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From Robots to Rules:

An Overview of AI and Its Current Legal and Regulatory Landscape

By Brandon N. Robinson and Amy Rodenberger

Artificial Intelligence is “having its moment,”

a moment that may not last forever, but will certainly have profound effects on our lives in 2024 and beyond. As Secretary of State Anthony Blinken said: “A global technology revolution is now underway. The world’s leading powers are racing to develop and deploy new technologies like artificial intelligence... that could shape everything about our lives – from where we get energy, to how

we do our jobs, to how wars are fought.”¹ Secretary Blinken has not been the only voice chiming in on this transformative era in technology. AI is being discussed on our television screens; in our newsfeeds; at our schools; churches, kitchen tables, and grocery stores; and, of course, by the regulatory powers that be in the United States.

Like many attempts to regulate emerging technologies, the development of a regulatory framework around AI has moved at a cautious pace compared to the rapid advancements in the technology itself,

and likely will continue to do so. Right-sizing regulation of rapidly evolving technology can be tricky: over-regulation can restrict trade and competition, create an uneven playing field (i.e., pick “winners and losers”), stifle innovation and market forces, and sometimes reduce both consumer and business welfare. On the other hand, under-regulation can lead to unpredictable, inconsistent, or even deceptive products or services; a lack of transparency and accountability; intellectual property disputes; and for consumer technologies, security and privacy concerns. One thing is clear, however – that AI has moved from experimental and academic to mainstream and operational – as more businesses and individuals alike incorporate the use of AI into their daily commercial and personal lives.

Artificial intelligence in some form (e.g., machine learning) has been around since the 1950s, when British mathematician Alan Turing began exploring its possibilities.² The term was said to be coined by computer scientist John McCarthy in 1955, when he developed the first AI programming language, Lisp.³ However, the last decade has witnessed dramatic increases in computing power, a marriage of AI capabilities with “big data,” and advancements in deep learning, neural networks, and large language models, all of which have converged to lead to breakthroughs in artificial intelligence at a dizzying pace and through a variety of applications. Thus, as regulators continue to grapple with “big tech,” a sentiment has emerged – across political aisles, tech industry, and even among the public – that it *is* time for some form

of regulation of AI, and that the time for such regulation is *now*.⁴ As of the summer of 2024, we are still just beginning to see what that regulation might look like.

What Is AI Anyway?

Before we discuss the regulation of AI, however, it is important to clarify what AI *actually* is, something even our lawmakers allegedly admit they do not fully grasp.⁵ The umbrella term “AI” is thrown around in the media and certain circles without the specificity required to fully understand the benefits and risks associated with certain types, uses, and applications of artificial intelligence. Understanding AI is difficult for many reasons. For starters, it involves computer and data science terms that most of us have never heard before nor care to understand in more than a general sense. Additionally, and perhaps an effect of the difficulty in explaining AI rather than a cause, there is no universal definition of AI. Even within the U.S. government itself, there is no definite consensus, just common aspects of a definition. For example, the National Artificial Intelligence Act of 2020 defines AI as:

“[A] *machine-based system* that can, for a given set of *human-defined objectives*, make *predictions, recommendations or decisions* influencing real or virtual environments.”⁶

The proposed Future of Artificial Intelligence Act, meanwhile, defines AI as:

“Any *artificial systems* that *perform tasks* under *varying and unpredictable circumstances*, without *significant human oversight*, or that can learn from their experience and improve their performance.”⁷

Both of these definitions are accurate descriptions of AI, but they clearly do not say or mean the same thing. Numerous definitions like these are currently peppered across various pieces of legislation, regulations, and industry standards.

