



**The Journal of Robotics,
Artificial Intelligence & Law**

Editor's Note: Landmark
Victoria Prussen Spears

Landmark Law on Artificial Intelligence Is Approved by the European Parliament
Charlotte E. Walker-Osborn, Christiane Stuetzle, Lokke Moerel,
Marijn Storm, and Stephan Kreß

Generative AI Is Staying Top of Mind
Daniel Ilan, Marcela Robledo, and Lindsay Harris

Will Indemnification Commitments Address Market Demands in AI?
Leila Purqurian, Barath R. Chari, and Scott A. McKinney

Will AI Destroy the DMCA Copyright Compromise?
William S. Morriss

Drafting AI Clauses: Five Tips
Roch Glowacki

Considerations for Employers Using Artificial Intelligence
Amanda McCloskey

U.S. Department of Justice Puts AI in the Hot Seat
William J. Stellmach, Laura E. Jehl, Andrew English, Sean Sandoloski,
Reginald Stewart, and Nicholas Chanin

California's SB-1047: Understanding the Safe and Secure Innovation for Frontier
Artificial Intelligence Systems Act
Danny Tobey, Ashley Carr, Karley Buckley, and Kyle Kloeppel

- 255 Editor’s Note: Landmark**
Victoria Prussen Spears
- 259 Landmark Law on Artificial Intelligence Is Approved by the European Parliament**
Charlotte E. Walker-Osborn, Christiane Stuetzle, Lokke Moerel, Marijn Storm, and Stephan Kreß
- 275 Generative AI Is Staying Top of Mind**
Daniel Ilan, Marcela Robledo, and Lindsay Harris
- 285 Will Indemnification Commitments Address Market Demands in AI?**
Leila Purqurian, Barath R. Chari, and Scott A. McKinney
- 289 Will AI Destroy the DMCA Copyright Compromise?**
William S. Morriss
- 293 Drafting AI Clauses: Five Tips**
Roch Glowacki
- 301 Considerations for Employers Using Artificial Intelligence**
Amanda McCloskey
- 305 U.S. Department of Justice Puts AI in the Hot Seat**
William J. Stellmach, Laura E. Jehl, Andrew English, Sean Sandoloski, Reginald Stewart, and Nicholas Chanin
- 309 California’s SB-1047: Understanding the Safe and Secure Innovation for Frontier Artificial Intelligence Systems Act**
Danny Tobey, Ashley Carr, Karley Buckley, and Kyle Kloepfel

EDITOR-IN-CHIEF

Steven A. Meyerowitz

President, Meyerowitz Communications Inc.

EDITOR

Victoria Prussen Spears

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Melody Drummond Hansen

Partner, Baker & Hostetler LLP

Jennifer A. Johnson

Partner, Covington & Burling LLP

Paul B. Keller

Partner, Allen & Overy LLP

Garry G. Mathiason

Shareholder, Littler Mendelson P.C.

Elaine D. Solomon

Partner, Blank Rome LLP

Linda J. Thayer

Partner, Finnegan, Henderson, Farabow, Garrett & Dunner LLP

Edward J. Walters

Chief Strategy Officer, vLex

John Frank Weaver

Director, McLane Middleton, Professional Association

THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW (ISSN 2575-5633 (print) /ISSN 2575-5617 (online) at \$495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2024 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at support@fastcase.com.

Publishing Staff

Publisher: Leanne Battle

Production Editor: Sharon D. Ray

Cover Art Design: Juan Bustamante

Cite this publication as:

The Journal of Robotics, Artificial Intelligence & Law (Fastcase)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2024 Full Court Press, an imprint of Fastcase, Inc.

All Rights Reserved.

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, scientists, engineers, and anyone interested in the law governing artificial intelligence and robotics. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the Editorial Content appearing in these volumes or reprint permission, please contact:

Leanne Battle, Publisher, Full Court Press at leanne.battle@vlex.com or at 202.999.4777

For questions or Sales and Customer Service:

Customer Service
Available 8 a.m.–8 p.m. Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

ISSN 2575-5633 (print)
ISSN 2575-5617 (online)

U.S. Department of Justice Puts AI in the Hot Seat

William J. Stellmach, Laura E. Jehl, Andrew English,
Sean Sandoloski, Reginald Stewart, and Nicholas Chanin*

In this article, the authors explain that the U.S. Department of Justice may be on the verge of enforcement activity with respect to artificial intelligence.

Deputy Attorney General Lisa Monaco recently delivered remarks at the University of Oxford on artificial intelligence (AI).¹ The Deputy Attorney General's speech, delivered as part of the Oxford Martin AI Governance Initiative, was equal parts discussion of the perils of AI and distillation of the Biden administration's desire to achieve a global consensus on "trustworthy" AI. Monaco promised the robust punishment of crimes aided by AI and described the foundation of an international alliance on combating AI-based cybercrimes. Given the technology-resources deficit often faced by prosecutors, however, only time will tell whether the Deputy Attorney General's remarks are a precursor of enforcement activity to come or remarks on a trendy topic.

