Debevoise & Plimpton

MARKETCHECK

The Debevoise M&A Report | Spring 2026

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> "Detecting latent licensing and ownership risks requires technical diligence that many traditional M&A diligence exercises overlook."

Avoiding IP Landmines In Software Assets In M&A Transactions

Mergers and acquisitions involving software as a material asset often carry greater latent intellectual property (IP) risk than those that do not, particularly where the target technology incorporates (a) unauthorized third-party code or (b) open-source software subject to restrictive licenses. The Uber-Otto transaction from 2016 illustrates how these risks can impose severe financial and reputational costs on the acquirer when a target's technology incorporates IP developed elsewhere. In August 2016, Uber announced its acquisition of Otto, a self-driving technology company, stating that "Otto plus Uber is a dream team."[1] The deal, valued at $680 million, reflected Uber's ambitions to reduce costs (by eliminating human drivers) and to enter the trucking business industry with self-driving trucks.[2] Six months later, Uber found itself defending a headline-grabbing lawsuit by Waymo alleging trade secret misappropriation involving LiDAR technology.[3] Waymo claimed that Anthony Levandowski, Otto's founder, downloaded confidential LiDAR files before leaving Waymo for Otto that Uber subsequently acquired.[4] In the end, Uber settled the suit by agreeing to pay approximately $245 million in Uber equity[5] while Mr. Levandowski received 18 months of prison time and was required to pay over $800 million in restitution and fines.[6]

Detecting latent licensing and ownership risks requires technical diligence that many traditional M&A diligence exercises overlook. Two categories of risk frequently arise in transactions involving

1. Travis Kalanick, *Rethinking Transportation*, Uber Newsroom (Aug. 18, 2016), https://www.uber.com/newsroom/rethinking-transportation-2/.
2. Bernie Woodall, *Uber Buys Self-Driving Truck Startup Otto; Teams with Volvo*, Reuters (Aug. 18, 2016), https://www.reuters.com/article/business/uber-buys-self-driving-truck-startup-otto-teams-with-volvo-idUSKCN10T1TL/.
3. Greg Bensigner, *Waymo Calls Uber a 'Cheater' as Driverless-Car Trial Begins*, Wall St. J. (Feb. 5, 2018), https://www.wsj.com/articles/waymo-calls-uber-a-cheater-as-driverless-car-trial-begins-1517860779; Daisuke Wakabayashi, *Waymo v. Uber Trial Opens With a Battle of Sports Metaphor*, N.Y. Times (Feb. 5, 2018), https://www.nytimes.com/2018/02/05/technology/uber-waymo-trial.html.
4. *Id.*
5. Ian Wren, Uber, *Google's Waymo Settle Case Over Trade Secrets For Self-Driving Cars*, NPR (Feb. 9, 2018), https://www.npr.org/sections/thetwo-way/2018/02/09/584522541/uber-googles-waymo-settle-case-over-trade-secrets-for-self-driving-cars.
6. DOJ, F*ormer Uber Executive Sentenced To 18 Months In Jail For Trade Secret Theft From Google*, Press Release (Aug. 4, 2020), https://www.justice.gov/usao-ndca/pr/former-uber-executive-sentenced-18-months-jail-trade-secret-theft-google. President Trump pardoned Mr. Levandowski in 2021, sparing him the prison sentence. *See* White House, *Statement from the Press Secretary Regarding Executive Grants of Clemency*, Statements & Releases (Jan. 20, 2021), https://

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software companies or software-based assets: (a) misappropriated proprietary code, where employees incorporate code taken from prior employers or other third parties; and (b) open-source licensing contamination, where restrictive licenses impose obligations on proprietary software. Each risk requires different and nuanced diligence techniques and contractual protections.

Misappropriated Proprietary Code

Increasingly, we are seeing employees leaving one company and bringing proprietary code or confidential materials to another.[7] Three characteristics of software based on source code (a text-based programming language that developers can read and write) contribute to that trend. *First*, unlike a device or machine, code is highly portable—millions of lines of source code can be compressed into as little as a few megabytes and quickly transferred via e-mail, instant messages, and cloud-based filesharing services. Low barriers to removal allow developers to carry code with them when they change jobs. *Second*, source code is often developed in self-contained, independent components called libraries. Libraries make it easy to reuse code in different applications. This means developers can take snippets or parts of source code instead of an entire codebase, which makes the origin of the source code harder to detect.[8] *Third*, assembling source code into a software program, which can then be sold to customers, usually requires little more than standard development tools that are readily available to software companies. This allows proprietary source code from one company to be easily incorporated in the codebase of another at low or no additional cost. The relative ease of incorporating code makes it difficult for companies to detect when code that was not developed at the company makes its way into their codebase.

Unauthorized acquisition or use of third-party code can expose companies to serious legal consequences. In *Motorola Sols., Inc. v. Hytera Commc'ns Corp.*,[9] for example, the jury awarded $764 million (later reduced to ~$407 million by the appeals court) against Hytera for hiring three Motorola engineers who brought with them confidential documents and source code. Acquirers should scrutinize potential trade-secret misappropriation risks given that trade secret litigation hit a record high in 2025 with over 1,500 federal cases.[10] Trade secret misappropriation also can trigger criminal liability, and recent news has featured some high-profile indictments and convictions.[11]

Traditional diligence methods often struggle to evaluate software source code due to the lack of (a) an easy means to assess lawful possession or use of code, (b) a database of proprietary code against which one can run a background check on code suspected of being misappropriated, or

trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-012021/.

7. James Bentley, *Intel Is Suing an Ex-Employee of 11 Years Alleging the Engineer Downloaded Nearly 18,000 Files, Many of Which Being Top Secret Or Confidential*, PC Gamer (Nov. 10, 2025), https://www.pcgamer.com/hardware/intel-is-suing-an-ex-employee-of-11-years-alleging-the-engineer-downloaded-nearly-18-000-files-many-of-which-being-top-secret-or-confidential; Kwan Wei Kevin Tan, *Flexport Is Going After 2 Former Employees, Accusing Them of Stealing Its Source Code*, Business Insider (Mar. 18, 2025), https://www.businessinsider.com/flexport-accuses-former-staff-stealing-code-set-up-rival-2025-3; Sarah Jackson, *Amid High Turnover, Workers Are Stealing Source Code from Their Companies at 3 Times the Rate They Were Taking It Last Year*, Business Insider (Aug. 13, 2021), https://www.businessinsider.com/workers-are-increasingly-stealing-sensitive-data-from-their-companies-2021-8.
8. *See, e.g.*, Mohammad Gharehyazie et al., *Some from Here, Some from There: Cross-Project Code Reuse in GitHub, Proc. 14th Int'l Conf. on Mining Software Repositories* 291, 295–97 (2017), https://doi.org/10.1109/MSR.2017.15 (finding significant amount of code reused across GitHub projects).
9. 108 F.4th 458 (7th Cir. 2024).
10. Ivan Moreno, *Trade Secret Filings Hit Record High In 2025, Report Finds*, Law360 (Jan. 28, 2026), available at https://www.law360.com/employment-authority/articles/2433237/trade-secret-filings-hit-record-high-in-2025-report-finds.
11. *See, e.g.*, Bonnie Eslinger, *Calif. Jury Convicts Ex-Google Engineer Of Stealing AI Secrets*, Law360 (Jan. 29, 2026), available at https://www.law360.com/articles/2435896/calif-jury-convicts-ex-google-engineer-of-stealing-ai-secrets; Lauren Berg, *Ex-Google Engineers Took Trade Secrets To Iran, DOJ Says*, Law360 (Feb. 19, 2026), available at https://www.law360.com/articles/2443949.

