

AI & Crypto: New Tech, Familiar Challenges

WACHTELL, LIPTON, ROSEN & KATZ

AI & Crypto: What's New?

National AI Initiative Act of 2020:

The term “artificial intelligence” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.



Crypto & The Blockchain: The Future of the Decentralized Internet

AI & Crypto: New Opportunities


New technologies historically have spurred frenzy in investment, M&A and IPOs.

Tech > Tech Industry

1999 VC funding tops total from last 11 years

The information technology industry raises enough venture capital in 1999 to eclipse the total raised in the 11 years from 1988 to 1998, according to a report.

Stefanie Olsen

2 min read 

Jan. 2, 2002 4:43 p.m. PT

The information technology industry raised enough venture capital in 1999 to eclipse the total raised in the 11 years from 1988 to 1998, according to a report.

Total investments in the tech industry reached \$34.3 billion in 1999, vs. \$11.2 billion in 1998, according to an annual report from [VentureFinance](#), published by New York-based [Technologic Partners](#), which has been tracking high-tech venture capital since 1986.

AI & Crypto: New Opportunities

But they don't always work out.

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COMMENTARY · COMMENTARY

15 years later, lessons from the failed AOL-Time Warner merger

BY [RITA GUNTHER MCGRATH](#)
January 10, 2015 at 12:00 PM EST 

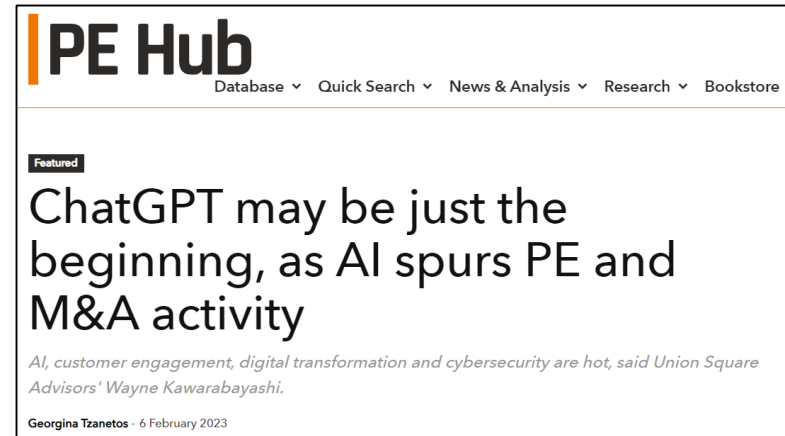


FILE -- Gerald Levin of Time Warner, left, with Stephen Case of America Online, announcing A.O.L.'s \$165 billion deal to acquire Time Warner in January 2000. Time Warner said on Thursday, May 28, 2009, that it would file for divorce in one of the most ill-fated marriages in the history of the media and technology business, its 2001 merger with AOL. The companies hope the separation is complete at the end of the year. (Ruby Washington/The New York Times)

PHOTOGRAPH BY RUBY WASHINGTON — THE NEW YORK TIMES/REDUX

AI & Crypto: New Opportunities

Hopefully most will fare far better than AOL/Time Warner.



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Featured

ChatGPT may be just the beginning, as AI spurs PE and M&A activity

AI, customer engagement, digital transformation and cybersecurity are hot, said Union Square Advisors' Wayne Kawarabayashi.

Georgina Tzanetos - 6 February 2023

Cisco to Acquire Splunk, to Help Make Organizations More Secure and Resilient in an AI-Powered World

September 21, 2023

News Summary

- Together, Cisco and Splunk will help move organizations from threat detection and response to threat prediction and prevention
- Combined, Cisco and Splunk will become one of the world's largest software companies and will accelerate Cisco's business transformation to more recurring revenue
- Expected to be cash flow positive and gross margin accretive in first fiscal year post close, and non-GAAP EPS accretive in year 2. Will accelerate revenue growth and gross margin expansion
- Unites two "Great Places to Work" with similar values, strong cultures, and talented teams
- The combination of these two innovative leaders makes them well positioned to lead in security and observability in the age of AI

