UDC 34:004.8
DOI https://doi.org/10.32782/apdp.v106.2025.25

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"AI WASHING" IN CORPORATE REPORTING: LEGAL LIABILITY AND REGULATORY APPROACHES TO PREVENTING DISINFORMATION

Problem statement. The rapid integration of artificial intelligence (AI) into all spheres of economic activity has become a key driver of global innovation and capital investment. Projections indicate that the global AI market could contribute up to $15.7 trillion to the world economy by 2030, with market capitalization reaching nearly $2 trillion by that time [1]. Amid this investment boom, a new deceptive practice has emerged and gained traction: "AI washing". This term, analogous to "greenwashing", describes a situation where companies deliberately exaggerate or falsify information about their use of AI technologies to attract investors, increase share value, and gain a competitive advantage [2; 3]. This phenomenon transforms a powerful technological tool into an instrument of corporate fraud, creating significant risks for financial markets and undermining trust in genuine technological innovation.

Sources and review of scientific literature, research topic relevance, and novelty. The relevance of this research is underscored by the swift reaction of financial regulators worldwide. The Chair of the U.S. Securities and Exchange Commission (SEC), Gary Gensler, has repeatedly warned companies against misleading investors with false claims about AI, stating directly: "Don't do it. One shouldn't greenwash, and one shouldn't AI wash" [4]. Recent enforcement actions by the SEC and the Federal Trade Commission (FTC) against companies like Delphia, Global Predictions, and Presto Automation signal a transition from warnings to active legal prosecution [5; 6]. In the European Union, the adoption of the comprehensive AI Act introduces a new regulatory paradigm with substantial fines for providing misleading information about AI systems [7]. This active formation of regulatory and judicial practice requires a thorough scientific and legal analysis to systematize existing approaches, identify their limitations, and develop effective legal mechanisms to combat this new threat

The goal of this article is to conduct a comparative legal analysis of the regulatory approaches of the US and the EU in combating "AI washing", identify the specific legal challenges posed by the unique nature of AI, and, based on this analysis, propose a forward-looking hypothesis for improving the regulatory framework to ensure the integrity of information in corporate reporting.

To achieve this goal, the following tasks have been set:

1. Define the legal nature of "AI washing" as a form of corporate disinformation.
2. Analyze the key judicial and regulatory precedents in the US concerning liability for "AI washing".
3. Examine the preventive mechanisms embedded in the EU AI Act.
4. Critically evaluate the effectiveness of existing regulatory models in light of the technological specifics of AI.

5. Formulate a hypothesis for creating a more robust system of control over corporate claims about AI.

The topic of "AI washing" is at the intersection of law, technology, and economics, and is just beginning to be explored in legal scholarship.

While foreign legal scholars and practitioners, such as those from the law firms DLA Piper, Ropes & Gray, and Norton Rose Fulbright, actively analyze the first enforcement actions, their works are often descriptive. A fundamental theoretical framework for understanding this phenomenon is offered in the academic paper by Seele, P. & Schultz, M., titled From Greenwashing to Machinewashing: A Model and Future Directions Derived from Reasoning by Analogy [8]. The authors propose the term "machinewashing" and, by analogy with greenwashing, identify the unique characteristics of AI that complicate its regulation, such as opacity and the lack of established verification standards. However, their research focuses primarily on creating a conceptual model rather than developing concrete legal mechanisms. Empirical data from FTI Consulting [9] indicates that corporate disclosures about AI remain overly broad and lack specifics about risk management. This study aims to fill the existing gap by moving from a conceptual understanding of the problem to proposing a practical legal solution based on a synthesis of American enforcement experience, European preventive regulation, and the theoretical insights of previous research.