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(c) anti-theft mechanisms, like a shopping cart wheel lock, that would deactivate the source code when it is used outside of authorized premises. Additionally, sophisticated software systems often contain millions of lines of code spread across thousands of files and repositories rarely distinguish critical algorithms from routine implementation code. Nevertheless, determining the provenance of code is not an intractable problem for M&A due diligence.

One practical heuristic requires examining audit logs from the target's code repositories, where one can find metadata associated with source code development, such as author, the dates and times the code was modified, lines of code modified, details of modifications, and any commentary added by the author when submitting code to the repository. (The absence of a code repository, in itself, would be a red flag necessitating more due diligence surrounding the technology.) Git, and its web-based avatar, GitHub, are examples of popular code repositories used nowadays. Acquirers can request repository audit logs during diligence and analyze them for suspicious patterns. Several patterns may signal elevated risk: (a) submission of voluminous amounts of source code or code files by a key developer during the initial few weeks joining the team or initiation of a new project followed by sparse subsequent modifications would indicate initial dumping of code developed elsewhere, (b) references to a developer's former employer in the audit logs would indicate that the code may belong to the employer named in the logs, and (c) lack of any developer commentary associated with code submission, which is standard industry practice, would indicate a desire to conceal the nature of code development.

Audit-log review requires far less time than full source code analysis. Moreover, unlike the analysis of actual source code, reviewing logs does not require developer expertise. The heuristics may also be incorporated into AI tools to further reduce time and effort required to identify obvious problems. If the analysis reveals suspicious patterns, the acquirer may reconsider the transaction, demand heightened diligence to alleviate any concerns, or seek more protections in the transaction agreement. An acquirer also could apply these heuristics after closing as a proactive safeguard.

Open-Source License Contamination

Today, the Internet offers numerous "open-source libraries" that contain source code available to anyone to view, modify, distribute, and enhance. The wide distribution and use of open-source libraries generally result in source code that has few defects and is easy to reuse. Developers often incorporate open-source libraries into proprietary software to reduce development time. But many open-source libraries are subject to restrictive licenses that ensure free software remains freely available to developers. The GPLv2 license, for example, is one such license that requires any user of its code to "cause any work that you distribute or publish, that in whole or *in part* contains or is derived from the Program or any part thereof, to be licensed as a whole *at no charge* to all third parties under the terms of this License."[12] Thus, if proprietary software contains any open-source code licensed under GPLv2, the software may have to be distributed under the same open-source terms (e.g., at no charge to third parties).[13]

Software Freedom Conservancy v. Vizio Inc.—a California state court case currently gearing up for trial—exemplifies the risk associated with commercial products incorporating open-source code under a "copyleft" license. In that case, the defendant sold Vizio TVs running on an operating system licensed under GPLv2.[14] The plaintiff seeks

12. GPLv2, § 2(b), available at https://www.gnu.org/licenses/old-licenses/gpl-2.0.en.html (last accessed Feb. 18, 2026) (emphasis added).
13. Note that GPL obligations are triggered primarily by distribution and not all use of GPL code creates a derivative work. Thus, companies can use GPL code internally without triggering disclosure obligations.
14. Court Case: *Software Freedom Conservancy v. Vizio Inc.*, available at https://sfconservancy.org/copyleft-compliance/vizio.html (last accessed Feb. 20, 2026).

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to enforce GPLv2 as a third-party beneficiary and compel Vizio to provide the "complete corresponding" source code as required by GPLv2.[15] Although the court absolved Vizio of any duty under GPLv2 to ensure continuous and proper functioning after a user installs modified source code on the TV, whether Vizio needs to provide "complete corresponding" source code remains an open question for trial.[16] Walmart acquired Vizio in 2024 during the pendency of that case. If the plaintiff had brought the case after the closing of the transaction, it would have been critical that the due diligence caught this issue, so the parties could evaluate the terms (or even whether to enter into the transaction) accordingly.

Open-source code typically proves easier to detect than proprietary third-party code because publicly available online sources exist and can be compared against the target's source code. One of the tools to do so is Black Duck Software Composition Analysis (SCA) that can identify and assess open-source components and licenses. FossID, frequently used in the M&A due diligence context, specializes in snippet-level matching and conducts audits blindly without exposing the underlying codebase. Mend SCA, formerly known as WhiteSource, identifies open-source dependencies and maps them to its license database to determine the risk level of each. All these tools have incorporated AI to some degree. Depending on the product architecture, diligence teams can select tools and analysis depth accordingly.

Transaction Protections for Software IP Risks

It is not practical or necessary for every transaction involving software companies or code-based assets to be subjected to rigorous source code due diligence. SaaS (Software as a Service), for example, typically does not present open-source code risks because the software can be provided to end users without triggering many restrictive open-source code licenses (with AGPL as one prominent exception), since it does not require distributing source code. When an acquirer detects elevated risks warranting additional diligence, however, it may use the tools described above to uncover potential issues for the target to address or to adjust the terms of the transaction. Alternatively, the acquirer may seek representations and warranties (R&W) and obtain post-closing R&W insurance.

For private targets, agreements should allocate risks through representations, indemnities, and other contractual protections. If the technical due diligence raises any concerns, the acquirer could require stronger and more specific representations and warranties from the target, such as specialized IP representations on open-source compliance and no misappropriation. Similarly, acquirers should aim to negotiate longer survival periods, higher indemnity caps, escrow holdbacks, or special indemnities. And, given the reputational risk associated with allegations of source code theft, the acquirer may want to retain control of any litigation rather than simply tendering the defense to the indemnifier. In sum, parties in software-focused transactions should carefully consider the degree and the tools of technical diligence to manage risks.

15. *Id.*
16. Order Granting Vizio, Inc.'s Motion for Summary Adjudication, *Software Freedom Conservancy, Inc. v. Vizio, Inc.*, No. 30-2021-01226723-CU-BC-CJC (Super. Ct. Cal. Orange Cnty, Dec. 23, 2025).

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Refunds and Replacements: Navigating the Post-IEEPA Tariff Landscape

Two months have lapsed since the Supreme Court held in *Learning Resources, Inc. v. Trump*[1] that the International Emergency Economic Powers Act of 1977 (IEEPA) does not authorize the President to impose tariffs under its grant of authority to "regulate … importation." In that time, the Court of International Trade (CIT) has ordered the Customs and Border Patrol (CBP) to process universal refunds to companies that paid the IEEPA tariffs. But a system to facilitate those refunds is still being rolled out, and it is still unclear how much of the estimated $170 billion in paid IEEPA duties will be returned to importers of record.

Meanwhile, the Trump administration has increasingly relied on alternative statutory bases to pursue new tariffs. On the day *Learning Resources* was decided, President Trump signed a Proclamation imposing a 10% *ad valorem* import duty on all trading partners under Section 122 of the Trade Act of 1974, which took effect on February 24, 2026, and is authorized under the statute for a 150-day period. The administration has indicated an intention to raise these tariffs to 15%. Since then, the administration has also ramped up its pursuit of tariffs under Section 232 of the 1962 Trade Expansion Act and Section 301 of the 1974 Trade Act and hinted at other tariff tools that it may seek to deploy.