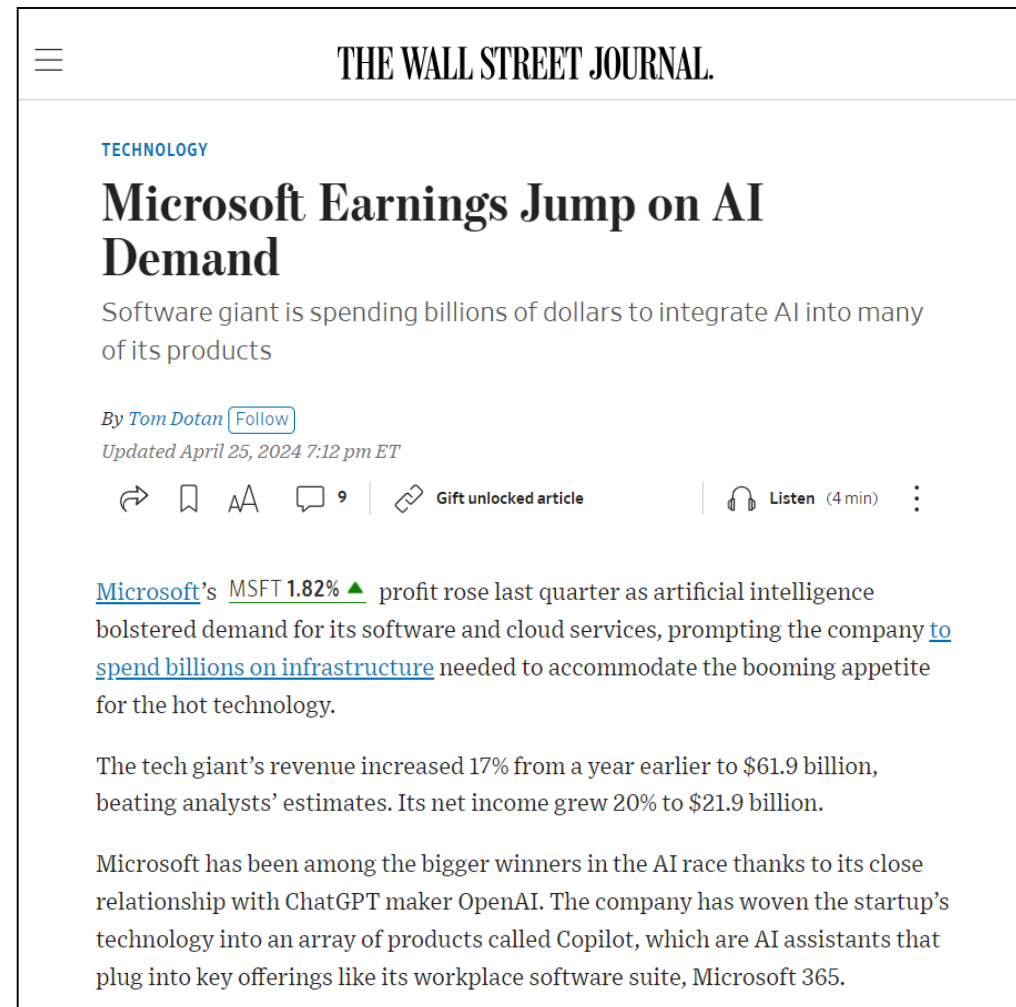
SAN JOSE, Calif. and SAN FRANCISCO, Sept. 21, 2023 /PRNewswire/ -- Cisco (NASDAQ: CSCO) and Splunk (NASDAQ: SPLK), the cybersecurity and observability leader, today announced a definitive agreement under which Cisco intends to acquire Splunk for \$157 per share in cash, representing approximately \$28 billion in equity value. Upon close of the acquisition, Splunk President and CEO Gary Steele will join Cisco's Executive Leadership Team reporting to Chair and CEO Chuck Robbins.

M&A is not limited to leaders in the new technology, but extends to the supply chain.

AI & Crypto: New Opportunities

Earnings reports show huge investments in AI are paying off.

But companies need to be thoughtful as they chase the next phase.



THE WALL STREET JOURNAL.

TECHNOLOGY

Microsoft Earnings Jump on AI Demand

Software giant is spending billions of dollars to integrate AI into many of its products

By [Tom Dotan](#) [Follow](#)
Updated April 25, 2024 7:12 pm ET

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[Microsoft's](#) [MSFT](#) **1.82%** ▲ profit rose last quarter as artificial intelligence bolstered demand for its software and cloud services, prompting the company [to spend billions on infrastructure](#) needed to accommodate the booming appetite for the hot technology.

