

September 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 you to express our support for the US AI Act, which we understand you will introduce this week at the hearing *Oversight of A.I.: Legislating on Artificial Intelligence*.¹

The Center for AI and Digital Policy (CAIDP) is an independent research organization, based in Washington, DC.² We advise national governments and international organizations regarding artificial intelligence and digital policy. We previously testified on AI policy before the House Oversight Committee on *Advances in AI: Are We Ready For a Tech Revolution*?³

CAIDP strongly supports AI policies that advance democratic values and promote broad social inclusion based on fundamental rights, democratic institutions, and the rule of law, and therefore welcome your introduction of the US AI Act. For the last several years, we have published a detailed report – the *AI and Democratic Values Index* – that evaluates national AI policies and practices in 75 countries based on a dozen key indicators.⁴ We have specifically urged the United States to move forward comprehensive legislation for the governance of AI.⁵

⁴ Artificial Intelligence and Democratic Values (CAIDP 2023)

¹ Senate Judiciary Committee, Oversight of A.I.: Legislating on Artificial Intelligence, September 12, 2023, <u>https://www.judiciary.senate.gov/committee-activity/hearings/oversight-of-ai-legislating-on-artificial-intelligence</u>

² CAIDP, <u>https://www.caidp.org</u>

³ Testimony and statement for the record of CAIDP President Merve Hickok, *Advances in AI: Are We Ready For a Tech Revolution?* House Committee on Oversight and Accountability: Subcommittee on Cybersecurity, Information Technology, and Government Innovation (Mar. 8, 2023), <u>https://oversight.house.gov/wp-content/uploads/2023/03/Merve-</u> Hickok testimony March-8th-2023.pdf;

⁵ Marc Rotenberg and Merve Hickok, *Artificial Intelligence and Democratic Values: Next Steps* for the United States, Council on Foreign Relations, August 22, 2022,

https://www.cfr.org/blog/artificial-intelligence-and-democratic-values-next-steps-united-states;

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We previously submitted several statements to your Subcommittee with related recommendations.⁶

We understand from the summary of the AI Act and the comments of the Sponsors that the US AI Act will: $^7\,$

- Establish a licensing regime administered by an independent oversight body
- Ensure legal accountability for AI harms
- Defend national security and international competition
- Promote transparency
- Protect consumers and kids

We endorse the provisions as set in the preliminary Bipartisan Framework for the U.S. AI Act, and particularly the section to Promote Transparency, which will (1) require developers to disclose essential information about AI systems, (2) give users an affirmative right to know when they are interacting with an AI system, (3) promote watermarking and other technical measures to identify deepfakes, and (4) establish a public database about AI model information. We also believe that individuals must have the right to contest adverse decisions made by an AI system. That will require access to the logic and the date that produced the outcome.

You have also proposed a strong and effective independent enforcement agency that will establish licensing requirements and include the registration of information about Al models and be conditioned on developers maintaining risk management, pre-deployment testing, data governance, and adverse incident reporting programs. The oversight body will have the authority

Marc Rotenberg and Merve Hickok, *Regulating A.I.: The U.S. Needs to Act, The New York Times*, March 6, 2023, https://www.nytimes.com/2023/03/06/opinion/letters/alex-murdaugh.html#link-7f9159ab

⁶ CAIDP, Statement to US Senate Judiciary Committee on Oversight of AI.I.: Principles of Regulation (July 21, 2023), <u>https://www.caidp.org/app/download/8468551763/CAIDP-EJ-Statement-SJC-AI-07212023.pdf1</u> 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; CAIDP Advises US Senate on AI and Human Rights (June 13, 2023),

https://www.caidp.org/app/download/8462575863/CAIDP-SJC-06132023.pdf?t=1694461301 ⁷ Bipartisan • Framework for U.S. Al Act, Senator Richard Blumenthal & Senator Josh Hawley, Chair and Ranking Member of the Subcommittee on Privacy, Technology, and the Law https://x.com/SenBlumenthal/status/1700147410880569475?s=20

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to conduct audits of companies seeking licenses and will monitor and report on technological developments and economic impacts of AI. We also strongly recommend impact assessments prior to deployment for any AI system, not only sophisticated general-purpose AI models, that implicate civil rights or public safety.

We further support a liability regime that ensures legal accountability for harms, though we ask you to consider that a liability regime to ensure compliance with the fairness and safety obligations set out in the legislation will be more effective. Recognizing the danger of catastrophic risk with AI system, by the time harms emerge it may already be too late. Just as restaurants may be fined for maintaining unsafe kitchens without any harm to particular diners and drivers may be fined for exceeding speed limits before damage to property or life occurs, AI developers should also be subject to fines if they fail to comply with necessary safety standards.

We support your proposal to address AI risks to consumers and kids though we recommend a stronger emphasis on data minimization and accountability methods, rather than simply notice about the use of AI systems. There is a growing risk to the American public of unrestricted data collection that will fuel the large AI models of a small number of firms. The safeguards to address that challenge will need to be robust. Limits on data collection is the starting point.

The Universal Guidelines for AI

We would also like to call your attention to the Universal Guidelines for AI. 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 Universal Guidelines for AU seek to maximize the benefits and minimize the risks of AI.⁸ The Universal Guidelines for AI set out 12 principles that should be included in the US AI Act. (see attached) We note that several of these principles are incorporated in the draft US AI Act. We ask you to also consider such principles as the Termination Obligation that should be enacted into law. That principle states simply:

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.

⁸ Public Voice, *Universal Guidelines for AI (2018)*, https://thepublicvoice.org/ai-universal-guidelines/



We believe this principle, from the Universal Guidelines for AI (2018), may be the single most effective safeguard to address concerns about catastrophic risk

The CAIDP OpenAI Complaint

We also call your attention to the complaint CAIDP filed with the Federal Trade Commission regarding OpenAI. The FTC has now opened investigation of OpenAI we requested.⁹ 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.¹⁰ We can't wait that long this time. AI products are evolving rapidly and being deployed downstream in consumer facing services. As several SJC Members are also members of the Senate Commerce Committee, we urge you to press the FTC on this matter.

Thank you for your attention to our statement. We look forward to the release of the text of the AI Act and would welcome the opportunity to testify at a future hearing.

Sincerely,

Merve Hickok CAIDP President

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Marc Rotenberg CAIDP Executive Director

⁹ 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,

https://www.nytimes.com/2023/07/13/technology/chatgpt- investigation-ftc-openai.html; John D. McKinnon and Ryan Tracy, *ChatGPT Comes Under Investigation by Federal Trade Commission*, Wall Street Journal, July 13, 2023, https://www.wsj.com/articles/chatgpt-under-investigation-by- ftc-21e4b3ef.

¹⁰ Federal Trade Commission, *Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises*, November 29, 2011, https://www.ftc.gov/newsevents/news/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failingkeep-privacy-promises





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.



CAIDP Statement September 11, 2023

Senate Judiciary Committee Oversight of A.I.: Legislating on Artificial Intelligence