

AI Proxy Wars: The Struggle For Control Of Corporate Adoption And Use Of Artificial Intelligence Technologies

By

Gary Rinkerman*

Abstract: Attempts to exercise control over corporate artificial intelligence (“AI”) adoption, development, implementation, and management have surfaced in the form of Executive Orders, legislation, rulemaking, union and guild agreements, and case law. However, shareholders in publicly traded corporations have also used the shareholder Proposal and Proxy voting process to introduce sweeping or focused efforts to force corporate management to address and disclose information on a variety of AI-related issues. These Proposals are often couched in language that references ethical and significant social policy issues that arise in course of the target company’s AI-related business plans and activities. Of course, the determination of what is “ethical” or what constitutes a “significant social policy issue” can be quite subjective or driven by the advocate’s ancillary political and economic goals. This article discusses three recent attempts to use the shareholder Proposal and Proxy voting process to impose AI-related “transparency” and control requirements on major users of the technology. The common thread that runs through each effort is the strategic use of shareholder initiatives to attempt to influence the policies and management approach to AI and AI-related issues, including, in some instances, specific security, privacy, copyright, and personality rights issues.

Introduction

As various factions vie for control of, or profit from, developments in AI technologies, especially generative AI technologies,¹ an important series of strategic initiatives can be found in corporate

¹* Gary Rinkerman is a Founding Partner at the law firm of Pierson Ferdinand, LLP, an Honorary Professor of Intellectual Property Law at Queen Mary University School of Law in London, a member of George Mason University’s Center For Assurance Research and Engineering, and a Senior Fellow at George Mason University’s Center for Excellence in Government Cybersecurity Risk Management and Resilience. The views and information provided in this article express solely the work of author and **do not** comprise legal advice and are not for attribution to any entity represented by the author or with which he is affiliated or a member.

Generative artificial intelligence is a subset of AI that utilizes machine learning models to create new, original content, such as images, text, or music, based on patterns and structures learned from existing data.” *Generative Artificial Intelligence*, Cornell University, Center for Teaching Innovation, Computing & Communications Center, <https://teaching.cornell.edu/generative-artificial-intelligence>. As one commentator explained, “[g]enerative AI can be thought of as a machine-learning model that is trained to create new data, rather than making a prediction about a specific dataset. A generative AI system is one that learns to generate more objects that look like the data it was trained on.” Adam Zewe, *Explained: Generative AI*, MIT News, Nov. 9, 2023, <https://news.mit.edu/2023/explained-generative-ai-1109>. This contrasts with “traditional AI, which may be described as follows: “Traditional AI, sometimes also known as Weak AI or Narrow AI, is a subset of artificial intelligence

shareholder attempts to “force” a general or issue-specific corporate approach to the adoption, development, implementation, and management of AI issues.² As can be seen in the area of generative AI system training, the use of third-party copyrighted works without compensation to the authors or copyright holders has sparked a number of ethical and cautionary notes in shareholders’ requests for corporate transparency and policy adoption on that issue. However, the requests typically go well beyond a discrete issue and can traverse almost every aspect of corporate management and behavior. The “flashpoint” occurs when corporate recipients of such Proposals see them as illegitimate attempts to interfere in routine day-to-day operations and micromanage corporate decision-making that is more properly left to well-informed personnel who are charged with the internal management of such issues. Moreover, where the Proposal is characterized by the Proponent shareholder(s) as raising important ethical issues and significant social policy issues, the reaction might be that the Proposal is a ploy that merely tries to “bootstrap” intrusive political agendas or micromanaging attempts into an undeserved status of general societal concerns.³

Because shareholder Proposals raise issues of corporate transparency and corporate management, an immediate concern in the target company is whether omission of the shareholder proposal from shareholder voting materials will invite scrutiny from the U.S. Securities and Exchange Commission (“SEC”).⁴ In instances where a shareholder Proposal is deemed by the corporate

that focuses on performing preset tasks using predetermined algorithms and rules. These artificial intelligence applications are designed to excel in a single activity or a restricted set of tasks, such as playing chess, diagnosing diseases, or translating languages.” Heaslip, *What’s The Difference Between Traditional and Generative AI?*, U.S. Chamber of Congress, 2025, <https://www.uschamber.com/co/run/technology/traditional-ai-vs-generative-ai>.

² This article focuses on three specific instances in which a shareholder Proposal sought arguably pervasive insights into the corporate target’s general and specific AI policies. Other, more confined AI-related issues have also arisen in the context of shareholder Proposal and voting efforts. For example, on January 20, 2025 Amazon.com, Inc. informed the Securities and Exchange Commission’s Office of Chief Counsel, Division of Corporation Finance that Amazon wished to exclude the following shareholder Proposal from Amazon’s proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders: “Shareholders request that Amazon issue a report explaining how it will meet the climate change-related commitments it has made on greenhouse gas emissions, given the massively growing energy demand from artificial intelligence and data centers that Amazon is planning to build.” See 2025 WL 356569 (S.E.C. No - Action Letter 2025). The Proposal appeared as Item 7 at page 40 of Amazon’s Notice of 2025 Annual Meeting of Shareholders & Proxy Statement – and was opposed by Amazon’s Board. See https://s2.q4cdn.com/299287126/files/doc_financials/2025/ar/Amazon-2025-Proxy-Statement.pdf. The annual meeting is scheduled for May 21, 2025.

