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## Ethics Of Artificial Intelligence For Lawyers: That Is The Sound Of Inevitability: Legislatures And Regulators Step In

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# ETHICS OF ARTIFICIAL INTELLIGENCE FOR LAWYERS: THAT IS THE SOUND OF INEVITABILITY: LEGISLATURES AND REGULATORS STEP IN

Cliff McKinney\*

## I. INTRODUCTION

In *The Matrix*, the evil artificial intelligence entity, Agent Smith, corners the human hero, Neo, on the subway tracks.<sup>1</sup> Agent Smith says, “*You hear that Mr. Anderson? . . . That is the sound of inevitability. . . .*” And if there is one thing that is inevitable, it is that regulations will quickly develop around the way that we interact with and utilize artificial intelligence.

No matter how innovative or disruptive artificial intelligence may be, lawmakers and regulators will not allow it to operate unchecked. Congress recently elected not to impose a moratorium on state regulation, and California has charged ahead with regulatory efforts that are likely to influence other states. The European Union has also begun imposing regulations that may also provide insight regarding the direction that states will take as they continue to deal with this issue.

## II. LEGISLATIVE AND REGULATORY FRAMEWORK

### A. Congress Takes a Pass

Congress has not yet decided how, or even if, to regulate artificial intelligence. The original version of H.R. 1 (119th), a/k/a “One Big Beautiful Bill,” passed by the House of Representatives on May 22, 2025, contained a provision titled “Moratorium” in

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1. THE MATRIX (Warner Bros. 1999).

Title IV, Subtitle C.<sup>2</sup> This section would have imposed a ten-year moratorium on any state from “limiting, restricting, or otherwise regulating artificial intelligence models, artificial intelligence systems, or automated decision systems entered into interstate commerce.”<sup>3</sup> The proponents of the moratorium wanted to avoid a patchwork of inconsistent state laws that could complicate advancements in artificial intelligence.<sup>4</sup> Both Democrats and Republicans objected to the moratorium, some arguing that it infringed on the powers of the states reserved under the Tenth Amendment.<sup>5</sup> The Senate struck the moratorium in a 99-1 vote and also rejected a late effort to reduce the time frame to just five years.<sup>6</sup> Each state is now allowed to create its own laws and regulations regarding the use of artificial intelligence, at least until Congress takes action.<sup>7</sup>

Later subsections will provide an overview of the regulatory efforts underway in California and the European Union, the two jurisdictions currently being the most aggressive in regulating artificial intelligence. Many of these laws and regulations are new, with some not yet taking effect as of the time of writing this article.

## B. California Artificial Intelligence Legislation

With Congress recently electing not to preempt state regulation of artificial intelligence, states are in the beginning stages of developing artificial intelligence regulations.<sup>8</sup> States, such as New York and Texas, are also developing laws focusing on privacy abuses and discrimination.<sup>9</sup> California, though, leads

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2. Stephanie J. Dorvil, *House GOP-Backed “One Big, Beautiful Bill” Act Would Block State AI Regulation for 10 Years*, AM. BAR ASS’N (June 2, 2025), [<https://perma.cc/2J6J-2L9X>].

3. *Id.*

4. *Id.*

5. *Id.*

6. Matt Brown & Matt O’Brien, *Senate pulls AI regulatory ban from GOP bill after complaints from states*, PBS (July 1, 2025), [<https://perma.cc/PP2J-BK2U>].

7. *Id.*

8. Steven Eisenstein, *Artificial Intelligence and States’ Role in Protecting Their Citizens*, N.J. LAW., April 2025, at 17.

9. *Id.*

the United States in the regulation of artificial intelligence.<sup>10</sup> California offers a possible glimpse into the future of artificial intelligence regulation.

