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DECONSTRUCTING: ARTIFICIAL INTELLIGENCE REGULATION

IPR RESEARCH BRIEF

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ABOUT **DECONSTRUCTING**

Deconstructing is an IPR blog series devoted to building a greater understanding of theoretical and practical terms and concepts that may be commonly used but not widely understood in the communication industry.

ABSTRACT:

Artificial Intelligence (AI) has been a disruptive force within the communication industry. Regulations of this new technology have yet to keep pace with the technological development of generative AI. However, within the United States, the President, Congress, federal agencies, state legislatures, and municipal governments have attempted to provide a framework to regulate AI. These regulations attempt to strike a balance between allowing the technology to grow and guarding against issues of disinformation, discrimination, and privacy violations. This article examines the current trends in U.S. AI regulation pointing out the legal and regulatory philosophies that guide early attempts to manage generative AI platforms. The article concludes with suggestions for PR practitioners to navigate the evolving parameters of AI regulation.

ARTIFICIAL INTELLIGENCE: THE COMMUNICATION ISSUE OF THE 2020s

The power of generative artificial intelligence has sent both awe and fear for those with knowledge-based careers, such as public relations. Looking at the trade presses and seminars in the field, the issue of how do we use artificial intelligence (AI), how does AI help us with communication strategy, and how will AI potentially make public relations practitioners obsolete, are common questions. Generative AI's disruption to communication is analogous to the creation of the internet. When the internet was put in public domain for use in 1993, there was trepidation by some organizations to become part of the online revolution. The beginnings of online growth saw some organizations rapidly adopt the new technology, while others were more cautious. By the late 1990s the proliferation of the internet led to the dot com bubble and the eventual crash of those companies in the early 2000s. From that event, regulation of the internet proliferated in the 2000s, and led to the current status we operate in today.

The internet's evolution is illustrative of how AI regulation is likely to develop. The technology is rapidly evolving and there is uncertainty in how it will be implemented. Managers and communicators share a mutual interest and skepticism of the real benefit of AI. This is also accelerated by the democratization of AI tools. Utilizing machine learning and generative AI does not necessarily require custom software. And barriers to AI use, such as hardware, software, machine learning models, data, and expertise data scientists, are more available with costs trending downward for organizations. That means that AI as a tool is gaining more traction in a variety of work settings, large and small.

This situation presents a difficult position for lawmakers and industry organizations who are seeking to regulate generative AI in this early phase. Too much regulation can stifle the growth of an important new technology. No regulations would potentially facilitate a

free-for-all development of generative AI that can result in unintended adverse impacts on user privacy, increase of discrimination, and the loss of intellectual property. This article examines existing and proposed U.S. laws and regulations on AI and provides suggestions for how professional communicators practicing in the U.S. can navigate this fast-paced and evolving technology.

EXECUTIVE REGULATION BY THE **WHITE HOUSE**

In the United States, there has been an acknowledgement of the need for AI regulation as far back as 2016 when the Obama administration published a report “[Preparing for the Future of Artificial Intelligence](#),” which ranged in discussion from autonomous vehicles to weapons systems to workplace discrimination (White House, 2016). The report foretold of some current concerns within AI, namely job replacement and equitable decision making made by AI technology. By 2019, President Trump issued the [Executive Order on Maintaining American Leadership in Artificial Intelligence](#), which prompted the White House Office of Science and Technology Policy to issue guidance to federal agencies in their regulation of AI (White House, 2019). Essentially the administration advocated for a limited regulatory approach to AI because the concern was aggressive regulation would have the net effect of delaying U.S. AI growth in favor of non-U.S. AI development.

By 2022 the change in technology in AI, and the introduction and widespread use of platforms like ChatGPT, created new business and political concerns. In June 2022 the Biden administration issued a statement created [The Blueprint for an AI Bill of Rights](#). In the Blueprint, the White House issued a two prong test to determine when the AI Bill of Rights applied, stating that AI technology should be regulated when “(1) automated systems that

(2) have the potential to meaningfully impact the American public’s rights, opportunities, or access to critical resources or services.” (White House, 2022). This broad standard applies potentially to almost any AI platform. Biden’s AI Bill of Rights enumerates five areas of rights:

- 1. Safe and effective systems**
- 2. Algorithmic discrimination protections**
- 3. Data privacy**
- 4. Notice and explanations**
- 5. Human alternatives, consideration, and feedback**

Of these rights the “safe and effective systems” and “human alternatives” are the most interesting because they attempt to define processes by which AI regulations are created and regulated. According to the Biden administration, the development of AI should be done with the idea of adverse consequences in mind. In effect, what the AI Bill of Rights attempts to harness is the potential harm AI could cause humans. This ranges from decision making to discrimination to data privacy. The AI Bill of Rights also advocates for an opt-out for individuals from AI decision making in order to have human interaction and consideration in automated AI processes (White House, 2022).



