Artificial Intelligence

Comprehensive Counsel at the Cutting-Edge

The rapid development of artificial intelligence (AI), generative AI (GenAI), machine learning and related technologies is driving companies across all sectors to weigh the benefits promised by these tools against the reality of significant legal and regulatory risks. As AI adoption accelerates, Katten's cross-practice team is at the cutting edge, providing timely and practical counsel to companies across all industries seeking to deploy these evolving technologies. Our team represents a diverse clientele spanning various industries and practice areas, including: intellectual property; data privacy and security; advertising, marketing and promotions; health care; labor and employment; securities enforcement; financial markets; and banking and consumer financial services.

AI Policies and Compliance Programs

Katten's cross-practice AI team works closely with clients' legal and business stakeholders to create bespoke AI and generative AI policies and compliance programs. Drawing upon the latest legal and regulatory developments as well as leading voluntary compliance frameworks (e.g., National Institute of Standards and Technology's (NIST) Artificial Intelligence Risk Management Framework), we help clients identify relevant stakeholders for AI committees, create AI usage inventories, harmonize existing company policies with AI policies, set up AI compliance and monitoring programs, and train employees regarding AI policies and procedures.

Intellectual Property Protection and Disputes

Complex IP issues abound regarding how AI models are trained and used. Katten's deep bench of IP attorneys can help clients, ranging from AI developers and users to content creators and owners, with IP issues, including:

- Ownership and licensing of training data
- Ownership, registration, enforcement and licensing of IP rights in AI-generated content
- Licensing and use of AI tools, including liability, indemnification and related issues

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- IP infringement litigation relating to AI technologies, including copyright, patent, trademark, trade secret, right of publicity and breach of license.

- Complex copyright issues pertaining to infringement, fair use and derivative works

- Rights of publicity and anti-impersonation

- Trade secrets

Katten attorneys are closely following as courts and regulators continue to address copyright and other IP issues arising from the use of AI tools.

Intellectual Property Transactions

For clients considering a transaction, whether it is a merger or acquisition, joint venture with an AI provider or the licensing of an AI tool, there must be heightened scrutiny on IP issues. Whether we are working with content owners with the means for training or fine-tuning an AI tool or those considering a relationship with an AI technology provider, Katten attorneys help clients address issues involving:

- Due diligence, including issues of IP ownership

- Open source licenses, terms of use and other contractual frameworks

- Representations and warranties, and indemnities specific to AI assets

- Post-closing issues, including dynamic retraining considerations

As the use of AI to conduct due diligence becomes more prevalent, Katten deal teams have begun carefully deploying this technology where it offers efficiencies and cost savings to our clients.

Data Privacy and Security

As AI models train on data scraped from the internet and companies deploy new technologies, ranging from session replay and chatbots to tracking pixels, Katten attorneys are positioned to advise clients on related privacy and data security concerns, including:

- Confidentiality and privacy protections of training data

- Disclosure, consent and data retention requirements

- Data accuracy and bias considerations

- Data security

- Data governance

- US and global privacy regulations

- Litigation risks, including biometric data and other class action challenges
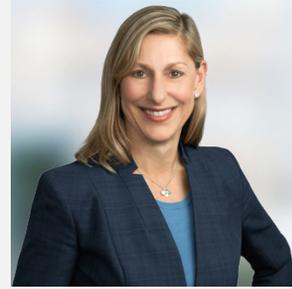
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Katten continues to closely monitor regulatory and enforcement trends, including new laws such as the EU AI Act, state privacy and AI-specific laws, as well as government actions aimed at mitigating privacy risks of these technologies.

