# Akin

# Akin Intelligence

February 2024

Welcome to the February edition of Akin Intelligence. This month, U.S. agencies have continued to implement the October artificial intelligence (AI) Executive Order, and the European Union (EU) moves closer to finalizing its AI Act. On Capitol Hill, lawmakers continue to introduce sector-specific AI bills and explore AI issues in hearings. Additionally, judges trim down the copyright claims against AI companies, and new AI product announcements continue to roll out at a steady pace.

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## Akin Spotlight

### Akin IP Lawyers Publish AI-Assisted Drug Discovery Article in PharmaPhorum

*PharmaPhorum* has published "Patentability and predictability in AI-assisted drug discovery," an article by Akin intellectual property partner Michael Kahn and counsels Ryan Dowell and Svetlana Pavlovic. The article discusses the evolving use of Artificial Intelligence (AI) tools and the potential implications for intellectual property (IP) protection in the life sciences space.

[Click here to read the full article](#)

## Federal Action

### Biden-Harris Administration Announces Creation of AI Safety Consortium

On February 8, 2024, Commerce Secretary Gina Raimondo announced the creation of the U.S. AI Safety Institute Consortium (AISIC), which will include more than 200 member companies and organizations dedicated to the development and deployment of safe and trustworthy AI. Members include AI creators and users, academics, government and industry researchers, and civil society organizations. The consortium will be housed under the U.S. AI Safety Institute (USAISI) and will contribute to priority actions outlined in President Biden's October 2023 AI Executive Order (AI EO), such as developing guidelines for red-teaming, watermarking synthetic content and risk management.

### Commerce Secretary Gina Raimondo Announces Leadership at U.S. AI Safety Institute

On February 7, 2024, Commerce Secretary Gina Raimondo announced new members of the executive leadership team of the USAISI. Secretary Raimondo named Elizabeth Kelly as its Director and Elham Tabassi as its Chief Technology Officer. As USAISI Director, Kelly will be responsible for providing executive leadership, management and oversight of the Institute and coordinating with the National Institute of Standards and Technology (NIST), the Commerce Department and other government agencies on AI policy and technical initiatives. As USAISI Chief Technology Officer, Tabassi will be responsible for leading key technical programs of the Institute and shaping efforts at NIST to conduct research, develop guidance and conduct safety evaluations of AI models to identify and mitigate AI safety risks.

### DHS Launches Initiative to Hire 50 Artificial Intelligence Experts in 2024

On February 6, 2024, the Department of Homeland Security (DHS) announced its first-ever hiring sprint to recruit 50 artificial intelligence technology experts in 2024. These 50 experts will comprise the new "AI Corps," modeled after the U.S. Digital Service. The AI Corps will provide expertise in AI, data science, data engineering, software engineering, cybersecurity and more to support policy initiatives ensuring the safe and secure use of AI, while protecting privacy, civil rights and civil liberties. DHS will launch the hiring effort at a recruiting event in Mountain View, California.

### White House Announces Key AI Actions Following October Executive Order

On January 29, 2024, Deputy Chief of Staff Bruce Reed convened the White House AI Council to review the progress made by different federal departments and agencies on their 90-day actions tasked by the AI EO. The departments and agencies reported that they have completed all of their 90-day actions and advanced other directives with later deadlines.

Actions the government has taken to manage AI risks and promote the safe innovation of AI include:

- The U.S. National Science Foundation (NSF) launching a pilot of the National AI Research Resource (NAIRR) to deliver computing power, data, software, access to open and proprietary AI models, and other AI training resources to researchers and students.

- The AI and Tech Talent Task Force launching an AI Talent Surge to hire AI professionals across the federal government, including through a large-scale hiring action for data scientists.

- The NSF beginning the EducateAI initiative to help fund educators creating high-quality, inclusive AI educational opportunities at the K-12 through undergraduate levels.

- The NSF announcing funding of new Regional Innovation Engines (NSF Engines), including a focus on advancing AI.

- The Department of Health and Human Services establishing an AI Task Force to develop policies with the goal of providing regulatory clarity and catalyzing AI innovation in health care.

