

Senators Urge FTC, DOJ to Investigate AI Models That Copy Third-Party Content — AI: The Washington Report

September 18, 2024 | Article | By [Bruce Sokler](#), [Alexander Hecht](#), [Christian Tamotsu Fjeld](#), Matthew Tikhonovsky

VIEWPOINT TOPICS

- Artificial Intelligence

- On September 10, eight Democratic Senators urged the heads of the FTC and DOJ's Antitrust Division to investigate certain generative AI features used by dominant online platforms that may violate competition laws.
 - According to the Senators' [letter](#), many dominant online platforms now deploy AI features that answer user questions by summarizing or regurgitating content from other sources – including small news organizations, journalists, and content creators – often without crediting the original source and without the source's authorization.
 - The Senators are concerned that the unauthorized use of content by AI features forces content creators to compete against AI models that regurgitate their content for the same viewers.
 - The letter comes as legislation to crack down on intellectual property infringement by AI models stalls in Congress.
-

On September 10, eight Democratic Senators called on the heads of the Federal Trade Commission (FTC) and the Department of Justice's (DOJ) Antitrust Division to investigate whether certain generative AI tools that summarize or simply repeat content from other sources violate the nation's competition laws. In a [letter](#) to FTC Chair Lina Khan and Assistant Attorney General (AAG) Jonathan Kanter, the Senators expressed concerns that dominant online platforms' use of these AI tools, which often take content from other sources without their authorization, may amount to a form of exclusionary conduct or unfair method of competition.

The letter comes as a number of Senators have attempted to pass legislation that would protect journalists, musicians, and other content creators from the unauthorized use of their content by AI models. As this effort and other AI legislation have stalled in Congress, the letter shows that Senators are attempting to find other approaches under current law through which to regulate AI.

Senators Focus on Protecting Small Content Creators, Journalists from Unauthorized Uses by AI

In July, [as we covered](#), a bipartisan group of Senators introduced two bills that would limit the ability of AI models to use information or content from other sources without the authorization of those sources. The Nurture Originals, Foster Art, and Keep Entertainment Safe Act (NO FAKES Act) and the Content Origin Protection and Integrity from Edited and Deepfaked Media Act (COPIED Act) both responded to concerns that AI models that are trained with third-party content may infringe on the intellectual property of journalists, news organizations, musicians, and other creators. However, neither bill has advanced out of committee and their passage through this Congress is very unlikely, as there are less than 10 weeks left with this Congress and the November election is looming.

Senators Call on FTC, DOJ to Investigate AI-Generated Summaries

According to the Senators' letter, many dominant online platforms now deploy AI tools that "answer user queries by summarizing, or, in some cases, merely regurgitating online content from other sources or

platforms.” Unlike traditional search results, which usually include a link to the original publisher, AI-generated summaries “[keep] the users on the original search platform,” allowing the platform to “profit from the user’s attention through advertising and data collection.” Some AI-generated summaries identify the original source of the content at the bottom of the summary, which users are unlikely to scroll to, while other AI-generated summaries altogether fail to identify the original source and represent the content as its own.

The Senators’ letter details concerns that AI-generated summaries have a number of anticompetitive effects that “distort markets for content.” When AI features summarize content from another publisher, “it often forces the content creator—whose content has been relegated to a lower position on the user interface—to compete with content generated from their own work.” The letter provides an example of a user who uses an AI feature to search for a recipe and is presented with a summary copying a recipe from another website, without authorization from the website and in direct competition with the website. When this happens, small publishers and content creators not only have to compete against summaries of their content for the same viewers, but also have little recourse. Publishers and content creators can only avoid having their content summarized if they “opt out of being indexed for search completely, which would result in a materially significant drop in referral traffic.”

Furthermore, the Senators also argue that dominant firms may use AI tools that summarize or regurgitate other platforms’ content to further entrench their market power. Many dominant platforms, according to the letter, “already abuse their gatekeeper power over the digital marketplace in ways that harm small businesses and content creators and eliminate choices for consumers.” The Senators are concerned about the “potentially devastating impact of some new generative AI features,” including those that summarize content from other publishers, on smaller content creators and news organizations. Yet, it will be up to the FTC and DOJ to decide whether to investigate and potentially ultimately challenge whether the use of these AI features by dominant players is consistent with existing antitrust and copyright laws.

The FTC and DOJ Take on AI

The FTC and DOJ are not unfamiliar with the challenges that AI poses to small content creators. As [we covered](#), at an October 2023 roundtable, Chair Khan noted that “generative AI, in particular, poses a unique set of opportunities and challenges to creative industries.” AI tools could “virtually overnight significantly disempower creatives and artists, who may watch their livelihood...be appropriated into models over which they have no control.” In May, AAG Kanter asked in a [speech](#), “What incentive will tomorrow’s writers, creators, journalists, thinkers and artists have if AI extracts their ingenuity without compensation?” In late July, as [we covered](#), the FTC and DOJ also acknowledged concerns shared by the Senators that dominant online platforms might use AI “to protect against AI-driven disruption, or harness it to their particular advantage” to entrench their market power or dominance.

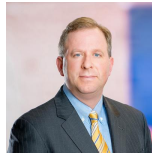
The FTC and DOJ have also been willing to rely on existing law to confront AI issues. As past newsletters have covered extensively, the agencies have brought [cases against AI companies](#), issued [business guidance](#) for AI, [proposed rules](#) for AI, and also joined an international [statement on competition](#) in the AI ecosystem. We will continue to closely monitor and analyze whether the DOJ and FTC set their sights on AI-generated summaries and other AI issues.

Authors

Bruce Sokler

Bruce D. Sokler is a Mintz antitrust attorney. His antitrust experience includes litigation, class actions, government merger reviews and investigations, and cartel-related issues. Bruce focuses on the health care, communications, and retail industries, from start-ups to Fortune 100 companies.

Alexander Hecht, Executive Vice President & Director of Operations



Alexander Hecht is Executive Vice President & Director of Operations of ML Strategies, Washington, DC. He's an attorney with over a decade of senior-level experience in Congress and trade associations. Alex helps clients with regulatory and legislative issues, including health care and technology.

Christian Tamotsu Fjeld, Senior Vice President



Christian Tamotsu Fjeld is a Vice President of ML Strategies in the firm's Washington, DC office. He assists a variety of clients in their interactions with the federal government.

Matthew Tikhonovsky

Matthew is a Mintz Senior Project Analyst based in Washington, DC.