In this article, we break down (i) the current status of the complex refund procedures being developed by the CBP and how importers can maximize their chances of securing those tariff refunds; (ii) the tools that the Trump administration is increasingly relying on to continue its broad tariff policy; and (iii) strategies companies and investors should implement to anticipate and minimize tariff exposure moving forward.

Tariff Refunds in Limbo

The process to initiate what will likely be the largest tariff refund process in U.S. history has begun, but is still subject to much uncertainty.

First, although the CIT acted promptly following the Supreme Court's *Learning Resources* decision, CBP's administrative refund process is still being rolled out, and the CIT's ruling may yet be appealed.

On March 5, 2026 in *Atmus Filtration v. U.S.*,[2] CIT Judge Richard Eaton ordered CBP to refund collected IEEPA duties—both those that CBP had not yet finally assessed, i.e., "unliquidated," as well as those already finally assessed within the prior 90 days, i.e., "liquidated but not yet final."[3] On March 27, he amended that order to extend the refund directive to finally liquidated entries as well, i.e., those finalized more than 90 days before, thereby making clear that all IEEPA duties are covered.

Following Judge Eaton's order, CBP has been developing an automated refund processing system, called the Consolidated Administration and Processing of Entries (CAPE), based on the U.S. government's existing Automated

1. *Learning Resources, Inc. v. Trump*, No. 24-1287 (U.S. Feb. 20, 2026).
2. *Atmus Filtration, Inc. v. United States*, No. 26-01259 (Ct. Int'l Trade Mar. 5, 2026) (order).
3. In U.S. customs practice, "liquidation" is the point at which CBP makes its final calculation of duties owed on an import entry. See 19 C.F.R. § 159.1. Until that happens, an entry is "unliquidated," meaning the duty amount is still preliminary and can be changed. Once liquidation occurs, the duty amount is generally final unless timely challenged (i.e., "protested"). "Reliquidation" refers to CBP reopening and revising that final calculation—typically pursuant to a statute, administrative process or court order—which can result in a refund or additional duties. CBP has statutory authority to voluntarily reliquidate an entry within 90 days of the original liquidation. *See* 19 U.S.C. § 3522.

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Commercial Environment (ACE)[4] to calculate and provide valid refunds of IEEPA duties. On April 20, 2026, CBP launched the first phase of the CAPE tool, which is limited to certain unliquidated entries and certain entries within 80 days of liquidation. CBP is currently evaluating functionality for other types of entries, but has not indicated when any subsequent phases would be launched.

Securing a refund through this processing system, however, is still not guaranteed. On April 6, 2026, the plaintiffs in *Atmus Filtration* requested a voluntary dismissal of their lawsuit. On April 8, the CIT granted the request and entered an order of voluntary dismissal. That same day, the court also lifted the stay in another IEEPA tariff-refund case—*Euro-Notions Florida v. U.S.*[5]—and issued an order with identical language to Judge Eaton's March orders in *Atmus Filtration*.[6] Although this case has since been stayed again,[7] the government may still ultimately challenge this order if the stay is lifted. And if the government succeeds in narrowing or overturning it, the thousands of importer cases pending before the CIT—almost all of which remain stayed—may become battlegrounds for litigating both the scope of any refunds and when those refunds must be paid.

Second, pass-through issues are already beginning to complicate the situation and increase potential exposure to secondary litigation. For instance, consumers have begun filing class action lawsuits against companies such as FedEx, Costco and Lululemon to recover tariff refunds on the theory that the companies passed tariff costs on to consumers through increased prices. The outcomes of these cases will turn on contract language, pricing structure, and proof of actual pass-through, but importers are likely to have strong defenses where prices were fixed, negotiated globally or reflected multiple cost inputs beyond tariffs. The government might also challenge its obligation to issue certain refunds where duties were passed on to buyers further down the supply chain through increased prices, arguing the importer did not bear the economic burden and is therefore not entitled to a refund. Refund-related commercial disputes therefore present a meaningful secondary risk that companies should evaluate in parallel with any refund strategy.

Third, companies should be aware of a secondary market that has emerged in the face of *Learning Resources*. A range of investors, including hedge funds, liquidation specialists, and investment firms, are buying from importers of record an economic interest in their potential tariff refund proceeds at a discount. These deals do not transfer the claim itself but instead assign some or all of the expected refund proceeds, while the importer of record remains responsible for pursuing the refund. By selling the rights to potential tariff refund proceeds at a discount to financial institutions, companies can access capital earlier and avoid the uncertainty with the timeline and process for an actual refund pay-out. Analysts predict that this market could grow to be worth $100 billion.

4. ACE is an online platform through which importers, customs brokers and other trade participants file entry data, submit documents, pay duties and track shipment status. It is also used by other federal agencies involved in trade for data processing and management. The Consolidated Administration and Processing of Entries (CAPE) is the ACE-based entry-processing framework that CBP is developing to administer and pay IEEPA-related refunds.
5. *Euro-Notions Florida, Inc. v. United States*, No. 25-00595 (Ct. Int'l Trade Apr. 7, 2026) (order lifting stay).
6. *Euro-Notions Florida, Inc. v. United States*, No. 25-00595 (Ct. Int'l Trade Apr. 7, 2026) (order) (ordering that "with respect to any and all unliquidated entries that were entered subject to IEEPA duties, U.S. Customs and Border Protection is hereby directed to liquidate those entries without regard to the IEEPA duties. Any liquidated entries for which liquidation is not final shall be reliquidated without regard to those duties. Any liquidated entries for which liquidation is final shall be reliquidated without regard to the IEEPA duties.").
7. *Euro-Notions Florida, Inc. v. United States*, No. 25-00595 (Ct. Int'l Trade Apr. 20, 2026) (order) (ordering that the matter is stayed, except with respect to the CIT's order that defendants shall file a report on the progress made in CAPE Phase 1 by April 28).

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Non-IEEPA Tariff Authorities and Potential IEEPA Replacements

Without IEEPA, the Trump administration has lost a major—and unusually flexible—source of asserted authority to impose tariffs broadly and quickly by executive action. Nevertheless, tariffs remain a central feature of this administration's policy. Indeed, the Trump administration has expanded its reliance on alternative tariff tools and appears to be exploring others to replace IEEPA's sweeping reach. That shift is already evident in the Trump administration's use of Section 122 of the Trade Act of 1974 to impose new tariffs post-*Learning Resources*, as well as the initiation of broad Section 301 trade investigations and continuation of the pursuit of tariffs under Section 232 of the Trade Expansion Act. The Trump administration may seek to deploy other tools as well.

The Trump administration has imposed tariffs under Section 232 of the Trade Expansion Act on multiple product categories, and several additional investigations are ongoing, including into pharmaceuticals, critical minerals, aircraft and others—as shown in the chart titled "Current Section 232 Investigation and Tariffs" located on page 20 of this issue. After the Supreme Court's *Learning Resources* decision, the Trump administration announced its plan to "[m]aintain tariffs currently imposed under Section 232 of the Trade Expansion Act of 1962, and conclude ongoing investigations."

Since the *Learning Resources* decision, the Trump administration has initiated several new Section 301 investigations against China and other nations, as shown in the chart titled "Current Section 301 Investigations and Tariffs" located on page 20 of this issue. On March 11 and 12, the United States Trade Representative initiated investigations "relating to structural excess capacity and production in manufacturing sectors" for 16 countries, and a further 60 investigations "relating to failures to take action on forced labor."

Most recently, the Trump administration invoked Section 122 in its response to *Learning Resources* to impose a 10% tariff on all imports, and President Trump has since further announced his intent to raise that rate to the statutory maximum of 15%.

