

January 15, 2020

The Honorable Roger Wicker, Chairperson
The Honorable Maria Cantwell, Ranking Member
U.S. Senate Committee on Commerce, Science & Transportation
512 Dirksen Senate Building
Washington DC, 20510

Dear Chairperson Wicker and Ranking Member Cantwell:

We write to you regarding the hearing on “Industries of the Future,”¹ and we appreciate the Committee’s particular interest in AI policy. EPIC urges the Committee to follow the White House’s lead in highlighting American values, including privacy, rule of law, and support for democratic institutions as key to U.S. AI strategy. EPIC further recommends that the U.S. implement the OECD Principles on AI and adopt the Universal Guidelines for Artificial Intelligence.

The Electronic Privacy Information Center (“EPIC”) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.² EPIC is one of the leading privacy organizations in the world, now focused on the challenges of algorithmic decision-making.³ EPIC has litigated several open government cases concerning AI,⁴ provided advice to Congressional committees,⁵ and led an international campaign for “algorithmic transparency.” EPIC also has published the *EPIC AI Policy Sourcebook*, the first reference book on AI policy. *The EPIC AI Policy Sourcebook* includes international AI policy frameworks (including the OECD AI Principles), national AI initiatives, the recommendations of professional societies (including the ACM and IEEE), and an extensive list of related resources.⁶

EPIC has also made an open and inclusive process for US policy on AI a priority. EPIC, joined by many of the nation’s leading scientific and computing societies, including the AAAS, the

¹ *Industries of the Future*. S. Comm. On Commerce, Science, & Transportation (Jan. 15, 2020) <https://www.commerce.senate.gov/2020/1/industries-of-the-future>.

² EPIC, About EPIC, <https://epic.org/epic/about.html>.

³ EPIC, *Algorithmic Transparency*, <https://epic.org/algorithmic-transparency/>.

⁴ *EPIC v. CBP (Analytical Framework for Intelligence)*, <https://epic.org/foia/dhs/cbp/afi/>; *EPIC v. DHS-FAST Program*, <https://epic.org/foia/dhs/fast/>; *EPIC v. DOJ (Criminal Justice Algorithms)*, <https://epic.org/foia/doj/criminal-justice-algorithms/>.

⁵ See, e.g., Statement of EPIC, *Google and Censorship through Search Engines*, 116th Cong. (2019), S. Comm. on the Judiciary (July 16, 2019), <https://epic.org/testimony/congress/EPIC-SJC-GoogleCensorship-Jul2019.pdf>; Statement of EPIC, *Game Changers: Game Changers: Artificial Intelligence Part III, Artificial Intelligence and Public Policy*, 115th Cong. (2018), H. Comm. on Oversight & Gov. Reform, Subcomm. on Information Technology (April 19, 2018), <https://epic.org/testimony/congress/EPIC-HOGR-AI-Feb2018.pdf>.

⁶ EPIC AI Policy Sourcebook 2020, <https://epic.org/bookstore/ai2020/>.

ACM, the FAS, and the IEEE, petitioned the White House in 2018 to ensure a public and transparent process for the development of national AI policy.⁷ EPIC successfully sued the National Security Commission on Artificial Intelligence to ensure public access to their meetings and documents.⁸ EPIC also filed a complaint with the Federal Trade Commission alleging that recruiting company HireVue has committed unfair and deceptive practices in violation of the FTC Act. EPIC said the company failed to comply with baseline standards, including the Universal Guidelines for AI and the OECD AI Principles (described below) for AI decision-making.⁹ EPIC has also sued the Department of Justice to make public information the algorithms used in criminal sentencing.¹⁰

The Universal Guidelines for AI

The develop of appropriate policies for AI is now a global challenge. The Public Voice Coalition, a network of civil society organizations, has set out the Universal Guidelines for Artificial Intelligence as a global framework for A.I. policy to “maximize the benefits of AI, to minimize the risk, and to ensure the protection of human rights.”¹¹ Over 250 experts and 60 organizations, representing more than 40 countries, have endorsed the Universal Guidelines for AI (“UGAI”).¹² As the signatories state, “these Guidelines should be incorporated into ethical standards, adopted in national law and international agreements, and built into the design of systems.” The Universal Guidelines for AI are:

1. **Right to Transparency.** All individuals have the right to know the basis of an AI decision that concerns them. This includes access to the factors, the logic, and techniques that produced the outcome.
2. **Right to Human Determination.** All individuals have the right to a final determination made by a person.
3. **Identification Obligation.** The institution responsible for an AI system must be made known to the public.
4. **Fairness Obligation.** Institutions must ensure that AI systems do not reflect unfair bias or make impermissible discriminatory decisions.
5. **Assessment and Accountability Obligation.** 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 AI system.

⁷ Petition to OSTP *supra*.

⁸ *EPIC v. v. Nat'l Sec. Comm'n on Artificial Intelligence*, 2019 U.S. Dist. LEXIS 207789 (D.D.C. Dec. 3, 2019); *See also* EPIC v. AI Commission: *Seeking public access to the records and meetings of the NSCAI* <https://epic.org/foia/epic-v-ai-commission/>.

⁹ *In re Hirevue*, <https://www.epic.org/privacy/ftc/hirevue/>,

¹⁰ *EPIC v. Dept. of Justice*, 320 F.Supp. 3d. 110 (D.D.C. 2018), 2019 U.S. App. LEXIS 11725 (D.C. Cir. Mar. 28, 2019) (motion for summary affirmance denied); *See also* EPIC v. DOJ (Criminal Justice Algorithms), <https://epic.org/foia/doj/criminal-justice-algorithms/>.