### CDAO Launches First DOD AI Bias Bounty Focused on Unknown Risks in LLMs

On January 29, 2024, the Department of Defense (DOD) Chief Digital and Artificial Intelligence Office (CDAO) launched the first of two planned AI Bias Bounty exercises. These exercises are meant to crowdsource novel approaches to solving problems related to AI, such as red teaming, identifying and addressing risks and ensuring the systems are unbiased. The goal of the first bounty exercise is to identify unknown areas of risk in Large Language Models (LLMs) so that these risks can be mitigated. The first bounty will run from January 29 to February 27, 2024, with the second exercise to come later.

### White House Announces New Rules Requiring Tech Companies to Inform Government of AI Projects

In remarks given at a Stanford University Hoover Institute event, Commerce Secretary Gina Raimondo stated that the Biden administration is preparing to use the Defense Production Act ("DPA") to make tech companies inform the U.S. government of AI models trained using a significant amount of computing power. The responses to this DPA survey are intended to give the U.S. government access to key information about some of the most sensitive projects inside AI companies. The companies will also have to provide information on safety testing being done on their AI products. The new rules are being implemented as part of the AI EO, which requires reporting the amount of computing power being used, information on the ownership of data being fed to the model and details of safety testing.

### Commerce Department Proposes "Know Your Customer" Requirements

On January 29, 2024, the Department of Commerce issued a proposed rule requiring U.S. cloud companies to determine whether foreign entities are accessing U.S. data centers to train AI models. Although tied to the AI EO, the proposed rule also implements the provisions of the 2021 executive order on "Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities." The Proposed Rule broadly applies to "Infrastructure as a Services ("IaaS") products" and "U.S. IaaS Providers." The Proposed Rule would require U.S. IaaS Providers, including cloud computing companies, to verify the identity of foreign persons who sign up for or maintain accounts for "IaaS Products" through a "Customer Identification Program" (CIP). The proposed rule would

also set minimum standards for identifying foreign users and require IaaS providers and resellers to certify compliance annually.

Comments are open until April 29, 2024. Akin's full analysis of the proposed rule is available here.

## FTC Launches Inquiry into Generative AI Investments and Partnerships

On January 25, 2024, the Federal Trade Commission (FTC) announced that it issued orders to five companies requiring them to provide information regarding recent investments and partnerships involving generative AI companies and major cloud service providers. The five companies that were sent the orders were Alphabet Inc., Amazon.com. Inc., Anthropic PBC, Microsoft Corp. and OpenAI Inc. The goal of the FTC's inquiry, ordered under Section 6(b) of the FTC Act, is to scrutinize these companies' relationships with AI providers and understand their impact on the competitive landscape. The companies have 45 days from the date they receive the order to respond.

## FTC Hosts Virtual Tech Summit Focused on Artificial Intelligence

On January 25, 2024, the Federal Trade Commission's (FTC) Office of Technology hosted a virtual summit to discuss key developments in the artificial intelligence field. The summit featured remarks by FTC Chair Lina M. Khan and Commissioners Rebecca Kelly Slaughter and Alvaro Bedoya, as well as three panel discussions with representatives from academia, industry, civil society organizations and government. A recording of the summit can be found here.

## GPO Director Testifies on Beneficial Uses of Artificial Intelligence for Productivity

On January 24, 2024, the U.S. Government Publishing Office's (GPO) Director Hugh Nathanial Halpern testified before the Senate Committee on Rules and Administration about GPO's use of artificial intelligence and the role it can play in the improvement of GPO's productivity. Halpern stated that he hoped to use AI to perform repetitive basic tasks, freeing up employees to focus on more complex issues and making roles more enticing to young talent. He noted that AI can be implemented at GPO for acquisitions, employee communications, cybersecurity, process automation, quality assurance image analysis, proofreaders and more. GPO currently has an AI Governance Committee under development, as well as an overall AI strategy that will be completed in the next few months.

## NSF to Launch National AI Research Resource Pilot

On January 24, 2024, the NSF and collaborating agencies launched the NAIRR pilot. The NSF, along with 10 other federal agencies and 25 private sector, nonprofit and philanthropic organizations, will provide access to advanced computing, datasets, models, software, training and user support to U.S.-based researchers and educators through the NAIRR pilot. The NAIRR pilot will support artificial intelligence research to advance safe, secure and trustworthy AI, and will be organized into four focus areas: NAIRR Open, NAIRR Secure, NAIRR Software and NAIRR Classroom.