Looking ahead, the administration could also rely on other authorities—including Section 201 of the Trade Act of 1974 and Section 338 and anti-dumping and countervailing duties (AD/CVD) under the Tariff Act of 1930—to pursue additional tariff actions.

As we reported here, none of these statutory authorities afford the President the same flexibility and breadth of authority as that claimed under IEEPA. Most are more procedurally demanding and constrained by subject-matter, geographic and/or temporal limitations. And, with the exception of Sections 122 and 338—neither of which has previously been used to impose tariffs—these other bases have already withstood legal challenges.

Accordingly, companies should expect that tariff actions pursued outside IEEPA will be relatively narrow in scope and slow to implement. The heightened requirements in those statutes may also give affected parties additional avenues to challenge tariffs on procedural and as-applied grounds. At the same time, the same guardrails make measures adopted under these established, court-tested authorities more likely to withstand scrutiny and endure once in place.

Practical Strategies for Managing the Shifting Tariff Landscape

The shock absorbers that have helped some companies contain tariff exposure are unlikely to be as durable in a post-IEEPA landscape. In 2025, many businesses limited near-term exposure through shipment timing, inventory buildups, supply-chain rerouting, exemptions, and margin compression. But each of those tools has clear limits: inventories will normalize, rerouted supply chains may still be captured by shifting

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Refunds and Replacements: Navigating the Post-IEEPA Tariff Landscape (continued from page 7)

tariff policy, margins cannot absorb added costs indefinitely, and exemptions remain discretionary and unpredictable.

Tariffs should therefore be viewed not as a temporary disruption, but as a recurring operating and transactional risk requiring sustained focus in diligence, valuation, transaction structuring, contractual risk allocation, and post-closing integration.

First, given continuing uncertainty around post-*Learning Resources* refund mechanics, companies seeking to preserve potential recoveries should pursue administrative and judicial remedies in parallel. That includes using CBP's CAPE refund process, seeking corrections for unliquidated entries, filing protests within 180 days for liquidated entries, and considering claims under the CIT's residual jurisdiction under Section 1581(i)—a catch-all provision of the CIT's jurisdictional statute that allows companies to seek relief from CIT when no other legal or administrative pathway is available to challenge government actions related to customs or trade. Although recent CIT orders suggest refunds may be available without a Section 1581(i) complaint, that position could still be narrowed, and a two-year limitation period applies to Section 1581(i) claims. Early filing may also prove advantageous as CIT congestion increases.

Second, acquirors and investors should account for tariff exposure directly in diligence and underwriting. That includes mapping and stress-testing supply chains, key customer and supplier contracts, and pricing flexibility, as well as assessing whether tariff risk is fully captured in the deal economics. That inquiry may affect the credibility of projections, the sustainability of recent earnings, the adequacy of carveout financials, and the appropriateness of valuation and contingent consideration. It may also shape how transaction risk is allocated, including through closing conditions, interim covenants, and targeted indemnity protection.

Third, transaction parties should review existing agreements and negotiate new ones with tariff risk allocation in mind. Because tariffs can materially affect earnings stability, pricing flexibility, and supplier and customer relationships, provisions addressing price adjustments, pass-through rights, change-in-law protection, indemnities, termination rights, and dispute resolution may take on increased significance, as we reported here.

Fourth, companies should incorporate tariff compliance into integration and governance planning from the outset. Practical steps may include establishing a cross-functional tariff response team, implementing protocols for repricing and supplier renegotiation following defined tariff events, and strengthening customs classification, valuation and country-of-origin substantiation processes to reduce overpayment risk and preserve access to refunds, exclusions or other relief.

In short, despite the recent success of the IEEPA challenge, tariff risk will likely remain a meaningful feature of the deal environment. It should be treated not only as a trade or compliance issue, but as a core diligence, valuation, structuring and execution issue.

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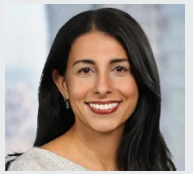

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How AI Advantages Tend to Compound, Increasing the Risks of Falling Too Far Behind

As we look back on 2025, one theme that emerges from our work helping over 100 clients with their artificial intelligence (AI) adoption is that extracting real value from AI takes a sustained effort across the organization, and those investments are now starting to pay off. In 2026, we anticipate that many firms will emerge from the pilot/experimentation AI phase and transition to an operational phase that includes multiple large-scale AI use cases in production, with demonstrable return on investment in the form of either cost savings or new sources of revenue.

These firms will likely have gone through long periods of skills building, governance enhancements, pilot programs, model testing, and use case iteration, with many small victories and failures along the long road to figuring out how AI can deliver real value for their particular businesses. That investment of time was needed to align business strategy with AI strategy and to find the right combination of tools, talent, workflows, pilot programs, training, and governance necessary to implement high-value/low-risk AI use cases at scale.

Organizations that have made these investments are now positioned to expand the scope of their more successful use cases, and to quickly find and implement new valuable use cases, which leads to a compounding and accelerating advantage loop. In our experience, both at Debevoise and with our clients, AI success leads to more AI success, including increased buy-in from employees and management, better understanding of what AI tools can and cannot do, and more ideas for how to use AI to save time and money or deliver entirely new services to clients. Through this process, employees develop their AI skills, improve existing use cases, and accelerate the timeline for moving new ones into production, creating even more organizational momentum. Those firms that are ahead now will find it relatively easy to stay ahead, especially if they can poach talent from the firms that have fallen behind.

For those companies that find themselves behind in AI adoption, it is certainly not too late to catch up. Indeed, the path to success is clearer now than it was a year ago, so it should take less time to reach successful adoption than it did in 2025, but those that are ahead are gaining momentum. So, for many of the companies that have largely been on the AI adoption sidelines, the time to get in the game is now.

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HSR Filing Updates

The first quarter of 2026 generated significant developments for M&A transactions that require a filing under the Hart-Scott-Rodino (HSR) Act. To comply with the HSR Act, transacting parties must notify the U.S. Department of Justice, Antitrust Division (DOJ) and the Federal Trade Commission (FTC), of their intended transaction if certain thresholds are met. In the past few months, the rules and requirements for those notifications have been both challenged and expanded.

HSR Rules Overturned

Enacted in 1976, the HSR Act sets forth the requirements for when transacting parties must file premerger notifications with the federal antitrust agencies. In October 2024, the FTC issued a Final Rule adopting the most extensive revisions to the HSR rules since the HSR Act's original enactment. The Final Rule, which went into effect in February 2025, substantially expanded the prior rule by requiring parties to submit significantly more information and documents than was previously necessary. According to the FTC, the new filing requirements are expected to increase the time required to complete a premerger filing by more than 60 hours on average and by more than 100 hours for more complex transactions.

On February 12, 2026, a year after the Final Rule went into effect, a federal court vacated the FTC's Final Rule in *Chamber of Commerce v. FTC* (finding that the Final Rule exceeded the FTC's statutory authority)[1]. The FTC appealed to the Fifth Circuit Court of Appeals. While originally the Fifth Circuit granted the FTC's Motion for an Administrative Stay until further order of the court, the Court denied that Motion to Stay on March 19, 2026.

The FTC has now formally provided notice through its Premerger Notification Office (PNO) that it is now accepting HSR filings using the Form and Instructions that were in place before the Final Rule went into effect. Additionally, the PNO also confirmed that it will also continue to accept filings submitted under the February 10, 2025 Form and Instructions if parties voluntarily choose to use them.