So far, California's regulations can be grouped into several categories:<sup>11</sup>

Defining Artificial Intelligence: California defined artificial intelligence as: "an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments."<sup>12</sup>

Transparency in Training Data: Artificial intelligence developers must publish the sources used to train their systems, with an exception for some governmental and national security systems.<sup>13</sup>

Consumer Data Privacy: The California Consumer Privacy Act clarifies that artificial intelligence systems fall within the existing scope of personal information regulation, especially when used for profiling or automated decision-making.<sup>14</sup>

Healthcare: California has established rules for the use of artificial intelligence in healthcare settings, targeting both insurance-based utilization review and patient communications. When using artificial intelligence, insurers must consider individualized patient information, not rely solely on generalized datasets, and not replace clinical judgment for that of medical professionals.<sup>15</sup> Healthcare facilities, clinics, and physicians must include prominent disclaimers alerting patients that the content was generated by artificial intelligence and must provide clear instructions for reaching a human provider.<sup>16</sup> However, a licensed medical professional may use artificial intelligence tools to help evaluate test results and diagnoses without disclosing the use.<sup>17</sup>

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10. Jena Martin et. al., *Balancing Interests: AI, Business & Human Rights, and the Legal Landscape in an Era of Disruption*, 127 W. VA. L. REV. 1, 45 (2024).

11. Jana Slavina Farmer et al., *California Enacts a Series of AI Bills While Controversial AI Safety Bill Is Vetoed. What is Next?*, 2024 WL 4510329.

12. CAL. GOV'T CODE § 11546.45.5 (2025).

13. CAL. CIV. CODE § 3111 (2025).

14. CAL. CIV. CODE § 1798.140.

15. CAL. INS. CODE § 10123.135 (2025).

16. CAL. HEALTH & SAFETY CODE § 1339.75 (2025).

17. CAL. HEALTH & SAFETY CODE § 1339.75.

Education: California is including artificial intelligence in its K-12 education system through artificial intelligence literacy.<sup>18</sup> Schools must teach how artificial intelligence works, its applications, limitations, and ethical implications in the context of mathematics, science, history, media literacy, and social science.<sup>19</sup> California also requires a working group to develop a model policy for the use of artificial intelligence in schools.<sup>20</sup>

Entertainment and Publicity: California prohibits the use of a deceased person's voice or likeness without consent from the rights holders.<sup>21</sup> There are exceptions for uses in news, satire, parody, or biographical works that do not mislead the audience.<sup>22</sup> Living performers cannot be replaced with a digital replica unless the agreement contains a clear and conspicuous description of the intended use and the individual was represented by legal counsel or a labor union.<sup>23</sup>

Misinformation: California requires state agencies to disclose when using artificial intelligence in public communications and evaluate of public safety risks.<sup>24</sup> California also regulates robocalls by requiring disclosure when using a synthetic voice.<sup>25</sup>

Deepfakes: California has enacted several laws targeting the misuse of artificial intelligence to create deepfakes, particularly those involving sexually explicit or deceptive content, to protect individuals from identity theft, emotional harm, and nonconsensual exploitation. It is a crime to intentionally distribute artificial intelligence-generated sexual images that depict an identifiable person engaged in sexual conduct or exposing intimate body parts, if the distributor knows or should know the image would cause serious emotional distress, and it in fact does so.<sup>26</sup> This includes not only altered photographs but also

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18. CAL. EDUC. CODE § 33548 (2025).

19. CAL. EDUC. CODE § 33548.

20. CAL. EDUC. CODE § 33328.5 (2025).

21. CAL. CIV. CODE § 3344.1 (2025).

22. CAL. CIV. CODE § 3344.1.

23. CAL. LAB. CODE § 927 (2025).

24. CAL. GOV'T CODE § 11549.65 (2025).

25. CAL. PUB. UTIL. CODE § 2874 (2025).

26. CAL. PENAL CODE § 647 (2025).

computer-generated or photorealistic representations that could mislead a reasonable viewer into believing the image is authentic.<sup>27</sup> Social media platforms must respond to reports of such “sexually explicit digital identity theft,” provide a reporting mechanism, temporarily block the content while under review, and permanently remove the content if confirmed.<sup>28</sup> California also prohibits the possession of artificial intelligence-generated sexual images that appear to depict minors, even if no real child was involved, with heightened penalties for depictions involving prepubescent children or sadomasochistic content.<sup>29</sup>