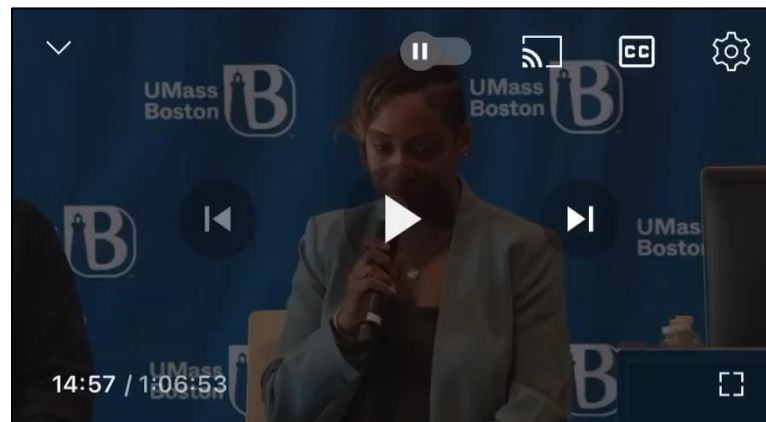
The tech giant's revenue increased 17% from a year earlier to \$61.9 billion, beating analysts' estimates. Its net income grew 20% to \$21.9 billion.

Microsoft has been among the bigger winners in the AI race thanks to its close relationship with ChatGPT maker OpenAI. The company has woven the startup's technology into an array of products called Copilot, which are AI assistants that plug into key offerings like its workplace software suite, Microsoft 365.

AI & Crypto: Regulator Concerns

Attorney General Advisory on the Application of the Commonwealth's Consumer Protection, Civil Rights, and Data Privacy Laws to Artificial Intelligence

The Office of the Attorney General (“AGO”) issues this Advisory to provide guidance to developers, suppliers, and users of artificial intelligence and algorithmic decision-making systems (collectively, “AI”)¹ about their respective obligations under the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2, and the regulations promulgated in 940 Code Mass. Regs. 3.00 *et seq.* and 940 Code Mass. Regs. 5.00 *et seq.* Additionally, this Advisory provides guidance on the obligations of developers, suppliers, and users of AI under the Massachusetts Anti-Discrimination Law, G.L. c. 151B, § 4 and the Data Security Law, G.L. c. 93H, and implementing regulations, 201 Code Mass. Regs. 17.00, *et seq.*²