Returning to the pre-February 2025 HSR Form and Instructions will likely reduce both the cost and amount of time necessary to submit an HSR filing to the FTC. It will on average require entities to conduct less data collection and produce less documents.

It should be noted that the appeal of the federal district court's decision on the merits is still pending at this time, meaning that the 2025 HSR Form and Instructions could come back into play. However, until a court orders otherwise, the 2025 HSR filing requirements under the Final Rule are no longer required, and the pre-February 10, 2025 Form and Instructions have been reinstated.

U.S. Department of War to Review Defense-Related Transactions

The FTC has recently published guidance[2] that certain transactions that are notifiable under the HSR Act now will need to be disclosed to the

1. *Chamber of Commerce of the United States of America, et al. v. Federal Trade Commission, et al.*, Case No. 6:25-cv-9-JDK.
2. *See* https://www.ftc.gov/enforcement/premerger-notification-program/department-of-war-filings.

Continued on next page

U.S. Department of War (DOW) as well.[3] The guidance sets forth the four scenarios under which a transaction must be reported to the DOW:

1. **Defense Directed Business.** Either party used to have, currently has, or intends to have a contract with the DOW, or to perform as a subcontractor on a DOW contract.
2. **Critical Technologies.** The transaction involves technology related to one of the following: (i) Applied Artificial Intelligence, (ii) Biomanufacturing, (iii) Contested Logistics Technologies, (iv) Quantum and Battlefield Information, (v) Scaled Hypersonics, or (vi) Scaled Directed Energy.
3. **Defense Industrial Base Sector.** The transaction involves the research and development, or the design, production, delivery, or maintenance, of military weapons systems, subsystems, and components or parts.[5]
4. **Intellectual Property.** One or more of the parties has patents, trademarks, copyright protections, or trade secrets relating to the above Critical Technologies or Defense Industrial Base Sector categories.

Transacting parties must now email the DOW M&A Division to inform the agency of a potential transaction that falls into one or more of the above categories.

California to Require HSR Filings

California has joined Colorado and Washington as the third state to require the submission of HSR filings to the State Attorney General. The filing requirement will apply to any HSR filings made to the FTC and DOJ on or after January 1, 2027. Similar to the thresholds in Washington and Colorado, a filing will be required only if a party (i) has its principal business in California or (ii) annual net sales in California above approximately $26.78 million. If one of these thresholds is met, the HSR form must be submitted to the State Attorney General within one business day of the filing to the federal authorities. Non-compliance can result in a civil penalty of up to $25,000 per day after written notice and a three-business day period to cure.

The primary intention for states like California in requiring the submission of HSR filings is to gain access to information that is otherwise confidential in order to assess transactions that could affect commerce within the state. While the state filing requirements such as the one in California are not expected to materially increase filing costs, transacting parties should be aware that states may seek to challenge transactions they believe could substantially lessen competition, including by coordinating with the DOJ or FTC.

3. Please note that the official title of the agency is the U.S. Department of Defense, but pursuant to Executive Order 14347, the current administration is referring to the agency as the U.S. Department of War. *See* Exec. Order No. 14347 (Sept. 5, 2025).
4. *See* cisa.gov (providing detail about the Defense Industrial Base Sector).

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Court of Chancery Finds Disclosure Issues Defeat *MFW* and Sustains Aiding-and-Abetting Claim Against Target's Financial Advisor

In late February, the Delaware Court of Chancery issued a decision in *In re EngageSmart, Inc. S'holder Litig.*[1] addressing both fiduciary duty and aiding and abetting claims arising from EngageSmart's $4 billion take-private transaction. The court held that it was reasonably conceivable that the minority stockholder vote was not fully informed, precluding the defendants from obtaining the protections of *Kahn v. M&F Worldwide Corp. (MFW)*[2]—namely, review under the deferential business judgment rule rather than entire fairness. The court also declined to dismiss an aiding and abetting claim against the company's financial advisor.

Background

EngageSmart was controlled by a private equity sponsor who supported a transaction to take the company private through a sale to a financial buyer. The transaction was structured to comply with the framework established in *MFW*, with negotiations conducted by a special committee of independent directors of EngageSmart's board and conditioned on approval by a majority vote of the unaffiliated stockholders. The special committee retained its own independent financial advisor, while EngageSmart's long-standing financial advisor continued to serve as its advisor for the transaction. The transaction was ultimately approved by the minority stockholders.

Stockholder plaintiffs asserted fiduciary duty claims against EngageSmart's controlling stockholder and the EngageSmart directors who approved the transaction, as well as aiding and abetting claims against the buyer and EngageSmart's financial advisor.

Aiding and Abetting Claims

According to the complaint, EngageSmart's longtime financial advisor maintained significant ongoing advisory relationships with the controlling stockholder and several of its portfolio companies, while also maintaining active lending and financing relationships with the buyer and its affiliated funds and portfolio companies. Against that backdrop, the complaint alleged that, while the special committee's financial advisor urged the company to remain open to control transactions, the company's financial advisor worked closely with the controller to develop a transaction strategy aligned with the controller's objective of obtaining liquidity while retaining a significant ownership stake. The complaint further alleged that this strategy—implemented during the sale process—may have limited the pool of potential bidders interested in acquiring control of the company.

The complaint also alleged that the company's financial advisor provided price guidance to the buyer during negotiations and delayed follow-ups

1. C.A. No. 2023-1093-JTL (Del. Ch. Feb. 27, 2026).
2. *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

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with other potential bidders while awaiting the buyer's proposal. In addition, plaintiffs alleged that the advisor sought to limit the involvement of the special committee's financial advisor, including by excluding that advisor from participation in outreach to potential bidders. The court held that these allegations were sufficient at the pleading stage to support an inference that the financial advisor knowingly participated in breaches of fiduciary duty by the controller and directors. Under Delaware's relatively low "reasonably conceivable" pleading standard, those allegations were enough to survive a motion to dismiss.

Disclosure Issues

The opinion also addressed disclosure issues relating to both conflicts of interest and the conduct of the sale process. Although the advisor's relationships with the controlling stockholder and the buyer had been disclosed to the special committee when it approved the advisor's retention, the court emphasized—quoting *RBC Capital Mkts., LLC v. Jervis*[3]—that disclosure of conflicts to a board does not provide a "free pass" for a financial advisor to act in its own interests. Separately, the complaint alleged that the company's proxy statement failed to adequately disclose certain relationships (including the financial advisor's relationships with the controller and buyer) and aspects of the sale process. Those alleged proxy disclosure deficiencies were among the factors that led the court to conclude that the minority stockholder vote may not have been fully informed. The decision also follows other recent Delaware cases, including *In re Inovalon Holdings, Inc. Stockholder Litig.*,[4] emphasizing the importance of complete and accurate disclosure of financial advisor conflicts and relationships.

The decision is the latest in a line of Delaware cases examining the role of financial advisors in sale processes and the circumstances under which banker conduct may give rise to aiding and abetting claims. While such claims remain subject to a demanding "knowing participation" standard, *EngageSmart* underscores that courts will closely scrutinize alleged conflicts, process design decisions, and disclosure practices—particularly in transactions involving a controlling stockholder.

3. *RBC Capital Mkts., LLC v. Jervis*, 129 A.3d 816 (Del. 2015).
4. *In re Inovalon Holdings, Inc. Stockholder Litig.*, 318 A.3d 1262 (Del. 2024).