¹¹ The Public Voice, *Universal Guidelines for Artificial Intelligence*, <https://thepublicvoice.org/AI-universal-guidelines>,

¹² A full list of endorsements is available at The Public Voice, *Universal Guidelines for Artificial Intelligence: Endorsement*, <https://thepublicvoice.org/AI-universal-guidelines/endorsement>.

6. **Accuracy, Reliability, and Validity Obligations.** Institutions must ensure the accuracy, reliability, and validity of decisions.
7. **Data Quality Obligation.** Institutions must establish data provenance, and assure quality and relevance for the data input into algorithms.
8. **Public Safety Obligation.** 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.
9. **Cybersecurity Obligation.** Institutions must secure AI systems against cybersecurity threats.
10. **Prohibition on Secret Profiling.** No institution shall establish or maintain a secret profiling system.
11. **Prohibition on Unitary Scoring.** No national government shall establish or maintain a general-purpose score on its citizens or residents.
12. **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.¹³

The OECD AI Principles

EPIC has also worked in support of the Organization for Economic Co-Operation and Development AI Principles (“OECD AI Principles”), the first international standard for AI, now supported by the OECD member countries and the G-20. The OECD AI principles make central “the rule of law, human rights and democratic values” and set out requirements for fairness, accountability and transparency. EPIC commended the US administration for backing the OECD process, but we also wrote in the New York Times that there is much more to be done. As we explained, “The United States must work with other democratic countries to establish red lines for certain AI applications and ensure fairness, accountability, and transparency as AI systems are deployed.”¹⁴

The OECD Principles on AI are twofold, establishing a set of standards for AI and also key steps for governments.

1. Inclusive growth, sustainable development and well-being;
2. Human-centered values and fairness;
3. Transparency and explainability;
4. Robustness, security and safety; and
5. Accountability.¹⁵

¹³ *Universal Guidelines for Artificial Intelligence*, The Public Voice (last visited Sep. 26, 2019) <https://thepublicvoice.org/ai-universal-guidelines/>.

¹⁴ Marc Rotenberg, *The Battle Over Artificial Intelligence*, N.Y. Times, Apr. 18, 2019, <https://www.nytimes.com/2019/04/18/opinion/letters/artificial-intelligence.html>. (In the introduction to the *EPIC AI Policy Sourcebook* and in a subsequent letter to the New York Times, we warned of the growing risk of the Chinese AI model. Marc Rotenberg and Len Kennedy, *Surveillance in China: Implications for Americans*, N.Y. Times, Dec. 19, 2019, <https://www.nytimes.com/2019/12/19/opinion/letters/surveillance-china.html>

¹⁵ Organization for Economic Co-operation and Development, *OECD AI Principles*, <https://www.oecd.org/going-digital/ai-principles/>

The four key steps for governments to establish in national policy and international cooperation that the OECD established are:

1. Investment in AI research and development
2. Fostering a digital ecosystem for AI
3. Providing an enabling policy environment for AI; and
4. Building human capacity and preparing for labor market transformation.¹⁶

The OMB/OSTP Guidance for Regulation of Artificial Intelligence Applications

Last week, the White House Office of Management and Budget (“OMB”) and the Office of Science and Technology and Policy (“OSTP”) published Guidance for Regulation of Artificial Intelligence Applications.¹⁷ The OMB/OSTP Guidance for Regulation Artificial Intelligence Applications sets out several principles, including “Public Trust in AI” and “Public Participation,” specifically stating that:

Agencies should provide ample opportunities for the public to provide information and participate in all stages of the rulemaking process...to inform the public and promote awareness and widespread availability of standards and the creation of other informative documents.¹⁸

Further, in an op-ed published simultaneously with the Guidance, US Chief Technology Officer Michael Kratsios said:

The White House calls on agencies to protect privacy and promote civil rights, civil liberties, and American values in the regulatory approach to AI. Among other important steps, agencies should examine whether the outcomes and decisions of an AI application could result in unlawful discrimination, consider appropriate measures to disclose when AI is in use, and consider what controls are needed to ensure the confidentiality and integrity of the information processed, stored and transmitted in an AI system.¹⁹

With this commitment by the White House, AI policymaking must be transparent moving forward. This would include full, proactive compliance with open government laws as well as following both the OMB/OSTP Guidance for AI Regulation and the OECD AI Principles the US has endorsed.

¹⁶ Press Release, Forty-two countries adopt new OECD Principles on Artificial Intelligence(May 22, 2019), <http://www.oecd.org/newsroom/forty-two-countries-adopt-new-oecd-principles-on-artificial-intelligence.htm>

¹⁷ Acting Director Russell T. Vought, *Memorandum for the Heads of Executive Departments and Agencies: Guidance for Regulation of Artificial Intelligence Applications*, Office of Management and Budget (January 7, 2020) <https://www.whitehouse.gov/wp-content/uploads/2020/01/Draft-OMB-Memo-on-Regulation-of-AI-1-7-19.pdf>.

¹⁸ *Id.* at 3.

¹⁹ Michael Kratsios, *AI That Reflects American Values*, Bloomberg (Jan. 07, 2020) <https://www.bloomberg.com/opinion/articles/2020-01-07/ai-that-reflects-american-values?srnd=opinion>.

EPIC recommends the U.S. implement the OECD Principles on AI and adopt the Universal Guidelines for Artificial Intelligence. These AI policy frameworks flow directly from the White House AI Guidance, fulfill U.S. international commitments, and will enhance U.S. leadership on AI.

Thank you for your timely attention to these pressing issues. We ask that this statement be entered into the record.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ Ben Winters

Ben Winters
EPIC Equal Justice Works Fellow