Exposition of the main material. "AI washing" is a form of corporate disinformation where a company creates a misleading impression of its technological capabilities. This can manifest in various ways:

- Exaggerating the role of AI: A company presents a simple algorithm, a set of automated rules, or statistical analysis as a sophisticated, self-learning artificial intelligence system. A striking example is the case of the Silicon Valley startup Nate Inc., which raised over $50 million but, as it turned out, used human operators in India to process most transactions instead of the declared A [10].
- Falsifying the existence of AI: A company claims to use proprietary AI technologies that, in reality, do not exist or are in the earliest stages of development.
- Misrepresenting AI capabilities: A company ascribes functions or levels of autonomy to its AI systems that they do not possess, for instance, claiming full automation when the system only performs an advisory role and key decisions are made by humans.

From a legal standpoint, such actions can be qualified under various articles of law depending on the jurisdiction and context. In the realm of corporate finance and securities markets, "AI washing" falls directly under the definition of securities fraud. This involves disseminating materially false or misleading information that a reasonable investor would consider important when making an investment decision. In the consumer sphere, it constitutes a deceptive commercial practice, misleading consumers about the key characteristics of a product or service. The primary legal challenge lies in proving the falsity of the claim, given the technical complexity and often "black box" nature of AI systems.

The U.S. legal system has not created specialized legislation to combat "AI washing". Instead, regulators have adapted existing legal instruments, primarily in the fields of securities regulation and consumer protection.

The Securities and Exchange Commission (SEC) has taken the lead in this area. The SEC's primary tool is Rule 10b-5 of the Securities Exchange Act of 1934, which prohibits fraudulent activities in connection with the purchase or sale of securities. To establish a violation, the SEC must prove that a company made a material misstatement or omission with an intent to deceive (scienter), and that this information influenced investment decisions.

In March 2024, the SEC brought its first cases directly related to "AI washing":

• Case against Delphia Inc. and Global Predictions Inc.: These two investment advisory firms were charged with making false and misleading statements about their use of AI. Delphia claimed to use AI to analyze client data to make "intelligent" investment predictions, while the firm did not actually possess these capabilities. Global Predictions falsely claimed to be the "first regulated AI financial advisor". Both companies agreed to settle the charges and pay a total of $400,000 in civil penalties [6]. These cases created a critical precedent, demonstrating the SEC's readiness to apply anti-fraud rules to the AI sphere.

• Case against Presto Automation Inc.: In April 2024, the SEC investigated this provider of AI-powered automation for restaurants. The company was accused of misleading investors about the commercial success and nature of its AI technology. The case highlights that not only outright false statements but also significant omissions about the technology's effectiveness and client relationships can form the basis of a securities fraud charge [5].

The Federal Trade Commission (FTC) protects consumers from unfair and deceptive business practices under Section 5 of the FTC Act. The FTC actively monitors advertising and company statements for unsubstantiated claims about AI. The Commission's standard is clear: if a company claims its product uses AI, it must have "a reasonable basis" to support that claim at the time it is made. The FTC has warned that simply using a computational tool does not equate to using AI, and companies must be prepared to prove their claims [11].

The U.S. approach is thus characterized as an ex-post (reactive) model based on enforcement. Its strength lies in its flexibility and the power of its regulators. However, its weakness is that it responds to violations only after they have occurred and investors or consumers have already suffered losses.

In contrast to the U.S., the European Union has chosen a path of comprehensive, ex-ante (preventive) regulation by developing and adopting the EU AI Act. This landmark regulation is the world's first comprehensive law on artificial intelligence. The Act classifies AI systems based on their level of risk (unacceptable, high, limited, minimal) and establishes corresponding obligations for their developers and users.

While the AI Act does not contain the term "AI washing", its provisions create a powerful mechanism to combat it. Article 52 of the Act establishes transparency obligations for certain AI systems. For example, systems that generate or manipulate content (like "deepfakes") must disclose that the content is artificially created.

