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Office of Science and Technology Policy (OSTP) Request for Information on an Artificial Intelligence (AI) Action Plan

90 Fed. Reg. 9088 (Feb. 6, 2025) Docket No. NSF_FRDOC_0001

COMMENT FOR THE RECORD

March 14, 2025

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide American consumers. Our mission is to make the internet safe for free enterprise and for free expression. We also work to promote the integrity and availability of the internet on a global stage, and are engaged on issues in the states, in Washington, DC, and in international internet governance organizations.

NetChoice appreciates the opportunity to submit comments to the Office of Science and Technology Policy (OSTP) regarding this Request for Information on the Development of an Artificial Intelligence (AI) Action Plan.

NetChoice is delighted that President Trump and his administration have demonstrated such a strong interest from the outset in "sustaining and enhancing America's AI dominance in order to promote human flourishing, economic competitiveness, and national security."[1]

NetChoice shares President Trump's view that the United States faces "an emergency" related to AI, prompted by competition from China.[2] While America has historically led the world in technology development–particulary of and for the Internet–our present position as the leader in AI is tenuous. President Trump's assessment of the release of DeepSeek, a Chinese AI model, as a "wakeup call" is entirely correct.[3] Regardless of how Chinese interests behind DeepSeek

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[1] 90 FR 9088; 2025-02305
https://www.federalregister.gov/documents/2025/02/06/2025-02305/request-for-information-on-the-development-of-an-artificial-intelligence-ai-action-plan
[2] "Announcing the Stargate Project," OpenAI, January 21, 2025.
https://openai.com/index/announcing-the-stargate-project/
[3] "Trump: DeepSeek's AI should be a 'wakeup call' to US industry," Reuters, January 28, 2025.
https://www.reuters.com/world/us/trump-deepseeks-ai-should-be-wakeup-call-us-industry-2025-01-27/

produced their model, it demonstrates that China has rapidly closed the gap with the United States on AI.

The United States must rise to this challenge. Internet pioneer and venture capitalist Marc Andreessen's assessment of the criticality of AI is spot-on:

> "Artificial intelligence is the most consequential innovation we have seen in a generation, with the transformative power to address society's most complex problems and create a whole new economy—much like what we saw with the advent of the printing press, electricity, and the internet."[4]

Despite the novelty of AI and the historic inflection point it presents, America does not need a radical new approach to ensure global leadership in all things AI. The blueprint for success is evident in our history and our national DNA, as demonstrated by America's current economic dominance, and the global internet built and shaped by Americans, such as Google, Amazon, Meta, and X. Global rivals lack our powerful legacy of tech innovation.

Some policy changes at the margins will help, on which these comments will elaborate. However, the overarching theme for policymakers addressing AI should reinforce what works about the historical American approach to technology and innovation: *permissionless innovation and regulatory humility*, as explained next.

Permissionless innovation means, "Experimentation with new technologies and business models should generally be permitted *by default*. Unless a compelling case can be made that a new invention will bring serious harm to society, innovation should be allowed to continue unabated, and problems, if they develop at all, can be addressed later."[5]

Regulatory humility means regulators should avoid trying to predict the future or address the myriad ways a technology can be misused, only to stifle beneficial development and deployment of a technology. If problems develop then regulation should be targeted, incremental, and sectoral. For example, it is highly unlikely that the automobile industry as we know it today would exist in a world where all of the regulations that apply to automobiles today were applied to the Ford Model T.

An additional aspect of regulatory humility is regulatory stability and certainty. Rapid changes and other instability in underlying policy, including general policy areas such as tax and energy, undermine the risk-taking necessary for investment and innovation.

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[4] Marc Andreessen, X Post, November 1, 2024, 2:13 pm.
https://x.com/pmarca/status/1852413608850010332?lang=en
[5] Adam Thierer and Michael Wilt, "Permissionless Innovation: A 10-Point Checklist for Public Policymakers," The Mercatus Center, March 31, 2016.
https://www.mercatus.org/research/policy-briefs/permissionless-innovation-10-point-checklist-public-policymakers

In line with the above shared vision and principles, NetChoice offers the following recommendations on AI, starting with what the Trump administration can do immediately followed by what the administration should work with Congress to see through.

