

## → Artificial Intelligence

Sheppard Mullin is at the forefront of artificial intelligence (AI) legal issues, including the rapidly growing use of generative AI. Our attorneys frequently counsel, litigate, speak and write on these issues, including presentations to in-house counsel and industry stakeholders who are getting up to speed on the legal implications, policy development and use of AI and generative AI.

AI is not new. Sheppard Mullin attorneys have been advising clients on AI issues for nearly two decades. A number of our attorneys, including those in our Intellectual Property, Business Trial and Entertainment, Technology and Advertising groups, have technical backgrounds that enable us to understand the methodological workings of AI tools and the component technologies that AI is comprised of, such as:

### Corporate Policies for Employee Use of AI

While many attorneys are trying to get up to speed on AI issues, we routinely prepare and deliver customized presentations to clients across many industries to explain the range of legal issues and risks that can arise based on how they are using or planning to use AI, including both determinative AI and generative AI applications. To minimize the risk of liability, we assist clients in developing a policy on employee and contractor use of AI. We also help clients develop policies on responsibly developing AI tools.

We help ensure that if creative content needs to be copyright-protectable, certain uses of AI do not hinder that goal. For example, our attorneys have analyzed the terms of use for many of the leading generative AI tools and can advise on the legal ramifications of their use, which varies widely.

### Intellectual Property

Sheppard Mullin is a leader in the protection of IP rights, and we are well positioned to help companies protect their IP rights and exploit their commercial potential. We have been recognized by *Law360* as the "Intellectual Property Practice Group of The Year." In addition to the traditional IP work we do, below are some examples of how we can assist with AI-related IP issues.

*Patents* – We advise on and implement patent strategies to protect AI inventions and sort through the inventorship issues that can arise with AI-assisted inventions. We leverage our understanding of AI technology, the intricacies of patent law, and the new patent-eligibility guidelines resulting from the *Alice* decision, to provide strategic advice to clients on:

- Assessing the patentability of AI inventions, including thinking creatively about the various aspects of an AI system that may be patentable;
- Drafting patent applications and claims for AI inventions with an understanding of the level of disclosure needed for Section 112 support and to build in the predicate for patent-eligibility under Section 101; and
- Leveraging our experience, including those of former Patent Examiners, to overcome any objections or rejections made by the USPTO and expedite the allowance of the applications.

*Copyrights* – besides covering traditional copyright issues, we have attorneys who are thought leaders on cutting edge copyright issues with generative AI, including:

- Copyright issues with training AI models, which includes legal issues with the collection of data and other content, whether using copyright protected content to train AI constitutes infringement and if so, is “fair use” a defense;
- Whether the output of generative AI tools can be copyright protected, including if the level of human involvement with the output of generative AI is sufficient for the human to be an author; and
- Infringement issues with works produced by generative AI and the respective liability of users and AI tool providers.

## Litigation

Since the inception of Sheppard Mullin in 1927, litigation has been a core part of the firm's practice. Our Litigation Practice today consists of approximately 250 attorneys nationwide who are dedicated to serving our clients' needs. Sheppard Mullin litigators possess exceptional trial and appellate skills, in-depth knowledge of state and federal courts at all levels, and practical business judgment, all of which contribute to our consistent delivery of cost-effective results. Due to our landmark year of class action victories, Sheppard Mullin was selected as the 2022 Class Action Practice Group of the Year by Law360. With the growing number of class action lawsuits involving AI tools, rest assured our litigators can help if you end up on the wrong side of a dispute with employees, customers, or competitors or face an escalation of AI-related government investigations.

AI has worked its way into numerous areas of litigation. We represent multiple clients in chatbot litigation stemming from the use of generative AI powered chat tools in retail and e-commerce, and lead a working group coordinating industry wide efforts to address this emerging issue. Our team has significant experience in consumer protection class actions, including claims related to the use of AI systems in customer relations decision making and loss prevention. We are prepared for evolving claims related to how companies use customer data in AI applications and power interactive experiences with AI agents. As AI begins to touch every industry, safety is on the forefront of our clients' minds and we help them communicate their diligence and standards in AI-related disputes. We also intelligently leverage AI legal technology where appropriate to achieve client savings.

