

What the U.S. and EU are Doing to Mitigate the Legal Risks to the Rights of Privacy and Publicity, and Intellectual Property Posed by AI

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How can nations regulate Artificial Intelligence (“AI”) technology to mediate public and private injury while not stifling the tremendous opportunities for good—and commercial profit—posed by this technology? Both the European Union (“EU”) and the U.S. have begun to regulate Generative Artificial Intelligence (“AI”) technology. The EU’s AI Act (“the Act”), expected to become effective in 2025, focuses on enforcing transparency for AI that is determined to have “limited risk,” while banning AI that is determined to have an “unacceptable” level of risk. The content of the Act has not yet been made available to the public, but experts speculate that it will contain protections against AI technology that poses a threat to national security and has the potential to otherwise harm EU citizens.

One of the biggest challenges faced by legislators is to balance use of AI technology that could be beneficial to society against “high risk” exploitation, that could compromise national and privacy interests. One example: Member states have demanded permission to use remote, real-time biometric identification systems for their law-enforcement agencies to monitor high-profile public events like the 2024 Summer Olympics. This pits privacy rights against the law enforcement objective of keeping the large event safe. Experts in both the EU and the U.S. urge lawmakers to also consider the ramifications of potential data breaches or malicious uses of generative AI when determining the types of permissible technology, including use of biometric data.

To provide general guidance in these and other areas, President Biden issued [an Executive Order](#) on Oct. 30, 2023, setting forth best practices and requirements to help regulate generative AI and its associated risks while “harnessing AI for justice, security, and opportunity for all.” Executive agencies and entities developing or demonstrating intent to develop AI technologies are expected to conduct their own tests and report the results of risk analysis and potential benefits to the federal government.

With its ability to quickly replicate third parties’ identities and their content, AI poses a risk to the right of publicity and intellectual property (“IP”), particularly copyrightable content. Accordingly, the Director of the National Intellectual Property Rights Coordination Center, in consultation with the Attorney General, is expected to develop a training, analysis, and evaluation program. This program will be responsible for analyzing reports of AI-related IP theft, coordinating with the FBI and U.S.

Customs and Border Protection, developing guidance for private sector actors seeking to mitigate AI-related IP theft, and more.

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