Election Integrity: The *Democracy from Deepfake Deception Act of 2024* requires platforms to label or remove materially deceptive content within 72 hours.<sup>30</sup> It is unlawful during the 120 days leading up to an election (and in some cases for 60 days after) to distribute content generated by artificial intelligence in ways likely to mislead voters or erode public confidence.<sup>31</sup> Disclosures are required when candidates use manipulated media themselves.<sup>32</sup> Exceptions exist for satire, parody, and journalism.<sup>33</sup> Political committees must disclose when a political advertisement has been generated or substantially altered using artificial intelligence, excluding minor cosmetic changes.<sup>34</sup>

Artificial intelligence is still an emerging technology, and we are in the initial stages of its regulation. The regulatory trend is expected to continue growing rapidly.<sup>35</sup> New case law will also shape these regulations and the use of artificial intelligence.<sup>36</sup> The California laws discussed above provide a taste, if not a

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27. CAL. PENAL CODE § 647.

28. CAL. BUS. & PROF. CODE § 22671 (2025).

29. CAL. PENAL CODE § 311.11 (2025).

30. CAL. ELEC. CODE § 20519 (2025).

31. CAL. ELEC. CODE § 20012 (2024).

32. CAL. ELEC. CODE § 20012.

33. CAL. ELEC. CODE § 20012.

34. CAL. GOV'T CODE § 84514 (2025).

35. Morris Wilner, *Artificial Intelligence and Its Usage in the Business and Practice of Law*, 50 W. ST. L. REV. 125, 126 (2023).

36. Alicia Solow-Niederman, *Do Cases Generate Bad AI Law?*, 25 COLUM. SCI. & TECH. L. REV. 261, 280 (2024).

rudimentary framework, of where that regulation will probably go in future years.

### C. The European Union Approach

The European Union is aggressively regulating artificial intelligence through Regulation (EU) 2024/1689 (“EU AI Act”), which contains 144 pages in the English version.<sup>37</sup> The EU AI Act is structured to phase in over a three-year period, with the final regulations taking effect on August 2, 2027.<sup>38</sup> The act also applies to artificial intelligence companies outside of the EU if they serve EU citizens.<sup>39</sup>

The EU AI Act and its related regulations categorize artificial intelligence systems into four risk levels: unacceptable, high, limited, and minimal to no risk.<sup>40</sup>

Unacceptable risks are banned outright. Unacceptable risks include subliminal, deceptive, or manipulative techniques; efforts to exploit an individual’s age, disability, or socio-economic status; evaluating individuals based on personality traits or behaviors (with some exceptions for things like credit scoring); and predictive policing based on profiling or personality traits that are not objectively linked to criminal activity.<sup>41</sup>

High-risk systems, such as those used in biometrics, education, employment, credit scoring, migration, and law enforcement, are subject to detailed obligations, including

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37. Davinia Cutajar, *Balancing Efficiency and Privacy: AI’s Impact on Legal Confidentiality and Privilege*, INT’L BAR ASS’N (Nov. 29, 2024), [<https://perma.cc/ZY7X-UK3C>]; see also 2024 O.J. (L 2024/1689).

38. Niamh Kingsley & Olivia Godon, *Navigating the EU AI Act: Key Insights into Regulation (EU) 2024/1689*, DELTA CAPITA, [<https://perma.cc/GB7D-8DNE>] (last visited Dec. 14, 2025).

39. Anne Robert, *Regulation (EU) 2024/1689 on Artificial Intelligence (AI Act), applicable to providers and deployers of non-EU countries*, 99 AVOCATS ASSOCIÉS (Aug. 7, 2024), [<https://perma.cc/8JUT-XQH8>].

40. Dóra Petrányi, *EU Commission issues Guidelines on Prohibited AI Practices – Part I.*, CMS LAW-NOW (Feb. 7, 2025), [<https://perma.cc/22UJ-EC6X>]; see also Alex Mueller, *One Step Forward, Two Steps Back: The United States’ New Direction on Digital Trade*, 26 MINN. J.L. SCI. & TECH. 116, 182 (2025).