## USPTO Releases Guidance on AI-Assisted Inventorship

On February 12, 2024, the US Patent and Trademark Office published its Inventorship Guidance for AI-assisted Inventions, which was mandated by the AI EO. The guidance is policy, rather than rulemaking, and interprets how existing law applies. The guidance begins with the premise that "AI-assisted inventions are not categorically unpatentable for improper inventorship" and largely focuses on the *role* of AI in an invention. The guidance

states that inventions require "significant contribution" from a human and declines to set a bright line rule for this threshold, requiring a case-by-case analysis. Further, the USPTO indicates that AI should not be named as an inventor, but its use does not necessarily need to be disclosed—although disclosure may be required if there is ambiguity as to the human's contribution.

Kathi Vidal, Under Secretary of Commerce for Intellectual Property and Director of the USPTO, released a companion statement on the USPTO Director's Blog. The USPTO is hosting a webinar covering the guidance on March 5 and is accepting public comments on the guidance through May 13, 2024.

## Congressional Action

### House Launches Bipartisan AI Task Force

On February 20, 2024, Speaker of the House Mike Johnson (R-LA) and House Minority Leader Hakeem Jeffries (D-NY) announced the formation of a bipartisan House AI Task Force that includes members of key committees of jurisdiction and will be jointly led by Chair Jay Obernolte (R-CA) and Co-Chair Ted Lieu (D-CA). The Task Force, which includes 12 Republican Members and 12 Democratic members, will seek to produce a comprehensive report that will include "guiding principles, forward-looking recommendations and bipartisan policy proposals developed in consultation with committees of jurisdiction." The full list of Task Force members is available here.

### Lawmakers Introduce Slew of AI Bills

- Energy and Commerce (E&C) Committee Ranking Member Frank Pallone (D-NJ) has introduced the Do Not Disturb Act (H.R. 7116) (bill text available here, section-by-section is available here), comprehensive legislation which aims to curb illegal robocalls. In particular, the bill includes the QUIET Act (H.R. 7123), which was introduced by Reps. Eric Sorenson (D-IL) and Juan Ciscomani (R-AZ) and would amend the Communications Act of 1934 to require disclosure when AI is used in robocalls, and to established increased penalties for the use of AI in that context. Additionally, the package includes Rep. Jan Schakowsky's (D-IL) R U Real Act (H.R. 7120), which would amend the Telemarketing Sales Rule to require disclosures of AI usage in telemarketing contexts.

- A bicameral group of lawmakers have introduced the Artificial Intelligence Environmental Impacts Act of 2024 (S. 3732/H.R. 7197), which would direct NIST to develop standards to measure and report the full range of AI's environmental impacts, as well as create a voluntary framework for AI developers to report environmental impacts. Sens. Ed Markey (D-MA), Martin Heinrich (D-NM), Ron Wyden (D-OR), Peter Welch (D-VT), Alex Padilla (D-CA) and Cory Booker (D-NJ) introduced the bill in the Senate, and Reps. Anna Eshoo (D-CA) and Don Beyer (D-VA) introduced the bill in the House.

- Sens. Amy Klobuchar (D-MN), Ron Wyden (D-OR), Dick Durbin (D-IL), Peter Welch (D-VT), Mazie Hirono (D-HI), and Richard Blumenthal (D-CT) introduced the Preventing Algorithmic Collusion Act (S. 3686) to address concerns about companies exploiting automated algorithms to collude and inflate prices. The legislation emphasizes transparency, requiring companies to disclose the use of pricing algorithms and allowing antitrust authorities to audit them. Additionally, the bill prohibits the use of competitor data to inform pricing algorithms and directs the FTC to study their impact on competition.

- Sens. Ron Wyden (D-OR), Peter Welch (D-VT), Amy Klobuchar (D-MN), Bernie Sanders (I-VT), Mazie Hirono (D-HI), Laphonza Butler, (D-CA), Jeff Merkley (D-OR) and Richard Blumenthal, (D-CT) have introduced the Preventing the Algorithmic Facilitation of Rental Housing Cartels Act of 2024 (S. 3692), which includes measures to prohibit rental property owners from engaging with companies that coordinate rental housing prices and supply information, designate such arrangements as violations of the Sherman Act, and prevent the coordination of price and supply information among multiple property owners.

### Top E&C Republican Announces Retirement

On February 8, 2024, House Energy and Commerce (E&C) Chair Cathy McMorris Rodgers (R-WA) announced she would not be running for re-election, stating, "We will spend this year honoring the Committee's rich history — plowing the hard ground necessary to legislate on solutions to make people's lives better and ensure America wins the future." Potential candidates to replace her as the top Republican on the panel include Reps. Brett Guthrie (R-KY), Bob Latta (R-OH) and Richard Hudson (R-NC).