³ The approach to Rule 14a-8 shareholder proposals (as discussed more fully in this article), as well as the success or failure of an argument that the Proposal raises important ethical issues and significant social policy issues, can depend on the views of the then-current administration. For example, as pointed out by Golberg, Sasfai, and Hooper in *The Changing Tides of the SEC Under the Second Trump Administration*, *Harvard Law School Forum on Corporate Governance*, March 3, 2025, <https://corpgov.law.harvard.edu/2025/03/03/the-changing-tides-of-the-sec-under-the-second-trump-administration/>: “While the SEC’s rulemaking agenda still lists the status of a rule, which was expected to amend Rule 14a-8 under the Exchange Act to narrow certain substantive bases for excluding shareholder proposals, as being in the rule proposal stage expected for October 2025, it is now expected that the SEC will not pursue the proposed rule under the Trump administration.”

⁴ The U.S. Securities and Exchange Commission has a three-part mission: (1) protect investors; (2) maintain fair, orderly, and efficient markets; and (3) facilitate capital formation. As described by the SEC, its mission is to ensure

target to be improper, the corporation may seek an affirmation from the SEC's Division Of Corporation Finance, Office Of Chief Counsel ("Office of Chief Counsel" or "Chief Counsel") that the shareholder Proposal may be excluded from consideration and inclusion in shareholder voting materials without a recommendation of further scrutiny by the SEC.⁵ Therefore, the corporation's first level of defense when it receives what it perceives as a Proposal that inappropriately delves into AI-related management matters may be to confer with the Proponent shareholder(s) for a negotiated withdrawal of the Proposal.⁶ If the negotiation fails (or does not take place) the target corporation may seek a determination from the Office of Chief Counsel that the omission of the Proposal from the corporation's shareholders voting package will not trigger a recommendation from the SEC's Office of Chief Counsel⁷ that the SEC investigate the matter or otherwise take action.⁸ This process – the promulgation and reaction to shareholder Proposals – is generally governed by Rule 14a-8 of the Securities Exchange Act of 1934 ("Exchange

that: (1) Companies offering securities for sale to the public must tell the truth about their business, the securities they are selling, and the risks involved in investing in those securities; and (2) those who sell and trade securities – brokers, dealers, and exchanges – must treat investors fairly and honestly. See <https://www.investor.gov/introduction-investing/investing-basics/role-sec>.

⁵ Rule 14a-8 of the Securities Exchange Act of 1934, as amended, established a mechanism for public company shareholders to request that a proposal be included in the company's proxy statement, to be voted upon at a company's shareholder meeting. Under the seventh of thirteen bases listed in the Rule for exclusion of the Proposal from shareholder materials, the Proposal may be excluded on the following basis: "(7) Management functions: If the proposal deals with a matter relating to the company's ordinary business operations." See <https://www.govinfo.gov/content/pkg/CFR-2011-title17-vol3/pdf/CFR-2011-title17-vol3-sec240-14a-8.pdf>.

⁶ Proposing shareholders typically include an invitation to the target corporation to engage in negotiations. For example, in the *Disney* matter discussed below, the Proponent shareholder included the following invitation in its notice of Proposal to Disney: "We welcome the opportunity to discuss the shareholder proposal with you, and are available to meet with the Company, jointly with AFL-CIO Equity Index Funds, via teleconference on October 23 or October 27 between 11am and 1pm PDT." See *The Walt Disney Company*, p. 10., 2024 WL 312337 (S.E.C. No - Action Letter).

⁷ The requests are submitted to the U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel. The SEC's Office of the General Counsel helps the Commission issue opinions in appeals of SEC administrative proceedings and adjudications before the Commission, including challenges to decisions made by self-regulatory organizations. <https://www.sec.gov/about/divisions-offices/office-general-counsel>. The Office of Chief Counsel is distinct and works with the SEC's Division of Corporation Finance which: (1) seeks to ensure that investors are provided with information needed to make informed investment and voting decisions, including when a company initially offers its securities to the public and on an ongoing basis; and (2) provides interpretive assistance to companies with respect to SEC rules and forms and makes recommendations to the Commission regarding new rules and revisions to existing rules. See <https://www.sec.gov/about/divisions-offices/division-corporation-finance>.

⁸ As discussed above, at this point in the process there might also be contact between the company and the Proposing shareholder(s) to determine if there is a possibility that a negotiated withdrawal of the Proposal can be achieved.

Act”),⁹ although (depending on the nature of the Proposal) other rules may come into play.¹⁰ One permissible basis for “exclusion” from sharing voting materials under Rule 14a-8 is that the Proposal relates to the Company’s ordinary business operations. This exclusion is listed under Rule 14a-8(i)(7) – and this basis is typically cited in corporation attempts to exclude AI-related shareholder Proposals.¹¹ Notably, Proponents of AI-related shareholder proposals typically cite the SEC’s position that a shareholder Proposals relating to ordinary business operations but focusing on a significant policy issue generally are not excludable under the ordinary business exception “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”¹² However, in a clarifying statement issued on February 12, 2025 by the Division of Corporation Finance, the following approach to reliance on assertions of “policy issues” in Rule 14a-8(i)(7) shareholder Proposals:

[W]hether the significant policy exception applies depends on the particular policy issue raised by the proposal and its significance in relation to the company. . . . As such, the staff will take a company-specific approach in evaluating significance, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally “significant.” Accordingly, a policy issue that is significant to one company may not be significant to another. The Division’s analysis will focus on whether the proposal deals with a matter relating to an individual company’s ordinary business operations or raises a policy issue that transcends the individual company’s ordinary business operations.¹³