CONGRESSIONAL LEGISLATION **REGULATING AI**

Prior administrations' reports and the Blueprint for an AI Bill of Rights, represent a first step in regulating AI on a national level. However, laws governing AI likely will not come from the White House. Just as with regulations of the internet and social media, Congress will likely take the first steps in regulating AI. This is not an easy task, especially with a highly partisan Congress that is trepidatious about implementing regulations that will ultimately stifle AI growth.

Senate Majority Leader Senator Chuck Schumer (D-NY) has struggled to find an entry point for legislation on AI given the complexity of AI and the pace in which it has developed. While Schumer and other members of Congress are working on this framework of AI legislation, Schumer has indicated there are four “guardrails” for AI regulations: “who, where, how and protect” (Senate Democratic Leadership, 2023) Essentially these guardrails are meant to increase transparency on who develops the AI algorithms, who is targeted by AI communications, transparency in data sources, and how AI generates responses to queries. All of this is to be taken into consideration along with pre-testing and disclosure of impacts by AI developers. This is meant to both support the responsible development of AI without jeopardizing the United States' competitive positioning in AI creation, especially in light of AI technology created in China.

REGULATION BY U.S. FEDERAL AGENCIES

For communicators, federal agencies, specifically those that regulate consumer information and advertising, will be an importance source of AI regulation. To date, however, most of the regulatory discussions surrounding AI has been more fact-funding and philosophical than creating new law. The Federal Trade Commission (FTC) is one agency that is likely to develop some of the first AI specific regulations that directly impact communication. One

of their first initiatives was to address claims about AI itself, specifically the communication surrounding the promotion of AI technology. In February 2023 the FTC created a [blog](#) that provided guidance on promoting AI technology warning companies not to over-promise what their AI platforms could do and warning companies to make proper disclosures about AI products. The FTC acknowledged that a company selling AI products cannot claim ignorance of the product itself by using a “black box” argument that you cannot understand the negative impacts of AI because AI is too complex or too evolving to fully understand (Federal Trade Commission, 2023a).

The FTC is specifically concerned with how AI can contribute to fake news and deception, specifically fake consumer reviews, websites, posts, profiles, and phishing emails. Warning companies of the effect like that of film *Jurassic Park*, the FTC states that companies should ask themselves if they “should” build a type of AI rather than asking is they “could” build it (Federal Trade Commission, 2023b). The FTC also advises that users of AI are responsible for discovering potential issues with the technology, and that it should not be the consumer’s responsibility to discover problems within the system, specifically issues that may result in fraud (Federal Trade Commission, 2023b). In August 2022 the FTC issued an advanced notice of proposed rulemaking (ANPR) that largely addressed commercial surveillance of consumers, but also addressed issues of automated decision making that could result in discrimination and consumer harm (Federal Trade Commission, 2022).

The National Institute of Standards and Technology (NIST), an agency within the U.S. Department of Commerce, also created the [Artificial Intelligence Risk Management Framework 1.0 \(AI RMF 1.0\)](#). (National Institute of Standards and Technology, 2023). This framework is a voluntary guide on how to manage AI in the future, but it may be a good illustration of how federal agencies philosophically view AI. Underpinning the AI RMF 1.0 is the notion that AI is “socio-technical,” meaning AI’s delivery of content and other generative functions are a reflection of human-made content, including algorithms (National Institute

of Standards and Technology, 2023, p. 9). Inherent in this humanness of AI is the potential for new technology to perpetuate and even exacerbate human made inequities in society. According to the NIST this can be combatted by AI regulations that value “human centricity, social responsibility, and sustainability” (National Institute of Standards and Technology, 2023, p. 1).

Other agencies are addressing niche issues within AI, such as intellectual property. The U.S. Copyright Office (USCO) announced a series of workshops on AI and copyright focusing on types of copyrightable works including literary, visual works, audio, and music and sound recordings (U.S. Copyright Office, 2023). These listening workshops presents stakeholders an opportunity to speak on the issues involving copyright and AI.

On March 16, 2023 in the federal register the USCO published [copyright guidance](#) for registering works created by generative AI (Copyright Registration Guidance, 2023). In that guidance the USCO stated that AI generated work will not be protected by copyright unless there is a high degree human involvement of the creation of the content. This involvements goes beyond a prompt in a generative platform, and requires the human involvement to produce content in a “sufficiently creative way” (Copyright Registration Guidance, 2023) This, of course, depends on the content itself, so the analysis of protection is case-by-case. The USCO also notes that only the human components of the content will be protected, and AI generative content that is greater than de minimis, i.e. small amounts, will not.



