Podcast Transcript

2025 DSIR Deeper Dive: Artificial Intelligence

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May: On April 15, 2025, BakerHostetler's Digital Assets and Data Management Practice Group, DADM, released its 11th Annual Data Security and Incident Response Report, the DSIR. This one-of-a-kind law firm report provides organizations around the globe with metrics to make data-driven decisions before, during, and after security incidents. I'm Charlie May, and you are listening to BakerHosts.

We're back with a deeper dive series covering key topics in this year's DSIR. On today's episode, we take a look at artificial intelligence and how AI law and guidance has changed over the last year. Our guests today are James Sherer and Brittany Yantis. James is a partner in our New York office and co-leader of our Emerging Technologies team and Brittany is an associate on this team and based in our Washington, D.C. office. Welcome to the show, James and Brittany.

Sherer: Thank you.

Yantis: Thanks for having us.

May: James, let's start with you. How has federal guidance on the use of AI changed from 2024 to the first half of 2025?

Sherer: We saw a new administration come into power, and we've seen changes in the federal approach to AI regulation that's come through executive orders, as well as statements by the government. It also includes some movement on legislation where there were back and forth discussions about whether there would be a blanket prohibition against AI governance at a state level, and then an intermediate step that had been floated about whether there would be federal funds and cuts for states that deployed AI-specific governance in those regions.

The federal government backed away from that, but then did come out with a more general statement about AI speaking to support the development of AI and these technologies in the United States with particular focus on United States values, putting America first, supporting U.S. industry, and by extension, making it more difficult for those entities the U.S. has identified as being adversarial, try not to support AI development there with the thought that there will emerge a victor for AI technologies, and the U.S. at the federal level wants to support the United States leading that race.

May: What are you seeing at the state level when it comes to new AI law? Are any states in particular paving the way for future state-level legislation?

Yantis: I think since the federal government has taken a step back from any sort of regulation across the board, I think we're going to see a similar trend to what we saw with privacy law, where the states really step in.

We saw New York City really be the first jurisdiction to pass anything that went into effect. And that was really focused on the use of AI for employment decisions. The state more broadly has had some similar laws proposed, but they haven't actually passed anything. So, I think we're seeing other states now take a leading role. Colorado seems to be the biggest player with the most comprehensive law to date that is set to go into effect February 1 of next year, and that is the Colorado AI Act.

There is still some question on whether or not that is going to be scaled back a little bit. They have a little bit of time when they come back into session, I believe in January, but we'll see if that goes forth. But then we've otherwise seen a similar trend in California where they're taking a leading role similar to privacy, although it is been a patchwork of laws in California rather than one comprehensive AI regulation. It's been laws focused on chatbots, laws focused on deep fakes and using digital replicas for celebrities, and then they've also had some modifications to existing employment regulations to cover the use of automated decision tools.

And then, of course, we've seen recently, as of just last month, they finalized the regulations under the CCPA related to automated decision making as well. And then some other states that are notable to mention, Utah has also had a focus on the generative AI use and chatbots and as well as a trend in towards regulating the use of chatbots in the mental health space, both New York and Utah have passed laws to that effect.

Sherer: But even there, we've seen challenges at the state level. And you can compare and contrast for what we've seen in Colorado and what we saw in Texas. The Texas AI Act, or TRAIGA, took a very high-level approach and cut many of the proposed provisions in the original bill to perhaps react to federal guidance about how much direct effect these laws should have on AI companies, as well as what requirements would be in place related to policies and documentation, audit provisions, and the like.

Colorado has struggled even after putting this AI law into effect. To Brittany's point, not only will there be an opportunity in January to revisit the bill, but Polis this week has called for a special legislative session to reevaluate the state's budget in the wake of the H.B.1, the Big Beautiful Bill, but also to examine the effects of tariffs on the economy. Likewise, the legislature will have an opportunity to evaluate the AI Act. So, there will be another bite at that apple. And as of the point of this recording, it is interesting to see how there's been continued focus and investment in lobbying about these bills and acts from the companies who are affected.

May: So, what industry bodies do you see are closely following regulatory changes?