Adding to this confusion is the fact that AI itself is an umbrella term, within which there are a great many different types of AI. While

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“AI” is today’s simple buzzword, and the newest and most advanced iterations of AI garner the most attention, not all AI tools are new, nor are they all colloquially known as AI. Spell check on our Word documents, suggested content on our social media feeds, and traffic apps that help us avoid congestion are all applications of AI used already in our daily life, but that we may not necessarily lump in the same category as other, newer AI technology. This means that AI is not one single thing that needs to be regulated; it is a myriad of tools, models, algorithms, etc., each of which takes many forms and will change our lives in different ways. There is “narrow AI,” “general” or “strong” AI, and “superintelligent AI.” There is machine learning, deep learning, natural language processing, and the use of AI with large language models (often thought of as “generative AI”). “Narrow AI” refers to AI that can perform only narrow sets of tasks. Contrast these with “broad AI,” which we see growing exponentially today,⁸ that enables groups of AI systems to work together and perform more complex sets of tasks, the kinds of things that previously only fictional machines could do. Each of these types of AI has its own capabilities and limitations and comes with its own set of risks and benefits.

OpenAI’s ChatGPT is one of the first examples of broad AI to gain mainstream popularity and arguably launched today’s AI frenzy. ChatGPT uses generative AI technology to interpret massive amounts of data; find patterns and statistical likelihoods within that data; and “generate” text, images, movies, and music in response to human prompts based off of what it has learned from the data.⁹ Although it

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was first introduced only two years ago, today ChatGPT already has valid competitors in Google, Microsoft, Amazon, and more, and the advances from these and other tech companies do not seem to be slowing down.¹⁰ Building off the success of generative AI models and the other advances in broad AI technology, these companies are building AI technology that really will “shape everything about our lives,” as Blinken said, from entertainment to health to finances and beyond.¹¹

AI continues breaking and recreating the boundaries of its definition, and this might mean a set definition will not emerge for some time. This is as exciting as it is terrifying. There is an open-ended amount of potential in AI technology because of how “broad” it is and how quickly it is advancing. Even today’s top computer scientists and tech engineers cannot predict all of AI’s capabilities over the next decades; what we *do* know, however, is that such potential also carries a corresponding amount of risk. Some risks of AI are already known, some are sector-

or application-specific, and some are relevant only to the developers of the AI technology, not those who utilize it. For these and other reasons, regulatory frameworks around AI will likely: (i) be dispersed across multiple agencies, sectors, and jurisdictions within the US; and (ii) continue to evolve along with the technology.

The current regulatory trend in the United States already exemplifies this multifaceted and decentralized concept. It involves overarching federal frameworks highlighting basic rights, executive agency-specific rulings targeting sector-specific issues, implementation and enforcement of more general laws to cover AI-specific risks, various Congressional bills attempting to either address AI comprehensively or tackle discrete issues more narrowly, and individual state efforts to address all of AI’s promises while mitigating its risks to society. In the following sections, we present an overview of a few recent examples of regulatory efforts at various levels.

International Action

Just as the European Union took the lead on privacy regulation with the its General Data Protection Regulations (“GDPR”) (which we later saw reflected in U.S. state laws, such as California’s Consumer Privacy Act, later amended by the California Privacy Rights Act), it passed the first comprehensive AI regulation this spring with the E.U. AI Act. This followed years of debate among representatives of the European Commission, the European Parliament, and the Council of

the European Union on the shape and contents of the Act.¹² The resulting legislation classifies applications of AI into three levels of risk: AI that creates unacceptable risk is banned; AI that creates high risk is subject to specific rules and requirements; and AI that poses little or low risk is left largely unregulated. The Act also differentiates between developers and deployers (or users) of AI, with the majority of obligations falling on the former. In accordance with the Act's provisions, the European AI Office was established within the Commission to oversee the Act's enforcement and implementation.¹³

Like with the GDPR, the E.U.'s regulation will likely impact U.S. and other businesses outside of the E.U. that wish to operate in the E.U., and some "high risk" AI systems could even be completely banned. And while the E.U. is the first to pass such regulations, the AI Act will likely serve as a model for future regulations by more authorities. By the end of 2023, numerous other countries, including China, India, and Japan, had proposed their own AI regulatory frameworks, some comprehensive in nature like the E.U.'s, but others more specific. Additionally, as of April 2024, the United Nations General Assembly also adopted its first resolution on AI rules, with all 193 member nations supporting the adoption.

