

Gunderson Dettmer Webinar: AI Regulatory Landscape Under the New Trump Administration

Wed, Apr 2, 2025

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Aaron Rubin: we want to start off by saying Good afternoon. Thanks. Thanks. So much for joining us today I'm Aaron Rubin. I'm a partner in Gunderson strategic Transactions and Licensing group. I'm joined by my colleague, Christina Chen. And today we're going to cover a topic that many of our clients ask us about right now. It's

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Aaron Rubin: what is the legal landscape going to look like under the trump administration.

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Aaron Rubin: So this this presentation is designed to give you kind of a very quick overview of some of the things we're seeing, some of the things that are on the horizon, and a nice discussion of what the takeaways are from there. So we'll begin by examining how some of the key initiatives from the Biden era have been impacted by recent policy shifts which are setting the stage for new priorities at the Federal level under the trump administration.

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Aaron Rubin: We'll also take a look at the growing patchwork of State level AI laws and regulations which present unique compliance challenges for developers and users of AI tools who find themselves navigating an increasingly fragmented regulatory environment. We'll quickly touch on the international dimension which includes the EU AI act.

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Aaron Rubin: And then our goal is to at the end give you some actionable guidance to help you as a developer of AI tools or a user of AI tools, which is pretty much all of us, to stay compliant, mitigate risks, and yet remain innovative in a in a very rapidly evolving space.

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Aaron Rubin: So with that, I'm going to hand it off to Christina, who's going to jump into our agenda and then go from there

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Christina Chen: Thanks, Erin. It's great to be here. Thank you all for joining us today. So to get started, we'll discuss the status of Biden. Era's AI initiatives. President Trump, on his very 1st day in office.

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Christina Chen: within hours of arriving at the White House, immediately signaled to the world a shift in policy direction with respect to AI. When he revoked former President Biden's executive order on the safe, secure, and trustworthy development and use of AI in that order, it focused on accountability and the need for robust evaluation policies and mechanisms to mitigate the risks.

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Christina Chen: particularly around curbing discriminatory results, stemming from the use and deployment of AI systems. But, as you can see, some vestiges of Biden Era's AI initiatives remain with the common interest across the aisle, being sustained, support for us. Advancements in semiconductor and AI model innovation. So we have the Chips Act, the A Diffusion rule and Biden's Executive order on advancing U.S. Leadership in AI infrastructure.

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Christina Chen: Next slide. Laura.

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Christina Chen: Okay. New AI. Policy under the Trump Administration almost as a replacement to Biden's executive order. During Trump's 1st days in office he passed his own order, entitled Removing Barriers to American Leadership, and AI, as you can tell from the quoted line from the order, it effectively set a principle at the Federal level that America should dominate AI innovation and to get there its development largely needs to be free from any kinds of restraints.

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Christina Chen: The order expressly directed Federal officials to review all Biden era initiatives and to revise or rescind them if they're inconsistent with that goal.

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Christina Chen: Armed with the task of developing an AI action plan to carry out the goal of that executive order is the White House's AI and Cryptozar, which we'll get into more in a bit. And as of about 2 weeks ago. March 15, th 2025, the open public comment period for that AI action plan closed. And Erin in just a bit. We'll go through some of the key themes from comments received during that period.

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Christina Chen: Next slide. Laura

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Aaron Rubin: Thanks, Christina, so to kind of get a sense of where the trump administration is right now, and where it might be going in terms of AI regulation. It might be helpful to take a very quick look at some of the key players who are involved with crafting policy. We think about some of the heads of administrative agencies, and some of the special appointees that the President has appointed recently.

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Aaron Rubin: Give. Give us an idea of. Of you know what folks attitude within the Administration is with respect to AI regulations. So you know, Christina mentioned David Sachs, the AI and Crypto Czar.

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Aaron Rubin: You know, he's someone with a Vc background who has long advocated for minimal AI regulation that includes unrestricted data use for training AI models which will be a theme that we'll see again when we talk about some of the comments to the AI Action plan.

