Akin Intelligence - May 2025

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Akin Spotlight

BIS Rescinds AI Diffusion Rule and Issues New Guidance

May 16, 2025 UPDATE: BIS published an updated press release, which can be found here.

On May 13, 2025, the Commerce Department's Bureau of Industry and Security (BIS) announced that the Commerce Department initiated a rescission of the Biden Administration's Framework for Artificial Intelligence Diffusion ("AI Diffusion Rule"). BIS also issued guidance to strengthen export controls on overseas AI chips, including:

- Policy Statement on advanced computing integrated circuits (ICs) and other commodities to train AI models;

- Industry Guidance to prevent diversion of advanced computing ICs; and
- Guidance on the application of General Prohibition 10 (GP10) to China's advanced computing ICs.

AI Diffusion Rule

The Under Secretary of Commerce for Industry and Security Jeffery Kessler has instructed BIS enforcement officials not to enforce the AI Diffusion Rule. The Rule was published on January 13, 2025, with a compliance date of May 15, 2025. It revised the Export Administration Regulations' (EAR) controls on advanced computing ICs and added a new control on AI model weights. Specifically, the AI Diffusion Rule:

- added a control for AI model weights under Export Control Classification Number (ECCN) 4E091;
- expanded the license requirements and revised the review policy for ECCNs 3A090.a, 4A090.a, and corresponding .z items;
- expanded the country scope of License Exception Advanced Computing Authorized (ACA);
- added new License Exceptions Artificial Intelligence Authorization (AIA), Advanced Compute Manufacturing (ACM), and Low Processing Performance (LPP);
- added new red flag guidance related to AI model weights;
- bifurcated the Data Center Validated End-User (VEU) Authorization into Universal and National VEU Authorizations;
- updated the License Exception Notified Advanced Computing (NAC) notification procedures; and
- expanded the destination scope of the advanced computing foreign direct product (FDP) rule and added a new FDP rule for AI model weights in ECCN 4E091.

BIS Policy Statement on Controls that May Apply to Advanced Computing Integrated Circuits and Other Commodities Used to Train AI Models (May 13, 2025)

In this Policy Statement, BIS updated previous advisory opinions to identify certain types of activities that may be subject to an export authorization under the EAR with respect to advanced computing ICs and commodities subject to the EAR for training AI models. Advanced computing ICs and commodities that contain such ICs include items classified under ECCNs 3A090.a, 4A090.a, and corresponding .z items in Categories 3, 4, and 5. Specifically, the following activities may trigger a license requirement under the catch-all controls of Part 744 when there is **"knowledge" that the AI model will be used for weapons of mass destruction (WMD) or military-intelligence end use/user:**

- Exports, reexports, or transfers (in-country) of advanced computing ICs and commodities to any party when the exporter, reexporter, or transferor has **"knowledge" that the party will use these items to conduct training of AI models for or on behalf of parties headquartered in D:5 countries (including China) or Macau.**
- Transfers (in-country), defined as a change in end use or end user, of advanced computing ICs and commodities already in possession of parties, if there is **"knowledge" that the items will be used by the transferee to train AI models for or on behalf of parties headquartered in D:5 countries (including China) or Macau.**
- A "U.S. person" provides any "support" or performs any contract, service, or employment, when there is **"knowledge" such activity will be used for or may assist the training of AI**

models for or on behalf of parties headquartered in D:5 countries (including China) or Macau.

In addition, **foreign parties acting contrary to U.S. national security and foreign policy interests**, including by training AI models that could support WMD or military-intelligence end uses for or behalf of parties headquartered in D:5 countries (including China) or Macau, may be added to the Entity List, even where no violation of the EAR occurs.