Federal Executive Action

In the U.S., the President and the Executive Branch have addressed AI in multiple ways, including by setting forth guiding principles to companies and agencies on the


creation and use of AI and by demanding concrete action across the Executive Branch. One of the earliest examples of executive action was the "AI Bill of Rights," published in October 2022 by the White House Office of Science and Technology Policy.¹⁴ It focuses on protecting civil rights and democratic values in the age of AI and sets forth five principles to "guide the design, use, and deployment of automated systems to protect the American public in the age of artificial intelligence."¹⁵ These non-binding principles lay out a framework of both potential threats from AI and general standards to mitigate these threats and highlight what the federal government will be most focused on in the coming years. They include ensuring that: (1) AI systems are safe and effective; (2) algorithms are fair and nondiscriminatory; (3) individual privacy rights are respected; (4) readily available notice is given to citizens about when and how AI is used; and (5) the design, development, and implementation of AI keeps human rights and well-being at the forefront.

In October 2023, a year after the AI Bill of Rights was published, the White House announced President Biden's Executive Order ("EO") on the Safe, Secure, and Trustworthy Development of AI, the third and most comprehensive order on AI to date.¹⁶ Like the Bill of Rights, this EO emphasizes the core principles needed to responsibly develop and use AI systems while addressing its potential risks: primarily concerns associated with bias, discrimination, and privacy. However, it also highlights the importance of AI innovation in the U.S. and the desire of

the Executive Branch not to stifle development with overbearing regulations. Most concretely, it directs federal agencies to develop specific action plans for responsible AI use within their respective jurisdictions. In addition, it requires these agencies to address and report on key security risks arising from their AI use and to conduct risk assessments on AI use in critical infrastructure sectors.

Agency Action

Since the President issued the EO, federal agencies have begun developing action plans to address AI-related issues within their specific areas of expertise and have taken other steps to further their



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individual studies and deployments of AI. Many agencies appointed internal chief AI officers as initial steps in this process.¹⁷ Additionally, as of the spring of 2024, numerous agencies, including the Department of Defense (DOD), the Department of Transportation (DOT), the Treasury, and the Department of Health and Human Services (HHS) have completed their risk assessments.¹⁸ Finally, different agencies have proposed rulemakings specific to their sectors on a variety of far-ranging issues. For example, the DOT has focused on self-driving cars amongst other AI transportation technologies, and the Food and Drug Administration is prioritizing regulating AI for the development of medical products.¹⁹

These same agencies and others are also working to apply existing general legislation to new issues arising from AI. Many of these efforts relate to anti-bias and anti-discrimination legislation and include enforcement of bills like the Equal Credit Opportunity Act, the Fair Housing Act, and Title VII of the Civil Rights Act.²⁰ This has been seen with the Securities and Exchange Commission (“SEC”) and Consumer Financial Protection Bureau (“CFPB”), as both agencies have separately proposed rules ensuring financial systems in the U.S. using AI in their decision making processes remain unbiased for all consumers.²¹ Other efforts by agencies relate to ensuring existing privacy-related laws, such as the Health Insurance Portability and Accountability Act (“HIPAA”), the Fair Credit Reporting Act (“FCRA”), and the Children’s Online Privacy Protection Rule (“COPPA”), remain enforced

The FTC’s mandate has always been interpreted broadly, and the organization has already begun scrutinizing AI within this context, specifically in areas like misleading AI practices, unfair data collection, and algorithmic biases.

in spite of the onslaught of AI technology.

Notably, the Federal Trade Commission (FTC) has emerged as a leader in the agency efforts to mitigate AI risks, focusing specifically on risks that are created by companies and that impact consumers. They assert jurisdiction derived from Section 5 of the FTC Act, which prohibits unfair or deceptive acts and practices by businesses.²² The FTC’s mandate has always been interpreted broadly, and the organization has already begun scrutinizing AI within this context, specifically in areas like misleading AI practices, unfair data collection, and algorithmic biases. For example, on February 27, 2024, as a result of an FTC lawsuit, a federal court temporarily shut down a business opportunity scheme that lured consumers to invest \$22 million in online stores, using claims that their use of AI would ensure success and profitability for consumers who agreed to invest.²³ The FTC has no specific AI rules yet, but additional

efforts to build on this Section 5 enforcement and to protect citizens from AI use more broadly are expected and will likely set the pace for the rest of the administration.²⁴

