Digital Transformation Webinar Series

Regulating AI – the European Approach and the APAC Perspective

FAQ Sheet

1. Who is the provider according to the EU AI Act when a service provider uses an AI as part of its services to the customer?

In a situation where a service provide integrates an AI application into its own service, it is the service provide who qualifies as "provider" as it brings the AI on the market in its own name.

2. What would be an example of a substantial modification in the sense of the AI Act that changes the role from a deployer to a provider?

An example for shift from a mere "deployer" to a "provider" is when somebody markets a third-party-provided AI, after a fine-tuning with related (eg few-shot) learning that qualifies the AI to perform a given, specific task in a materially better way, with details to be further clarified by the EU Commission which is expected to publish Guidelines about this and other important questions.

3. In relation to the licensed use of a GPAI produced by a non-EU parent company, what is the role of an EU company (or vice versa) that purchases the licence? Does joint development or training of the AI system play a role?

If a GPAI is licensed and potentially onward trained by an EU "deployer/user" then both parties (namely the initial GPAI provider and the GPAI deployer/user) maintain that role. The situation will change, however, if the EU-based deployer/user starts onward to offer the fine-tuned/re-trained GPAI to third parties. In such a situation, the initial deployer/user will become, depending on the level of fine-tuning/re-training, a second provider with corresponding obligations.

4. Are there any special obligations if I use and integrate a large language model (such as ChatGPT) offered by the vendor (provider) in a professional environment within the European market?

If a GPAI is integrated into any application that is onward marketed to third parties, the party that conducts this integration and offers the combined product to third parties on the EU market will be treated as a "provider" of the system with all the legal obligations that come along with it. It may be that this obligation will be in parallel (and possibly still also responsible) to the initial provider of the GPAI model.

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5. Can you provide examples of Unacceptable Risk AI systems?

Under the new EU law, unacceptable risks are: (1) the use of AI applications for "social scoring", (2) for creating databases of individual's faces (AI-enabled facial recognition databases), (3) psychologically manipulative techniques in certain environments, eg workplace, (4) real time identification of individual on public places. Importantly though, there are exceptions to all these unacceptable risks for certain applications by public authorities for public safety or defence.

6. Should companies consider the EU AI Act as the 'gold standard' for AI governance and apply it to regions such as APAC?

What is clear is that the EU AI Act is probably the most comprehensive piece of legislation on the topic in any major jurisdiction around the world so far, but there are sure to be bumps in the road as it comes into force in stages. Whilst there is no harm in setting the EU AI Act as a gold standard, you must consider whether by setting standards that are higher than what is required under local legislation you are increasing costs, causing the business to miss out on opportunities or limiting the ability of the business to adapt nimbly to changing circumstances.

If you are thinking of operating in any given jurisdiction you need to consider (1) the local law position and which universe of local laws on and around AI will apply and (2) whether there are areas where you can set standards internally based on the EU AI Act that do not conflict with local law and that give the business sufficient flexibility to adapt to changing circumstances. There is no precedent for AI legislation and no one really knows what the technology will look like five years from now.

Meet our speakers for Episode 1

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