Industry Guidance to Prevent Diversion of Advanced Computing Integrated Circuits (May 13, 2025)

In this Industry Guidance, BIS is providing guidance to help increase the industry's awareness of illegal diversion schemes involving advanced computing ICs and commodities that contain such ICs, i.e., items classified under ECCNs 3A090.a, 4A090.a, and corresponding .z items. The Guidance identifies a **non-exhaustive list of new transactional and behavioral red flags** (in addition to the "Know Your Customer" and Red Flag Guidance available on the BIS website and set forth in Supplement No. 3 to Part 732 of the EAR) and **due diligence actions** that can assist companies in evaluating whether a party or an identified activity may be connected to export control evasion. The Guidance states that companies should take these due diligence actions for new customers, as well as evaluating Infrastructure-as-a-Service (IaaS) providers, involved with the export or use of advance computing ICs or commodities that contain such ICs subject to the EAR, especially those located in destinations outside of A:1 countries identified in Supplement No. 1 to Part 740.

The Guidance also identifies catch-all controls that may apply to advance computing ICs for training AI models, which include the activities identified in the Policy Statement discussed above.

Finally, the Guidance identifies **information and assurances** that can help prevent the unauthorized diversion of advanced computing ICs for restricted end uses and end users. The information and assurances are not meant to replace existing customer certifications and end-use statements that exporters have already determined best mitigates diversion risk. Rather, the Guidance encourages exporters to review the information and assurances and consider whether it is worth adding to existing practices and documentation to help prevent diversion, as the unwillingness of a customer to attend to one or more requests for information may be a red flag.

Guidance on Application of General Prohibition 10 (GP10) to People's Republic of China (PRC) Advanced-Computing Integrated Circuits (ICs) (May 13, 2025)

This Guidance alerts industry to the risks of using PRC advanced-computing ICs, including specific Huawei Ascend chips, that were likely developed or produced in violation of U.S. export controls. The Guidance advises that the **use of ICs that meet the parameters of ECCN 3A090 that have been developed or produced by companies located in, headquartered in, or whose ultimate parent company is headquartered in a D:5 country (including PRC) or Macau, may implicate the EAR's GP10.** The Guidance provides the following **non-exhaustive list of PRC 3A090 ICs subject to the presumption that GP10 restrictions apply:**

- Huawei Ascend 910B
- Huawei Ascend 910C

- Huawei Ascend 910D

The Guidance states that **all 3A090 ICs designed by companies located in, headquartered in, or with an ultimate parent company headquartered in PRC (whether produced within or outside the PRC) likely are subject to the EAR and may have been produced in violation of the EAR, subjecting them to GP10 restrictions**. Such chips likely are either designed with certain U.S. software or technology or produced with semiconductor manufacturing equipment that is the direct product of certain U.S.-origin software or technology. Also, such ICs may have been produced, purchased, or ordered by an entity on the Entity List with a Footnote 1 or 4 designation, or such entities were parties to the transaction.

The Guidance states that if a party intends to take any action with respect to a PRC 3A090 IC for which it has not received authorization from BIS, the party should confirm with its supplier, prior to performing any of the activities identified in GP10, that authorization exists for the export, reexport, transfer (in-country), or export from abroad of (1) the production technology for that PRC 3A090 IC from its designer to its fabricator, and (2) the PRC 3A090 IC itself from the fabricator to its designer or other supplier.

The Guidance also states that BIS will not pursue enforcement actions against parties that obtain a PRC 3A090 IC solely for the purpose of technical analysis or evaluation (such as destructive testing) to determine the technical capabilities of an individual IC.

For more information, please refer to our client alert titled, "BIS Rescinds Its AI Diffusion Rule and Issues Compliance Guidance Regarding Advanced Computing Items" available here.

Federal Action

District Court Denies First Amendment Free Speech Rights for AI Chatbot

On May 21, 2025, Senior District Judge Anne Conway in the U.S. District Court for the Middle District of Florida denied a motion to dismiss various tort claims on the basis that the claims against developers of an artificial intelligence (AI) chatbot are barred by the First Amendment. The AI chatbot is Character A.I., an app launched by Character Technologies, Inc. that allows users to interact with AI characters. The complaint alleges various tort claims, including products liability, intentional infliction of emotional distress (IIED), unjust enrichment and wrongful death.