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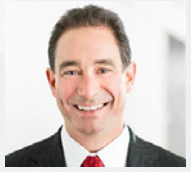

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Industry Updates

AI and Intellectual Property Litigation: Recent Developments and Considerations for Public Companies

Last year was pivotal for intellectual property (IP) litigation involving artificial intelligence (AI), and the implications for public companies are significant. Whether your company is developing AI tools, integrating them into operations, or protecting valuable IP portfolios, 2025 brought key rulings that carry real-world consequences for corporate strategy, risk management, and the bottom line as virtually every industry is being reshaped by developments in AI.

As 2026 develops, expect continued litigation on many fronts, even as stakeholders explore new paths forward through licensing and partnerships. Below, we discuss the most significant trends that public company leaders and in-house legal teams should understand and prepare for in the year ahead.

First Fair Use Rulings Arrive

In 2025, we saw the first major fair use rulings involving generative AI, which broadly includes technologies that learn patterns from training data sets to create new text, images, video, or other content based on user prompts. These cases contain important signals for companies developing or deploying AI systems, as well as for companies whose IP may be used to train them.

Generative AI Training: Two Early Wins for Defendants, but Questions Remain

The first major fair use rulings in generative AI training cases arrived in June 2025, offering early wins for defendants while revealing fundamental disagreements about how courts should analyze AI training. In *Bartz v. Anthropic*, using copyrighted works to train large language models was held to be fair use but maintaining a collection of illegally downloaded works was not.[1] In *Kadrey v. Meta*, the court similarly held training was fair use (even when using pirated sources).[2] Significantly, the *Kadrey* holding hinged on plaintiffs' failure to present empirical evidence of market harm, yielding a detailed roadmap for future plaintiffs and leading the court to observe that "in most cases the answer" to whether training AI on copyrighted materials is illegal "will likely be yes"

1. *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1033 (N.D. Cal. 2025).
2. *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026, 1060 (N.D. Cal. 2025).

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if plaintiffs are able to present sufficient evidence demonstrating market harm.[3]

The courts split on critical analytical approaches: *Bartz* analogized AI training to human learning and dismissed concerns about indirect market competition, while *Kadrey* rejected this analogy and emphasized that generative AI's unique potential to "flood the market with competing works" makes market dilution "highly relevant" to the fair use analysis because outputs generated from training data may serve as substitutes for the original works, thereby affecting their market value—a key consideration under the fourth fair use factor.[4]

These and other areas of disagreement, even in opinions that reached the same result, signal that deeper fissures may emerge as litigants learn from these early rulings. The lack of a unified framework means that risk assessments around AI training practices should account for the possibility that courts in different jurisdictions may reach divergent conclusions.

A Different Approach to Fair Use: Direct Competitors Training Non-Generative AI

Earlier in the year, the District of Delaware addressed fair use in the context of non-generative AI in *Thomson Reuters v. ROSS Intelligence* (currently on appeal before the Third Circuit).[5] ROSS's use of Westlaw's copyrighted headnotes to train its AI-powered legal research tool was held not to be fair use, due to the commercial nature of ROSS's product and its potential to compete directly with Westlaw. Notably, this holding was distinguished in *Bartz*, where the lack of direct market competition between Anthropic's AI system and plaintiffs' works presented a very different situation.[6]

Unresolved Questions and Future Rulings Ahead

These decisions underscore that the fair use analysis for AI will remain context dependent. Each ruling took a different approach, and none resolved the broader question of how the fair use doctrine should apply generally across AI use cases—such as different training methods, model architectures, and the extent to which outputs may substitute for copyrighted works—beyond the specific factual contexts before the courts. Outcomes could change if plaintiffs present stronger evidence of market harm stemming from AI-generated outputs or direct competition with original works, and these decisions provide a roadmap for developing that evidence.

For public companies, this uncertainty warrants careful diligence on the provenance of training data used by AI vendors and internal AI initiatives, as well as proactive assessment of potential exposure across business lines. In September 2025, for example, the Ninth Circuit held that Walt Disney Pictures could be vicariously liable for its contractor's infringement of visual effects software, where the contractor used unlicensed software to perform work on Disney's films and Disney retained the right and ability to supervise the work while benefiting from it.[7]

While not an AI case, this decision underscores that diligence and contractual controls are critical when a vendor's practices could be challenged. In-house teams should ensure that AI vendor agreements include robust representations and warranties regarding the legality and provenance of training data, broad indemnification provisions

3. *Id.* at 1034.
4. *Bartz*, 787 F. Supp. 3d at 1032; *Kadrey*, 788 F. Supp. 3d at 1036.
5. *Thomson Reuters Enter. Centre GmbH v. Ross Intell. Inc.*, 765 F. Supp. 3d 382, 398 (D. Del. 2025).
6. *Bartz*, 787 F. Supp. 3d at 1022.
7. *Rearden, LLC v. Walt Disney Pictures*, 152 F.4th 1058, 1069 (9th Cir. 2025).

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covering IP infringement claims (including claims arising from the vendor's training practices), audit rights permitting inspection of training data sources and compliance practices, and appropriate limitations of liability that do not unduly cap the vendor's exposure for IP-related claims. Where vendors begin to deploy new AI tools, existing agreements should be reviewed and renegotiated as needed to address these risks.

Some Corporate Plaintiffs Join Forces, and Others Pursue Partnerships

In 2025, large public companies with substantial IP portfolios increasingly entered the fray. In February, 14 media companies sued AI developer Cohere. In June, Disney and Universal City Studios sued Midjourney, with a complaint prominently featuring Midjourney outputs with plaintiffs' iconic visual IP. These cases carry important lessons for public company leaders evaluating their own IP strategies:

- Corporations with extensive IP portfolios are treating generative AI as a material threat to the value of those assets, particularly insofar as the risk that AI systems trained on proprietary content could generate outputs that substitute for protected works at scale, thereby diluting existing markets and undermining value or licensing opportunities. Rather than waiting for greater legal clarity, these companies are pursuing litigation to preserve and enforce their IP rights, a signal that boards and management teams should be evaluating the adequacy of their own IP protection strategies given AI developments.
- Joining forces can help manage the cost and complexity of AI-related discovery. AI training cases often involve production of massive datasets and reams of internal communications, frequently raising trade secret concerns. Joint litigation can reduce the time and cost burden of discovery on each individual plaintiff, a consideration that in-house teams should weigh when evaluating enforcement options.
- These cases may serve as a roadmap for other industries (including software and video game developers, streaming platforms, and educational content providers) that rely heavily on proprietary works. Public companies in these sectors should monitor these proceedings closely for precedent that could affect their own IP positions.

Not all corporate plaintiffs are opting to litigate, however. For example, Warner Music Group (WMG) resolved two separate claims it had been pursuing against AI music startups Udio and Suno in late November. Immediately following these resolutions, WMG publicly announced new partnerships with both companies to develop and commercialize AI-generated music leveraging WMG's catalog and artist relationships. And in December, Disney announced a partnership with OpenAI to bring AI-generated videos featuring Disney IP to the Disney+ streaming service.

Licensing agreements like these between major corporate IP holders and AI developers underscore the emergence of a sophisticated and rapidly maturing market for high-quality training data and AI-enabled content rights. That market is showing no signs of cooling in 2026. For example, in March 2026, News Corp. announced a $50 million per year licensing agreement with Meta to provide content for use in AI model training and related services, further cementing the normalization of paid access to proprietary datasets.