⁹ See 17 CFR §240.14a-8 Shareholder proposals. <https://www.govinfo.gov/content/pkg/CFR-2011-title17-vol3/pdf/CFR-2011-title17-vol3-sec240-14a-8.pdf>. Rule 14-a-8 provides the mechanism via which shareholder Proposals are to be submitted and considered, including procedures, deadlines, content, length, and categories of Proposals that may be omitted – *i.e.*, excluded – from shareholder voting materials. The article focuses on the exclusion process under Rule 14a-8(i)(7). However, the Rule contains thirteen (13) grounds for exclusion, including, *e.g.*, proposals relating to ordinary business operations, proposals that are not economically relevant to the company, proposals that are substantially implemented by the company, and those that are duplicates or resubmissions of previous proposals. Recent guidance on the policies and processes under Rule 14-8 can be found in the U.S. Securities and Exchange Commission’s *Shareholders Proposals: Staff Legal Bulletin No. 14M (CF)*, published on February 12, 2025. See <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

¹⁰ See, *e.g.*, Rule 14a-19 which allows shareholder proposed director nominees to be included on a company’s proxy card, subject to certain requirements.

¹¹ Rule 14a-8(i)(7), the “ordinary business” exclusion, permits a company to exclude a proposal that deals with a matter relating to the company’s ordinary business operations. The purpose of the exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” See <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>. The Commission has stated that the policy underlying the “ordinary business” exclusion rests on two central considerations. The first relates to the proposal’s subject matter; the second relates to the degree to which the proposal “micromanages” the company. *Id.*

¹² See *Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)*, Division of Corporation Finance, Securities and Exchange Commission, Issued Feb. 12, 2025,

<https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

¹³ *Id.*

In short, recitations of alleged universally “significant” policy issues will be considered in the context of the specific target company’s operations, not as general policy issues *per se*.¹⁴ However, it should be noted that the approach merely reflects the Division of Corporation Finance’s current intention – the statement is not a rule, regulation or statement of the SEC and, like all staff guidance, it “has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.”¹⁵

If a positive result is not received from the Office of Chief Counsel in a Rule 14a-8(i)(7) request for confirmation of an exclusion, the target corporation can either negotiate with the shareholder for a withdrawal of the proposal or include the proposal (and supporting arguments) in the shareholder voting package and make the argument against it in that context. The shareholder vote will then determine if the Proposal succeeds or fails.

Below are discussions of three recent and major attempts to force the corporate recipient of an AI-related shareholder Proposal to provide information on the corporation’s development, adoption, use, and management of AI assets. Each proposal expresses concern about the use of third-party copyrighted materials to train AI systems – and there appears to be an attempt to force each major corporation to take an “acceptable” position on the issue. However, the Proposals also echo the attempt by the Biden White House to foster very aggressive government scrutiny of, and involvement in, AI-related corporate management decisions.¹⁶ The three Proposals discussed below – the corporate targets being Apple, Inc., The Walt Disney Company, and Paramount Global – seek information on a broad range of issues, including issues that might be characterized as “social justice” and labor issues. Each instance discussed below provides insight into the mechanisms, typical arguments, and potential utility of the shareholder Proposal process in AI-related matters.

Apple, Inc.

In October of 2023 Apple, Inc. (“Apple”) attempted to secure from the SEC’s Office of Chief Counsel concurrence with Apple’s intention to exclude certain information regarding Apple’s use

¹⁴ *Id.* *Staff Legal Bulletin No. 14M (CF)* addresses an arguable trend under the prior Administration to more routinely accept assertions that “significant” general policy issues defeat Rule 14a-8(i)(7)’s ordinary business exclusion. Various aspects of the *Bulletin* seek to rein in this more general approach. For example, *Bulletin No. 14M* : “We are reinstating the following sections of guidance that was previously rescinded by Staff Legal Bulletin No. 14L: Staff Legal Bulletin No. 14J Section C.2. Micromanagement; (2) Staff Legal Bulletin No. 14J Section C.3 The Division’s application of Rule 14a-8(i)(7) to proposals that address senior executive and/or director compensation; Staff Legal Bulletin No. 14K Section B.4. Micromanagement.”

¹⁵ *Id.*

¹⁶ The Biden Administration’s approach can be seen in Executive Order 14110, titled *Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (sometimes referred to as “*Biden Executive Order on Artificial Intelligence*”) which was issued on October 30, 2023. The Order was rescinded by President Trump on January 20, 2025. See, e.g., *Removing Barriers To American Leadership In Artificial Intelligence*, White House Actions Report, January 23, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>.

of AI from Apple’s proxy statement and proxy to be filed in connection with Apple’s 2024 annual meeting of shareholders.¹⁷ The request for disclosure was submitted to Apple on September 12, 2023 by Segal Marco Advisors¹⁸ on behalf of shareholder AFL-CIO Equity Index Funds.¹⁹ The resolution and request in the shareholder letter to Apple stated: “RESOLVED: Shareholders request that Apple Inc. prepare a transparency report on the company’s use of Artificial Intelligence (“AI”) in its business operations and disclose any ethical guidelines that the company has adopted regarding the company’s use of AI technology.”²⁰ The resolution also specifies that the report should be made publicly available to the company’s shareholders on the company’s website, be prepared at a reasonable cost, and omit any information that is proprietary, privileged, or violative of contractual obligations.²¹

According to the AFL-CIO’s statement in support of the resolution, a number of significant social policy issues are raised by Apple’s adoption and implementation of AI.²² Among the issues specified are: (1) the use of AI in human resources decisions may raise concerns about discrimination or bias against employees; (2) the use of AI to automate jobs may result in mass layoffs and the closing of entire facilities; (3) AI may be used in ways that violate the privacy of customers and members of the public; and (4) AI technology may be used to generate “deep fake” media content that may result in the dissemination of false information in political elections. These concerns echo a number of AI-related statements used by the Biden administration to justify sweeping investigations and oversight with regard to the development

¹⁷ See October 23, 2023 Letter to U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel On Behalf Of Apple, Inc., 2023 WL 7093244 (2024).