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Aaron Rubin: and you know, advocating for the Us. Being ahead of the pack, especially with respect to China, in terms of being able to develop AI technology. And they, his feeling shared by many others in the administration is that additional regulation

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Aaron Rubin: on AI developers, and deployers will inhibit the Us's ability to be the leader internationally in terms of AI innovation. Brendan Carr at the Fcc. Has also been on the record many times about

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Aaron Rubin: reducing disclosure requirements for AI. Technology used in political ads supporting free speech and innovation. Andrew Ferguson, similarly, wants to, has noted his support at the Ftc. Excuse me for curbing regulation that he believes stifles AI innovation. And then we have Elon Musk, who, you know, as head of Doge has

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Aaron Rubin: You cut AAA lot of the

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Aaron Rubin: what they call bureaucratic red tape around regulating AI tools and technology. I will note very quickly that there is some more complexity in terms of some of these folks's attitude towards an approach towards AI regulation. Elon Musk, for instance, has previously backed certain AI regulations in California. He's expressed support for regulating

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Aaron Rubin: certain aspects of of general artificial intelligence. A Agi

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Aaron Rubin: and Brendan Carr, on the similarly, has noted his support for rolling back portions of the section 2, 30 of the Communications Decency Act which grants

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Aaron Rubin: tech companies. Immunity with respect to user generated content posted on the platform so that the Fcc. Can police some content, you know a bit more aggressively so there is a little bit of a mixed bag in terms of the approach here, and our expectations as to what the agencies may do, but I think the general theme here is that there's going to be less regulation at the agency level.

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Aaron Rubin: Laura, if you wouldn't mind going to the next slide, please. Thank you.

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Aaron Rubin: So Christina mentioned the the AI action plan, and that was that's being spearheaded by the office of science and technology policy. They received almost 9,000 comments during the open comment period. We can't see. Most of those comments were private

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Aaron Rubin: but they, you know, they came from individuals and entities that represent many different sectors and viewpoints. For this presentation I wanted to focus more on the comments provided by some of the biggest names in the AI space. And

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Aaron Rubin: one of the reasons we can do that is because they actually published their comments and those comments converged on several key themes that included support for Federal preemption of State. AI laws support for the use of copyrighted content to train AI models as being fair use strict export controls to safeguard us, chip and AI innovations, and so on. So

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Aaron Rubin: I want to. Let's talk about 2 of those very quickly Openai published in in their comments into the AI Action Plan support for the use of using copyrighted, publicly available information, to be able to train their models and to have that be classified as as fair use under copyright law. So essentially, they would not be liable for copyright infringement

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Aaron Rubin: for using that publicly available information.

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Aaron Rubin: Their rationale for that was the companies AI innovators should be permitted to use that copyright, content to remove what they believe is an impractical hurdle of large companies having to negotiate with copyright holders while they're busy developing and training models. And they also say it's a matter of national security to maintain American competitiveness. Given that Chinese AI companies have unfettered access to training data.

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Aaron Rubin: As we'll cover in one second with the

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Aaron Rubin: lack of Federal regulation anticipated, the States are sort of filling in the gap on the regulatory front. The other theme that these comments pervade was

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Aaron Rubin: a strong support for the Federal preemption of State. AI. Laws that would therefore create sort of a unified Federal regulatory framework which would be very light and avoid a fragmented patchwork of State regulations.

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Aaron Rubin: It's interesting to me. We'll see whether, when the final AI Action plan comes out this summer. Whether it will advocate for both the fair use and Federal preemption points, I'm personally not sure whether the President has the power in his sole capacity through an executive order, to

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Aaron Rubin: enact these changes without input from Congress. I'm sure there will be debate and the fights about that. But that may be where we're headed. Later on.

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Aaron Rubin: Laura feel free to go to the next slide. Please

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Christina Chen: Thanks, Aaron. So, as Aaron mentioned, in the absence of comprehensive Federal laws and regulation regarding AI, we do have a patchwork of State laws to look towards. So we're not entirely operating in an unregulated environment. Just some stats on this slide. In 2024 alone, almost 700 AI bills were introduced across the United States.