Immediate Actions:

1. Rescind and Replace Biden's Executive Order 14141
2. Settle Biden's Antitrust Cases Against American AI Innovators
3. Roll Back Biden's Hart-Scott-Rodino (HSR) restrictions on M&A

Support:

1. Support a National Data Privacy and Security Law
2. Support Reinstatement of Full Expensing of Capital Investment and R&D
3. Embrace and Enforce Existing Law

By no means is the above a comprehensive list. Several of NetChoice's members will have submitted comments to this docket as well. We encourage the Trump administration to consider and incorporate their suggestions into the AI action plan as well.

Rescind and Replace Biden Executive Order 14141

In the waning days of Biden's term, his administration rushed through Executive Order (EO) 14141, Advancing United States Leadership in Artificial Intelligence Infrastructure. On the surface, this EO strikes many of the right rhetorical notes on policy, promising expedited permitting and the opening up of federal lands for the development of data centers and related energy infrastructure. Unfortunately, the Biden administration attached a litany of progressive policy strings to the EO that not only will not advance AI investment and infrastructure development, but actively hamper it.

While the purported goal of EO 14141 is to facilitate the rapid development and deployment of AI infrastructure, its "benefits" rest far too much on unrelated policy objectives. These include favors to unions through requirements to pay prevailing wage, "clean energy" mandates for data centers on federal lands, climate resiliency studies and environmental reporting requirements, and chip procurement quotas that domestic suppliers are unlikely to be able to meet in the near term. This is the kind of red tape that plagued other Biden administration infrastructure programs, such as the Broadband Equity Access and Deployment (BEAD) Program[6] and the

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[6] James Earwin, "Why BEAD is Failing," The Journal of the James Madison Institute, Fall 2024. https://jamesmadison.org/wp-content/uploads/2024_Fall_Journal_23-v01.pdf

National Electric Vehicle Infrastructure (NEVI) Program,[7] resulting in paltry outcomes despite allocating tens of billions of taxpayer dollars.

The Trump administration should rescind and replace EO 14141 to provide flexibility for data center and energy infrastructure development on federal lands – without imposing peripheral policy requirements.

Settle Biden's Antitrust Cases Against Major AI Investors and Innovators

AI is a general purpose technology that will be developed and deployed by firms of all shapes and sizes. Like many technologies in their infancy, AI is resource-intensive, and early innovations have drawn heavily on the capital, data, and knowledge only the major technology companies can provide. Apple, Google, Meta, Amazon, and Microsoft have all developed and deployed AI services, invested in AI startups, and built data centers to fuel these AI systems. What these companies also have in common is that they are all either in active litigation or under investigation by European and American antitrust regulators.

These cases and investigations are enormous restraints on the ability of these firms to keep America on top of the AI race. Aside from the significant diversion of executive attention and company resources, the ultimate inhibiting factor is the uncertainty of being in the crosshairs of antitrust restrictions. This is particularly true given the Biden administration's radical, expansive approach to antitrust, which has shaped all of the current cases and investigations.

Our tech leaders need look no further than the Biden Department of Justice's (DOJ) proposed remedies in *United States v. Google* to understand the existential risks to their AI portfolios posed by current cases and investigations. Per the Biden DOJ's filing, Google should be prevented "from owning or acquiring any investment or interest in any search or search text ad rival, search distributor, or rival query-based AI product or ads technology."[8] This would require Google to pull funding from Anthropic, a highly-successful AI firm in which Google has invested $3 billion, including a $1 billion investment two days after President Trump's inauguration.[9]

Thankfully, the Trump administration DOJ revised the proposed remedies and removed this excessive and extraneous remedy request. However, even DOJ's revised remedies would still prevent Google from tightly integrating its AI technology into its other products, via expansive

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[7] James Bikales, Trump administration moves to suspend national EV charger rollout," Politico, February 6, 2025. https://www.politico.com/news/2025/02/06/trump-administration-ev-charger-program-00203011

[8] "Executive Summary of Plaintiffs' Proposed Final Judgment." Case 1:20-cv-03010-APM, Document 1062. United States District Court for the District of Columbia, Filed November 20, 2024. https://www.justice.gov/atr/media/1378046/