More importantly, Article 72 of the final version of the Act establishes significant penalties for non-compliance, which can be imposed for providing "incorrect, incomplete or misleading information" to notified bodies and national competent authorities

in response to a request. For such violations, fines can reach up to €7.5 million or 1.5% of the company's total worldwide annual turnover for the preceding financial year, whichever is higher [7]. This provision creates a direct financial incentive for companies to provide truthful and accurate information about the functionality and characteristics of their AI systems.

The EU's approach can be described as systemic and preventive. It aims not so much to punish for market manipulation as to create an environment where transparency and truthfulness are economically advantageous from the outset.

A comparison of the US and EU approaches reveals two fundamentally different regulatory philosophies. The US model is based on applying powerful but general anti-fraud laws after the fact, relying on active enforcement by regulators like the SEC and FTC. Its main legal basis is existing securities and consumer protection law, and its sanctions include fines and cease-and-desist orders. The EU model, in contrast, is preventive and risk-based, codified in a specialized, comprehensive regulation-the AI Act. It focuses on imposing transparency obligations and technical standards before a system is brought to market, with penalties for providing misleading information that are calculated based on a company's global turnover, making them potentially much larger than typical US civil penalties. This fundamental divergence highlights a global search for the most effective legal tools to govern a complex new technology.

The foundational academic work From Greenwashing to Machinewashing [8] convincingly argues that regulating claims about AI is significantly more complex than regulating environmental claims ("greenwashing"). The authors identify several "idiosyncrasies" of AI that render traditional disclosure-based regulation less effective:

1. Opacity ("Black Box" Problem): The decision-making processes of complex neural networks are often incomprehensible even to their developers, making it difficult to verify their functionality

2. Lack of Measurement Standards: Unlike greenhouse gas emissions, there are no universally accepted metrics to objectively measure the "intelligence" or "autonomy" of an AI system.

3. Fluidity and Adaptability: Machine learning models can change and adapt over time, meaning a statement that was true at the time of an audit may become inaccurate later.

4. Absence of Established "Watchdogs": The ecosystem of independent auditors and verification bodies for AI is still in its infancy compared to the well-developed fields of financial or environmental auditing.

Current US regulation, focused on punishing "materially false statements", and EU regulation, focused on pre-market documentation for high-risk systems, do not fully address these challenges. A company can craft legally cautious but substantively misleading statements that are difficult to refute without deep technical expertise. Empirical data confirms this: a study of S&P 500 company reports shows that while 85% mention AI, the disclosures are often "broad and generalized", lacking specifics on governance and risk management [9].

This leads to the following hypothesis: A hybrid regulatory framework that supplements mandatory disclosure standards with a requirement for risk-based,

independent third-party technical audits for "high-impact" AI systems would be significantly more effective at preventing "AI washing" than relying solely on anti-fraud provisions and corporate self-reporting.

This proposed model directly targets the core problem identified by de Crémer et al. [8] – the asymmetry of technical information and the opacity of AI. While traditional disclosure rules ensure that a company's statements are not overtly false, they do not verify the substance behind those statements. A marketing claim that a company uses "proprietary predictive AI" can be technically true even if the "AI" is just a simple linear regression model that provides negligible value.

An independent technical audit would shift the focus from verifying words to verifying code and architecture. The audit would not assess the commercial viability of the AI (which should remain a market risk) but would confirm its substantive technological nature. The auditor's conclusion could be a simple, tiered classification, for example:

- Tier 1: Rule-Based Automation. The system operates based on pre-programmed rules.
- Tier 2: Classical Machine Learning. The system uses established statistical models to make predictions based on data.
- Tier 3: Advanced AI (e.g., Deep Learning). The system utilizes complex neural networks capable of self-learning and identifying non-obvious patterns.

Including such a classification in a corporate report (e.g., the 10-K filing in the US) would provide investors with objective, standardized information to assess the real level of a company's technological development, neutralizing the effect of vague marketing jargon.