Congressional Action

Congress has also been actively attempting both to understand AI and to mitigate its risks in numerous, although not completely cohesive, ways. The federal legislature has held hearings across committees and parties; proposed legislation that addresses AI comprehensively but also targets specific AI-areas, including national security, research and development, and election security; and announced competing, bipartisan frameworks to guide forthcoming AI legislation in a holistic manner. The federal legislature also hosted a well-attended forum on AI in the fall of 2023, where Senate Majority Leader Chuck Schumer (D-NY) gathered two-thirds of the Senate along with key AI tech CEOs, civil rights leaders, and labor rights representatives to discuss potential AI legislation. Then, in May 2024, the Senate released a “Roadmap for Artificial Intelligence” that recommended further study into how existing regulations can apply to AI but did not itself create any explicit guardrails.²⁵ This widespread and bipartisan interest and support of AI regulation suggests that at least some of the more targeted bills will be passed, although the odds of comprehensive legislation passing in this year’s legislative session are uncertain.

Individual State Action

There has also been a flurry of state activity over the past year with respect to AI, differing widely across the country, but that has mirrored federal efforts in that some proposals address discrete concerns while others address AI more holistically.

The numbers representing the breadth of state action speak to the importance of these issues at the state level. For example, in 2023, 25 states introduced AI bills. Most prominently, at least 12 states have passed bills to address privacy concerns, including California.²⁶ Several other bills have addressed bias and discrimination, fair election protections, and children's rights with respect to generative AI content. Several states, including Alabama, have passed laws mandating further government research on AI's potential.²⁷ Other states even went so far as to establish AI Advisory Councils and specific state divisions to address AI.²⁸ Colorado was the first state to pass a comprehensive AI law, in May 2024, that requires developers and deployers of AI to comply with various reporting and compliance obligations. Finally, the National Conference of State Legislators, a nonpartisan organization of sitting state legislators, published an AI report in the summer of 2023 that focused on exploring best practices for state regulations, building a consensus around AI definitions, and raising awareness on the risks of AI.²⁹ As states have historically done, these efforts and experimental approaches

to AI legislation will demonstrate what ideas work and what ideas do not and will hopefully guide future federal legislation and agency action.

Conclusion

While this piecemeal approach to AI regulation may initially be cause for confusion and distress among those innovators and entrepreneurs who may be impacted, it is not unique in how our country has historically approached new and emerging technologies. Indeed, consider the introduction of the automobile or the airplane. When first introduced to the public, there were few, if any, existing guardrails in place to protect people from the risks of these technologies. Slowly but surely, both federal and state regulation evolved along with the technologies. Seatbelts were introduced and later mandated. States developed speed limits and required driver's licenses for which driving tests were required. Today, the Department of Transportation ("DOT") and Federal Aviation Authority ("FAA") regulate the automobile and aviation industries at the federal level, while the Transportation Security Administration ("TSA") is responsible for ensuring the safety and security of the traveling public, alongside state highway safety offices and departments of transportation. There are safety standards for companies that create cars and planes and serious consequences when violations occur. This evolution reflects our philosophy that technology is neither good nor bad, but rather

dependent on how it is used, by whom, for what purposes, and under what restrictions or standards – all designed to harness the benefits of technology while mitigating its risks. And AI is no different.

As the AI regulatory framework grows in the U.S., there will continue to be new and evolving laws to match the new and evolving technologies. We should expect more activity in the months and years that follow, as many federal and state branches of government across the country, as well as technical, standards, and industry organizations, prioritize how to address AI most effectively. As President Biden's Executive Order idealistically stated, the overarching goal of AI regulation should be "to ensure that America leads the way in seizing the promise and managing the risks of artificial intelligence."³⁰ The past year gave us a small glimpse of how our federal and state governments intend to address these goals, and 2024 will continue to be a banner year in the AI regulatory space as more regulations are proposed and passed. ▲

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