## Open Source

Sheppard Mullin attorneys are at the forefront of emerging legal issues arising from and risk management necessitated by, the rapid increase in using open source software. We work with business, technical, and legal personnel to provide comprehensive advice regarding all aspects of use and distribution of open source software as well as contribution to open source projects.

With generative AI, some tools use open source code to train AI models to generate software upon request from developers. These open source components are covered by licenses that may permit their use but impose compliance obligations after doing so. Some AI tools are trained using data covered by open data licenses. Some of these licenses include limitations and restrictions that can hinder their desired use (e.g., some prohibit use of the data for commercial purposes). Given the prolific use of open source in AI tools, it is important for companies to understand the legal ramifications of and compliance with open source licenses.

## Data Protection and Privacy

Privacy concerns may arise when AI-powered systems collect and process personal and biometric data. Businesses and organizations need to comply with data protection laws in order to ensure the data of those individual is collected and processed lawfully, fairly, and transparently. They also need to address any contractual obligations to protect and secure personal or sensitive information. Our 30+ global, interdisciplinary Privacy & Cybersecurity Team includes some of the most respected lawyers in the privacy space. We have significant experience handling the current wave of AI-related litigation over issues like chatbot wiretapping, data scraping and harvesting, and the protection of biometric information, health data, and children's security online. Outside of the courtroom, our team advises clients on proactively addressing privacy and data security issues relating to the use of AI, including EU and U.S. privacy requirements targeted at addressing risks associated with using personal information for automated decision-making leading to potential legal, financial and health and social consequences for individual consumers or employees.

## Entertainment and Digital Media

The ubiquity of AI will touch every corner of entertainment and media. It's reimagining content creation, propelling personalized user experiences, and redefining interactive mediums. Sheppard Mullin's renowned entertainment and digital media practice has achieved international acclaim and recognition for being the go-to source of strategic advice and transactional support for clients facing profound and multifaceted business and legal challenges arising from the major technological disruptions and advancements of the last several decades. As a result, we are uniquely positioned to provide critical legal and commercial guidance on the dynamic legal and commercial issues posed by generative AI across the creative industries.

This team has been at the forefront of the global content boom, handling the acquisition, financing, production, licensing, and distribution of intellectual property for major motion picture and television studios, performing rights organizations, and streaming services, among other platforms. Our breadth of experience extends to digital video and music content development, licensing and distribution; live broadcasting and streaming initiatives across emerging media platforms and devices; interactive media including video game, esports, and virtual, augmented, and mixed reality platforms and applications; marketing and promotional activations and programmatic advertising; brand licensing, sponsorships, product placements, celebrity and influencer endorsements.

Recognizing these unique perspectives, companies operating in all facets of entertainment and digital media continue to partner with Sheppard Mullin to advise them on harnessing AI's transformative potential while navigating novel copyright, trademark, and name, image, and likeness issues, including ownership, protectability, enforcement, and licensing. We have also been providing ongoing strategic counseling and proactive advice on risk analyses, go-to-market strategies, and monetization frameworks for companies who stand to be the most impacted generative AI. This deep industry experience and focus on technological innovation has given us an unrivaled understanding of the evolving legal, commercial, and ethical issues stemming from rapid adoption and use of generative AI.

## Advertising

We have a world class team of advertising lawyers and advise clients on truthful advertising and the avoidance of deceptive trade practices regarding AI. AI-powered systems may perpetuate bias and discrimination if they are trained on biased data or use algorithms that discriminate against certain groups of people. As countless industries expand their products and services to include AI-powered tools, accurately advertising the use of AI by AI-focused companies and entities using AI for background applications becomes critical to reducing the risk of advertising claims. Using AI truthfully, fairly, and equitably has become an area of focus for the FTC. We monitor FTC activity in this area, including various AI-related reports and its enforcement actions. We advise clients on how to ensure their AI systems are designed and trained in a way that is fair and non-discriminatory.

