

July 21, 2023

Chairman Richard Blumenthal Ranking Member Josh Hawley Senate Judiciary Committee Subcommittee on Privacy, Technology, & the Law Washington, DC

Dear Chairman Blumenthal, Ranking Member Hawley, and Committee Members:

We write to you regarding the upcoming hearing *Oversight of A.I.: Principles for Regulation*.¹

The **Center for AI and Digital Policy** (CAIDP) is an independent non-profit organization, based in Washington, DC. We have written extensively about the need for the United States to develop a strong, nonpartisan legislative framework for the governance of AI.² **Encode Justice** is an international movement that has urged youth-informed action on AI risks and opportunities.

We wrote to you in advance of your May hearing *Oversight of AI: Rules for AI.*³ We asked you to:

- Review the Artificial Intelligence and Democratic Values Index
- Consider the Universal Guidelines for AI as a basis for legislation
- Review our recent complaint to the Federal Trade Commission on OpenAI.

We write now to provide a brief update and to make one further request.

First, in the next edition of our annual assessment of national AI policies and practices – the *AI and Democratic Values Index* – we will note positively the decision of the United States to rejoin UNESCO.⁴ Support for the UNESCO Recommendation on AI Ethics is a key metric in

¹ Senate Judiciary Committee, Subcommittee on Privacy, Technology, and the Law, *Oversight of A.I.: Principles for Regulation*, July 25, 2023, https://www.judiciary.senate.gov/committee-activity/hearings/oversight-of-ai-principles-for-regulation

² Lorraine Kisselburgh and Marc Rotenberg, *Next Steps on the US AI Bill of Rights*, The Washington Spectator (Nov. 2, 2021), https://washingtonspectator.org/ai-bill-of-rights/

³ CAIDP Statement to US Senate Judiciary Committee on Oversight of A.I.: Rules for Artificial Intelligence (May 11, 2023), https://www.caidp.org/app/download/8457859963/CAIDP-Statement-SJC-AI-05112023.pdf

⁴ Associated Press, US formally rejoins UNESCO after five-year absence, July 11, 2023,

https://apnews.com/article/us-unesco-6380e9bfc62c02e6669d227590d44341#

Center for AI and Digital Policy



our evaluation of national AI strategies.⁵ Collaboration on AI policy was also cited by both the US and UNESCO in the recent decision.⁶

Second, we believe the Universal Guidelines for AI (2018) speak directly to the topic of your hearing. As we explained earlier, the UGAI were endorsed by 300 experts and 60 associations (including the AAAS, the ACM, and the IEEE) across 40 countries. Perhaps most importantly, the UGAI bridges the divide today between concerns about algorithmic bias and existential risk. You will see, for example, Guidelines on Fairness and Reliability, and also on Cybersecurity and Termination. The aim of the framework is to be comprehensive. Many of the AI policy issues before your Senate committee now were discussed and assessed in the development of the Universal Guidelines for AI several years ago.

Third, the Federal Trade Commission has opened the investigation of OpenAI we requested.⁷ This is clearly a positive development, but we also need the FTC to prioritize this investigation. It took two years from the time we filed similar complaints with the FTC concerning Google and Facebook before there was a settlement.⁸ We can't wait that long this time. AI products are evolving rapidly. As several SJC Members are also members of the Senate Commerce Committee, we urge you to press the FTC on this matter. Before the end of this year the FTC must complete the investigation of ChatGPT and enter into a settlement with OpenAI that ensures the companies will abide by the practices for AI companies the Commission has previously issued.

Fourth, for future hearings, we urge you to invite witnesses that represent youth organizations working on AI policy, such as Encode Justice. It is this generation that is rising that will be most impacted by AI technologies and it is this generation that should shape its future.

https://www.unesco.org/en/articles/united-states-becomes-194th-member-state-unesco?hub=701

⁷ Cecilia Kang and Cade Metz, F.T.C. Opens Investigation Into ChatGPT Maker Over Technology's Potential Harms, The New York Times, July 13, 2023, <u>https://www.nytimes.com/2023/07/13/technology/chatgpt-</u>

⁵ AI and Democratic Values Index 1133-34 (CAIDP 2023) (Metrics), :

Q10. Has the country endorsed the UNESCO Recommendation on AI Ethics?

Q11. Is the country implementing the UNESCO Recommendation on the Ethics of AI?

⁶ UNESCO, *The United States becomes the 194th Member State of UNESCO*, July 11, 2023 ("Among the reasons for their return, they highlighted the launch of new initiatives to tackle contemporary challenges (including a global ethical framework for artificial intelligence and ocean protection programmes) . . . "),

investigation-ftc-openai.html; John D. McKinnon and Ryan Tracy, *ChatGPT Comes Under Investigation by Federal Trade Commission*, Wall Street Journal, July 13, 2023, <u>https://www.wsj.com/articles/chatgpt-under-investigation-by-ftc-21e4b3ef</u>.