AI REGULATION BY STATE AND LOCAL GOVERNMENTS

While most laws affecting communication come from federal statutes or agency regulations, state laws have increasingly become important to fully understand the trends in communication law. Frequently, states create laws surrounding communication issues because federal legislation is a protracted and highly partisan process. As with the federal law, states are playing catch up to the pace of the technology. California, New York, Virginia, Maryland, Colorado, and Montana all have some state laws that address AI. California is a leader state AI laws, passing the California 2019 Bolstering Online Transparency Act (BOTS Act), which banned bots from making suggestions for purchases or elections without disclosure, and the California Consumer Privacy Act of 2018 (CCPA), which allows consumer opt-outs from automated decision making.

In 2023 California Assembly member Rebecca Bauer-Kahan (D) introduced a bill in the California legislature to specifically address algorithmic discrimination. Among other things, the bill mandates employers using AI tools to provide an annual assessment to the state Civil Rights Department and also provide disclosures to users anytime AI tools were used to make “consequential decision[s]” (Automated Decision Tools, 2023). Other state legislatures are following other means of AI regulation, frequently in a bipartisan way. In Texas there is a bill to create a seven-person AI advisory council that would advise on legislation for automated chatbots and decision making (Dupree, 2023). Currently, most states do not have any type of statewide AI law, but that is likely going to change as states address issues of privacy and discrimination.

Even municipal governments have entered the realm of AI regulation. In New York City, a municipal law that requires bias audits for AI is set to go in effect in July 2023. New York City Department of Consumer and Worker Protection (DCWP) enforces this law, which was first passed in 2021 but had its final rules approved in April 2023. Under this law, employers must provide an annual bias audit, post those results on their organizational website, and notify applicants that AI is used in the selection process. Fines will be \$500 to \$1500 per day per violation (Automated Employment Decision Tools Act, 2021).

WHAT DOES THIS MEAN FOR U.S. BASED PR PRACTITIONERS?

Giving public relations practitioners precise measures for navigating their communication work is difficult given the state of flux of AI regulation. At this stage the legal system is porting out where the problem points are in AI, with privacy, discrimination, and disinformation being major areas of concern. Going forward, PR practitioners should be aware of three major issues.

1. EXPECT REGULATORY CHANGE FROM MULTIPLE LEVELS OF GOVERNMENT.

U.S. law is in a state of flux, and that means that as the technology of AI evolves so will the law. Federal agency law is likely to address the particular issues of AI in communication, so practitioners should pay close attention to FTC regulations in the area. That agency is concerned over many of the topical issues in communication, namely disinformation. However, U.S.-based practitioners increasingly communicate in a global marketplace, which may have laws that differ to that in the U.S. For instance, the European Union GDPR regulates data privacy, which has major impact for the construction of AI platforms. Understanding the evolving landscape of AI regulation means looking at U.S. federal, state, and local law, but is also requires a global perspective.

2. COMBATting DISCRIMINATION AND FAKE NEWS ARE MAJOR DRIVERS OF REGULATION.

AI regulation has increasingly focused on discrimination and false information. At the basis of artificial intelligence is human knowledge. That knowledge has been developed over thousands of years and contains inaccuracies, biases, and other disinformation that can be replicated by AI. The bottom line is AI is only as good as the data it uses to generate content, so it is important for professional communicators to be wary of the accuracy of any exclusively generated AI content. As a business, public relations firms and in-house functions have a unique opportunity to discuss bias and accuracy of information with clients and employers, because so much of the law is rooted in transparency. PR professionals have worked with issues of organizational transparency since the dawn of corporate PR, so regulations, like that in New York City, that mandates disclosure of algorithm use and potential bias lends itself well to the transparent practices of communication.

3. PR PROFESSIONALS NEED TO DEVELOP AN ORGANIZATIONAL OR INDUSTRY STANDARD TO DEAL WITH EVOLVING AI.

AI technology will evolve faster than the laws that regulate it. Because of that, public relations professionals will need to establish professional standards and norms for AI use. Those conversations need to happen now, and need to continue to happen as AI's place in the field becomes more solidified. This conversation should include frank discussions around ethics, organizational reputation, transparency, and business goals. Ethical guides for industry provide a framework for difficult discussions about implementing AI. However, these discussions must consider both the deliberate and unintended consequences of AI use. These conversations may also include industry standards in niche subfields. For example, AI guidelines have already been established in some sectors, such as in engineering and healthcare. If a professional is practicing in one of these areas, these standards can serve as a guidepost for communications as well.

Keeping up with technological change presents a challenge for all professionals in the communication industry. Perhaps ChatGPT provides the best advice when trying to keep apprised of AI regulations. When queried, ChatGPT said:

It's important to note that the regulatory landscape for AI is rapidly evolving, and new regulations or guidelines may be introduced to address the unique challenges and risks associated with generative AI systems. It's advisable to stay updated on the latest developments and consult legal experts or regulatory authorities for the most accurate and current information (Open AI, 2023).

Of course, ChatGPT also noted its knowledge on the subject is only as current as September 2021. PR practitioners beware.

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