

AI Enforcement Update: FTC Authorizes Compulsory Process for AI Investigations

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On November 21, 2023, the Federal Trade Commission (“the FTC”) [announced](#) its approval of an omnibus resolution authorizing the use of compulsory process for nonpublic investigations concerning products or services that use artificial intelligence (“AI”). Compulsory process refers to information or document requests, such as subpoenas or civil investigative demands, for which compliance is enforceable by courts. Recipients who fail to comply with compulsory process may face contempt charges.

Before issuing compulsory requests, FTC Staff (“Staff”) must typically seek a resolution from the Commission. This omnibus resolution streamlines Staff’s ability to issue compulsory requests to companies offering products or services involving AI and will be in effect for ten years. By reducing the administrative “red tape” associated with issuing a compulsory request broadly related to AI, this omnibus resolution appears to allow the FTC to more easily issue compulsory process to companies using or offering AI that it believes have information of interest to its competition or consumer

protection investigations.

We have previously written about the [heightened scrutiny of AI](#) from antitrust enforcement, and this reduction of process at the FTC only underscores FTC's focus on AI and makes aggressive investigation of AI developers and users more likely. If your company offers products or services that use AI, the FTC can quickly demand the production of key documents and information by merely launching an investigation. It is paramount that companies offering or using AI conduct a comprehensive review of their AI usage within their business and work with counsel to identify and address potential competition concerns.

As we previously [covered](#), the FTC launched a high profile investigation of OpenAI relating to potential unfair or deceptive privacy or data security practices and unfair or deceptive practices relating to risks of consumer harm. As part of that investigation, the FTC issued a [civil investigative demand](#) to OpenAI on a wide range of topics. In part, it sought information on OpenAI's policies for various AI-related activities. In that blog, we noted the need for companies developing AI to develop comprehensive policies and procedures to guide that development. This recent authorization for compulsory process only heightens the need for companies to be prepared to respond if the FTC comes knocking. If you do not have AI policies, now is a good time to develop them.

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