

Insights: Alerts

AI Transparency and Compliance – Key Takeaways from California’s AI Transparency Act

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On September 19, 2024, Governor Newsom signed [SB-942 the California AI Transparency Act](#) (“SB-942” or the “Act”) into law. Broadly, the Act, which becomes operative on January 1, 2026, codifies requirements “Covered Providers” and third-party licensees must meet concerning the disclosure of AI-generated content. Covered Providers are defined as “a person that creates, codes, or otherwise produces a generative artificial intelligence system that has over 1,000,000 monthly visitors or users and is publicly accessible within the geographic boundaries of the state.” Covered providers that violate the Act are liable for “a civil penalty in the amount of \$5,000 per violation,” with each day being “deemed a discrete violation,” as well as reasonable attorney’s costs and fees. Third-party licensees in violation are liable for injunctive relief and reasonable attorney’s costs and fees.

The Act has several distinct characteristics important to companies from a compliance and risk standpoint. The first, as noted, is the broad definition of a Covered Provider. Having the definition based on monthly visitors, as opposed to the computing power of the underlying system for example, expands the definition to a greater number of entities. It also raises questions concerning open-source and fine-tuned AI systems. The Act’s definition of AI is also broad, and “means 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.” This definition is not unique to SB-942 though as it was recently codified in [California’s AB 2885 Artificial Intelligence Act](#), which provides a uniform definition of AI for California laws.

As far as transparency, SB-942 requires a Covered Provider to offer a user “the option to include a manifest disclosure in image, video, or audio content [...] created or altered by the covered provider’s GenAI system.” This disclosure would identify that the output is AI-generated content, be permanent (or “extraordinarily difficult to remove”), and be “clear, conspicuous, appropriate for the medium of the content, and understandable to a reasonable person.” Additionally, Covered Providers must “include a latent disclosure in AI-generated image, video, or audio content, or content that is any combination thereof, created by the covered provider’s GenAI system.” The disclosure must, to the extent technically feasible and reasonable, provide pertinent information (name of the Covered Provider, data on the system that generated the content, time and date of creation, and a unique identifier), be consistent with industry standards, and also be “permanent or extraordinarily difficult to remove.” Additionally, the Act requires Covered Providers to make available an AI detection tool to identify content created by their system “at no cost to the user” and the disclosure must be “detectable by the covered

provider's AI detection tool.”

In addition to the above, the Act also requires, in instances where a Covered Provider licenses its system to a third-party, that the parties enter a contract requiring that the “licensee maintain the system's capability to include [the required] disclosure in content the system creates or alters.” The law also stipulates that if a Covered Provider learns that the licensee has modified the system to prevent it from including required disclosures, the provider must revoke the license within 96 hours, and the licensee must stop using the system once the license is revoked.

As noted, a Covered Provider that violates SB-942 “shall be liable for a civil penalty in the amount of five thousand dollars (\$5,000) per violation to be collected in a civil action filed by the Attorney General, a city attorney, or a county counsel.” Additionally, each day a Covered Provider is in violation is “deemed a discrete violation.” The Act also stipulates penalties for third-party licensees. The Act states that “for a violation by a third-party licensee [...] the Attorney General, a county counsel, or a city attorney may bring a civil action for” injunctive relief and reasonable attorney's fees and costs. It is important to note that the law contains an exemption, and does not apply “to any product, service, internet website, or application that provides exclusively non-user-generated video game, television, streaming, movie, or interactive experiences.”

To date, SB-942 is the most significant U.S. law on AI transparency requirements of this type. While there are over 120 bills concerning AI presently under consideration in Congress, with some addressing AI transparency like the Content Origin Protection and Integrity from Edited and Deepfaked Media Act or the Advisory for AI-Generated Content Act, these bills have shown little legislative progress. In the absence of comprehensive federal AI legislation, it is expected that state specific laws like SB-942 and federal agency regulations regarding AI will continue to proliferate, further adding to the fragmented patchwork of U.S. AI regulation and legislation.

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