### House and Senate Hold Hearings on Government Implementation of AI

On January 24, 2024, the Senate Rules Committee held a hearing on the use of AI in the Library of Congress, Government Publishing Office and the Smithsonian Institution. The following week, the House Administration Committee held a hearing titled, "Artificial Intelligence: Innovations within the Legislative Branch." During the hearing, witnesses from the Government Publishing Office, the Library of Congress, the Government Accountability Office and the House of Representatives testified to how their respective organizations are using AI to modernize their processes. Further, all witnesses attested to abiding by the NIST AI Risk Management Framework to guide their implementation of AI.

### House Committees Address AI Impact on Creative Rights and Scientific Discovery

On February 2, 2024, the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet held a field hearing in Los Angeles, California, during which they focused on protecting the rights of people in the creative industry. Witnesses from the Recording Academy and the Software and Information Industry Association (SIIA), as well as Lainey Wilson, GRAMMY Nominee, testified before the panel, urging Congress to pass legislation that focuses on preventing deepfakes and voice clones of artists and actors.

On February 6, the House Science, Space and Technology Committee held a hearing on how federal science agencies are utilizing AI, and how it can drive scientific discoveries. Witnesses from the NSF and DOE, as well as industry and academia, spoke on the release of the NSF's NAIRR and how government needs to continue to sustain funding towards research and development programs.

### Senate Committees Probe AI's Impact on Criminal Justice and Healthcare

On January 24, 2024, the Senate Judiciary Subcommittee on Criminal Justice and Counterterrorism held a hearing titled, "AI in Criminal Investigations and Prosecutions." During the hearing, lawmakers focused on facial recognition technologies used by law enforcement, and emphasized the need to prioritize transparency on how such technologies are used. Lawmakers expressed an understanding that AI may amplify the efficiency and accuracy of the criminal justice system.

### Sen. Hickenlooper Proposes Comprehensive AI Regulation Framework

On February 5, 2024, Sen. John Hickenlooper (D-CO) proposed AI auditing standards and outlined a framework for AI regulation aimed at transparency, data protection and international collaboration. Emphasizing the need for third-party audits, particularly for generative AI, Hickenlooper's framework focuses on AI Transparency and Literacy, Data Privacy and International Coalitions. It calls for clear transparency on data models and personal data collection, advocates for AI literacy and promotes U.S. leadership in global AI governance standards.

### Senators Advocate for FCC Action Against AI-Generated Scam Calls

On February 7, 2024, Sens. Ben Ray Luján (D-NM) and Mark Kelly (D-AZ) penned a letter to FCC Chairwoman Jessica Rosenworcel endorsing the proposed Declaratory Ruling affirming that robocalls violate the TCPA, which regulates unsolicited advertisements, autodialers and prerecorded or artificial voice messages. They urge the Commission to proceed with the ruling to hold AI-generated voice calls to these standards, emphasizing the need to halt the use of generative AI for fraudulent misrepresentation, especially in vital sectors like public safety, election integrity and consumer protection. Both senators underscored the erosion of consumer trust caused by illegal scam calls and warn of the heightened risk posed by AI-generated voices, which contribute to the billions of scam calls received annually.

### Senators Call for Action Against AI-Generated Election Disinformation

On January 30, 2024, Sens. Amy Klobuchar (D-MN) and Susan Collins (R-ME) sent a letter urging the Election Assistance Commission (EAC) to assist state and local election officials in combating AI-generated disinformation targeting elections. Following reports of deepfake robocalls using the President's voice to discourage voting in the New Hampshire primary, both senators stressed the urgency of addressing this emerging threat. They highlight bipartisan legislation introduced in September 2023, the Protect Elections from Deceptive AI Act (S. 2770), which aims to ban AI-generated content falsely depicting federal candidates to influence elections.

## Health Care

### The Food and Drug Administration (FDA) ISTAND Pilot Program Accepts Submission of First AI-Based Technology for Neuroscience

The FDA's Innovative Science and Technology Approaches for New Drugs (ISTAND) Pilot Program is designed to encourage the use of innovative methods, materials or measures that have the potential to facilitate drug development in a specified area of need. The agency's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) accepted the first AI-based, digital health technology project in neuroscience. This tool utilizes multiple behavioral and physiological indices of depression and anxiety in a machine learning model to derive severity measurements.