Sherer: It is interesting because some regulatory bodies and, think of them as regulatory bodies extended. For example, the NAIC is the National Association of Insurance Commissioners, and they promulgate proposed approaches for states that are regulating insurance and they had done so for artificial intelligence in its application. So, a number of states took what the NAIC had provided and then put their own special state spin on it and started to apply those requirements to entities operating in those states.

Likewise, the federal government in terms of OCR and some of the health-related entities, there are exceptions to some of the privacy laws for industry-specific action. I think there, we've seen the industries themselves working with that federal level or state level regulators and potential enforcement to get some certainty and direction on what they can do with these technologies. And then we've seen some reactionary activity, especially with these chatbots and their use in mental health and their effects on individuals, including in cases where very, very difficult circumstances lead to reactions on the part of the legislature to address those.

May: In your recent blog post on this topic, you mention the one constant in the near future will be change. From a legal perspective, where is this change in AI guidance trending towards for major industries?

Yantis: I think it is going to be hard to find a trend. I think there's certain areas that seem to be more of a focus. I think there is a big focus on employment and regulating the use of AI there and hiring practices. I think that is an easy thing to grab at just because it is easy to complain, right? You don't get a job, you want to know why, and all of a sudden AI is the reason. And so, it is easy to launch a complaint there. Similar in the mental health space, like James mentioned, just seeing the effects that AI and the use of chatbots over a long period of time can have an effect on mental health and that is also an easy thing to grab at. But I think the states are all over the place in how they're choosing to regulate certain things and they all have different approaches and we've seen Colorado be super comprehensive and have notice and intensive audit requirements and things like that.

And then other states that are really just like, hey, you got to provide notice if you're putting up a chatbot and it is as simple as that. And we're also seeing laws that go into effect immediately and laws that have at least a year ramp up. So, it is definitely going to be constant change. It'll be interesting to see where it goes in 2026 and if these bigger laws do indeed take effect, like Colorado and Texas.

Sherer: I'd say there's three parts, too, for how these changes are coming about and for the continuous change that we are reacting to. One is the technology itself is borderless, and that is appreciated both in what we've seen in the United States at those higher level statements about America and its positioning with AI and technology development, and then reactions from the EU in form of the EU AI Act, as well as China's plan and a Chinese at least pronouncement of more international cooperation and focus on research and development. You've got existing technologies that are now starting to find themselves within broader definitions of AI.

So, one thing we've worked with clients on has been robotic process automation or RPA, which exists within a number of clients because they're manufacturers, they work at scale, they have automated some of their work, and that may fit within these broader definitions of artificial intelligence. So, how do you take technologies that have been in place for quite some time, and now look at evolving laws that are sweeping them in, even though there may not have been something that applied prior to that?

And then finally, we've got the pressures and sensitivities of these technologies, many of them including the generative AI ones that are the underpinnings for some of the chatbots and the emerging laws are interacting directly with people. And people are slowly becoming accustomed to how they operate and are interacting with them in ways that the chatbots and these generative AI platforms were designed to, which is to captivate attention, to get engagement. But we've seen some people find it really challenging to differentiate between a chatbot just trying to engage and it actually offering advice and counsel. And what does it mean? Like these concerns about hallucinations that can lead to, in some cases, very tragic effects.

And to Brittany's point, where the proverbial rubber hits the road, or where we see the friction, is where people have interactions and they are unsatisfied or something horrible happens, and you have the courts, you have regulators, and then ultimately legislators responding and reacting to those and emerging areas of law. Like they say, bad facts sometimes lead to bad law. You're going to overcorrect or overcompensate. And we're seeing a lot of these frontline interactions, unlike prior technologies where they may be hidden, many, many steps down the road within a manufacturing process where you wouldn't think an automated portion of that process is at fault. Where there is direct interaction with chatbots or interactions there, we can see how regulators and legislators who also can interact directly with them can find issues and then seek to react to those and address them. And that could be through legislation, it can be through enforcement, it can be through decisions that can have a broader effect.

There is that irony because a lot of these AI technologies are put in place in order to scale operations, and some of the reactions in terms of law, court decisions, regulatory inquiry, and enforcement will also have these economies of scale for effect, and we'll have to react to those, as will clients.

May: James and Brittany, thank you so much for joining the show today.

Sherer: Thanks for having us.

May: If you have any questions for James or Brittany, their contact information is in the show notes. As always, thanks for listening to BakerHosts.