## Healthcare

Our cutting-edge Healthcare team has a deep and experienced bench focusing on digital health and has been an industry educator and trusted advisor, handling healthcare regulatory and transactional matters involving AI and novel technology. In the last nine years (2021, 2017, 2014), it has been named U.S. Health Law Practice Group of the Year and ranked nationally for its healthcare expertise by *U.S. News & World Report*, *Chambers USA*, *Legal 500*, *Modern Healthcare*, *M&A Atlas Awards*, the *ABA Health Law Section* and the *Los Angeles Business Journal*.

We understand the ethical, legal, and even physical risks of integrating AI and other IT modalities into health and wellness operations. We also understand that AI is crucial to healthcare's evolution, including access to healthcare and population healthcare initiatives. As it pushes the industry closer to true value-based and workable care coordination-based solutions, and has the ability to improve clinical diagnostics, treatment planning, and overall efficiency, our team provides legal pathways and recommendations to mitigate AI's risks.

Our Full Service Platform for AI in Healthcare covers the following:

- **Regulatory:** Our team counsels on the interplay of health regulatory framework and AI, including ensuring compliance with corporate practice of medicine and professional licensing, fraud and abuse laws, health information privacy and security requirements, patients' rights, reimbursement methodologies, and ethical and legal implementation of AI in traditional and novel healthcare. With former governmental and in-house attorneys as well as former law enforcement and medical professionals, our team looks forward to navigate the issues around the corners and are able to respond and legal actions and federal and state audits and inquiries.
- **Commercial:** Our team handles technology licensing, intellectual property (IP) strategy and protection, IT contract negotiation, vendor negotiations, outsourcing, and financing and uses our bench of former Big Tech and Telecommunications in-house to support crafting practical and protective terms and
- **Transactional:** Our team supports some of the largest and most impactful healthcare transactions including, private equity investment in AI, the launch and early funding for innovative health and wellness AI start-ups, and deal structuring and negotiation of health entities' mergers, acquisitions, joint ventures, and strategic collaborations. Our practical guidance and due diligence expertise provide clients with AI integration support while risk is mitigated and future risk is identified and managed.

## Life Sciences and Medical Devices

Our Life Sciences team assists clients with strategic issues that range from acquisitions to antitrust, entity formation to enforcement and investigations, incorporations to IPOs, licensing to litigation, patents to product liability, and trademarks to transactions.

Our Life Sciences team is comprised of a cross-section of attorneys with technical backgrounds and industry experience, including patent agents, and scientific advisors whose particular strengths cover the legal needs of both emerging and established companies, including navigating the FDA approval pathway for novel technology and AI as a medical device. Many of our team members possess hands-on research experience and advanced degrees, including PhDs, in areas such as biochemistry, cell biology, chemistry, molecular biology, bioinformatics, pharmacology, and bio-medical engineering, enabling us to understand our clients' business and objectives.

## Transportation

Sheppard Mullin is a trusted advisor to the transportation industry, leveraging its multi-disciplinary team of attorneys to seamlessly counsel transportation clients on their vital business and legal issues. From handling automobile finance, connected vehicle technology and leasing transactions to advising trucking companies on nationwide class actions and sensitive labor and employment issues. Our transportation attorneys have extensive experience across the entire transportation field and we can address various legal issues with autonomous vehicles and other applications of AI in the transportation industry.

## Labor and Employment Law

Our highly ranked labor and employment team provides day-to-day counseling to employers on a variety of human resources matters and defends employers in all stages of litigation. The rapidly developing use of AI in the employment context, including in hiring, firing, promoting and evaluating employees, has become an enforcement priority for state and federal agencies that enforce anti-discrimination laws, including the U.S. Equal Employment Opportunity Commission. An increasing number of states and municipalities have also passed legislation regulating how and when employers may use AI when making employment decisions. Our team advises clients on how to effectively deploy AI in the workplace while avoiding legal risk and defends employers against claims that AI has been used improperly or unlawfully in employment decisions.

