

A MoFo Privacy Minute Q&A: The FTC's Streamlined Process for Investigations into AI Products and Services

04 Dec 2023

Privacy + Data Security

Client Alert

This is a *MoFo Privacy Minute*, where we will answer the questions our clients are asking us in sixty seconds or less.

Question: My company is developing an AI product. What should I know about the FTC's recently streamlined procedure for AI-related investigations?

Answer: The FTC recently announced that it had approved an omnibus **resolution** authorizing it to use civil investigative demands (CIDs) in non-public investigations involving products and services claiming to use AI or detect content made by AI. CIDs are a form of compulsory process that are enforceable in court and issued to obtain the production of documents, written reports, and testimony from the target of an FTC investigation.

The FTC resolution highlights the agency's focus on regulating the rapidly evolving use of AI and complements efforts **across the federal government** to mitigate the risks of AI. The FTC has repeatedly indicated that it intends to use its investigative and enforcement authority to prevent the use of AI to perpetuate fraud, deception, privacy infringements, and other unfair practices. The resolution makes this easier by allowing a single Commissioner—rather than a majority of sitting Commissioners—to approve a CID request by FTC staff in any investigation covered by the resolution for the next 10 years.

Companies developing AI and offering products or services that involve AI should assess their practices, as well as the claims they make about their offerings, to ensure they align with legal standards. They should also be prepared to explain and defend their practices if a CID comes their way.

Carson Martinez, Associate, contributed to the drafting of this alert.

Visit our **A MoFo Privacy Minute Series** page to view our collection of Q&As. Explore our **Privacy + Data Security** page for additional information from our **Privacy Library** and Resource Centers for **Cybersecurity**, **U.S. State Privacy Laws**, and the **GDPR + European Privacy**.

© 2023 Morrison & Foerster LLP Client Alert www.mofo.com

Contacts

Julie O'Neill

joneill@mofo.com

(202) 887-8764

(617) 648-4731

Marian A. Waldmann Agarwal

mwaldmann@mofo.com

(212) 468-7900

(212) 336-4230

About Morrison Foerster

We are Morrison Foerster — a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, and Fortune 100, technology, and life sciences companies. The Financial Times has named us to its list of most innovative law firms in North America every year that it has published its Innovative Lawyers Reports in the region, and Chambers Asia-Pacific has named us the Japan International Firm of the Year for the sixth year in a row. Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.