



December 11, 2023

European Union Passes Artificial Intelligence Act

On December 8, 2023, the European Union ("EU") passed a comprehensive, EU-wide Artificial Intelligence law, called the "AI Act." A copy of the AI Act can be found [Here](#).

We reported in October on the Biden Administration issuance of an Executive Order to develop a regulatory framework for the Artificial Intelligence ("AI") industry (available, with other resources, at [Kurtin PLLC Information Technologies & Internet](#)). With the AI Act, the EU has now moved ahead of the U.S. in development of an AI legal/regulatory regime.

The AI Act categorizes different AI functionalities by potential risk level to users, as known or appreciated now (recognizing that as AI develops, new issues in public safety may become apparent): Unacceptable Risk, High Risk, Generative AI, and Limited Risk.

Unacceptable Risk AI systems are considered a threat to people by the AI Act and will be banned. They include:

- Biometric categorization systems that use sensitive personal characteristics such as race, religion, sexual orientation, political

or philosophical beliefs;

- Untargeted scraping of facial images from the Internet or Closed Circuit TV systems to create facial recognition databases;
- Emotional recognition in the workplace and educational institutions;
- Social scoring based on social behavior or personal characteristics;
- AI systems that manipulate human behavior to circumvent free will, for example, voice-activated toys that encourage dangerous behavior in children.

There may be narrow, court-approved, case-by-case exceptions for law enforcement purposes, such as targeted searches to prevent child trafficking, sexual exploitation and terrorism.

High Risk AI categories are those that may negatively affect safety or fundamental rights. They are divided by the AI Act into two categories:

(1) AI systems that are used in products falling under EU product safety legislation, such as toys, aviation, banking, insurance, cars and medical devices; and

(2) AI systems falling into any of 8 specific areas, that will require a registration into an EU database:

- Biometric identification and categorization of natural persons;
- Management and operation of critical infrastructure;
- Education and vocational training;
- Employment, worker management and access to self-employment;
- Access to and enjoyment of essential private services and public services and benefits;
- Law Enforcement;
- Migration, asylum and border control management; and

- Assistance in legal interpretation and application of law.

Election and voting systems are also included in the High Risk categorization. All High Risk AI systems will be assessed for public safety before going on the market and on a continuing basis thereafter.

Generative AI, like ChatGPT, will be required to comply with transparency requirements:

- Disclosing that the content was generated by AI;
- Designing the model to prevent it from generating illegal content; and
- Publishing summaries of copyrighted data used for training and compliance with EU copyright law.

Limited Risk AI categories will be required to comply with minimal transparency requirements to allow users to make informed decisions about initially using it and continuing to use it, including the knowledge that they are interacting with AI. This will include Generative AI systems that generate or manipulate image, video or audio content, such as deepfakes.

Sanctions and Entry into Force: Non-compliance with the AI Act can lead to fines ranging up to 35 million Euros to 7% of global turnover, depending on the gravity of the infringement and size of the company involved. The AI Act will enter into force within months after adoption by the EU Parliament and Council.

For additional information, please contact us at info@kurtinlaw.com.

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