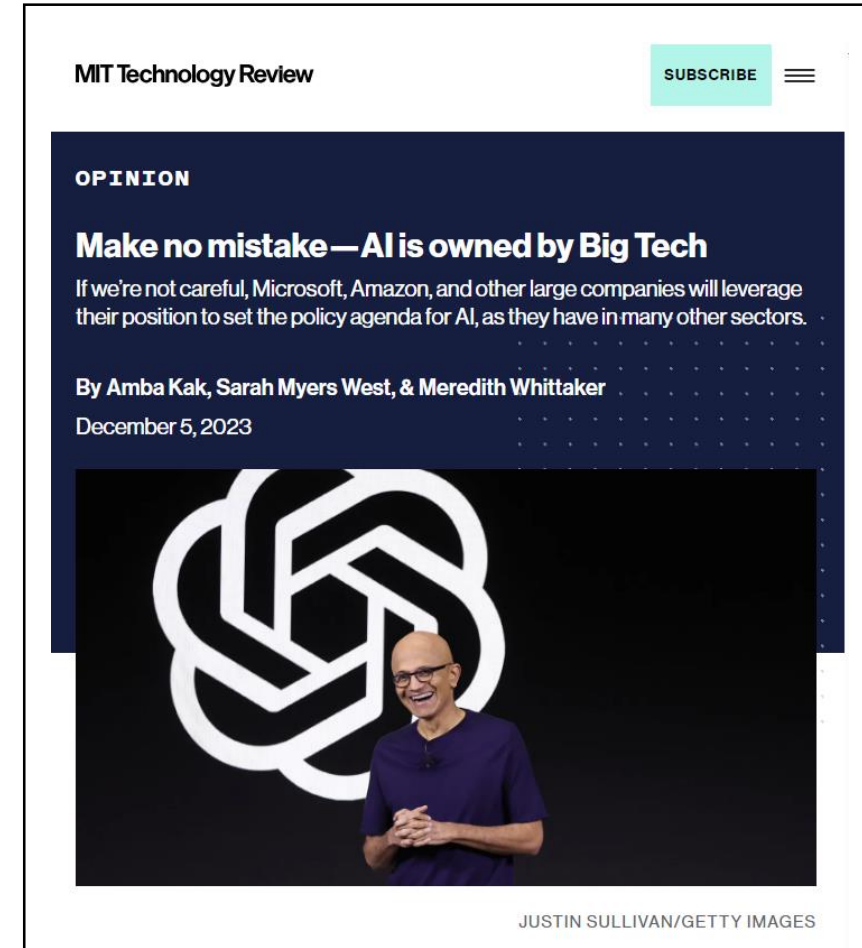


AI & Crypto: Regulator Concerns

Big tech companies are the ones leading the way in this area with huge investments, both organic as well as through M&A and partnerships.



AI & Crypto: Regulator Concerns



AI & Crypto: Regulator Response

THE WALL STREET JOURNAL


TECHNOLOGY | ARTIFICIAL INTELLIGENCE

European Lawmakers Pass AI Act, World's First Comprehensive AI Law

EU law is the first comprehensive set of rules for artificial intelligence, including new restrictions on how it can be used

By [Kim Mackraet](#) [Follow](#) and [Sam Schechner](#) [Follow](#)
Updated March 13, 2024 12:53 pm ET

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OCTOBER 30, 2023

Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

BRIEFING ROOM
PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. Artificial intelligence (AI) holds extraordinary potential for both promise and peril. Responsible AI use has the potential to help solve urgent challenges while making our world more prosperous, productive, innovative, and secure. At the same time, irresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security. Harnessing AI for good and realizing its myriad benefits requires mitigating its substantial risks. This endeavor demands a society-wide effort that includes government, the private sector, academia, and civil society.

AI & Crypto: Regulator Concerns & Response



Government Cracks Down on Crypto Industry With Flurry of Actions


State and federal agencies have levied fines, brought new cases and issued policy statements to rein in freewheeling practices in recent weeks.

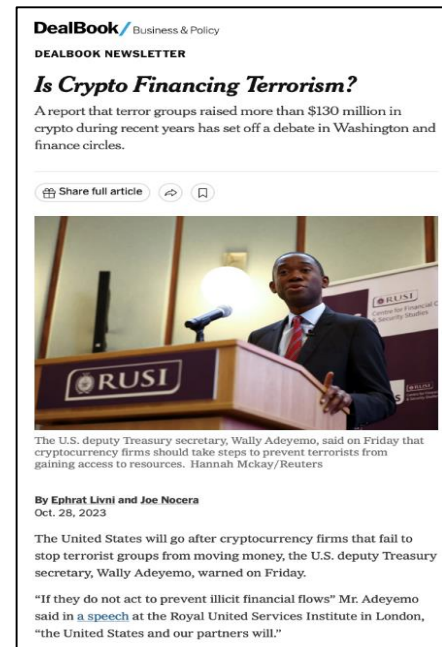
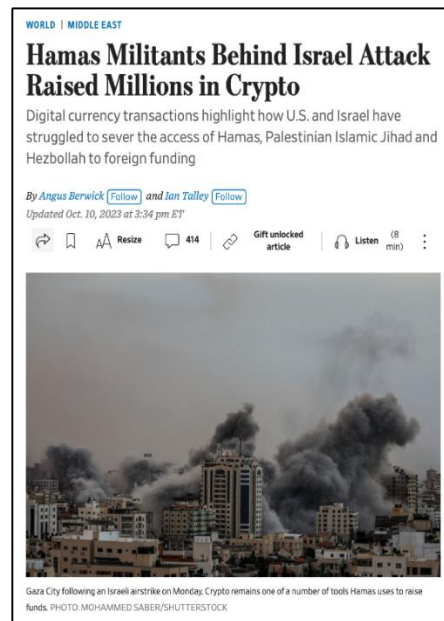
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Senators Sherrod Brown of Ohio, left, and Tim Scott of South Carolina during a hearing on financial system safeguards for digital assets this month. Pete Marovich for The New York Times

AI & Crypto: Navigating Regulatory Confusion & Overreach

- Like cybersecurity risk, AI is everywhere. 
- Regulation and liability can come from unexpected directions.
- Get a handle on your facts so you can promptly convey them to the uninitiated.