¹⁸ Segal Marco Advisors is an investment consulting and research firm with locations in the United States, Canada, and the Republic of Ireland. In describing its proxy-related experience, the firm makes the following representation: “Corporate engagement and proxy voting services - Your shareholdings give you a seat at the table with publicly-traded companies, and we’ll help make sure you make the most of the opportunity. Every year, we vote proxies at roughly 8,000 companies and engage corporate boards directly on a wide range of corporate governance issues important to our clients. With our in-depth knowledge of the needs of plan participants and the resources to analyze individual proxy votes on a global scale, we will be your plan’s advocate.” See <https://www.segalmarco.com/>. (Visited May 2, 2025).

¹⁹ The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a national trade union center that is the largest federation of unions in the United States. It is made up of 61 national and international unions, together representing millions of active and retired workers. See <https://aflcio.org/> (Visited May 2, 2025). As is evident in the Apple, Inc. and Walt Disney Company matters discussed in this article, the AFL-CIO engages in substantial spending and activism on AI-related issues.

²⁰ See October 23, 2023 Letter to U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel On Behalf Of Apple, Inc., p. 2, 2023 WL 7093244 (2024).

²¹ *Id.* The notation that proprietary information, privileged information, and information covered by contractual obligations can be omitted very substantially limits the scope (and potential utility) of the sought-after disclosures. For example, it is likely that many of the details of a company’s adoption and use of AI – as well as any proprietary AI technology – will be subject to trade secret restrictions and confidentiality obligations.

²² The AFL-CIO has been the core participant in a number of additional AI-related shareholder Proposals that are not treated in this article. Further information may be found at the AFL-CIO website: <https://aflcio.org/>.

and implementation of AI.²³ Moreover, there was a strong component of intellectual property concerns voiced on the part of the AFL-CIO and its members. As stated in the AFL-CIO's Proposal:

We believe that the adoption of ethical guidelines for the use of AI can help improve our company's bottom line by avoiding costly labor disruptions. In 2023, writers and performers went on strike against the Alliance of Motion Picture and Television Producers in part over concerns that the use of AI technology to create media content will infringe on the intellectual property and publicity rights of writers and performers and potentially displace human creators. (Wall Street Journal, "Hollywood's Fight: How Much AI Is Too Much?," July 31, 2023, available at <https://www.wsi.com/articles/at-the-core-of-hollywoods-ai-fight-how-far-is-too-far-f57630df>). . . . In our view, AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders. We also believe that AI should not be used to create literary material, to replace or supplant the creative work of professional writers.²⁴

As might be expected, Apple reacted negatively to what it viewed as an unwarranted intrusion into its day-to-day management activities and an inappropriate attempt to micromanage the company's routine affairs. According to Apple's reasoning, the Proposal should be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the company's ordinary business operations which should be left to internal management decisions rather than unwarranted shareholder intrusions. According to Apple, the Proposal sought an inappropriate level of detail on the use of AI in Apple's broad spectrum of routine and complex business operations. As a result, the AI report requested in the Proposal could encompass potentially every aspect of the company's business operations, including whether and how it chooses to use AI/machine learning (if at all) in the course of routine business operations such as product development and research, supply chain management, and financial management and planning, as well as in managing efficient energy use throughout the company's physical plants and buildings, monitoring cyber and physical security at the company's facilities, coordinating employee benefit and human resource management programs, and conducting a wide range of other ordinary business operations.²⁵

Apple's letter to the SEC's Office of Chief Counsel sought assurance that the Chief Counsel would not recommend investigation or any enforcement action to the Commission if Apple excluded the AFL-CIO's Proposal from Apple's 2024 Proxy Materials. Apple's objection to the Proposal's inclusion on shareholder voting materials was based on the "exclusion" provided in

²³ See, e.g., *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Executive Order 14110 of October 30, 2023.

<https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

²⁴ See October 23, 2023 Letter to U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel On Behalf Of Apple, Inc., p. 9, 2023 WL 7093244 (2024).

²⁵ *Id.* at p. 2-3.

Rule 14a-8(i)(7) of the Exchange Act for Proposals that inappropriately intrude into a company's ordinary business operations. Rule 14a-8(i)(7) expressly permits a company to exclude a shareholder proposal from shareholder voting materials if the proposal "deals with a matter relating to the company's ordinary business operations."²⁶ This Ordinary Business Exclusion is premised, in part, on the notion that ordinary business challenges should be addressed and resolved by management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.²⁷

Essentially, there are two core considerations in determining whether the Ordinary Business Exclusion applies: (1) certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight; and (2) a proposal should not seek to "micromanage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. These considerations seek to strike a practical balance between shareholders' entitlement to meaningful information and a company's need to internally identify and address day-to-day challenges without unnecessary and unproductive distractions. Nonetheless, an exception to the Ordinary Business Exclusion may be made when a Proposal focuses on significant social policy issues that transcend the day-to-day business matters of the company.²⁸

Regarding the AFL-CIO's assertion that its resolution and request relate to significant social policy issues, Apple acknowledged that certain aspects of AI or the application of certain novel types of AI in specific contexts can raise significant social policy issues with a broad societal impact.²⁹ However, Apple argued that the AFL-CIO's assertion that its Proposal addressed significant social policy issues was lacking in specifics and simply sought to bootstrap general AI-related concerns into an intrusion into Apple's day-to-day operations and management prerogatives. According to Apple:

The use of AI technology in ordinary business operations reflects further progress in the historical development of workplace technological trends that include the automation of manufacturing and the introduction of personal computers to automate certain office tasks. Indeed, one of the most fundamental aspects of any company's ordinary business operations is the adaptation of new techniques and technologies to optimize operations, including potentially workforce management, increase productivity, and seek innovation across its operations. The use of AI technology, broadly defined, across the Company's business operations does not present any significant policy issues distinct from these historical patterns. Such ordinary business matters are the crux of the Proposal's focus.

