—Legal issues and Solutions (Part 2—Solutions)," SheppardMullin (May 15, 2023), https://www.lawoftheledger.com/2023/05/articles/artificial-intelligence/solving-open-source-problems-with-ai-code-generators-legal-issues-and-solutions-2/.

[45]Getty Images (US), Inc. v. Stability AI, Inc., No. 1:23-CV-00135 (D. Del. filed Feb. 3, 2023).

[46]Andersen v. Stability AI Ltd., Case No. 3:23-cv-00201 (N.D. Cal. filed Jan. 13, 2023).

[47]17 U.S.C.A. § 1707.

[48]Authors Guild, Inc. v. Google, Inc., 954 F. Supp. 2d 282 (S.D.N.Y. 2013), aff'd, 804 F.3d 202 (2d Cir. 2015), cert denied, 136 S. Ct. 1658 (2016).

[49]954 F. Supp. 2d at 286–87.

[50]954 F. Supp. 2d at 293–94.

[51]804 F.3d 202.

[52]136 S. Ct. 1658.

[53]Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 143 S. Ct. 1258 (2023), aff'g 11 F.4th 26 (2d Cir. 2021).

[54]11 F.4th 26.

[55]143 S. Ct. 1258.

[56]hiQ Labs, Inc. v. LinkedIn Corp., 485 F.Supp.3d 1137 (N.D. Cal. 2020).

[57]See https://creativecommons.org/licenses/.

[58]Flora v. Prisma Labs, Inc., No. 3:23-cv-00680 (N.D. Cal. filed Feb. 15, 2023).

[59]Federal Trade Commission, Using Artificial Intelligence and Algorithms (Apr. 8, 2020), https://www.ftc.gov/business-guidance/blog/2020/04/using-artificial-intelligence-and-algorithms.

[60]See, e.g., Press Release, Federal Trade Commission, FTC Finalizes Settlement With Photo App Developer Related to Misuse of Facial Recognition Technology (May 7, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/05/ftc-finalizes-settlement-photo-app-developer-related-misuse-facial-recognition-technology.

[61]See Gatto & Dworkin, "Training AI Models—Just Because It's 'Your' Data Doesn't Mean You Can Use It," SheppardMullin (June 20, 2023), https://www.lawoftheledger.com/wp-content/uploads/sites/15/2023/06/Training-AI-Models-Article-0623.pdf.

[62]Federal Trade Commission, Using Artificial Intelligence and Algorithms (Apr. 8, 2020), https://www.ftc.gov/business-guidance/blog/2020/04/using-artificial-intelligence-and-algorithms.

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