⁸ Federal Trade Commission, Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises, Nov. 29, 2011, https://www.ftc.gov/news-events/news/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep-privacy-promises





Thank you for your consideration of our views. We would be pleased to provide you and your staff with more information.

We ask that this statement and the attachments be included in the hearing record.

Sincerely

Merve Hickok CAIDP President

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Lorraine Kisselburgh CAIDP Chair

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Marc Rotenberg CAIDP Executive Director

Sneha Revanur Encode Justice Founder and President

Attachments

CAIDP, Universal Guidelines for AI (2018)

CAIDP, Letter to Senator Blumenthal and Senator Hawley (May 11, 2023)

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RIGHT TO TRANSPARENCY

All individuals have the right to know the basis of an Al decision that concerns them. This includes access to the factors, the logic, and techniques that produced the outcome.

RIGHT TO HUMAN DETERMINATION

All individuals have the right to a final determination made by a person.

IDENTIFICATION OBLIGATION

The institution responsible for an AI system must be made known to the public.

FAIRNESS OBLIGATION

Institutions must ensure that AI systems do not reflect unfair bias or make impermissible discriminatory decisions.

ASSESSMENT AND ACCOUNTABILITY

An AI system should be deployed only after an adequate evaluation of its purpose and objectives, its benefits, as well as its risks. Institutions must be responsible for decisions made by an Al system.

ACCURACY, RELIABILITY, AND VALIDITY Institutions must ensure the accuracy, reliability, and validity of

decisions **DATA QUALITY**

Institutions must establish data provenance, and assure quality and relevance for the data input into algorithms.

PUBLIC SAFETY Institutions must assess the public safety risks

that arise from the deployment of AI systems that direct or control physical devices, and implement safety controls.

CYBERSECURITY Institutions must secure AI systems against cybersecurity threats.

PROHIBITION ON SECRET PROFILING No institution shall establish or maintain a secret

profiling system.

PROHIBITION ON UNITARY SCORING No national government shall establish or maintain a general-purpose score on its citizens or residents.

TERMINATION OBLIGATION

An institution that has established an AI system has an affirmative obligation to terminate the system if human control of the system is no longer possible.

Senate Judiciary Committee Oversight of A.I.: Principles for Regulation





May 11, 2023

Chairman Richard Blumenthal Ranking Member Josh Hawley Senate Judiciary Committee Subcommittee on Privacy, Technology, & the Law Washington, DC

Dear Chairman Blumenthal, Ranking Member Hawley, and Committee Members:

We write to thank you for scheduling the upcoming hearing, *Oversight of A.I.: Rules for Artificial Intelligence.* Last month CAIDP President Merve Hickok told the House Oversight Committee, "we do not have the guardrails in place, the laws that we need, the public education, or the expertise in government to manage the consequences of the rapid changes that are now taking place."¹ Your hearing could address these challenges.

The **Center for AI and Digital Policy** (CAIDP) is an independent non-profit organization, based in Washington, DC. We have written extensively about the need for the United States to develop a strong, nonpartisan legislative framework for the governance of Artificial Intelligence.² In advance of the hearing on Rules for AI, we ask you to:

- Review the *Artificial Intelligence and Democratic Values Index.* We have compiled and published an extensive review of AI policies and practices around the world.³ We specifically assess the strengths and weaknesses of US AI policy, including US leadership on the OECD AI Principles and the OSTP AI Bill of Rights, as well as concerns about the lack of public participation in the development of national AI strategies. The report also summarizes recent developments at the Council of Europe, the European Union, the G7, the G20, and in China.
- Consider the Universal Guidelines for AI as a basis for legislation. In 2018, over 330 leading experts and 60 associations (including the AAAS, the ACM, and the IEEE) endorsed the Universal Guidelines for AI (UGAI). The Guidelines seek to maximize the benefits and minimize the risks of AI.⁴ Through our subsequent work with the OECD, UNESCO, and the Council of Europe, several of the AI Guidelines focusing on rights and obligations in AI governance have been incorporated in AI frameworks. The Universal Guidelines provides a good starting point for AI legislation in the US.

⁴ Public Voice, Universal Guidelines for AI (2018), https://thepublicvoice.org/ai-universal-guidelines/

Center for AI and Digital Policy May 11, 2023 Senate Judiciary Committee "Rules for Artificial Intelligence"

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¹ Testimony of Merve Hickok before the House Oversight Committee, "Advances in AI: Are We Ready for the Tech Revolution?" March 8, 2023, https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok testimony March-8th-2023.pdf

² Lorraine Kisselburgh and Marc Rotenberg, Next Steps on the US AI Bill of Rights, The Washington Spectator (Nov. 2, 2021), https://washingtonspectator.org/ai-bill-of-rights/

³ CAIDP, Artificial Intelligence and Democratic Values (2023), https://www.caidp.org/reports/aidv-2022/