

# Client Alert

Special Matters and Government Investigations

**OCTOBER 04, 2024**

For more information, contact:

Robert K. Hur (Rob)  
+1 202 383 8969  
[rhur@kslaw.com](mailto:rhur@kslaw.com)

Leah B. Grossi  
+1 202 626 5511  
[lgrossi@kslaw.com](mailto:lgrossi@kslaw.com)

Michael Galdo  
+1 512 457 2081  
[mgaldo@kslaw.com](mailto:mgaldo@kslaw.com)

King & Spalding

Washington, D.C.  
1700 Pennsylvania Avenue,  
NW  
Suite 900  
Washington, D.C. 20006  
Tel. +1 202 737 0500

Austin  
500 West 2nd Street  
Suite 1800  
Austin, Texas 78701  
Tel. +1 512 457 2000

## Department of Justice Continues to Focus on AI This Week

On September 23, 2024, the U.S. Department of Justice (Department) announced that it had updated its guidance to prosecutors on how to evaluate the effectiveness of a corporation's compliance program. The guidance, known as the Evaluation of Corporate Compliance Programs (ECCP), provides prosecutors with factors to consider and questions to ask when determining the adequacy and effectiveness of a corporation's compliance program at the time of the offense and at the time of a charging decision or resolution with the Department.

According to accompanying remarks given by the head of the Department's Criminal Division, Principal Deputy Assistant Attorney General (PDAAG) Nicole M. Argentieri, the additions to the ECCP were in three main areas: (1) emerging technologies, including artificial intelligence; (2) whistleblowers; and (3) access to data, including third-party vendor data. **The specific focus on companies' use of artificial intelligence (AI) was particularly noteworthy.**

This week, nine days after announcing the ECCP updates, PDAAG Argentieri spoke again about AI and how the "promises and perils" of AI are "top of mind" for the Criminal Division and for the Department more broadly. Referencing the need for robust detection of AI vulnerabilities, discriminatory impacts, and bias, PDAAG Argentieri announced that the Criminal Division would be updating its 2017 Vulnerability Disclosure Framework to facilitate reporting consistent with the Computer Fraud and Abuse Act and intellectual property laws and urged companies to implement a vulnerability disclosure program to detect these issues within their AI systems.

This was just the most recent indication that the Department is focused on the challenges and risks posed by AI. In February 2024, U.S. Attorney General Merrick Garland announced the designation of the Department's first Chief AI Officer. That same month, U.S. Deputy Attorney General (DAG) Lisa Monaco gave remarks where she announced the creation of



“Justice AI,” a convening of stakeholders from civil society, academia, science, and industry to better understand and prepare for the risks of AI. As part of Justice AI, the Department’s Criminal Division convened corporate compliance executives to help inform the Department on how to update the ECCP to address the risks and uses of AI by companies and their compliance departments.

Last month’s additions to the ECCP instruct prosecutors to ask a series of questions about AI (including generative AI) and emerging technologies to determine whether a corporation’s compliance program is well-designed—a critical factor in deciding how to resolve criminal investigations of corporate conduct. The additions instruct prosecutors to consider whether a company has conducted a **risk assessment** regarding the use of new technologies, including AI, and whether the company has taken appropriate **steps to mitigate the risk** associated with the use of that new technology.

Questions for prosecutors and companies include:

- Does the company have a **process for identifying and managing emerging internal and external risks** that could potentially impact the company’s ability to comply with the law, including risks related to the use of new technologies?
- How does the company **assess the potential impact of new technologies**, such as artificial intelligence (AI), on its ability to comply with criminal laws?
- Is management of risks related to use of AI and other new technologies **integrated into broader enterprise risk management (ERM) strategies**?
- What is the company’s **approach to governance** regarding the use of new technologies such as AI in its commercial business and in its compliance program?
- How is the company **curbing any potential negative or unintended consequences** resulting from the use of technologies, both in its commercial business and in its compliance program?
- How is the company **mitigating the potential for deliberate or reckless misuse** of technologies, including by company insiders?
- To the extent the company uses AI and similar technologies in its business or as part of its compliance program, are **controls in place to monitor and ensure its trustworthiness, reliability, and use in compliance with applicable law** and the company’s code of conduct?
- Do controls exist to ensure that the technology is used only for its intended purposes?
- What baseline of human decision-making is used to assess AI?
- How is accountability over use of AI **monitored and enforced**?
- How does the company **train its employees** on the use of emerging technologies such as AI?
- Is there a **process for updating policies and procedures** to address emerging risks, including those associated with the use of new technologies?
- What efforts has the company made to **monitor and implement policies and procedures that reflect and deal with the spectrum of risks it faces**, including changes to the legal and regulatory landscape and the use of new technologies?