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Christina Chen: Of those about, you know, 113 bills were enacted into law, and so we think that the trend is that more and more States are likely to propose and enact laws regarding the development and deployment of AI.

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Christina Chen: We're going to take a look at 2 of the most comprehensive US. State laws that have been passed regarding AI, one in Colorado, the other in Utah. It's worth noting that Colorado's AI law is not effective until February 1, st 2026.

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Christina Chen: We do want to note this because we'll have a couple of practical tips at the end for developers and deployers of AI, and so to the extent that you can be proactive and try to get ahead for compliance with these laws, if applicable, it may be prudent to do so. So taking Colorado's law first, it's applicable to developers and deployers doing business in Colorado

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Christina Chen: which includes any offering of an AI system that is intended to interact with consumers in Colorado. The definition of a developer under this Colorado law is anyone that develops or intentionally and substantially modifies an AI system. And importantly, the requirements hinge on whether or not you're developing and using a high risk. AI system which is a system that when deployed makes a

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Christina Chen: consequential decision about a consumer's life that's any material, legal, or similarly significant effect on a consumer's life.

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Christina Chen: Requirements are imposed on such developers. They focus on accountability and transparency. So if you are developing and using a high risk, AI system, you must notify your consumers about the purpose of your AI system and the nature of any decisions that can be produced from that. You also have to conduct impact assessments and describe what data you're processing and any measures that you're taking to mitigate the risks

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Christina Chen: and limitations of your models. I do want to mention the fine under the Colorado law it is on the higher side for Us. State law. It's

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Christina Chen: \$20,000 per fine per violation, and there is a rebuttable presumption available for companies that discover and cure a violation as a result of their proactive measures. So this is important when we talk about practical steps, to try to take advantage of that rebuttable presumption. Utah's AI policy Act is applicable to any persons or entities that use an AI system to

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Christina Chen: interact with a Utah consumer, but it splits the persons or entities into 2 groups

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Christina Chen: regulated or non-regulated occupations, the difference being that the regulated occupations are essentially anyone or any company that requires a license or a state certification from the State in order to operate so just as examples. This applies to healthcare professionals, accountants, tax professionals, and lawyers, and there is a disclosure requirement for both types of

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Christina Chen: occupations, albeit with different standards, the prominent disclosure standard, and the clearly and conspicuously standard. And there's no clear guidance under Utah State law on what exactly it means to meet those disclosure standards, but based on the legislative notes. It's very likely that something more prominent other than just

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Christina Chen: a statement or a description in your hyperlink terms of user privacy policy is required to meet that requirement

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Christina Chen: next slide, please, Laura.

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Christina Chen: thank you. So California has been one of the most active states in proposing and enacting laws regarding AI. This chart just isn't a high level overview of 3 of its enacted laws. The 1st 2 imposed on developers of AI systems, each of them not scheduled to be effective until the New Year, and the very last one is for any users deployers of bots.

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Christina Chen: So, taking the 1st one Sb. 942, it applies to covered providers that must meet 3 prongs for applicability. So you must be a person that creates codes or produces a generative AI system. You have to have more than 1 million monthly visitors or users of your system, and your system must be publicly accessible within California.

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Christina Chen: If you fall into that classification, you must offer certain tools and provide notices that essentially make it clear to your users whether and what content on your platform was generated with artificial intelligence.

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Christina Chen: Ab. 2013, California's AI Training Data Transparency Act applies to AI developers. Any developer that even substantially modifies a pre-existing AI system. So it applies to even persons or entities that make new versions, releases or or fine tunes existing. 3rd party

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Christina Chen: AI models. It requires developers to publicly disclose documentation regarding the data sets that are used to develop and train those AI systems.

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Christina Chen: And lastly, the bot disclosure law.

