

POTUS Issues Expansive Executive Order on AI, Calling for All Hands On Deck

NOVEMBER 7, 2023

[DAN JASNOW](#), [ELIZABETH H. COHEN](#), [MICHELLE A. COOKE](#), [MATTHEW BERLIN](#), [YUSEF ABUTOUQ](#), [GORDON SUNG](#)

Share This Page [EMAIL](#) [LINKEDIN](#) [TWITTER](#) [FACEBOOK](#)

On October 30, 2023, President Biden issued an expansive Executive Order (EO) on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (AI), aiming to establish standards for AI technology to address related potential benefits and risks.

The **EO** seeks to establish guidelines, best practices, and policies for managing AI in a safe and secure manner while fostering innovation, supporting workers, promoting equity, and upholding civil rights.[\[1\]](#)

The EO provides a broad definition of AI which encompasses recent headline-making developments, such as generative AI large language models (*e.g.*, ChatGPT), as well as other systems that have been built over the past several years. Further, the EO seeks to hold AI developers as well as users accountable.

In this alert, we highlight a few elements of the new initiative that may be relevant particularly for intellectual property owners and clients in select industries:

New Reporting Requirements for the Most Powerful AI Systems

The EO requires developers of the most powerful AI systems (measured primarily by computing power) to notify the federal government of ongoing or planned activities related to training, developing, or producing certain AI models, and to share safety test results with the government. It also requires disclosure of the location and total computing power of large-scale computing clusters.

Intellectual Property Protection

The EO directs the US Copyright Office to issue recommendations to the President on potential executive actions relating to copyright and AI, including the scope of protection for works produced using AI and the treatment of copyrighted works in AI training. These recommendations, to be issued the later of 270 days of the date of the EO or 180 days after the Copyright Office publishes its forthcoming AI study, may provide much-needed clarity amidst the waves of litigation related to the use and training of AI models and questions about the ability to protect AI generated content under existing copyright laws.

Watermarking of AI Content

The EO directs the US Secretary of Commerce to identify existing standards, tools, methods, and practices to label AI-generated or synthetic content, such as “watermarking,” and to identify technological gaps that may require further development. The EO defines “watermarking” as the act of embedding information into outputs created by AI for the purposes of verifying authenticity, provenance, modifications, or conveyance.

Health Care

The EO requires the US Secretary of Health and Human Services to establish a common framework to identify and capture clinical errors resulting from AI deployed in healthcare settings and develop a central repository to track associated incidents that cause harm to patients, caregivers, or other parties.

Education

The EO directs the creation of an “AI toolkit” for education leaders that implements recommendations from the US Department of Education’s AI and the Future of Teaching and Learning report. This toolkit is to include ensuring appropriate human review of AI decisions, designing AI systems to enhance trust and safety, aligning AI systems with privacy-related laws and regulations in the educational context, and developing education-specific guardrails.

Transportation and Autonomous Mobility

The EO calls on the US Department of Transportation (DOT) to assess the need for information, technical assistance, and guidance regarding the use of AI in transportation. It directs the DOT to provide support for and evaluate the outcomes of various transportation-related applications of AI and to prioritize the allocation of grants for projects that explore use of AI enhancements in autonomous mobility ecosystems.

Labor and Employment

The EO directs the US Secretary of Labor to publish guidance for federal contractors regarding unlawful discrimination in the context of AI and other technology-based hiring systems, and to confirm that any AI used to monitor or augment employees’ work will continue to comply with the protections under the Fair Labor Standards Act of 1938.

Technology Services

In an acknowledgement of the impact AI has and will continue to have on cyberattacks as technology improves, the EO directs the Secretary of Commerce to propose regulations requiring US Infrastructure as a Service (IaaS) Providers to report when a non-US person utilizes its IaaS service to train a large AI model with potential malicious cyber-enabled capabilities. The regulations will also prohibit any foreign reseller of US IaaS from providing such service to a foreign person unless the reseller submits similar reports and maintains detailed records regarding the foreign person’s account, including their name, address, means, and source of payment.

Creation of New White House Council

The order establishes the White House Artificial Intelligence Council, which will include representatives from key government departments and agencies. This council will work toward creating a coordinated effort to advance AI research, development, and implementation across the federal government.

Impact and Implications

AI is rapidly being deployed across numerous industries and has great potential for significant benefits. This regulatory move by the government represents a significant step towards building a more cohesive AI ecosystem in the United States, and channeling resources to high priority initiatives. ArentFox Schiff is closely monitoring AI-related developments across all industries. We encourage you to reach out if you have any questions or concerns.

[1] EO Fact Sheet at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>

Contacts



Dan Jasnow

PARTNER AND AI, METAVERSE & BLOCKCHAIN
INDUSTRY GROUP CO-LEADER



Elizabeth H. Cohen

PARTNER



Michelle A. Cooke

PARTNER



Matthew Berlin

PARTNER



Yusef Abutouq

ATTORNEY



Gordon Sung

COUNSEL

Related Industries

AI, Metaverse & Blockchain

Continue Reading

ALERTS

California Passes New Law Raising Minimum Wage for Health Care Workers

NOVEMBER 6, 2023 | DANIEL J. MCQUEEN, MORGAN FORSEY, NORA STILESTEIN, BRETT YOUNG, ALEX RAFUSE

ALERTS

Avoiding Collateral Damage: Lessons of Lehman [Part II]

NOVEMBER 6, 2023 | JUSTIN A. KESSELMAN, MATTHEW R. BENTLEY, LES JACOBOWITZ, ALAN S. DUBIN, BROOKE FODOR, MEGAN (WOODWARD) DAILY, MALIA K. BENISON

ALERTS

How Low Can You Go? Labor Board's Final Joint Employer Rule Sets Exceedingly Low Bar for Assessing Joint Employer Liability

NOVEMBER 1, 2023 | DEREK BARELLA, TREVOR M. JORGENSEN

All Perspectives from Alerts