The misuse of AI—like the creation of false approvals and documents—can have serious legal, financial, and reputational consequences for companies. **Department leadership has repeatedly warned that where misconduct is made significantly more dangerous by the misuse of AI, prosecutors will seek stiffer sentences.** DAG Monaco has also said that if the Department determines that existing sentencing enhancements do not adequately address the harms caused by the misuse of AI, the Department “will seek reforms to those enhancements to close that gap.”

The Department’s enforcement efforts relating to AI have already resulted in criminal actions. For example, last month, the U.S. Attorney’s Office for the Southern District of New York secured a guilty plea from a former Chief Executive Officer and Board of Directors Chairman of a publicly traded digital advertising technology company for committing securities fraud by making material misrepresentations about the efficacy of the company’s proprietary AI fraud detection tool. According to the Department’s charging document, the securities fraud scheme included the creation of fake documents in order to mislead the independent certified public accountants who were engaged to audit the company’s financial statements. Sentencing in that case is set for December 2024.

Civil and state enforcement authorities are also focused on AI. For example, last month, the Texas Attorney General announced an Assurance of Voluntary Compliance settlement with an AI healthcare technology company. Also in September, the California Attorney General sent a letter to social media and AI companies that urged better identification and reporting of the use of AI to create deceptive content related to elections. In March 2024, the Securities and Exchange Commission announced charges against two investment advisors for “AI washing” by making false and misleading statements about their purported use of AI in their investment processes.

Taken together, these recent state and federal actions underline the need for care when it comes to adopting and implementing AI, including performing diligence of AI system providers. King & Spalding’s team of experts can help companies assess risks and review and revise their internal compliance policies with a keen eye towards their use or their employees’ potential use of AI in their commercial businesses and compliance programs.



## Special Matters & Government Investigations Partners

Gary Adamson  
New York  
+1 212 556 2113  
gadamson@kslaw.com

Adam Baker  
New York  
+1 212 556 2376  
abaker@kslaw.com

J.C. Boggs  
Washington, DC  
+1 202 626 2383  
jboggs@kslaw.com

Christopher C. Burris  
Atlanta  
+1 404 572 4708  
cburris@kslaw.com

Craig Carpenito  
New York  
+1 212 556 2142  
ccarpenito@kslaw.com

Steve Cave  
Northern Virginia  
+1 703 245 1017  
scave@kslaw.com

Michael J. Ciatti  
Washington, DC  
+1 202 661 7828  
mciatti@kslaw.com

Daniel R. Coats  
Washington, DC  
+1 202 626 2642  
dcoats@kslaw.com

Patrick M. Collins  
Chicago  
+1 312 764 6901  
pcollins@kslaw.com

Ander M. Crenshaw  
Washington, DC  
+1 202 626 8996  
acrenshaw@kslaw.com

Sumon Dantiki  
Washington, DC  
+1 202 626 5591  
sdantiki@kslaw.com

Ethan P. Davis  
San Francisco  
+1 415 318 1228  
edavis@kslaw.com

Alan R. Dial  
Washington, DC  
+1 202 661 7977  
adial@kslaw.com

Dan Donovan  
Washington, DC  
+1 202 626 7815  
ddonovan@kslaw.com

Robert L. Ehrlich, Jr.  
Washington, DC  
+1 202 626 9710  
rehlich@kslaw.com

David Farber  
Washington, DC  
+1 202 626 2941  
dfarber@kslaw.com

Zachary Fardon  
Chicago  
+1 312 764 6960  
zfardon@kslaw.com

Emily Gordy  
Washington, DC  
+1 202 626 8974  
egordy@kslaw.com

Leah B. Grossi  
Washington, DC  
+1 202 626 5511  
lgrossi@kslaw.com

Ehren Halse  
San Francisco  
+1 415 318 1216  
ehalse@kslaw.com

Zachary J. Harmon  
Washington, DC  
+1 202 626 5594  
zharmon@kslaw.com

Ted Hester  
Washington, DC  
+1 202 626 2901  
thester@kslaw.com

Max Hill, K.C.  
London  
+44 20 7551 2130  
mhill@kslaw.com

Amy Schuller Hitchcock  
Sacramento/San Francisco  
+1 916 321 4819  
ahitchcock@kslaw.com

