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DOJ Deputy Chief Announces “Stiffer Sentences” for AI-Related White-Collar Crime — *AI: The Washington Report*

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1. Department of Justice (DOJ) Deputy Attorney General Lisa Monaco’s March 7, 2024, speech addressed the agency’s current enforcement stance towards AI.
2. In the speech, Monaco reiterated that there are no AI exemptions to the laws on the books, announced that the DOJ will be seeking “stiffer sentences” for AI-augmented crimes, and stated that the agency will consider firms’ ability to manage AI risk in its Evaluation of Corporate Compliance Programs.
3. Monaco’s speech is part of a broader process whereby enforcement agencies have applied existing regulatory authority to novel uses of AI. Given these developments, firms utilizing AI should take special care to ensure that they are in proper compliance with the law.



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technology will be used for both good and ill ends. “All new technologies are a double-edged sword — but AI may be the sharpest blade yet,” asserted Monaco. “It holds great promise to improve our lives — but great peril when criminals use it to supercharge their illegal activities, including corporate crime.” Given the risks posed by the development of AI, Monaco asserted that the DOJ will be “using our tools in new ways to address them.”

Part of the DOJ’s AI enforcement strategy will be using existing tools in new ways because, as **asserted repeatedly** by Federal Trade Commission (FTC) Chair Lina Khan, “there’s no AI exemption to the laws on the books.” In other words, the use of AI does not protect otherwise illegal conduct from condemnation. To illustrate the point, Monaco asserted that fraud “using AI is still fraud. Price fixing using AI is still price fixing. And manipulating markets using AI is still market manipulation.”

Each of the three types of illegal conduct mentioned by Monaco has been of particular interest to regulators concerned with AI.

1. **Fraud:** AI-augmented fraud is a topic that has particularly interested the FTC. Since early 2023, the FTC has regularly posted **business guidance** warning firms that they should neither make **false claims about their AI products and services**, nor commit AI-augmented fraud. To combat the latter category of conduct, the **FTC proposed a rule** in mid-February 2024 that would hold AI companies liable for “deepfake” impersonation scams^[1] conducted using their platforms
2. **Price fixing:** The emergence of AI pricing algorithm services has allowed sellers to access suggested prices for their assets on the basis of relevant variables. One domain in which the use of pricing algorithms has made significant inroads is the property rental market. The FTC and DOJ have **expressed strong opposition** to this development on the basis that competing landlords’ use of a pricing algorithm constitutes a violation of the Sherman Act’s prohibition on price fixing. The agencies’ opposition to the use of pricing algorithms in the property rental market in part stems

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“Stiffer Sentences” for Certain AI-Augmented Crimes Announced by Monaco

In her address, Monaco announced that the DOJ would seek higher penalties for AI-related white-collar crimes committed by individuals and corporations. Monaco argued that since AI poses great risks to the public, and the DOJ has “long used sentencing enhancements to seek increased penalties for criminals whose conduct presents especially serious risks to their victims and to the public at large...**Where AI is deliberately misused to make a white-collar crime significantly more serious, our prosecutors will be seeking stiffer sentences — for individual and corporate defendants alike.**”[2]

It has long been clear that federal enforcement agencies are paying closer attention to AI-related misconduct. However, Monaco’s announcement that the DOJ would be seeking higher penalties for certain AI-augmented crimes is a significant development. It is important to note that the courts have not yet endorsed this enforcement doctrine, and the extent of these “stiffer sentences” has yet to be seen. Regardless, in light of this announcement, corporate officers should take particular care to ensure that their firms are utilizing AI in a manner that complies with applicable regulations.

DOJ Will Consider Ability to Manage AI Risk in Overall Compliance Review

Monaco concluded her remarks on AI by announcing that DOJ prosecutors will now be considering a firm’s ability “to manage AI-related risks as part of its overall compliance efforts.” She justified this development by arguing that as DOJ reviews of “a company’s compliance program” concern “how well the program mitigates the company’s most

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The rapid popularization of powerful commercial generative AI tools in late 2022 produced a regulatory and legislative chasm. Suddenly, lawmakers, regulators, and judges were faced with novel AI uses, some of which posed a threat to consumer safety, financial stability, and even the democratic process. Over the past year-and-a-half, federal lawmakers have not had success in formulating comprehensive AI regulation, and it now appears unlikely that such regulation will be forthcoming in this Congress. Despite this, the use (and abuse) of AI tools will only accelerate.

Into this regulatory chasm, the executive branch and its associated enforcement agencies have stepped in. President Biden issued an **executive order on AI** which enacted sweeping changes across the federal bureaucracy. And, as we have **discussed at length** in this newsletter series, enforcement agencies have sought to utilize their existing authority to reign in novel AI abuses.

Chief among the agencies seeking to become the “sheriffs” of the “AI Wild West” are the FTC and DOJ. Both agencies have attempted to establish themselves as premier AI regulators and have gone to great lengths to apply existing regulatory authority to the domain of AI. Monaco’s March 2024 speech marks another step in the process by which these two agencies have attempted to legitimize themselves as leading AI regulators in the United States.

There are those who have spoken out against the steps taken by the FTC and DOJ to assert their authority over AI, worrying that these enforcement initiatives may be misguided or might stifle innovation. It is also important to note that several of the positions put forth by Monaco in her March 2024 speech, such as the DOJ’s stance on algorithmic price fixing, have not been enforced by the courts.

Regardless, firms should pay careful attention to the strict enforcement stance taken by the DOJ regarding AI and ensure that they remain in compliance with the law. We will

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