For entities evaluating the benefits of integrating AI into existing business models, leveraging IP

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portfolios through licensing, partnerships, or co-development arrangements may ultimately prove more advantageous than protracted litigation.

Renewed Interest in Output-Based Infringement Claims

In 2025, IP holders began to give renewed attention to copyright claims based on AI-generated outputs, including claiming that AI-generated content can reproduce protected elements of their works or function as market substitutes, and bringing claims focused on the downstream distribution of those outputs rather than only the upstream training process. IP holders had previously struggled to advance such theories, and courts had consistently dismissed them for failing to allege substantial similarity or identify specific infringing examples.

That changed in October, when plaintiffs in the *In re OpenAI Copyright Litigation* multidistrict proceeding defeated a motion to dismiss their output-based infringement claims.[8] The court held that the class plaintiffs had plausibly alleged both actual copying and substantial similarity between ChatGPT-generated text and their copyrighted works.

One month later, a court similarly refused to dismiss output-based claims brought by Advance Local Media against Cohere.[9] The decision relied on evidence of close paraphrasing of news articles, including an example where Cohere's AI allegedly produced an output that "directly copied eight of ten paragraphs from a *New Yorker* article with very minor alterations."[10]

For AI developers, these rulings underscore the growing risk that outputs could also lead to fact-intensive litigation. For rightsholders, they represent a roadmap for future pleadings and a potential foothold for expanding the scope of viable infringement theories in AI litigation.

Trademark Claims Maintain Momentum as a Parallel Front

Trademark claims have continued to be a meaningful—and increasingly frequent—front in AI litigation. Though copyright theories have dominated headlines, Lanham Act claims have been a powerful complementary tool for plaintiffs in disputes over AI model training and outputs.

Several high-profile actions in 2025 have included trademark infringement, false designation of origin, and dilution allegations alongside copyright claims. For example, Encyclopedia Britannica and Merriam-Webster sued Perplexity in September, alleging that Perplexity misrepresented their works by falsely attributing AI-generated content to their registered trademarks or misleadingly suggested an association or endorsement.[11]

Many defendants have not moved to dismiss Lanham Act claims, and recent rulings confirm the viability of these theories against early challenges. In *Advance Local Media v. Cohere*, news organizations defeated a motion to dismiss trademark infringement and false designation of origin claims, which stemmed from outputs that allegedly reproduced trademarks and misattributed content.[12]

8. *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 23-CV-10211, 2025 WL 3003339 (S.D.N.Y. Oct. 27, 2025).
9. *Advance Loc. Media LLC v. Cohere Inc.*, No. 25-CV-1305 (CM), 2025 WL 3171892 (S.D.N.Y. Nov. 13, 2025).
10. *Id.* at *3.
11. *Encyclopaedia Britannica, Inc. et al. v. Perplexity AI, Inc.*, No. 1:25-cv-07546 (S.D.N.Y. Sept. 10, 2025).
12. *Advance Loc. Media*, 2025 WL 3171892 at *7.

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Where plaintiffs can plausibly allege confusion or reputational harm tied to AI-generated misattribution, Lanham Act claims present a viable path forward, particularly as courts grapple with how AI outputs can mimic brand identifiers or create misleading associations.

This year will likely bring significant rulings for both IP holders and AI developers. Among the most consequential developments to watch are class certification motions in pending multidistrict proceedings. If courts certify classes of copyright holders, AI developers could face dramatically expanded damages exposure and significant settlement pressure. Courts are also expected to weigh in on renewed motions to dismiss, fair use defenses at summary judgment, and novel theories advanced by IP holders, from claims that pirating and storing shadow library copies is distinct from training, to arguments over whether "leeching" and "seeding" works used in AI training infringes distribution rights, to carefully developed evidence of market dilution that courts have signaled could prove decisive in future fair use battles.

The legal landscape governing AI and intellectual property is evolving almost as rapidly as AI tools themselves, and the rulings and trends discussed above will continue to shape the risk environment for public companies across industries. Boards, management teams, and in-house legal departments should ensure that the company's legal, operational, and disclosure strategies remain aligned with the latest developments. Companies that take a proactive, well-informed approach to these issues will be best positioned to manage risk, capitalize on opportunities, and fulfill their obligations to shareholders.

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Closing the Valuation Gap: A Turning Point for Public Real Estate

After years marked by interest-rate volatility and muted transaction activity, public real estate appears poised for increased deal flow and strategic repositioning in 2026 as the market recalibrates to updated pricing realities. The valuation gap between public and private real estate is narrowing, with transacting parties showing greater willingness to engage at realistic pricing levels. For public REITs, this environment offers clearer signals on private market pricing and greater confidence in capital allocation and strategic planning, as evidenced by a 300% uptick in deal volume between calendar halves of 2025.

Certain sectors are expected to benefit disproportionately from these trends. Senior housing continues to attract investor interest amid an aging population and a lagging supply of quality assets. Data centers remain supported by strong, structural demand tied to digital infrastructure and artificial intelligence, while industrial real estate continues to benefit from long term drivers in e commerce and supply chain reconfiguration.

As capital markets stabilize, consolidation is viewed as the next phase of REIT M&A. Investors expect more public to private transactions and selective portfolio mergers aimed at achieving scale, operational efficiencies and balance-sheet flexibility. Recent examples include acquisitions by Rithm Capital Corp. of Paramount Group, Inc. for approximately $1.6 billion in December 2025, by Makarora Management LP and Ares Management Corporation of Plymouth Industrial REIT, Inc. for approximately $2.1 billion in January 2026, and by Elliott Investment Management L.P. and Morning Calm Management, LLC of City Office REIT, Inc. for approximately $1.1 billion in January 2026.

Simultaneously, REIT IPO activity has remained largely dormant, as many sponsors and operators are favoring private capital solutions over public listings. As a result, the public REIT landscape is highly concentrated. The top 10 public REITs account for approximately 44% of total enterprise value; consequently, smaller public REITs face relative challenges stemming from higher overhead, thinner margins and greater leverage.

These dynamics, headlined by discrepancies between net asset value and market capitalization, the pursuit of scale and the desire to reposition underperforming assets, are expected to drive transaction momentum. That said, sponsor led take-privates may continue to lag if residual interest rate volatility or financing uncertainty persists, reinforcing the importance of balance sheet discipline and strategic flexibility for public real estate companies throughout 2026.

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The Charts

Figure 1: Current Section 232 Investigations and Tariffs

Within each column, investigations and tariffs are ordered from oldest (top) to newest (bottom).