²⁶ See <https://www.govinfo.gov/content/pkg/CFR-2011-title17-vol3/pdf/CFR-2011-title17-vol3-sec240-14a-8.pdf>

²⁷ See, e.g., *Staff Legal Bulletin No. 14M (CF)*

<https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf> (Feb. 12, 2025)

²⁸ *Id.*

²⁹ See October 23, 2023 Letter to U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel On Behalf Of Apple, Inc., p. 6, 2023 WL 7093244 (2024).

Thus, the Proposal does not raise a significant policy issue and may be excluded under Rule 14a-8(i)(7).³⁰

On January 3, 2024, the Office of Chief Counsel summarily rejected Apple’s request for an affirmation of exclusion under Rule 14a-8(i)(7). As stated by the Chief Counsel: “The Proposal requests that the Company prepare a transparency report on the Company’s use of artificial intelligence in its business operations and disclose any ethical guidelines that the Company has adopted regarding its use of artificial intelligence technology. . . . We are **unable to concur in your view** that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.” (emphasis supplied.)³¹

As a result of Apple’s failure to secure an exclusion under Rule 14a-8(i)(7), Apple’s Notice of 2024 Annual Meeting of Shareholders and Proxy Statement included Shareholder Proposal No. 7 which set out the AFL-CIO’s Proposal and Supporting Statement.³² However, the Proposal and Supporting Statement was followed by Apple’s statement that “The Board recommends a vote AGAINST Proposal No. 7.” (emphasis in original.)³³ The Board’s rationale was summarized as follows: (1) “we are committed to responsibly advancing our products and services that use artificial intelligence and already provide resources and transparency on our approach to artificial intelligence and machine learning, all under the active oversight of our Board; and (2) the scope of the requested report is extremely broad and could encompass disclosure of strategic plans and initiatives harmful to our competitive position and would be premature in this developing area.”³⁴ In essence, Apple argued that social issues raised in the Proposal, such as discrimination, bias, and privacy may be implicated by AI technologies, but are not unique to the application of AI and are addressed in Apple’s existing guidelines, policies, and procedures. Nonetheless, as noted above, Apple also argued that the AFL-CIO’s Proposal “is premature in asking for a dedicated report when the AI landscape is just starting to emerge and regulators around the world are actively engaged in new rulemaking.”³⁵ This may be viewed as a determination by Apple to avoid taking specific positions on, *e.g.*, developing AI-related intellectual property matters, until such issues are further “fleshed out” and addressed in other forums.³⁶

³⁰ *Id.* at p. 7.

³¹ *Id.* at p. 1.

³² See Apple’s Notice of 2024 Annual Meeting of Shareholders and Proxy Statement, p. 93, https://www.sec.gov/Archives/edgar/data/320193/000130817924000010/laapl2024_def14a.pdf.

³³ *Id.* at p. 94.

³⁴ *Id.*

³⁵ *Id.* at p. 95.

³⁶ For example, on February 11, 2025 the U.S. District Court for the District of Delaware issued its opinion in *Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence, Inc.* ___ F.Supp.3d ___ 2025 WL 458520. In *Ross*, the court held that the alleged infringer who used plaintiff’s copyrighted case headnotes to train a non-generative AI system was not protected by the defenses of innocent infringement, copyright misuse, merger of expression and idea, or *scenes à faire*. In *Concord Music Group, Inc. v. Anthropic PBC* ___ F.Supp.3d ___ (N.D. Ca. 2025) 2025 WL 904333 the U.S. District Court for the Northern District of California denied preliminary relief

Approval of Shareholder Proposal No. 7 required the affirmative vote of: (1) a majority of the shares present or represented by proxy and voting at the Annual Meeting; and (2) a majority of the shares required to constitute a quorum.³⁷ The proposal received only thirty seven percent (37%) of the vote.³⁸

Perhaps because the AFL-CIO's intellectual property concerns were subsumed in the sweeping scope of the Proposal, Apple did not engage in a detailed discussion of the AFL-CIO's position that: "AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders. We also believe that AI should not be used to create literary material, to replace or supplant the creative work of professional writers."³⁹ Nonetheless, Apple's approach to generative AI systems has been (according to reports) characterized by Apple's efforts to secure licenses for the use of training materials for its AI systems.⁴⁰

The reluctance of some corporations to commit to a specific policy or position on particular AI-related issues likely stems from a perception that the law is in a state of flux and what might appear as a general issue is actually an amalgam of several distinct issues – as when uses by public libraries might contrast with uses by for-profit corporations.⁴¹ Numerous studies and cases are ongoing. For example, the U.S. Copyright Office is preparing a Report on the legal implications of training AI models on copyright-protected works, licensing considerations, and

on the plaintiff's claim that the defendant used publishers' copyrighted song lyrics to train its signature generative AI. The court denied the plaintiff's request for a preliminary injunction based on the court's determination that plaintiff did not show irreparable reputational harm or irreparable market-related harm. In arriving at its conclusion, the court reviewed the *Ross* opinion and noted that "it is distinguishable because: (1) it addressed the merits of the parties' respective infringement claims and defenses at the summary judgment stage; (2) it did not concern a generative AI model; and (3) the parties in that case were direct competitors. The Court does not rely on the opinion in making its ruling." 2025 WL 458520, p. 10 at footnote 1. These cases demonstrate the dynamic and evolving nature of AI-related copyright disputes. Core AI issues are also addressed in, e.g., union and guild agreements, *see*, <https://www.sagafta.org/contracts-industry-resources/member-resources/artificial-intelligence>, federal and state legislation, <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2025-legislation>, and Copyright Office studies, <https://www.copyright.gov/ai/>.