### Government Accountability Office (GAO) Reports FDA Expertise is Needed to Develop AI Legislation

The FDA reported to the GAO that the FDA needs expanded authority to adequately regulate use of AI, in particular for medical devices enabled with AI. The GAO found that lawmakers need expertise from the FDA to develop legislation that would enhance oversight of AI. In turn, the GAO recommended that the FDA clearly identify, document and communicate its requested legislative changes to lawmakers.

### Senate Finance Committee Shows Interest in Legislation Targeting AI in Health Care

The Senate Finance Committee held a hearing on the use of algorithms and AI systems in health care on February 8, 2024. Committee Chair Ron Wyden (D-OR) commented that he and ranking Republican Mike Crapo (ID) have discussed the need to implement guardrails to protect patients. During his opening statement, Sen. Wyden said that rules recently issued by the Department of Health and Human Services (HHS) did not go far enough to regulate AI. Sen. Wyden likely referred, in part, to a rule on health information technology recently issued by the Office of the National Coordinator for Health Information Technology (ONC), which we previously wrote about here.

## Judicial Action & Administrative Proceedings

### A "Geoge Carlin" Special Sparks Controversy

On January 25, 2024, George Carlin's estate filed a lawsuit in the Central District of California against the comedians who released "George Carlin: I'm Glad I'm Dead," a comedy special that was released earlier in January and claimed to be created with AI called "Dudesy," trained on George Carlin's standup routines. The video contained jokes delivered in a soundalike voice alongside AI-generated imagery. The lawsuit alleges that the video infringes copyrighted material, violated the California common law right of publicity and runs afoul of California's right of publicity. A representative for the comedians stated that Dudesy is "a fictional podcast character created by two human beings" and that the special was written by one of them.

The Dudesy YouTube channel is run by comedians Will Sasso and Chad Kultgen, with a premise that an AI participates in their podcast, and often features Will Sasso performing impressions. The podcast following the special contained a discussion of the role of AI in art, along with some discussion of professional wrestling kayfabe (the act of presenting staged performances as genuine). The George Carlin portion of that video and the special have been taken down.

### FCC Issues Declaratory Ruling on AI-Generated Voices in Robocalls

On February 8, 2024, the FCC unanimously adopted a Declaratory Ruling recognizing AI-generated voices as "artificial" under the TCPA. This ruling effectively makes AI-generated voices illegal in robocalls. The declaratory ruling stems from FCC's November Notice of Inquiry into combatting robocalls and was supported by a coalition of 26 State Attorneys General. The TCPA empowers the FCC to fine robocallers, allows private rights of action and permits State Attorneys General to enforce its definitions.

### Image Generators File Motion to Dismiss

On February 9, 2024, the AI image generator companies involved in a copyright case moved to dismiss in response to an amended complaint. As reported in November, U.S. District Judge William Orrick (N. D. Cal.) dismissed most of the claims in the original complaint, but gave the plaintiff an opportunity to amend the complaint. The image generator companies argue that the amended complaint fails to cure the defects of the first dismissal, including a lack of facts and plausible theories of liability.

**More Allegations Against OpenAI Dismissed**

On February 12, 2024, U.S. District Judge Araceli Martínez-Olguín (N. D. Cal.) dismissed many of the allegations against OpenAI across several cases. Judge Martínez-Olguín dismissed the plaintiffs' claims of vicarious copyright infringement, removal of copyright management information, unlawful or fraudulent competition, negligence and unjust enrichment—but the plaintiffs are allowed to amend their complaint regarding some of these allegations. The plaintiffs' unfair competition claim was not dismissed, and the direct copyright infringement claims were not part of the motion to dismiss. Further, Judge Martínez-Olguín consolidated three related cases: *Tremblay v. OpenAI*, *Chabon v. OpenAI* and *Silverman v. OpenAI*.

# State Action

### California

- On February 8, 2024, and the same day the U.S. Department of Commerce announced the creation of AISIC, Senator Scott Wiener introduced Senate Bill 1047, which seeks to ensure the safe development of large-scale AI systems via standards developed by the NIST USAISI. The bill sets out standards for developers (systems that meet the bill's threshold of $10^{26}$ flop would cost over $100 million to train). Specifically, the legislation clarifies that developers must take basic precautions such as pre-deployment safety testing and cybersecurity protections.