John A. Horn  
Atlanta  
+1 404 572 2816  
jhorn@kslaw.com

Andrew C. Hruska  
New York  
+1 212 556 2278  
ahruska@kslaw.com

Rob Hur  
Washington, DC  
+1 202 383 8969  
rhur@kslaw.com

Mark A. Jensen  
Washington, DC  
+1 202 626 5526  
mjensen@kslaw.com

Dixie L. Johnson  
Washington, DC  
+1 202 626 8984  
djohnson@kslaw.com

William Johnson  
New York  
+1 212 556 2125  
wjohnson@kslaw.com

Barry Kamar  
Miami  
+1 305 462 6044  
bkamar@kslaw.com

Allison F. Kassir  
Washington, DC  
+1 202 626 5600  
akassir@kslaw.com

M. Alexander (Alec) Koch  
Washington, DC  
+1 202 626 8982  
akoch@kslaw.com

Yelena Kotlarsky  
New York  
+1 212 556 2207  
ykotlarsky@kslaw.com

Steve Kupka  
Washington, DC  
+1 202 626 5518  
skupka@kslaw.com

Jade R. Lambert  
Chicago  
+1 312 764 6902  
jlambert@kslaw.com



Jamie Allyson Lang  
*Los Angeles*  
+1 213 443 4325  
jlang@kslaw.com

Raphael Larson  
*Washington, DC*  
+1 202 626 5440  
rlarson@kslaw.com

Carmen Lawrence  
*New York*  
+1 212 556 2193  
clawrence@kslaw.com

Brandt Leibe  
*Houston*  
+1 713 751 3235  
bleibe@kslaw.com

Aaron W. Lipson  
*Atlanta*  
+1 404 572 2447  
alipson@kslaw.com

Daniel E. Lungren  
*Washington, DC*  
+1 202 626 9120  
dlungren@kslaw.com

William S. McClintock  
*Washington, DC*  
+1 202 626 2922  
wmclintock@kslaw.com

Amelia Medina  
*Atlanta*  
+1 404 572 2747  
amedina@kslaw.com

Kendrick B. Meek  
*Washington, DC*  
+212 626 5613  
kmeek@kslaw.com

Andrew Michaelson  
*New York*  
+212 790 5358  
amichaelson@kslaw.com

Jim C. Miller III  
*Washington, DC*  
+1 202 626 5580  
jmiller@kslaw.com

Patrick Montgomery  
*Washington, DC*  
+1 202 626 5444  
pmontgomery@kslaw.com

Paul B. Murphy  
*Atlanta/Washington, DC*  
+1 404 572 4730  
pbmurphy@kslaw.com

Grant W. Nichols  
*Austin/Washington, DC*  
+1 512 457 2006  
gnichols@kslaw.com

Alicia O'Brien  
*Washington, DC*  
+1 202 626 5548  
aobrien@kslaw.com

Patrick Otlewski  
*Chicago*  
+1 312 764 6908  
potlewski@kslaw.com

Michael R. Pauzé  
*Washington, DC*  
+1 202 626 3732  
mpauze@kslaw.com

Michael A. Plotnick  
*Washington, DC*  
+1 202 626 3736  
mplotnick@kslaw.com

Olivia Radin  
*New York*  
+1 212 556 2138  
oradin@kslaw.com

John C. Richter  
*Washington, DC*  
+1 202 626 5617  
jrichter@kslaw.com

Rod J. Rosenstein  
*Washington, DC*  
+1 202 626 9220  
rrosenstein@kslaw.com

Daniel C. Sale  
*Washington, DC*  
+1 202 626 2900  
dsale@kslaw.com

Greg Scott  
*Sacramento/San Francisco*  
+1 916 321 4818  
mscott@kslaw.com

Richard Sharpe  
*Singapore*  
+65 6303 6079  
rsharpe@kslaw.com

Kyle Sheahen  
*New York*  
+1 212 556 2234  
ksheahen@kslaw.com

Michael Shepard  
*San Francisco*  
+1 415 318 1221  
mshepard@kslaw.com

Thomas Spulak  
*Miami*  
+1 305 462 6023  
tspulak@kslaw.com

Aaron Stephens  
*London*  
+44 20 7551 2179  
astephens@kslaw.com

Cliff Stricklin  
*Denver*  
+1 720 535 2327  
cstricklin@kslaw.com

Jean Tamalet  
*Paris*  
+33 1 7300 3987  
jtamalet@kslaw.com

Courtney D. Trombly  
*Washington, DC*  
+1 202 626 2935  
ctrombly@kslaw.com

Rick Vacura  
*Northern Virginia*  
+1 703 245 1018  
rvacura@kslaw.com

Anthony A. Williams  
*Washington, DC*  
+1 202 626 3730  
awilliams@kslaw.com

David K. Willingham  
*Los Angeles*  
+1 213 218 4005  
dwillingham@kslaw.com

David Wulfert  
*Washington, DC*  
+1 202 626 5570  
dwulfert@kslaw.com

Sally Q. Yates  
*Atlanta/Washington, DC*  
+1 404 572 2723  
syates@kslaw.com



---

**ABOUT KING & SPALDING**

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.

---