[9] Hayden Field, "Google agrees to new $1 billion investment in Anthropic," CNBC, January 22, 2025. https://www.cnbc.com/2025/01/22/google-agrees-to-new-1-billion-investment-in-anthropic.html

restrictions on "self-preferencing." While the remedies would not explicitly prevent Google from making AI investments, they would deny Google and its customers much of the benefits of AI integration. The impact on AI investment and innovation of the revised remedies therefore retains some of the restrictions in Biden's proposed remedies. The Trump administration should seek a settlement with Google, and should reexamine other Biden cases and investigations of the American firms pulling the most weight in the global AI race.

Roll Back Biden's Hart-Scott-Rodino (HSR) Changes

Active cases and investigations are not the only antitrust measures keeping untold billions of dollars worth of AI investment on the sidelines.

Regulatory changes on proposed mergers and acquisitions (M&A) promulgated by the Biden administration have introduced enormous uncertainty. The Biden administration fundamentally reshaped Hart-Scott-Rodino (HSR) Act antitrust enforcement through a series of policy changes beginning in 2021. Under the leadership of then-FTC Chair Lina Khan and DOJ Antitrust Chief Jonathan Kanter, the agencies suspended early termination for straightforward mergers, issued warning letters about potential post-waiting period challenges, and significantly expanded information requests during merger reviews. These procedural changes make merger clearance more difficult, time-consuming, and uncertain for businesses.

Substantively, the administration implemented new HSR reporting requirements covering labor market impacts, foreign subsidies, and previously unreported acquisitions. The FTC withdrew the 2020 Vertical Merger Guidelines, signaling skepticism toward vertical integration arguments, and in December 2023 the agencies issued updated merger guidelines that lowered market concentration thresholds and expanded the theories of competitive harm considered. These changes collectively created a more stringent merger review environment that reflected the Biden administration's broader commitment to aggressive antitrust enforcement.

NetChoice strongly opposed these HSR changes[10] due to the threat posed to America's tech innovation ecosystem—the most dynamic in the world. By more than quadrupling paperwork requirements and adding an estimated $350 million in filing costs, these changes create unnecessary burdens that discourage investments and delay capital flows. The success stories of acquisitions like Android, YouTube, and Instagram demonstrate how M&A fuels innovation that benefits consumers through improved products and services, often offered for free as many AI services are now.

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[10] Federal Trade Commission. Proposed Changes to HSR Premerger Notification Form: Comments of NetChoice. September 27, 2023.
https://netchoice.org/netchoice-files-hsr-comments-to-ftc-rejecting-europeanization-of-american-antitrust/

The new HSR framework also improperly politicizes merger reviews by importing European-style informational requirements that give agencies excessive discretion to block mergers through endless delays. Unlike the streamlined US process that has fostered innovation for decades, these changes would push us toward the European model, where agencies conduct months-long reviews based on factors unrelated to competition. The empirical evidence is clear—such regulatory approaches lead to economic stagnation, not growth.

These changes particularly harm pro-competitive vertical mergers by requiring extensive information about supply chains, despite overwhelming evidence that vertical integration benefits consumers. Courts have consistently recognized these benefits, as seen in recent acquisition cases involving Meta-Within and Microsoft-Activision. The economic literature strongly supports this view, with multiple studies showing vertical mergers improve efficiency, innovation, and consumer welfare.

Ensuring a healthy level of M&A activity is critical for AI advancement because of the signal it sends to start-up investors and venture capitalists. Investors are unlikely to enter if they do not see a realistic path to exit with a profit. Initial public offerings (IPOs) are happening at later and larger points for independent firms, indicating a narrowing path for investor exit via IPO.[11] The prospect of a potential acquisition is therefore crucial for luring investment into AI startups. The Biden administration's HSR changes threaten this dynamic.

Support a National Data Privacy and Security Law

Besides electrical power, what fuels AI is *data*. The strength of an AI model is directly correlated with the amount of data on which it is trained, and the additional data retrieved to generate responses.[12] Yet, what companies can and cannot do with the data they collect is a series of open questions, which for now begins with, "*Where* are you located?"