## Government Contractors

Our government contracts and government business groups have experience with AI-related issues that may arise in these areas. Several federal government agencies have announced initiatives related to the use of artificial intelligence, automated systems, and efforts to minimize the potential threats stemming from the misuse of this powerful technology. We understand and monitor the developing federal government compliance infrastructure and potential risks stemming from the misuse of AI and automated systems.

## Blockchain and Fintech

Our Blockchain and Fintech team includes nearly 60 attorneys with diverse backgrounds who understand the legal ramifications of blockchain, the intersection of financial services and technology and how AI is utilized in these areas. We also stay abreast of the regulatory issues and agency guidance concerning these areas.

## Technology Transactions

Our attorneys are experienced in negotiating AI technology agreements to best protect our client's interests. We have a deep understanding of data and technology and are able to leverage this understanding to our clients' advantage when negotiating technology agreements. Important issues around these agreements include data use and ownership rights, data governance, privacy and data security, intellectual property issues, and regulatory requirements.

## Space and Satellites

Sheppard Mullin is a trusted advisor to companies throughout the space industry, including satellite operators, launch providers, manufacturers, and service providers. Our attorneys work closely with space sector clients on a wide variety of regulatory, corporate, and commercial matters, including the use of AI to provide on-orbit services such as collision avoidance, space traffic management, data processing, and network security. Our space and satellite attorneys have extensive experience negotiating hosted payload and service agreements, as well as working with regulators to gain approval for novel technologies and spectrum uses.

## Corporate

One of the firm's core strengths is our Corporate practice. We assist clients throughout the United States (and abroad) in maximizing their business opportunities. We represent clients that range from private to public companies, and from startups and emerging businesses to international corporations.

Our Emerging Growth & Venture Capital lawyers serve as trusted advisors to both venture capital firms and the emerging growth companies in which they invest. We have handled a number of transactions for AI-based companies.

## Trade Compliance – Exports and Sanctions

The movement of technology across borders, and even within the United States, quickly becomes ensnared in a web of export control regulations and even sanctions. Sheppard Mullin's international trade team counsels technology companies, as well as those using advanced technologies, on how to navigate these regulatory regimes promulgated by the Departments of Commerce, State, and Treasury. In particular, the Department of Commerce has identified artificial intelligence and machine learning technology as ripe for review and potentially additional export controls. Such technology is also central to the broader U.S. national security strategy, particularly in connection with the U.S.-China strategic competition. We help our clients both comply with current controls and plan ahead of the impending controls. We have most recently seen new controls on AI software designed to automate the analysis of certain geospatial imagery.

## Consumer Finance and Fintech

Our Consumer Finance and Fintech team is widely recognized for working with companies to harness AI and machine learning technologies to introduce innovative products, services, and delivery methods to consumers, while managing algorithmic impact risks. We advise a variety of banks, fintechs, mortgage companies, auto lenders, money transmitters and other nonbank institutions on the cutting edge of AI technologies and systems, ensuring AI models in marketing, fraud management, underwriting, collections, customer service, and back office functions are compliant with applicable state and federal consumer financial protection laws.

While the risks of AI to consumers in the finance and banking spaces are all too real, we help companies adopt strategies that respond to a broad range of regulatory concerns, from dark patterns to algorithmic bias in fair lending, housing, or employment, among others. And when not acting as product counsel, we represent companies leveraging AI technologies in bank and nonbank supervisory examinations, investigations, and enforcement actions involving state and federal agencies.

## Antitrust and Competition

Our antitrust team includes DOJ Antitrust and FTC veterans and seasoned antitrust litigators who are thought leaders in the intersection of AI and antitrust. Our antitrust team is currently handling antitrust and consumer protection investigations and litigation involving cutting-edge AI-related issues. Competition-focused AI issues include: concerns that business will tie or bundle new generative AI products with existing core products potentially reducing competition; alleged algorithmic collusion and use of algorithms to effectively price fixing or bid-rigging; and AI analysis in merger reviews. Our team can identify potential antitrust risk associated with development and use of AI-products or services and data sharing, and develop AI policies and antitrust compliance policies and training to prevent, mitigate, and detect these risks.