Implementing this hypothesis requires several steps:

1. Defining "High-Impact" AI Systems: Regulators like the SEC, in consultation with technical experts (such as NIST in the US), would need to define criteria for AI systems whose claims require mandatory auditing. This definition could be based on the system's role (e.g., core to the company's business model) or its sector (e.g., finance, medicine, autonomous transport).

2. Developing Auditing Standards: A new standard-setting body, analogous to the Public Company Accounting Oversight Board (PCAOB) for financial audits, could be created or an existing one empowered to develop standards for AI auditing. These standards would define the methodology, qualification requirements for auditors, and the format of the audit report.

3. Creating a "Safe Harbor" Provision: To encourage honest disclosure, companies that voluntarily undergo and publish the results of a technical audit could be granted a "safe harbor" from liability for certain forward-looking statements about their AI's potential, provided the audit confirms the foundational technology.

The effectiveness of this model could be verified empirically by comparing the number of SEC enforcement actions and shareholder lawsuits related to "AI washing" before and after its implementation. A further indicator would be a change in the quality and specificity of AI-related disclosures in corporate reports, moving from vague marketing language to standardized, verified classifications.

Conclusions. This study has demonstrated that "AI washing" is evolving from a fringe issue into a significant regulatory challenge at the forefront of corporate law and securities regulation. An analysis of the legal responses in the United States and the European Union reveals two distinct philosophies: the American reactive, enforcement-based model and the European preventive, systemic model. While both approaches have achieved initial successes, they face fundamental limitations rooted in the unique technological nature of artificial intelligence its complexity, opacity, and lack of standardized metrics.

Existing legal frameworks, designed for a world of tangible assets and understandable processes, struggle to effectively regulate claims about an intangible, fluid, and often incomprehensible technology.

Relying solely on the truthfulness of verbal disclosures is insufficient when the very meaning of those words (like "AI") is ambiguous and easily manipulated.

The proposed hypothesis the creation of a hybrid regulatory model combining disclosure with mandatory technical audits for "high-impact" systems – is an attempt to address this core challenge.

Such a system would shift the regulatory focus from the linguistic shell of corporate statements to their technical substance, providing investors and markets with a more objective basis for evaluating a company's true innovative potential. This approach does not seek to stifle innovation but, on the contrary, to protect it by separating genuine technological achievements from deceptive marketing, thereby fostering a healthier and more transparent investment climate.

Prospects for further research in this area are extensive. A key direction is the development of specific legal and technical standards for AI auditing. What should be the scope of such an audit? What qualifications should an AI auditor possess? How can the confidentiality of a company's trade secrets be protected during the audit process?

Another important area for investigation is the economic impact of such regulation on startups and small innovative companies, for which the cost of an audit could be a significant burden. Finding a balance between effective control and the risk of over-regulation will be a central task for lawyers, economists, and technology specialists in the coming years.

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Summary

Shamov O. A. **"AI washing" in corporate reporting: Legal liability and regulatory approaches to preventing disinformation.** – Article.

This article provides a comprehensive legal analysis of the phenomenon of "AI washing" – the practice of companies making unsubstantiated or exaggerated claims about their use of artificial intelligence to attract investment and enhance their market position.

The introduction substantiates the relevance of the topic, driven by the rapid growth of the AI market and the emergence of "AI washing" as a new form of corporate fraud. The global trend of active AI integration creates significant risks of investor and consumer deception, necessitating a legal response. The goal of this article is to analyze existing legal mechanisms for holding companies accountable for "AI washing" in the US and the EU, identify gaps in current regulation, and propose a new approach to prevent such disinformation. The research methodology is based on a combination of formal-legal, comparative-legal, and systemic-structural analysis methods, applied to regulatory acts, judicial precedents, and scientific works.