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AI & Crypto: Risk Management/ Oversight

- Regulatory scrutiny isn't only limited to merger enforcement:
 - It applies to fair trade practices, data privacy, law enforcement technologies, etc.
 - Companies must carefully consider unique issues that arise when dealing with emerging technologies, especially when such issues are not well understood by regulators
- *Caremark* is the guide: **Effective risk management!**
 - Directors and officers must implement and oversee effective risk management and compliance controls in all contexts, whether it be M&A, internal investment decisions, technology strategy, etc.

AI & Crypto: Risk Management/ Oversight

- To implement effective risk oversight strategies, company leadership should:
 - 1) Regularly review with management the categories of risk the company faces and its risk appetite
 - 2) Review the primary elements comprising risk culture, including establishing a “tone at the top” that reflects the company’s core values
 - 3) Stay up to date on, and ensure the company addresses, “hot button issues”
 - 4) Maintain a written record of risk-management efforts

There is no “one-size-fits-all” approach – but all corporate leadership must be diligent in the oversight process, and evolve the company’s process to address a changing risk environment. Such process must be documented through minutes or other corporate records.

AI & Crypto: When You Have to Fight Back



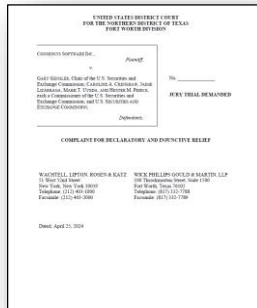
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Consider offense:



Consensys Software Inc. v. SEC (N.D. TX 2024)

¶ 1

This action is about regulatory overreach, the ambition of the administrative state to control innovative technologies, and elementary principles of fairness and due process.

¶ 11

This action challenges the SEC's determination that ETH is a security, subject to SEC jurisdiction.

Addressing Efforts to Leverage Tech Fears



“The bot issue at the end of the day ... feels more to us like the ‘dog ate the homework’ excuse to bail on the Twitter deal or talk down a lower price.”

government about the dysfunction at the heart of the company. In what can only be described as one of the most significant whistleblower complaints in recent history, a widely respected security expert and former Twitter Chief Security Officer, Peiter “Mudge” Zatkan, has submitted an 84-page whistleblower report to Congress, the FTC, the SEC, and the DOJ, outlining a series of explosive disclosures regarding misconduct within Twitter (the “Zatkan Complaint,” attached as Exhibit 1).



Addressing Efforts to Leverage Tech Fears



1 of 3 | Tom Barrak, center, leaves Brooklyn Federal Court, Friday, Nov. 4, 2022, in New York. Barrak, former President Donald Trump's inaugural committee chair, was acquitted of all counts Friday at a federal trial in which he was accused of using his personal access to the former president to secretly promote the interests of the United Arab Emirates. (AP Photo/Ted Shaffrey)

Addressing Efforts to Leverage Tech Fears

- DOJ and the SEC will often push in new areas what they refer internally to as “forward-leaning” theories of liability.
- In practice that often means applying a legal framework to a set of facts for which it was never envisioned.
- Good pushback at the internal appeal or litigation level means first aggressively pushing the facts that distance the matter from the analogy regulators or opposing litigants are attempting to develop.
- Second, it means coming up with a better analogy and showing why, though you may be dealing with novel technology or a new scenario, the matter is really analogous to a situation where there is agreement that this is the zone of sanctioned conduct.



Addressing Efforts to Leverage Tech Fears

- Addressing these risks in the context of deal-making, like in many areas, it is important to:
 - Engage in careful strategic planning
 - View it as another business risk to consider
 - Buyers must engage in thorough and thoughtful due diligence
 - Ensure there is appropriate risk allocation in contract
 - Incorporate into MAE definition
 - Suitable access covenants are key
 - Carefully create a strategy for seeking regulatory approvals
 - Go in first with a presentation
 - Seek to dissuade regulatory authorities of any problems up front
 - Acknowledge any problems and propose a fix

Addressing Efforts to Leverage Tech Fears

- Questions to consider:
 - How long will the process take?
 - What are the implications for the target in terms of running/growing the business?
Can a fast moving AI company afford to be substantially restricted by interim covenants for a long period of time? Does the buyer even want that?
 - If the deal doesn't close, what happens?