³⁷ See Apple's Notice of 2024 Annual Meeting of Shareholders and Proxy Statement, p. 82,

https://www.sec.gov/Archives/edgar/data/320193/000130817924000010/laapl2024_def14a.pdf.

³⁸ See *Proxy Voting Weekly Digest - Week Ended June 7, 2024*, <https://www.conference-board.org/research/esg-newsletters-alerts/proxy-voting-weekly-digest-week-ended-june-7-2024>.

³⁹ See October 23, 2023 Letter to U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel On Behalf Of Apple, Inc., 2023 WL 7093244, p. 9 (2024).

⁴⁰ See Marko Zivkovic, *Apple's generative AI may be the only one that was trained legally & ethically*, ai Affiliate Disclosure (April 24, 2024),

<https://appleinsider.com/articles/24/04/24/apples-generative-ai-may-be-the-only-one-that-was-trained-legally-ethically>.

⁴¹ For a specific public library oriented perspective on AI training issues *see, e.g.,* Klosek, *Training Generative AI Models on Copyrighted Works Is Fair Use*, ARL Views, Association of Research Libraries, Jan. 23, 2024, <https://www.arl.org/blog/training-generative-ai-models-on-copyrighted-works-is-fair-use/>.

the allocation of any potential liability.⁴² This Report will be the third installment of a series of AI-related Reports issued by the Copyright Office, the first two being, respectively, on: (1) digital replicas; and (2) copyrightability issues raised by AI outputs. Together with developing technologies, case law, legislative initiatives, rulemaking, and union agreements, the ongoing nature of the Copyright Office’s approach to this complex set of issues – and the large number of public comments received by the Copyright Office – demonstrates what some companies view as a basis for taking a cautious approach to, *e.g.*, infringement, fair use, and licensing issues in the AI training context.⁴³ This state of rapid and complex development, and the consequent reluctance to subscribe to a general “one size fits all” approach to AI training, likely explains the desire on the part of some interested corporations to refrain from taking a definitive and general position on the issue. In this context, the Proxy approach can be viewed: (1) an attempted means to force the target corporation to “commit” on the issue(s) in a way advocated in the shareholder Proposal; or (2) a means of opening dialog and negotiation with the target corporation.

The Walt Disney Company

In November of 2023 The Walt Disney Company (“Disney”) attempted to secure from the SEC’s Office of Chief Counsel a statement of non-objection to Disney’s intention to exclude certain information regarding Disney’s use of AI from Disney’s proxy statement and proxy to be filed in connection with Disney’s 2024 annual meeting of shareholders. The request for disclosure of the information was submitted to Disney by Segal Marco Advisors on behalf of AFL-CIO Equity Index Funds, together with co-filers the New York City Employees’ Retirement System, the New York City Fire Pension Fund, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively, the “Proponent”). In relevant part, the Proponent sought the following disclosure from Disney: “Shareholders request that The Walt Disney Company (the “Company”) prepare and publicly disclose on the Company’s website a Transparency Report that explains the Company’s use of Artificial Intelligence (“AI”) in its business operations and the Board’s role in overseeing AI usage, and sets forth any ethical guidelines that the company [sic] has adopted regarding its use of AI.”⁴⁴ Significantly, as in the *Apple* matter discussed above, the request also stated that “[t]his report shall be prepared at a

⁴² See *Inside the Copyright Office’s Report, Copyright and Artificial Intelligence, Part 2: Copyrightability*. Feb. 6, 2025, <https://blogs.loc.gov/copyright/2025/02/inside-the-copyright-offices-report-copyright-and-artificial-intelligence-part-2-copyrightability/>.

⁴³ Since launching an initiative in early 2023, the Copyright Office has been examining the copyright law and policy issues raised by AI, including the scope of copyright in AI-generated works and the use of copyrighted materials in AI training. After hosting public listening sessions and webinars, the Office published a notice of inquiry in the *Federal Register* in August 2023, which received over 10,000 comments by December 2023. See *Copyright and Artificial Intelligence*, <https://copyright.gov/ai/?loclr=blogcop>.

⁴⁴ Nov. 22, 2023 Letter to U.S. Securities And Exchange Commission, Division Of Corporation Finance, Office Of Chief Counsel On Behalf Of The Walt Disney Company, p. 2. See 2024 WL 312337 (S.E.C. No - Action Letter).

reasonable cost and omit information that is proprietary, privileged, or violative of contractual obligations.”⁴⁵

In the *Disney* matter, the Proponent cited a number of “social policy concerns” reasons for forcing the sought-after AI-related disclosure. These concerns included “potential discrimination or bias in employment decisions, mass layoffs due to job automation, facility closures, the misuse and disclosure of private data, and the creation of ‘deep fake’ media content that may result disseminate false information.”⁴⁶ The premise offered by the Proponent was that a failure on the part of the company to meaningfully identify and address these issues through, *e.g.*, ethical guidelines and informed practices, poses a risk to the public and to the company’s reputation and financial position. Moreover, specific intellectual property concerns were brought into focus by the Proponent’s request:

If the Company does not already have ethical guidelines for the use of AI, the adoption of ethical guidelines for the use of AI may improve the Company’s performance by avoiding costly labor disruptions and lawsuits related to the improper use of AI. The entertainment industry writer and performer strikes, sparked in part by AI concerns, and lawsuits related to the use of copyrighted works by AI engines have been prominent new stories throughout 2023 and may prove costly for companies that make use of AI. . . . We believe that issuing an AI transparency report is particularly important for companies such as ours in the entertainment industry that create artistic works that are the basis for our shared culture. In our view, AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders. AI should also not be used to create literary material, to replace or supplant the creative work of professional writers.⁴⁷

On January 3, 2024 Disney received an unwelcome response from the Office of Chief Counsel, including the following brief language: “We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.”⁴⁸ This negative determination led to negotiations between Disney and the Proponent that resulted in a withdrawal of the Proponent’s request.⁴⁹ Nonetheless, Disney’s Notice of 2024 Annual Meeting and Proxy Statement contained a number of significant AI-related statements. For example, the introductory AI-related statements include the following: “The Governance and Nominating Committee oversees the Company’s human rights policies and receives an annual report on

⁴⁵ *Id.* As discussed above, this set of exceptions to the sought-after disclosure could be viewed as exception that “swallow the whole.” In other words, it is quite likely that a large portion of the information sought would fall under the categories of information that are proprietary, privileged, or subject to contractual obligations of non-disclosure.

⁴⁶ See 2024 WL 312337, p. 10.

⁴⁷ *Id.* at p. 11.

⁴⁸ *Id.* at p. 1.

⁴⁹ See Gina Gambetta, *BREAKING: AI proposals withdrawn at Disney and Comcast*, responsible investor, 21 March 2024, <https://www.responsible-investor.com/resolution-round-up-biodiversity-proposal-withdrawn-at-kellanova/>.

human rights-related risks, which has included risks associated with artificial intelligence. The full Board also reviews reports regarding certain potential uses of generative artificial intelligence and the development of generative artificial intelligence governance principles.”⁵⁰ The Notice also provides assurances that the company mapped out a strategy to protect Disney content as generative artificial intelligence services proliferate and move towards video content, including identifying key services that may have the most impact on Disney content from an infringement perspective. In essence, it appears that Disney agreed with the Proponent that Disney needed to ensure its copyrighted content is not freely available to train generative AI systems.

The *Disney* matter shows the utility of shareholder Proposals as leverage in negotiations regarding AI-related concerns or other matters. It is unclear whether the current SEC’s Office of Chief Counsel will adopt the blunt and permissive “shareholder favoring” approach that is evident in each of the three matters discussed in this article. Nonetheless, the Disney determination – and the ensuing negotiations – demonstrate that certain companies can be productive targets for shareholder “policy making.” The shareholder Proposal approach is, therefore, an important part of any strategy to engage corporate management on AI-related issues irrespective of the Chief Counsel’s position on the matter.

Paramount Global

The same “rejection language” that was used to reject Disney’s request – “[i]n our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company” – was used by the Office of Chief Counsel on April 19, 2024 to reject a Rule 14a-8(i)(7)-based request by Paramount Global (“Paramount”) for confirmation that the Staff of the Division of Corporation Finance would not recommend to the Commission that enforcement action be taken if Paramount excluded an AI-related Proposal from Paramount’s 2024 Proxy Materials.⁵¹ The Proposal Paramount was referring to was submitted by the Comptroller of the City of New York, Brad Lander, on behalf of the New York City Employees’ Retirement System and the New York City Teachers’ Retirement System (collectively, the “Proponent”). The Proposal requested that Paramount prepare and publicly disclose on the Company’s website a transparency report that explains the Company’s use of AI in its business operations and the Board’s role in overseeing AI usage, and sets forth any ethical guidelines that the Company has adopted regarding its use of AI.⁵² As in the *Apple* and *Disney* matters, the Proposal notes that: “This report shall be prepared at a reasonable cost and omit information that is proprietary, privileged, or violative of contractual obligations.”⁵³

⁵⁰ The Walt Disney Company 2024 Notice of Annual Meeting of Shareholders And Proxy Statement, p. 30, <https://thewaltdisneycompany.com/app/uploads/2024/02/2024-Proxy-Statement.pdf>.

⁵¹ 2024 WL 385786, p.1 (S.E.C. No - Action Letter – April 19, 2024). As stated by Paramount: “The Company respectfully requests confirmation that the staff of the Division of Corporation Finance of the Commission (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2024 Proxy Materials.” *Id.* at p. 2.

⁵² *Id.*

⁵³ *Id.* at p. 2, 8.