The defendants sought dismissal of the claims based in part on the First Amendment protecting the AI chatbot's output as speech. The defendants analogized interactions with the AI characters to interactions with non-player characters (NPCs) in video games and with other persons on social media sites, both of which have received First Amendment protections. The court agreed that defendant can assert First Amendment rights of its users to receive the AI chatbot's "speech." The court, however, declined at this stage of the litigation to hold that the output is protected speech, citing the uncertainty at this stage of the case.

President Trump Signs TAKE IT DOWN Act into Law

On May 19, 2025, President Trump signed the bipartisan TAKE IT DOWN Act into law. The Act criminalizes the publication of nonconsensual intimate visual depictions of individuals, including AI-generated deepfakes. Threats to publish intimate visual depictions are also prohibited. Penalties include mandatory restitution, forfeiture of any proceeds of the violation and criminal penalties, including prison, a fine or both.

Separately, the Act establishes a notice and removal process, mandating that online platforms remove such content within 48 hours of a victim's request. Failure to reasonably comply with the notice and takedown obligations is treated as an unfair and deceptive act under the Federal Trade Commission Act.

The TAKE IT DOWN Act aims to protect individuals from online harassment and abuse and empowers institutions with resources to address digital exploitation effectively.

Executive Order Links Nuclear Reactor Development to AI Infrastructure Needs for National Security

On May 23, 2025, President Trump signed Executive Order 14299, titled Deploying Advanced Nuclear Reactor Technologies for National Security. The Order recognizes the need for a secure, reliable energy supply for advanced computing infrastructure for artificial intelligence (AI) capabilities and other mission capability at military and national security installations and national laboratories, and the potential for advanced nuclear reactors to deliver this energy. To promote and secure nuclear infrastructure for powering AI infrastructure, the Order directs the Secretary of Energy, in part, to:

- Initiate a process for designating AI data centers within the United States that are located at or operated in coordination with the Department of Energy facilities as critical defense facilities, and the electrical infrastructure needed to operate such facilities as defense critical electrical infrastructure;
- Use all available legal authorities to approve the construction and operation of privately funded nuclear reactor technologies at Department of Energy-owned or controlled sites for purposes of powering AI and other on-site infrastructure; and
- Release uranium for approved projects to power AI and other infrastructure, and ensure that a long-term supply of enriched uranium is available for their continued operation.

District Court Grants Preliminary Certification of Collective Action for Discrimination Claim Against AI-based System

On May 16, 2025, US District Judge Rita Lin in the Northern District of California granted a motion for preliminary certification of a collective action on an employment discrimination claim targeting an artificial intelligence (AI)-based application recommendation system. Plaintiff Derek Mobley brought the employment discrimination action against Workday, Inc., alleging that

Workday's AI-based applicant recommendation system discriminated against job applicants on the basis of race, age and disability.

The court preliminarily found that the proposed collective is similarly situated because the plaintiff substantially alleged the existence of a unified policy: the use of Workday's AI recommendation system to score, sort, rank, or screen applicants. The court also found that critical issue—disparate impact on applicants over forty—cuts across the proposed collective.

The Order allows the plaintiff to notify similarly situated individuals of the lawsuit and provide them an opportunity to opt-in having their claims heard on a collective basis. After discovery, Workday will have the opportunity to present evidence that the collective is not similarly situated and ask the court to revisit its preliminary decision.

Congressional Action

US Senate Judiciary Subcommittee Holds Hearing on AI-Generated Deepfakes

On May 21, 2025, the Subcommittee on Privacy, Technology, and the Law of the US Senate Committee on the Judiciary held a hearing on The Good, the Bad, and the Ugly: AI-Generated Deepfakes in 2025. The hearing focused on the NO FAKES Act, S.1367, which is a bipartisan bill that would give individuals a property right in digital replicas of their voice and visual likeness. The bill seeks to protect artists and creators from the proliferation of non-consensual digital replicas.