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Christina Chen: It covers both developers and deployers of bots for very broadly the sale of goods or services, or to influence a vote in an election, and the requirement is to provide clear and conspicuous notice to any user that's interacting with that bot

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Aaron Rubin: Great thanks, Christina. And so, in addition to some of the comprehensive laws the State laws that Christina just covered, we're seeing a number of other U.S. States propose laws or issue guidance under existing State consumer protection regulations

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Aaron Rubin: regarding the use of AI tools for certain decision making in specific sectors like employment housing, insurance healthcare. Really sectors where important decisions often related to the well-being of consumers will be made and will be increasingly outsourced to AI tools?

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Aaron Rubin: You know, some of these industry, specific laws and regulations sort of speak for themselves. I wanted to highlight 2 of them in particular, one.

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Aaron Rubin: the use of AI tools for automated hiring decisions in the employment realm. We've seen New York City, Illinois, Maryland, and then also in Colorado and Utah Pass laws regulating the discrimination of these regulating discrimination in the use of these tools for employment decisions.

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Aaron Rubin: and they require AI developers and users to take a number of preventative measures in mitigating this risk of of discrimination.

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Aaron Rubin: I want to point out here that these laws don't just regulate the creators and developers of this technology. They regulate the companies and and folks who use them to make these decisions.

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Aaron Rubin: So there are certain testing requirements, auditing requirements that companies will have to take going forward, should they? Should they use this technology in their hiring processes?

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Aaron Rubin: Also wanted to briefly note the use of personal data. Some states have required companies, and and by some States, I'm referring to Colorado and California at the forefront of this requiring companies to provide users with the choice to opt out of automated decision making tools that use their personal data.

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Aaron Rubin: Let's let's go to the next slide, please. Thanks

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Aaron Rubin: to to zoom out a bit further and and just cover very briefly on the international front. I wanted to highlight

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Aaron Rubin: sort of the most prominent international regulation in AI. So far.

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Aaron Rubin: That's the EU AI act. There's a lot to cover in the EU AI Act. We have a really comprehensive client, alert that we've written. You can find that on on the AI focus page of our of Gundersen's website.

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Aaron Rubin: We're going to have additional webinars solely devoted to this topic. So this is this is not intended to be anything near a comprehensive review of of the EU AI act in this session, but just wanted to know quickly that this act is gradually beginning to take effect. It will be in full effect by August of 2027.

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Aaron Rubin: Various portions, in the meantime of of the act are are going into effect now.

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Aaron Rubin: What the act covers essentially is is it views AI tools and sort of a risk based framework?

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Aaron Rubin: The act focuses on regulating certain higher risk uses of AI systems and tools, and you'll see some of what the the act

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Aaron Rubin: defines as a higher risk. Use is use in public infrastructure, recruitment, and employment, immigration, very similar themes to what we were talking about in some of the U.S. Laws, and that there are certain requirements for high risk uses of AI tools, transparency notices.

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Aaron Rubin: internal data, governance and record keeping practices, additional guard internal guardrails that need to be deployed with respect to decision making. And beyond that there are certain outright prohibitions on uses of certain AI tools. So that's use of these tools for using biometric information in public spaces or tools intended to cause physical or psychological harm.

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Aaron Rubin: You know, if if

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Aaron Rubin: if you are a creator of any of these type of tools or a user of these types of tools. It is important, even though the act does not fully go into effect until 2027, to start making sure that you're compliant with this act right now, one of the reasons why is because the penalties under this act are so high they can be up to the greater of 35 million euros or 7% of a company's annual revenue worldwide.

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Aaron Rubin: And it's also important to note that the law applies to any company doing business in the EU, regardless of whether it's headquartered there. So it sort of has that same extra judicial scope and reach that the Gdpr. Had, or has in the privacy realm so definitely something to keep on your radar. If you're

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Aaron Rubin: doing work in in the EU and something to to pay attention to our other content and webinars on that

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Aaron Rubin: For more detailed information before I hand it back to Christina. I just wanna

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Aaron Rubin: cover kind of very quickly the the takeaways from the regulatory landscape. So, just to sum it up.