### New York

- On January 8, 2024, New York Governor Kathy Hochul announced the creation of a consortium named Empire AI. The consortium will create and launch an AI computing center in Upstate New York. Over $400 million in public and private funding will go toward the consortium. Empire AI will comprise seven institutions—Columbia, Cornell University, New York University, Rensselaer Polytechnic Institute, the State University of New York, the City University of New York and the Simons Foundation. Additionally, Gov. Hochul has instructed the Office of Information Technology Services to issue a first-of-its-kind AI Policy that "establishes the principles and parameters by which state agencies can evaluate and adopt AI systems to better serve New Yorkers."

### Alabama

- On February 8, 2024, Alabama Governor Kay Ivey signed Executive Order 738 to create an AI task force to recommend policies for the responsible use of generative AI within state executive-branch agencies. Members of the task force will be appointed by the governor and will consist of seven cabinet members, two representatives from higher education, two state representatives, and two state senators. The task force will submit a report to the governor by November 30, 2024. The report will include relevant findings regarding the current use of generative AI within executive-branch agencies and whether those uses present any risks. Administrative recommendations to the use of generative AI will also be included in the report.

  EO 738 also contains additional provisions on the current use of generative AI. This includes the Office of Information Technology establishing "cloud infrastructure to allow state agencies to safely and responsibly conduct generative AI pilot projects." Additionally, all state executive-branch agencies should consider pilot projects involving

generative AI applications and consult experts from the industry, state government, and higher education.

## Virginia

- On January 18, 2024, Virginia Governor Glenn Youngkin signed Executive Order 30, implementing AI education guidelines for schools, as well as "AI Policy and Information Technology Standards" to "safeguard the state's databases while simultaneously protecting the individual data of all Virginians." $600,000 of funding from the state's Unleashing Opportunity budget will be used to launch pilot programs that evaluate the effectiveness of these new standards. The Virginia Information Technologies Agency (VITA) will be responsible for enforcing standards and approving or denying applications for new AI tools.

## Pennsylvania

- On February 5, 2024, House Republican Leader Bryan Cutler (R-Lancaster) announced that he has formed an AI Opportunity task force comprised of House Republican lawmakers who will engage with experts and stakeholders in an effort to create future policy relating to the use of AI and the appropriate safeguards that should be adopted. A letter was also addressed to Governor Josh Shapiro, Senate President Pro Tempore Kim Ward, Speaker of the House Joanna McClinton and Supreme Court of Pennsylvania Chief Justice Debra Todd inviting them to participate in the task force.

## North Carolina

- On January 16, 2024, the North Carolina Department of Public Instruction (NCDPI) released a guidebook for the use of generative AI in public schools. The initial guidebook includes a set of recommendations for using generative AI, with more information to be released in the coming months. School districts are encouraged to create additional guidelines specific to their schools. The state guidebook says that AI literacy should be infused into all grade levels and curriculum areas and stresses the importance of incorporating AI into the classroom in a responsible manner. The guidebook also discusses some common concerns surrounding AI, such as cheating and the protection of student data. The guidebook will be updated regularly.

# Industry Action

### OpenAI and Meta Announce AI Image Marking

On February 6, 2024, Meta announced that it intends to detect and label images across Facebook, Instagram and Threads. The announcement indicates that Meta already labels images made with its tools and the company is working on tools to detect AI-generated content, including by using the C2PA and IPTC technical standards. The same day, OpenAI announced that it was also including C2PA metadata in its images.

### Google Rebrands Bard for Gemini Launch and Launches GenAI Tools

On February 8, 2024, Google announced that its AI chatbot, Bard, is now called Gemini. The product formerly known as Bard began using the Gemini Pro 1.0 model, which was updated to Gemini Pro 1.5 on February 15. In that announcement, Google noted that it has successfully tested Gemini Pro with a 10 million token context window and that it started a limited preview of a version with a 1 million token context window.

Google also released several generative AI tools in February, including ImageFX, TextFX and MusicFX. ImageFX is an image generator with an interface designed for iterative prompts, TextFX is a tool for creative writing, and MusicFX is a text to music tool that will create a clip from prompts. The tools are available through Google Labs.