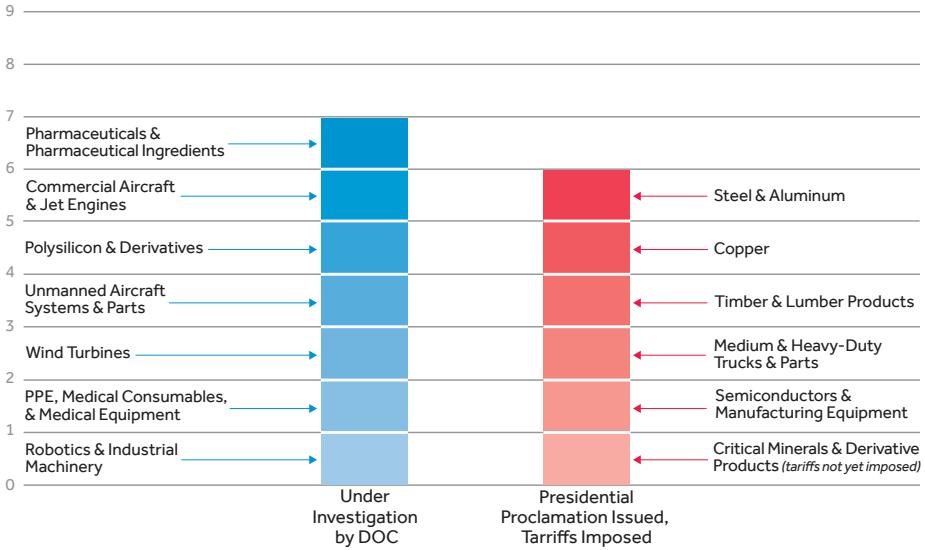
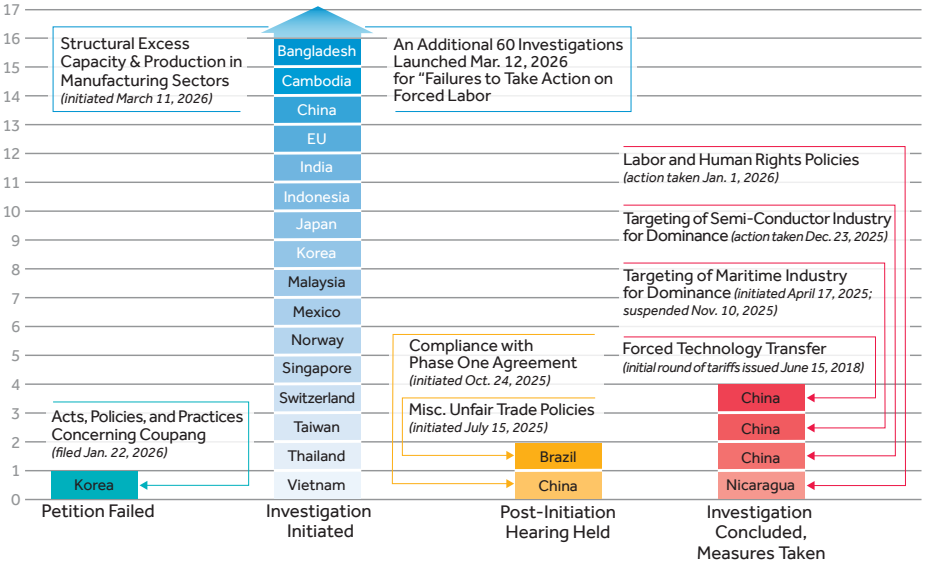


Figure 2: Current Section 301 Investigations and Tariffs



Debevoise Quarter

Below are links to articles and publications of interest.

ESG Update - April 16, 2026

Board Oversight of AI: Do Boards Need AI Experts?

DOJ Establishes National Fraud Enforcement Division to Centralize and Expand Fraud Enforcement

Debevoise Digest: Securities Law Synopsis - April 2026

Insider Trading & Disclosure Update—Vol. 14

Activism in the Insurance Industry

Governance Considerations for Replacing External Auditors

Law360: 6 Noteworthy Changes From SEC Enforcement Manual Update

Debevoise Digest: Securities Law Synopsis—March 2026

Special Committees in Conflict Transactions: A Practical Guide

Debevoise & Plimpton Special Committee Report Issue 11

PFAS Risks in M&A Amid Litigation, Legislative Developments

Governance Round-Up Issue 18

Delaware Supreme Court Upholds Constitutionality of Statutory Safe Harbor

Debevoise Digest: Securities Law Synopsis—February 2026

CFIUS Risk Lessons From Chips Biz Divestment Order

Third Circuit Confirms Limits of the Best Price Rule

2026 Insurance Industry Outlook

FTC Announces Increases to HSR Act Thresholds and Filing Fees

Crossword Puzzle

Across

3 Consolation prize for Netflix

5 Maker of the Claude AI assistant

8 Musical stock targeted by Pershing Square

10 Sneaker company turned AI company

Down

1 Invite-only lendingclub?

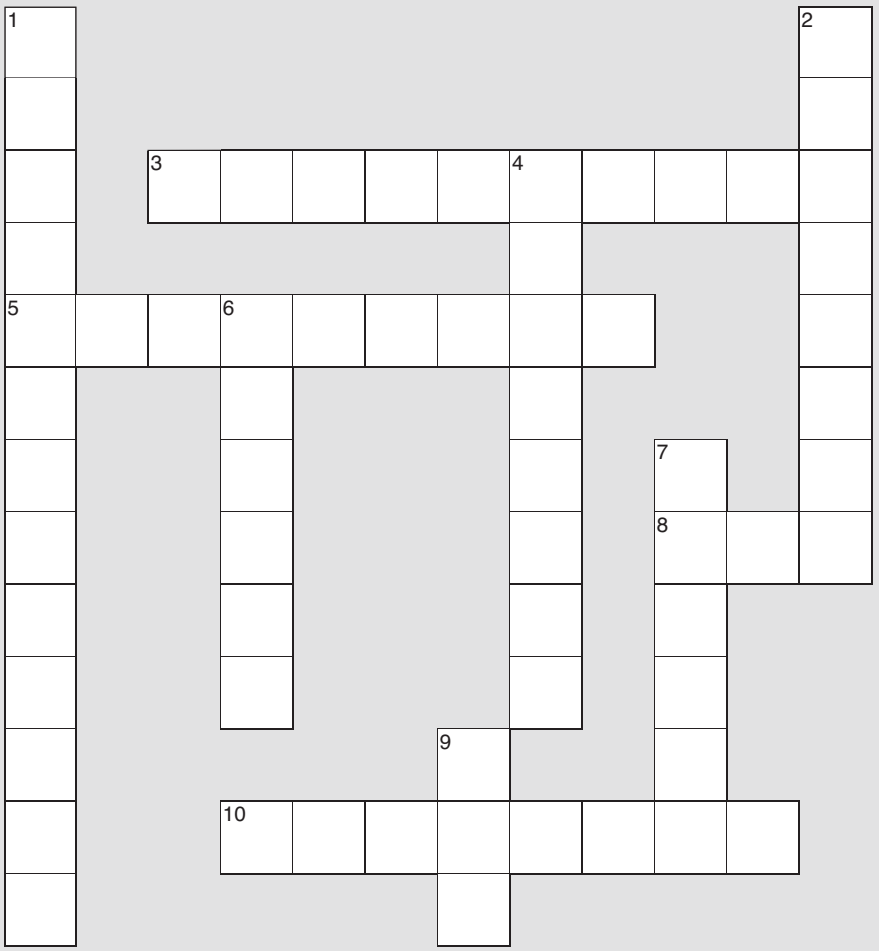
2 Aiding and _____

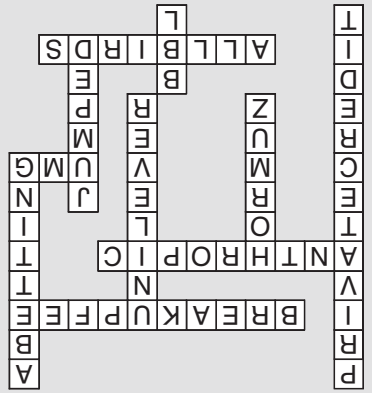
4 Seller in a mega mayonnaise deal

6 Strait between Oman and Iran

7 Netflix-Warner Bros. Discovery deal?

8 Barrel, on a trading screen





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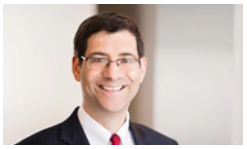

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