The US approach to data privacy regulation has evolved as a fragmented patchwork of state laws rather than a unified federal framework. This state-by-state approach creates significant challenges for businesses, which must navigate multiple, sometimes contradictory compliance requirements across different jurisdictions. Companies have to shoulder substantial regulatory costs as they track multiple standards, often requiring specialized legal teams. These burdens and costs are significant for large firms, but they are particularly difficult on startups and small firms.

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[11] John Berlau and Josh Rutzick, "The 20-Year Experiment Holding America Back," The Wall Street Journal, July 28, 2022.
https://www.wsj.com/articles/the-20-year-experiment-holding-the-u-s-back-sarbanes-oxley-corporate-reform-bush-entrepreneurs-investors-fraud-business-11659044813
[12] Tal Roded and Peter Slattery, " What drives progress in AI? Trends in Data," FutureTech, March 19, 2024.
https://futuretech.mit.edu/news/what-drives-progress-in-ai-trends-in-data

Regulatory fragmentation also results in inconsistent protection for consumers, who receive different privacy protections depending on where they live. Definitions of personal data, consent requirements, and enforcement mechanisms vary widely between states like California, Virginia, and Colorado. This creates confusion for individuals about their rights, especially when data crosses state lines, and undermines the effectiveness of privacy protection as a whole.

The state patchwork further complicates international business operations and data transfers. Foreign companies must contend with multiple regulatory environments when operating in the US, creating potential conflicts with more comprehensive frameworks like Europe's GDPR. Many privacy advocates and business leaders alike argue that a single, comprehensive federal privacy law would address these issues by creating regulatory certainty, ensuring equal protection for all Americans, and simplifying compliance for businesses of all sizes.

NetChoice has drafted model legislation for a pro-innovation, national data privacy law to address the above issues.[13] The proposal creates several key consumer protections, including mandatory breach notifications when sensitive personal information is compromised, rights for consumers to access and request deletion of their personal information, and the ability to opt out of third-party data sales. The legislation defines various categories of protected information and establishes clear requirements for covered entities—businesses handling data on more than 10,000 individuals. Enforcement authority is divided between the FTC (for commercial entities) and DOJ (for non-commercial entities), with state attorneys general also empowered to bring actions on behalf of their residents. Most importantly, the proposal includes a preemption clause that would supersede state privacy laws, creating a single national standard, while establishing a "safe harbor" provision allowing covered entities to demonstrate compliance through approved self-regulatory guidelines.

Support Reinstatement of Full Expensing of Capital Investments and R&D

The Tax Cuts and Job Act (TCJA) generally allowed 100 percent expensing for business property acquired and placed in service after Sept. 27, 2017 and before Jan. 1, 2023. That provision has now expired.

Full expensing encourages investment, most particularly capital investment, such as in a factory or machinery, instead of expensing a portion of that expense every year over decades. Under full expensing, the cost is recognized in the year of the expenditure. The value of taking that expense immediately is higher than amortizing over decades. The lack of ability to expense capital investments in the U.S. is believed to be a barrier to business investment[14].

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[13] Available at: https://netchoice.org/wp-content/uploads/2021/11/Federal-Privacy-Law.pdf
[14] Stephen J. Entin, "The Tax Treatment of Capital Assets and Its Effect on Growth," Tax Foundation, April 2013. https://files.taxfoundation.org/legacy/docs/bp67.pdf

It is an important step to remove bias against investment from the tax code. Further, restoring the research and development (R&D) tax credit also encourages investment.

The R&D tax credit is a federal tax policy that provides a dollar-for-dollar tax credit to companies for qualified research and development costs incurred domestically. R&D spending possesses some of the same characteristics as does a public good, such as positive externalities accruing to the benefit of other firms, but also is challenged by investment uncertainty, meaning that companies are not always consistent about investing in research and experimentation. The R&D tax credit is intended to correct for the potential under-investment. Overall, the economy gains from the increase of knowledge, increased productivity across industry, new products, and reduced consumer prices.

AI requires immense investments in physical infrastructure, such as servers and facilities to house them, as well as ongoing, critical R&D. AI is a rapidly growing and evolving technology necessitating an endless cycle of capital acquisition and improvement as well as continuous research and experimentation to keep America at the cutting edge. The tax code should reflect these priorities.