### IBM Details Audio-Jacking Attacks

On February 1, 2024, IBM Security published research on audio-jacking attacks, which are AI-based man-in-the-middle attacks on live conversations. Using a combination of LLM, speech-to-text, text-to-speech and voice cloning, an audio-jacking attack selectively replaces portions of a real conversation, such as changing bank account numbers to redirect funds. Although the attack is a proof-of-concept, this research indicates the need for vigilance against new threat vectors and the development of new security practices.

### Amazon Launches AI Shopping Assistant

On February 1, Amazon announced Rufus, an AI assistant designed to answer customer questions. Rufus uses generative AI trained on Amazon's product catalog, customer reviews, community answers and web information. The tool can also recommend products based on a customer's request.

### NVIDIA Releases Chat with RTX

On February 13, 2024, NVIDIA released Chat with RTX, a tech demo of a local LLM chatbot designed for customization. The chatbot runs on a user's own computer running the requisite NVIDIA hardware. Users can link their own files to the chatbot using retrieval-augmented generation (RAG).

### OpenAI Announces Video Generator

On February 15, 2024, OpenAI announced Sora, a text-to-video model that produces short video clips, ranging from animation to photorealism. Sora is a diffusion model, similar to many image generators. In addition to text prompts, the model is able to handle image and video inputs. Access to the tool is currently limited to experts to carry out risk assessments and safety testing, along with a few creative professionals to provide feedback on how the model can help their industry. If the model is released as a product, OpenAI intends to include C2PA metadata to identify the videos as AI-generated.

## EU and U.K. Updates

### Final EU AI Act Text Gets Crucial Nod from EU Countries, Set for Final Adoption in April

The EU AI Act has taken two steps closer to entering into force. On February 2, 2024, the EU's Committee of Permanent Representatives (COREPER) unanimously approved a political agreement reached on the final contentious issues in the EU AI Act last December. Eleven days later, on February 13, 2024, the European Parliament's Internal Market and Civil Liberties Committees then overwhelmingly approved the draft. A final plenary vote is set for April 10, where at this stage it seems unlikely that major changes will be introduced. This will conclude the adoption procedures, with the Act entering into force 20 days after publication in the official journal, so likely late spring/early summer. The obligations under the Act will then become enforceable gradually, with the ban on prohibited use of AI systems kicking in first, six months after the adoption of the Act. The February 2, 2024 vote

stands as a critical mark of approval after Germany, France and Italy expressed reservations about the December political agreement. However, after failing to secure meaningful concessions, all three countries dropped their opposition and threw their support behind the Act in the February 2 vote.

## Germany and France Join Forces to Develop Suite of AI Tools for Public Administration Bodies

On February 6, 2024, Germany and France announced a new initiative to "jointly develop a suite of sovereign digital products . . . making it possible to build a coherent and comprehensive offer of digital tools for public officials." The initiative will seek to develop a shared "instant messaging" software between the two countries, as well as a generative AI tool for public services to be named "Albert." While the declaration of intent launching the initiative is currently only between Germany and France, the two countries stated that their "long-term ambition is to extend this cooperation to other voluntary Member States of the European Union."

## UK Continues to Make its Pitch as a Global AI Leader

On February 6, 2024, in what many saw as a response to the EU AI Act's progression towards finalization, the U.K. released a "government response paper" on the U.K.'s "pro-innovation approach to AI regulation." The paper touts the U.K. as "leading the world in how to respond" to AI's adoption across industries and states that its "approach to preparing for such a future is firmly pro-innovation." In particular, the paper emphasizes the government's efforts to "ensure cohesion across the [regulatory] landscape," a new £10 million fund to "jumpstart regulator's AI capabilities" and a new "commitment by U.K. Research and Innovation (UKRI) that future investments in AI research will be leveraged to support regulator skills and expertise." While the paper largely did not put forward any concrete proposals, the U.K. government also announced that it may introduce "future targeted, binding requirements for most advanced general-purpose AI systems." The announcement also instructed key regulators to state "how they are responding to AI risks and opportunities" by the end of April 2024.

