Brown in IPWatchdog: EU Agreement on the Text of a New AI Act

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PRACTICES AI and Deep Learning, Intellectual Property

Haynes Boone Partner James Brown authored an article for *IPWatchdog* on on the state of the European Union's legislative process towards the AI Act.

Read an excerpt below:

“In certain organizations, a sensible step may be to establish an internal role of ‘AI regulatory officer’ to lead the process of ensuring that all the business operates in a manner which ensures compliance with what will likely be contained in the AI Act in due course.”

On December 8, 2023, provisional agreement was reached between the European Union (EU) Parliament and the EU Council on the basic content of the new AI Regulation (the “AI Act”) to be implemented as legislation in the EU. The text is still not publicly available as it is subject to certain further refinement over the coming weeks. However, there is information available in the public domain (including press releases issued by the European Union) as to the likely format of the AI Act. Additional background on the legislative process towards the AI Act is available here.

Prohibited uses of AI
In our earlier article, we had detailed that certain high-risk uses of AI were to be simply not permitted within the EU and this approach has been maintained by all accounts in the proposed AI Act. It is reported that banned applications of AI will include:

- using facial recognition systems (otherwise known as “remote biometric identifications systems”) in publicly accessible spaces for law enforcement purposes although there will be some exceptions;
- using AI to influence and overcome the free-will of individuals – or “cognitive behavioural manipulation”;
- using AI in the workplace or education settings to establish the type of emotions that individuals are experiencing;
- carrying out “social scoring” based on behaviour or characteristics of persons;
- AI that exploits vulnerabilities in people such as their age, social economic circumstances or disabilities;
- biometric categorising around sensitive characteristics such as political views, sexual orientation or philosophical beliefs; and
- some types of predictive policing.

Untargeted scraping of facial images from the internet or CCTV for the purposes of producing facial recognition systems is also stated to be prohibited. However, while facial recognition systems are generally to be prohibited, there are likely to be certain exceptions relating to law enforcement in public spaces provided there has been judicial authorisation of its use and it is for the purposes of certain specific and very serious crimes. It is also likely to be permissible to use it for the purposes of preventing certain matters, such as imminent terrorist threat or investigating serious crimes.

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To read the full article in *IPWatchdog*, click here.

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