The Proponent’s language that explains the bases for its AI-related concerns tracks closely the language used by the Proponent in the *Disney* matter. The development and implementation of AI-related ethical guidelines was cited by the Proponent in the *Paramount* matter as a means “to improve Paramount’s performance by avoiding [costly labor]⁵⁴ disruptions and lawsuits related to the improper use of AI.”⁵⁵ Prominently featured in the concerns is the potential liability for the use of third-party copyrighted works by AI engines.⁵⁶ In response, *Paramount* argued that:

As with other companies in the entertainment industry, the creation of artistic works is a core part of the Company’s business. Expert judgments, including legal analysis, are part of management’s business and legal decision making with respect to the creation of artistic works and the associated assessment of compliance with copyright and other intellectual property laws. The Proposal’s request for a report on the Company’s use of AI with respect to its creation of artistic works, which the Company already oversees through a robust internal legal process, seeks to involve the Company’s shareholder’s in decisions involving highly complex intellectual property laws.⁵⁷

In sum, among the chief arguments offered by Paramount against the proposed disclosure were: (1) Paramount’s use of AI in its business operations directly relates to the company’s ordinary business operations; (2) the Proposal relates to the company’s choice of technologies, which implicates the company’s ordinary business operations; (3) the Proposal relates to the company’s general adherence to ethical business practices, which relates directly to the company’s ordinary business operations; (4) the references to workforce management considerations in the Proponent’s Supporting Statement relate to the company’s ordinary business operations; (5) the Proposal does not focus on a significant social policy issue that transcends the company’s ordinary business operations; and (6) the Proposal seeks to impermissibly micromanage the company. However, Paramount’s arguments did not persuade the Office of Chief Counsel to look favorably on Paramount’s attempt to exclude the Proposal from Paramount’s Notice of 2024 Annual Meeting of Stockholders.

The negative determination by the Office of Chief Counsel led to inclusion of the following agenda item in Paramount’s Notice of 2024 Annual Meeting of Stockholders: Item 6 - Stockholder Proposal Requesting that the Company Prepare and Publicly Disclose a “Transparency Report” Regarding its Use of Artificial Intelligence: “RESOLVED: Shareholders request that Paramount Global Inc. (the “Company”) prepare and publicly disclose on the Company’s website a transparency report that explains the Company’s use of Artificial Intelligence (“AI”) in its business operations and the Board’s role in overseeing AI usage, and sets forth any ethical guidelines that the Company has adopted regarding its use of AI. This report shall be prepared at a reasonable cost and omit information that is proprietary, privileged,

⁵⁴ *Id.* at p. 8 (corrupted text corrected).

⁵⁵ *Id.* at p. 9.

⁵⁶ The Proponents in the *Paramount* matter also cited AI-related ethical guidelines developed by the White House Office of Science and technology Policy. *Id.* These so-called AI Bill of Rights include the following five guiding principles and aspirations: (1) safe and effective systems; (2) algorithmic discrimination protections; (3) data privacy; (4) notice and explanation; and (5) human alternatives, consideration, and fallback.

⁵⁷ 2024 WL 385786 at p.7.

or violative of contractual obligations.”⁵⁸

In urging shareholders to vote against preparation of the requested report, Paramount argued that: (1) the report requested by the proposal is unreasonably broad, implementation of the proposal would be overly burdensome for the Company and use significant resources and the report would include extensive detail about complex and confidential matters, all without any material incremental benefit to stockholders; and (2) the company has ethical guidelines under which all of its operations are conducted, as well as fulsome existing disclosures regarding its information technology risk oversight controls and the Board’s role in overseeing Paramount’s use of AI, rendering the report requested by the proposal unnecessary.⁵⁹

The request was also characterized by Paramount as seeking a transparency report on the use of AI across Paramount’s entire business operations, without limitation, and as expanding the definition of AI to generally encompass automated systems. Moreover, Paramount argued that, “in order for our stockholders to make a meaningful assessment of the appropriateness of the use of AI in our business operations and the choice of technologies used in our business, the report would need to include a significant amount of detail about the Company’s complex and confidential business needs and considerations, including applicable legal and regulatory considerations, competitive conditions, budget matters, quality parameters, and resource availability, among others.”⁶⁰ In short, Paramount argued that compiling the report would expend significant resources, incur unnecessary expenses, and provide no material benefit to stockholders – essentially being a waste of time and resources better spent on pressing business concerns, such technology management and cybersecurity matters.

The Proposal received only two percent (2%) of the shareholders’ vote.⁶¹ As in the *Apple* and *Disney* matters, the inclusion of the intellectual property concerns in other sweeping categories of inquiry likely explains why the intellectual property issues were not separately treated in any detail. Also, it is unlikely that any of the corporate recipients would readily consent to a public discussion of matters that implicate complex and developing legal issues. Nonetheless, the Proposal surfaced a number of important AI-related concerns and, as in the *Apple* and *Disney* matters, aligned the proposing shareholder with a number of positions espoused by the Biden White House. Even in failure, the shareholder Proposal process can be a potent tool for drawing out corporate positions and AI-related perspectives – and, in some instances, creating some negotiation leverage.

Conclusion

As AI serves as a lightning rod for Executive Orders, legislative considerations, rulemaking,

⁵⁸ Paramount 2024 Notice of Annual Meeting of Stockholders & Proxy Statement, p. 87. See <https://ir.paramount.com/node/69891/html>.

⁵⁹ Paramount 2024 Notice of Annual Meeting of Stockholders & Proxy Statement, ps. 88-89.

⁶⁰ *Id.* at p. 88.

⁶¹ See *Proxy Voting Weekly Digest - Week Ended June 7, 2024*, <https://www.conference-board.org/research/esg-newsletters-alerts/proxy-voting-weekly-digest-week-ended-june-7-2024>.

union and guild agreements, and litigation, the shareholder Proposal process is also an important potential strategic tool to declare and draw out corporate management positions on a range of AI-related issues. The *Apple*, *Disney*, and *Paramount* matters show the mechanisms of the process and the likely continuation of AI-related shareholder Proposals on AI-related matters. In some instances, Proposals can help to define the “battle lines” in, for example, AI issues arising from privacy, security, labor and intellectual property concerns. Also, even if unsuccessful, Proposals can evidence a shareholder organization’s leadership with regard to key AI-related issues. In short, the shareholder Proposal is an important part of any strategic analysis on how key players in AI industries can be engaged.