Embrace and Enforce Existing Law

Finally, a key component of developing any regulatory plan is understanding what consumer protection powers are already at the disposal of federal, state, and functional regulators. The perception of AI as an unregulated "wild west" is a fictional framework designed to justify greater government control over technology.

AI systems must comply with industry-specific functional regulations: healthcare AI follows HIPAA and FDA guidelines, financial AI adheres to FCRA and ECOA, and educational AI must follow FERPA requirements. Federal law already prohibits election misinformation that prevents qualified voters from voting, enabling prosecution of election-related deepfakes. The FTC Act's prohibition on unfair and deceptive practices offers strong consumer protections against misleading AI systems, and the FTC has demonstrated its commitment to enforcement through actions against companies making false claims about AI products or mishandling sensitive data.

Anti-discrimination laws including the Civil Rights Act, Fair Housing Act, and Americans with Disabilities Act prevents the use of any technology – including AI—for decisions about employment, lending, and housing that are biased or discriminatory. State-level consumer protection and civil rights laws also already apply to conduct that uses any technology, including AI. Additionally, existing defamation and false light torts protect individuals from reputational damage caused by deepfakes.

It bears mention that in seeking to combat the potential misuses of AI, governments should embrace protective AI systems and encourage consumers to leverage them as well. For example, current AI systems can detect deepfake audio in both audio and visual files at a 99 percent success rate.[15] These tools are vital to mitigate AI abuse, but developers are generally susceptible to the same regulatory costs and constraints as any other.

Taken together, the current laws that apply to AI represent a sectoral approach, which is an important principle for technological development. Congress's House Bipartisan Task Force on AI released a report in December 2024 emphasizing the benefits of a sectoral approach to AI:

> "For an agile and focused approach to AI policy, sector-specific regulators within federal agencies and other parts of government should use their existing authority to respond to AI use within their individual domains of expertise and the context of the AI's use. This would enable more informed and efficient engagement between federal agencies and entities utilizing AI. Agency expertise should remain focused on where it can be most effective."[16]

The Task Force went on to note that it is easier to provide existing agencies like the FDA or NIST with the resources and knowledge to narrowly address where AI impacts their sectors, versus building a new agency with expertise on AI and the myriad of sectors where such tools will be utilized.[17]

While certain AI applications may require targeted regulatory updates, the fundamental framework for responsible AI governance exists today. Our current legal structures can effectively address high-risk AI failures. Rather than implementing broad new AI-specific regulations, policymakers should carefully consider how new rules would interact with existing frameworks, focusing on addressing specific gaps without creating redundant regulations that could hinder innovation without improving public protection.

Thank you again for the opportunity to share our perspective on this critical issue. NetChoice respectfully asks the Office of Science and Technology Policy to consider this information, as well as that offered by our members, as any process moves forward as each of the issues raised here are part of construction or maintenance of an innovation ecosystem that will support the development of AI.

[15] Shubham Sharma, "Pindrop claims to detect AI audio deepfakes with 99% accuracy," VentureBeat, August 15, 2024. https://venturebeat.com/ai/pindrop-claims-to-detect-ai-audio-deepfakes-with-99-accuracy/

[16] Bipartisan House Task Force Report on Artificial Intelligence, 118th Congress, December 2024. https://republicans-science.house.gov/_cache/files/a/a/aa2ee12f-8f0c-46a3-8ff8-8e4215d6a72b/A163BDBF496ADA741F831E5BEBBCA06699B6AFF8CC34F4FDC4065BDA298295DF.ai-task-force-report-final.pdf

[17] Patrick Hedger, "The 119th Congress Should Listen to the 118th on AI," NetChoice, January 6, 2025. https://netchoice.org/the-119th-congress-should-listen-to-the-118th-on-ai/

We look forward to continuing this important dialogue. As always we offer ourselves as a resource to discuss any of these issues with you in further detail, and appreciate the opportunity to provide our thoughts on this important matter.

Sincerely,
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NetChoice[18]

NetChoice is a trade association that works to protect free expression and promote free enterprise online.

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[18] The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.

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