DOJ's Enforcement Strategy for AI

According to Monaco, the Department of Justice (DOJ) is "laser focused" on AI as "the most transformative technology we've confronted yet," and it is pursuing multiple enforcement strategies to address the risks presented by AI.

Monaco noted a number of ways that this emerging technology can be employed by wrongdoers. She stated, for instance, that AI can be used to create harmful content; to amplify existing discriminatory practices; and to speed the spread of disinformation, particularly by foreign adversaries and hostile nation-states during elections. Despite the nascent technology at play, however, she also recognized that many of these misdeeds are already themselves crimes: "[p]rice fixing using AI is still price fixing" and "identity theft using AI is still identity theft."

Deputy Attorney General Monaco also emphasized the ways that the DOJ is working to ensure that advanced American technology is not employed against America. To “neutralize these adversaries” who seek to “siphon off America’s most advanced technology and use it against us,” Monaco has directed the Disruptive Technology Strike Force—a joint undertaking with the Department of Commerce focused on protecting critical technological assets—to prioritize AI enforcement. This means that the Strike Force, which “enforces export control laws to strike back against adversaries” that attempt to steal American technologies, will be particularly vigilant about AI’s misuse by foreign actors. Finally, Monaco also explained that the DOJ may crack down on AI’s use by criminals by pursuing stiffer sentences: “Going forward,” she declared, “where Department of Justice prosecutors can seek stiffer sentences for offenses made significantly more dangerous by the misuse of AI—they will.”

From our perspective, this could manifest itself in more aggressive charging decisions by prosecutors or a stricter application of any relevant enhancements in the U.S. Sentencing Guidelines. Monaco pointed to sentencing enhancements for the use of firearms by criminals as an analogue: “The U.S. criminal justice system has long applied increased penalties to crimes committed with a firearm. Guns enhance danger, so when they’re used to commit crimes, sentences are more severe. Like a firearm, AI can also enhance the danger of a crime.”

Leveraging the Benefits of AI

In addition to discussing the risks that AI presents—and the ways the DOJ is attempting to mitigate those risks—Deputy Attorney General Monaco recognized that AI presents tremendous opportunity for the DOJ. Monaco’s remarks described the several ways in which the DOJ has used this nascent technology to improve its law enforcement efforts. For example, the DOJ has leveraged AI to classify and source illegal drugs, including opioids, to triage the over one million tips submitted annually to the FBI, and to synthesize large volumes of evidence in sprawling cases.

Moreover, and consistent with President Biden’s October 2023 Executive Order on Safe, Secure, and Trustworthy AI,² the DOJ is undertaking a number of initiatives meant to “anticipate the

impact of AI on our criminal justice system, on competition, and on our national security.” The DOJ is bringing together both law enforcement and civil rights staff to participate on an “Emerging Technology Board” that will provide guidance to DOJ leadership (including the Attorney General and Deputy Attorney General) on how the DOJ can responsibly and ethically leverage these tools. The DOJ has also appointed its first Chief AI Officer, Jonathan Mayer, to help the DOJ focus on ways to leverage AI for enforcement.³

The DOJ is not going it alone. Deputy Attorney General Monaco explained that the DOJ is working to develop and “internationalize responsible codes of conduct for AI Systems” through the Hiroshima AI Process, a working group launched by the G7 countries meant to promote safe, secure, and trustworthy AI. Furthermore, the DOJ is launching an initiative called “Justice AI,” by which it hopes to bring together “individuals from across civil society, academia, science, and industry,” as well as the DOJ’s foreign counterparts, to better understand the impact of AI on law enforcement.

Conclusion

It is unclear to us whether these remarks will represent a shift in the DOJ’s enforcement priorities, charging strategies, or sentencing practices. What is clear, however, is that the DOJ does not plan on being caught flat-footed in the face of technological change.

Notes

* The authors, attorneys with Willkie Farr & Gallagher LLP, may be contacted at wstellmach@willkie.com, ljehl@willkie.com, aenglish@willkie.com, ssandoloski@willkie.com, rstewart@willkie.com, and nchanin@willkie.com, respectively.

1. “Deputy Attorney General Lisa O. Monaco Delivers Remarks at the University of Oxford on the Promise and Peril of AI,” Department of Justice (Feb. 14, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-university-oxford-promise-and>.

2. “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>.

3. “Attorney General Merrick B. Garland Designates Jonathan Mayer to Serve as the Justice Department’s First Chief Science and Technology Advi-

sor and Chief AI Officer,” Department of Justice (Feb. 22, 2024), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-designates-jonathan-mayer-serve-justice-departments-first>.