Advertising and Marketing

From deploying AI to write ad copy or develop creative assets to the use of so-called deep fakes in testimonials, AI significantly impacts how companies interact with consumers. As customer-facing companies navigate a heightened regulatory focus in this area, including concerns with inaccuracy, bias and discrimination, Katten is equipped to address these and other issues, including:

- False and misleading advertising claims relating to AI-powered products and services, including investigations and disputes before the National Advertising Division (NAD), Federal Trade Commission (FTC) and courts
- AI-generated marketing collateral
- Licensing of third-party AI tools for marketing purposes
- Consumer reviews, testimonials and endorsements
- Disclosures and disclaimers for chatbots and other AI-related products and services
- Substantiation for AI-related claims

Health Care

Now more than ever, health care organizations are embracing AI as a valuable tool for improving patient outcomes and creating efficiencies. Health care providers, payors and life sciences companies are deploying AI in numerous contexts, including the diagnosis of patients, treatment recommendations, patient engagement, reimbursement, clinical research, data analytics and administrative activities. Katten's multidisciplinary team is poised to help clients navigate the business opportunities and legal challenges posed by AI, including matters related to:

- Fraud and abuse, including anti-referral concerns and False Claims Act risks
- Licensure, permits and registration
- Corporate governance
- Ethical considerations
- Corporate practice of medicine prohibitions
- Privacy and security of protected health information
- Payor reimbursement
- Contractual exposure

- Legislative initiatives

- State and federal regulatory compliance

- Enforcement

Labor and Employment

Increasingly, employers are turning to AI and other automated systems to assist in the human resources process, including hiring, performance monitoring and workplace training. While these tools offer significant potential to increase efficiencies and maximize worker performance, employers must stay ahead of a growing list of standards and regulations by federal, state and local authorities. Katten's Employment Counseling and Litigation attorneys advise employers on emerging issues posed by AI, including:

- AI-related employment discrimination

- Use of AI during the hiring process

- Consent, disclosure and accommodation requirements

- Compliance with EEOC technical guidance on the use of AI tools

- AI bias audits

- Employee displacement concerns

- Workplace training needs

- Evaluation of existing policies, procedures and handbooks to address AI concerns

Securities Enforcement

The Securities and Exchange Commission (SEC) has proposed rules that would impose certain requirements on broker-dealers and investment advisers using predictive data analytics and other technologies. While we await final AI rules for that segment of the market, all companies — including publicly held ones and others who can fall under the jurisdiction of the SEC — must take care now when making disclosures regarding their use of AI, as well as AI opportunities and risks. Katten attorneys support clients in navigating AI-related securities and enforcement risks, including those involving:

- Material disclosures

- Conflicts of interest

- Bias in investment decisions

- Financial fraud

- Cybersecurity and privacy

Katten can assist clients in connection with government rulemaking activity; enforcement investigations, proceedings and litigation; exams

and other interactions with the SEC and other regulators and law enforcement agencies involving AI.

Financial Markets

From trading and risk management to data processing and compliance, the potential applications of AI to financial services companies continue to increase. Katten helps clients across the sector navigate the benefits, risks and challenges presented by AI technology, including:

- Cyber and other security risks
- Accountability concerns
- Market stability
- Regulatory concerns and inquiries

We have significant experience in the rapidly changing crypto market and are supporting clients seeking guidance regarding policies and procedures, risks to customers and potential dangers to cybersecurity systems posed by AI systems. As regulators add AI-related risks to their list of enforcement priorities, Katten is poised to help.

Banking and Consumer Financial Services

Banks and consumer finance companies are increasingly deploying AI and machine learning technologies to assist with underwriting, customer service, debt collection, marketing and compliance, among other activities. Meanwhile, the Consumer Financial Protection Bureau (CFPB) and other federal and state agencies are focused intensely on how these new technologies are currently or will be impacting the banking and consumer credit and leasing industries, as well as the financial lives of consumers generally. Katten closely monitors the changing legal and regulatory landscape as it relates to these technologies, engages with state and federal agencies on behalf of its financial clients, and advises them as they seek to integrate emerging technologies in a compliant manner, relating to:

- Chatbots and other banking and consumer finance virtual assistants
- Fair lending, AI redlining and unfair credit rationing
- AI-driven risk-based pricing
- Adverse action notice requirements
- "Black box" underwriting algorithms
- Use of "alternative data" in underwriting

Katten's litigators also represent financial clients in agency enforcement actions and private litigation, including class actions and mass arbitrations, associated with these issues.