The article examines the essence of "AI washing", drawing an analogy with the well-known phenomenon of "greenwashing". It analyzes the regulatory practices of the United States, particularly the enforcement actions of the Securities and Exchange Commission (SEC) and the Federal Trade Commission (FTC), which apply existing anti-fraud and consumer protection laws to combat misleading AI claims. Cases against companies like Delphia, Global Predictions, and Presto Automation are reviewed as key precedents. The study also explores the European Union's approach, focusing on the provisions of the EU AI Act, which establishes a risk-based framework and imposes significant fines for providing misleading information. Based on a critical analysis of the academic paper "From Greenwashing to Machinewashing", which identifies the unique characteristics of AI (e.g., opacity, complexity), the article highlights the inadequacy of current disclosure-based regulations.

The study concludes that existing legal frameworks, while demonstrating initial effectiveness, are insufficient to fully counter the specific risks of "AI washing". Simply applying laws designed for traditional disclosures does not address the technical complexity and "black box" nature of AI. The author proposes a hypothesis for improving the regulatory regime: the implementation of a hybrid framework that combines mandatory disclosures with independent, risk-based technical audits of "high-impact" AI systems. This approach would provide substantive verification of corporate claims and create an effective mechanism for preventing sophisticated forms of digital disinformation, thereby protecting investors and fostering genuine innovation.

Key words: AI washing, machinewashing, artificial intelligence, corporate fraud, securities, disclosure of information, legal liability, SEC, EU AI Act.

Анотація

Шамов О. А. **«ШІ-відмивання» у корпоративній звітності: юридична відповідальність та регуляторні підходи до запобігання дезінформації.** – Стаття.

У статті досліджується феномен «ШІ-відмивання» (AI washing) – нової форми корпоративної дезінформації, що полягає у перебільшенні або наданні неправдивих відомостей про використання технологій штучного інтелекту (ШІ) з метою залучення інвестицій та підвищення ринкової капіталізації. Актуальність теми зумовлена стрімким зростанням кількості правозастосовчих дій з боку регуляторів, зокрема Комісії з цінних паперів і бірж США (SEC) та Федеральної торгової комісії (FTC), а також прийняттям в ЄС комплексного Акта про ШІ. Це перетворює «ШІ-відмивання» з маркетингової проблеми на серйозне правопорушення з суттєвими юридичними наслідками. Метою статті є комплексний юридичний аналіз «ШІ-відмивання», систематизація підходів до регулювання та відповідальності, а також розробка пропозицій щодо вдосконалення стандартів розкриття інформації. Методологічну основу дослідження складають формально-юридичний, порівняльно-правовий та системно-структурний методи.

У статті визначено правову сутність «ШІ-відмивання», його типові форми та проведено розмежування з правомірною діловою практикою на основі технічного аналізу базових понять ШІ. Проаналізовано регуляторні моделі США, що базуються на застосуванні існуючих антишахрайських норм (реактивний підхід), та Європейського Союзу, який впроваджує превентивну, ризик-орієнтовану модель згідно з Актом про ШІ (проактивний підхід).

Систематизовано ключові правозастосовчі кейси (справи Delphia Inc., Presto Automation Inc., Joonko) та судові прецеденти (Moffatt v. Air Canada), що демонструють поширення відповідальності за межі регуляторного нагляду на сферу деліктного права. На основі аналізу академічної концепції «машинвошингу» висунуто гіпотезу про необхідність впровадження Стандартизованого Фреймворку Технічної Верифікації (ATVF) – багаторівневої системи звітності, що підлягає незалежному технічному аудиту.

Виснувано, що «Ші-відмивання» є значною правовою загрозою, що вимагає переходу від реактивного реагування до проактивних регуляторних рішень. Запропонований фреймворк ATVF може стати ефективним інструментом для забезпечення точності та верифікованості корпоративних звітів про ШІ, що підвищить довіру інвесторів та сприятиме сталому розвитку ринку технологій.

Ключові слова: ШІ-відмивання, AI washing, шахрайство з цінними паперами, корпоративна звітність, дезінформація, відповідальність за дії ШІ, SEC, FTC, Акт про ШІ, стандарти розкриття інформації.