## International Treaty on AI Hits Roadblock on Coverage of Private Companies

The Council of Europe, a 46-member human rights body, has been attempting to negotiate the world's first Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law since establishing a Committee on AI in 2022. While the Council has set a deadline to finalize the Convention by March, its efforts hit a major roadblock at its January 23-26 plenary meeting, when a U.S.-led effort to limit the treaty's obligations to public bodies led to a stalemate in the talks. While only participating as observers, the United States and allies like Canada, Israel, Japan and the U.K. have threatened not to sign the Convention if the treaty applies to private companies. The U.S.-led coalition instead wishes for the Convention to allow signatories to "opt-in" their private companies. The EU, meanwhile, has pushed for an option to allow signatories to "opt out" of the Convention's provisions applying to private companies. It is now largely left to the EU and United States to resolve the dispute before the Council's next plenary meeting in mid-March 2024, or the Convention's future as a binding international treaty may be put at risk.

## EU Commission Establishes AI Office Ahead of EU AI Act Approval

On January 24, 2024, the EU Commission announced the establishment of an AI Office meant to help implement and supplement the EU AI Act. In particular, the Office will "contribute to the strategic, coherent and effective Union approach to international initiatives on AI," "contribute to fostering actions and policies in the Commission that reap the societal and economic benefits of AI technologies," "support the accelerated development, roll-out and

use of trustworthy AI systems and applications that bring societal and economic benefits," "monitor the evolution of AI markets and technologies" and more. The EU Decision establishing the Office will enter into force on February 21, 2024.

## China Updates

### Draft Guidelines to Accelerate Development of a Comprehensive System of National Industrial Standards for Artificial Intelligence

The Ministry of Industry and Information Technology issued the Draft Guidelines for the Development of a Comprehensive System of National Industrial Standards for Artificial Intelligence to solicit public comments by January 31, 2024. The Draft promotes development of over 50 new national standards and industry standards to accelerate the formation of a system of standards facilitating high-quality industrial development in the AI field. The Draft specifies that the structure of the system of AI standards will comprise six parts: fundamental commonalities, fundamental support, key technologies, intelligent products and services, industrial applications and safety/governance. Among them, standards for key technologies will primarily cover machine learning, knowledge graph, large models, natural language processing, intelligent speech, computer vision, biometric recognition, human-machine hybrid enhanced intelligence, intelligent entities, collective intelligence, cross-media intelligence, embodied intelligence and similar technologies.

### Implementation Opinions on Promoting Innovation and Development of Future Industries

The Ministry of Industry and Information Technology, the Ministry of Education, the Ministry of Science and Technology, the Ministry of Transport, the Ministry of Culture and Tourism, the State-owned Assets Supervision and Administration Commission of the State Council, and the Chinese Academy of Sciences jointly issued "Implementation Opinions on Promoting Innovation and Development of Future Industries." The opinions emphasize the need for forward-thinking planning. This involves staying abreast of global trends in scientific and technological innovation and industrial development through prioritizing the promotion of industrial growth in six key directions: future manufacturing, future information, future materials, future energy, future space, and future health, as well as creating iconic products that utilize technologies such as AI and advanced computing. The target products include humanoid robots with applications in intelligent manufacturing, home services, special environment operations, and ultra-large-scale intelligent computing centers to meet the needs of large-model iterative training and application reasoning.

### Guidance on Accelerating the Development of Emergency Robots

The Ministry of Emergency Management and the Ministry of Industry and Information Technology jointly issued "Guiding Opinions on Accelerating the Development of Emergency Robots." This document proposes that, by 2025, a batch of advanced emergency robots will be developed to significantly improve their scientific, professional and intelligence capabilities. A batch of practical test and demonstration application bases for emergency robots in key scenarios will be built to gradually improve the development ecosystem.

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Artificial Intelligence (AI) Executive Order | Akin Intelligence (November 22, 2023)

## Akin Thought Leadership

Akin IP Lawyers Publish AI-Assisted Drug Discovery Article in PharmaPhorum (February 20, 2024)

FCC Ruling on AI-Generated Robocalls Reflects Focus on Artificial Intelligence (February 9, 2024)

Hot Issues in 2024 for TMT Companies (February 2024)

Commerce Issues Proposed Rule on "Malicious Cyber-Enabled Activities" and Artificial Intelligence (January 31, 2024)

Akin IP Lawyers Author Article on Safeguarding Fund Data and IP When Using AI – Part Two (January 16, 2024)

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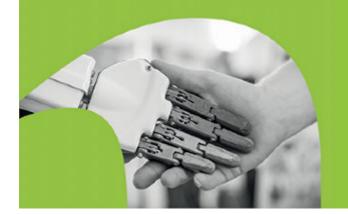
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Learn more about Akin's Artificial Intelligence & Machine Learning practice.

## Questions?

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