41. See Petrányi, *supra* note 40; see also Daniel Schwarcz et. al., *Regulating Robo-Advisors in an Age of Generative Artificial Intelligence*, 82 WASH. & LEE L. REV. 775, 799-800 (2025).

required risk management systems and registration in an EU database.<sup>42</sup>

Limited risk systems, or transparency risk systems, include chatbots and decision-making tools. These require notice to individuals that they are interacting with an artificial intelligence system, an option to request human intervention, and a method to contest decisions made by the artificial intelligence system.<sup>43</sup>

Minimal-risk systems, such as spam filters, grammar checkers, and video games, may require no regulation.<sup>44</sup>

The EU AI Act imposes severe penalties, which can be up to the higher of 7% of a company's total worldwide income or €35,000,000.<sup>45</sup> The EU AI Act also has a commission that is authorized to update the list of high-risk systems if “fundamental rights” are threatened.<sup>46</sup>

The EU's approach to regulating artificial intelligence is obviously quite different from the more piecemeal and limited approach used so far in the United States. States, however, will likely examine the EU AI Act, or at least pieces of it, when deciding how best to regulate artificial intelligence.

### III. ARKANSAS'S EFFORTS SO FAR

#### A. Proposed Administrative Order No. 25

As of this writing, the Arkansas Rules of Professional Conduct do not directly reference “artificial intelligence.”<sup>47</sup> However, on June 5, 2025, the Supreme Court of Arkansas issued *In re Creation of Ark. Sup. Ct. Administrative Order No. 25. Artificial Intelligence*.<sup>48</sup> This *per curiam* order opened a public

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42. See Schwarcz, *supra* note 41, at 801; see also Martin, *supra* note 10, at 45.

43. See Kingsley, *supra* note 38; see also Daniel Leufer & Fanny Hidvegi, *The Pitfalls of the European Union's Risk-Based Approach to Digital Rulemaking*, 71 UCLA L. REV. DISCOURSE 156, 160 (2024).

44. See Petrányi, *supra* note 40.

45. *Id.*

46. See Schwarcz, *supra* note 41, at 801.

47. *Arkansas Rules of Professional Conduct*, ARKANSAS JUDICIARY (June 12, 2025), [<https://perma.cc/5Q3D-6Z44>].

48. *In re Creation of Ark. Sup. Ct. Administrative Order No. 25. Artificial Intelligence*, 2025 Ark. 117, at 1, 2025 Ark. LEXIS 81, at \*1.

comment period, ending August 1, 2025, for a proposed new Administrative Order No. 25.<sup>49</sup>

This order established a subcommittee within the Supreme Court Committee on Automation to examine the implications of artificial intelligence.<sup>50</sup> The order notes that inputting client or court data into artificial intelligence systems could create confidentiality risks since these systems may store the data.<sup>51</sup> It also states that entering confidential or sealed information into such systems could conflict with existing rules of professional conduct.<sup>52</sup>

The proposed order prohibits Administrative Office of the Courts staff, court clerks and their staff, and anyone with access to internal CourtConnect systems from intentionally exposing internal court data to generative artificial intelligence.<sup>53</sup> Limited exceptions exist for research and analysis projects with prior approval from the Supreme Court's Automation Committee.<sup>54</sup> The order also authorizes the Court's Court Information System Division to research artificial intelligence tools that could improve court operations.<sup>55</sup>

Other than court staff, Administrative Order No. 25 does not put restrictions on practicing attorneys. But Administrative Order No. 25 may signal a willingness by the judiciary to impose some restrictions or limitations in the future. Since Arkansas mostly follows the Model Rules of Professional Conduct, attorneys can take guidance from the ABA Opinion and judicial decisions interpreting these rules.

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49. *Id.*, 2025 Ark. LEXIS 81, at \*1.