Speakers at the hearing include:

- Justin Brookman, Director of Technology Policy, Consumer Reports
- Suzana Carlos, Head of Music Policy, YouTube
- Mitch Glazier, CEO, Recording Industry Association of America
- Martina McBride, Country Music Singer-Songwriter
- Christen Price, Senior Legal Counsel, National Center on Sexual Exploitation (NCOSE)

This hearing followed President Trump signing the bipartisan TAKE IT DOWN Act into law on May 19, 2025, which criminalizes the publication of nonconsensual intimate visual depictions of individuals, including AI-generated deepfakes.

Additional Information: Lawmakers Reintroduce NO FAKES Act

AI Provisions in the One Big Beautiful Bill Act

On May 22, 2025, the U.S. House of Representatives advanced its version of a 2025 Fiscal Year budget reconciliation bill, H.R. 1, the One Big Beautiful Bill Act (OBBBA). The bill, which proceeds to the Senate for consideration, includes the following AI-specific provisions:

- 10-year moratorium on State and local laws and regulations regulating AI models, AI systems, or automated decision systems, except for any law or regulation that:
    - removes legal impediments to, or facilitates the deployment, operations, or adoption of, such models and systems;
    - does not impose any requirements on such models and systems, unless the requirement is imposed under Federal law or under a generally applicable law that is imposed in the same manner on non-AI models and systems that provide comparable functions; and
    - does not impose a fee or bond unless it is reasonable and cost-based and, under such fee or bond, such models and systems are treated in the same manner as non-AI models and systems that perform comparable functions.
- Department of Commerce: $500M to modernize and secure Federal information technology systems through the deployment of commercial AI, the deployment of automation technologies, and the replacement of antiquated business systems.
- Department of Defense (DOD):
    - $124M for improvements to Test Resource Management Center AI capabilities;
    - $250M for the expansion of Cyber Command AI lines of effort; and
    - $200M for the deployment of automation and AI to accelerate audits of the financial statements of the DOD.
- U.S. Customs and Border Protection: $1B for necessary expenses relating to procurement of new non-intrusive inspection equipment and associated civil works, AI, integration, and machine learning, as well as other mission support, to combat entry of illicit narcotics.
- Department of Health and Human Services: $24M redirected to implement AI tools for purposes of reducing and recouping improper payments made under Medicare Parts A and B.

Middle East Update

UAE Set to Use AI to Write Laws

On April 14, 2025, the United Arab Emirates (UAE) announced a plan to utilize artificial intelligence (AI) to write new laws and revise existing legislation. Sheikh Mohammad bin Rashid Al Maktoum, the Dubai ruler and UAE vice-president said: "This new legislative system, powered by artificial intelligence, will change how we create laws, making the process faster and more precise." A new cabinet unit, the Regulatory Intelligence Office, was created to oversee the legislative AI initiative. According to the press release, the UAE plans to use AI to build a legal database which, alongside other data such as court judgments and government services, tracks how laws affect the society. In turn, AI would suggest legislative updates. Officials project that the AI-driven system could accelerate the legislation cycle by up to 70%.

Visit our **AI Law & Regulation Tracker** for the latest in AI across regulatory developments, legal and policy issues, and industry news.

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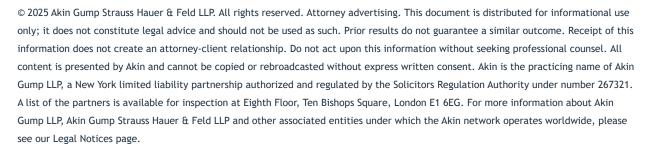**Washington, D.C.**

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