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Aaron Rubin: you know, we've seen that the trump administration is likely going to take a light touch on AI regulation. I'm personally interested to see how much the Administration believes it will be able to take unilateral action without any input from Congress on shaping how developers and users of AI tools will or will not be regulated going forward. So that will be sort of the story of the summer, I think.

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Aaron Rubin: But in in the absence of that Federal regulation, we're seeing the States fill in the gap in terms of of AI AI regulation, both comprehensively like we've seen in Colorado and California.

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Aaron Rubin: and with excuse me, Colorado and Utah, and and more pointed regulation on specific uses or on specific industries as we've covered in some of the other State statutes that we just reviewed. The EU is leading the way internationally. But we're going to continue to see other countries enact their own AI regulations.

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Aaron Rubin: and

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Aaron Rubin: beyond that we may additionally see self regulatory organizations in certain industries adopt their own AI rules and regulations that companies who belong to those self-regulatory groups may have to adhere to as well.

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Aaron Rubin: I want to hand it to Christina for what I think is the most important part of this presentation, which is some actionable takeaways that you, as a developer or user of AI tools, can take in light of the regulatory environment

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Christina Chen: Thanks, Erin. So by this point of the presentation, you're all wondering, what does this all mean, you know, for my company, so given that States are increasingly enacting laws regarding AI, and you have the EU AI act rolling out in full enforcement in the next couple of years you may want to be proactive in doing 3 core things just to distill what's on this slide? First, you want to inventory the AI tools that you're using

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Christina Chen: focus on. You know what you're using the tool for, if you're licensing it from a 3rd party, track the source and their applicable terms, and think about how your customers and end users are going to use that AI tool number 2 stay on top of State AI laws and evaluate their applicability to your business, and if you have any questions, Gundersen can certainly help with that. 3 track any potential risk

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Christina Chen: and flaws of your AI systems and be prepared to make disclosure notices about those risks in addition to any remedial measures that you've taken to to curb them.

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Christina Chen: Laura, next slide, please.

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Christina Chen: and we have a couple more specific considerations here for developers and deployers. The most important word on this slide is is proactive. We mentioned, you know, some of the State laws don't kick into effect yet. And so we've also mentioned some carve out rebuttable presumptions. And so this is all to help you stay ahead for developers during your AI deployment cycle from development to launch

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Christina Chen: focus on knowing your AI model or tool very well, focus on data governance track, the data that you're using to train your model and what data your end users are contemplated to be inputting into

that model. Try to conduct regular testing. And again, if you find flaws, document your mitigation actions, and with respect to your consumers, and end users, prioritize transparency and explainability

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Christina Chen: for deployers. 1st make sure that under applicable laws that you are, in fact, a deployer, as that term is defined under the law, and not a developer, because there may be more stringent requirements that are tied to your classification as one or the other. Second vet. Do diligence on your 3rd party, AI model

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Christina Chen: and soars, and be careful about using AI models and tools for decision making in certain sectors that could trigger additional requirements under applicable laws.

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Christina Chen: and 3 notice and disclosure are very important. Be prepared to provide those disclosures to your users describing how you're using their data. And of course, if you're providing a chat bot and it's available to California users, try to provide a notice at the start of that interaction, and not, you know, somewhere hidden in a terms of user or a privacy policy.

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Christina Chen: I think, Aaron, that brings us to the end there any closing remarks you'd like to make Aaron

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Aaron Rubin: Well, no, I mean, at 1st we have. But you know, I want to just emphasize that this is how the regulatory landscape looks today.

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Aaron Rubin: The world is changing day by day on this front, and it's very possible that by next week a lot of what we're talking about now will be superseded by additional stories or potential regulation or or declarations that there will be no regulation in certain areas. So

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Aaron Rubin: we're always happy to touch, base and and give you our viewpoint of of the latest don't hesitate to reach out if you have any questions. And thanks so much for for talking through this, and we'll likely, you know, do something again later on in the year, as some of the trend lines that we've noted in in the in this presentation have developed a bit more.

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Aaron Rubin: Thanks, very much.

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00:29:08.480 --> 00:29:09.520

Christina Chen: Thanks. Everyone.