50. *Id.*, 2025 Ark. LEXIS 81, at \*1.

51. *Id.* at 2., 2025 Ark. LEXIS 81, at \*2.

52. *In re Creation of Ark. Sup. Ct. Administrative Order No. 25. Artificial Intelligence*, 2025 Ark. 117, at 22025 Ark. LEXIS 81, at \*2.

53. *Id.*, 2025 Ark. LEXIS 81, at \*2.

54. *Id.* at 3, 2025 Ark. LEXIS 81, at \*3.

55. *Id.*, 2025 Ark. LEXIS 81, at \*3.

### B. Early Arkansas Legislative Approaches

As of this writing, laws governing artificial intelligence are still rare.<sup>56</sup> A search for the term “artificial intelligence” in Westlaw Edge, using the Arkansas database, revealed only two statutes with a reference. The Frank Broyles Publicity Rights Protection Act of 2016, Ark. Code Ann. § 4-75-1103, references the term three times in the definitions of “likeness,” “photograph,” and “voice.”<sup>57</sup> The Arkansas General Assembly updated definitions in Act 159 of 2025 to include references to artificial intelligence and create the following definitions:

(3) “Likeness” means a reproduction of the image of an individual by any means other than a photograph, including without limitation generation through means of artificial intelligence;

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(5) “Photograph” means a reproduction of the image of an individual that readily identifies the individual, made by:

(A) Photography;

(B) Videotape;

(C) Live transmission;

(D) Image, video, or three-dimensional generation through means of artificial intelligence; or

(E) Other means;

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(7) “Voice” means a sound in a medium that is readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice or a simulation of the voice of the individual, including without limitation a simulation of the voice of the individual that is generated through means of artificial intelligence.<sup>58</sup>

The second statutory reference is in the official commentary to the Uniform Electronic Transactions Act in § 25-32-102, but

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56. HARVARD FACULTY ARTS & SCI. MIGNONE CTR. FOR CAREER SUCCESS, *What Is AI: The Pros and Cons of Artificial Intelligence, and What Its Future Holds*, [<https://perma.cc/HEN5-CZJD>] (last visited Dec. 14, 2025).

57. ARK. CODE ANN. § 4-75-1103 (2016).

58. ARK. CODE ANN. § 4-75-1103.

the term “artificial intelligence” is not in the body of the statute.<sup>59</sup> The commentary to the Uniform Act notes:

While this Act proceeds on the paradigm that an electronic agent is capable of performing only within the technical strictures of its preset programming, it is conceivable that, within the useful life of this Act, electronic agents may be created with the ability to act autonomously, and not just automatically. That is, through developments in artificial intelligence, a computer may be able to “learn through experience, modify the instructions in their own programs, and even devise new instructions. . . .” If such developments occur, courts may construe the definition of electronic agent accordingly, in order to recognize such new capabilities.<sup>60</sup>

The Uniform Law Commission promulgated the Uniform Electronic Transactions Act in 1999, and this commentary proved prescient in the development of artificial intelligence, which is now capable of such autonomous acts.

Arkansas is unlikely to remain so silent on artificial intelligence for long. It is likely that future sessions of the General Assembly will address the use of artificial intelligence.

#### IV. CONCLUSION

Regulation of artificial intelligence is no longer a question of if, but when and how. Congress has stepped aside for now, leaving states like California to lead the way. The European Union has already imposed the world’s most comprehensive (and arguably overbearing) framework. Arkansas has begun laying its own groundwork. The sound of inevitability that Agent Smith warned about in *The Matrix* is now echoing in the halls of legislatures and courts: artificial intelligence will be regulated.

For lawyers, the challenge is to prepare now. The next installment will transition from external rules to practical guidance, outlining best practices that attorneys can adopt today

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59. ARK. CODE ANN. § 25-32-102 (2001).

60. UNIF. ELEC. TRANSACTIONS ACT § 2 cmt. (UNIF. L. COMM’N 1999) (citations omitted).

to utilize artificial intelligence responsibly and ethically in their practices.