COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

Federal Communications Commission Technological Advisory Council

Meeting September 22, 2020

September 18, 2020

EPIC submits comments responding to the Technological Advisory Council's AI Working Group charter for the September meeting of the Technological Advisory Council.[1] The Working Group has recognized that AI will pose new and unique risks to consumers. These comments address a key question in the Working Group's 2019-2020 Charter:

(4) As legitimate applications of AI start proliferating, what risks should be evaluated and what AI tools exist or should be developed to identify and mitigate harms that might arise from the proliferation of AI?[2]

EPIC urges the Technological Advisory Committee and the AI Working Group to adopt the Universal Guidelines for Artificial Intelligence and the OECD AI Principles as frameworks for evaluating the risks posed by artificial intelligence and recommending actions to ensure safe and equitable implementation of artificial intelligence

EPIC is a public interest research center in Washington, D.C. that was established in 1994 to focus public attention on emerging privacy and related human rights issues, and to protect privacy, the First Amendment, and constitutional values.[3] EPIC has a long history of promoting transparency and accountability for information technology.[4]

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[1] Federal Advisory Committee Act; Technological Advisory Council, 85 Fed. Reg. 55452 (Sept. 8, 2020) (Notice of public meeting).

[2] Federal Communications Commission, *Technological Advisory Council Working Group Charter*, fcc.gov (*last accessed* Sept. 10, 2020) https://www.fcc.gov/sites/default/files/fcc-tac-wrkgrp-charter.pdf.

[3] EPIC, *About EPIC* (2019), https://epic.org/epic/about.html.

[4] EPIC, *Algorithmic Transparency* (2018), https://www.epic.org/algorithmic-transparency/; EPIC, *Algorithms in the Criminal Justice System* (2018), https://www.epic.org/algorithmic-transparency/crim-justice/; Comments of EPIC, *Consumer Welfare Implications Associated with the Use of Algorithmic Decision Tools, Artificial Intelligence, and Predictive Analytics*, Federal Trade Commission (Aug. 20, 2018), https://epic.org/apa/comments/EPIC-FTC-Algorithmic-Transparency-Aug-20-2018.pdf; Comments of EPIC, *Developing UNESCO's Internet Universality Indicators: Help UNESCO Assess and Improve the Internet*, United Nations Educational, Scientific and Cultural Organization ("UNESCO") (Mar. 15, 2018), 5-6, https://epic.org/internetuniversality/EPIC_UNESCO_Internet_Universality_Comment%20(3).pdf.

EPIC has a particular interest in promoting algorithmic transparency and has consistently advocated for transparency and oversight through validation studies, reporting, and the application of the Universal Guidelines for AI ("UGAI") to promote trustworthy algorithms.[5] EPIC has pushed for transparency and accountability in the United States, and has litigated cases against the U.S. Department of Justice to compel production of documents regarding "evidence-based risk assessment tools"[6] and against the U.S. Department of Homeland Security to produce documents about a program to assess the probability that an individual commits a crime.[7] In 2018, EPIC and leading scientific societies petitioned the U.S. Office of Science and Technology Policy to solicit public input on U.S. Artificial Intelligence Policy.[8] EPIC submitted comments urging the National Science Foundation to adopt the UGAI, and to promote and enforce the UGAI across funding, research, and deployment of US AI systems.[9]

In an effort to establish necessary consumer safeguards, EPIC recently filed FTC complaints against an employment screening company that claims to assess job applicants using undisclosed algorithmic techniques[10] and a property rental service company[11] that claims to assess risk in potential renters based on an opaque algorithm. EPIC has also filed a petition with the FTC for a rulemaking for AI in Commerce.[12] EPIC recently published the *AI Policy Sourcebook*, the first reference book on AI policy.[13]

There are many AI principles set forth by industry, academia, civil society and governments. EPIC would like to provide the Working Group with copies of the Universal Guidelines for Artificial Intelligence and the OECD AI Principles in their entirety. EPIC supports using these frameworks as the baseline for AI regulation. EPIC believes that these frameworks are among the best currently available resources for evaluating and regulating artificial intelligence systems.

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[5]*See* e.g. EPIC v. DOJ (D.C. Cir.) (18-5307), https://epic.org/foia/doj/criminal-justice-algorithms/; Comments of EPIC, *Intellectual Property Protection for Artificial Intelligence Innovation*, U.S. Patent and Trademark Office (Jan. 10, 2020), https://epic.org/apa/comments/EPIC-USPTO-Jan2020.pdf; Comments of EPIC, *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, Department of Housing and Urban Development (Oct. 18, 2019), https://epic.org/apa/comments/EPIC-HUD-Oct2019.pdf; Testimony of EPIC, Massachusetts Joint Committee on the Judiciary (Oct. 22, 2019), https://epic.org/testimony/congress/EPIC-FacialRecognitionMoratorium-MA-Oct2019.pdf; Statement of EPIC, *Industries of the Future*, U.S. Senate Committee on Commerce, Science & Transportation (Jan. 15, 2020), https://epic.org/testimony/congress/EPIC-SCOM-AI-Jan2020.pdf; Comments of EPIC, *Request for Information: Big Data and the Future of Privacy*, Office of Science and Technology Policy (Apr. 4, 2014) https://epic.org/privacy/big-data/EPIC-OSTP-Big-Data.pdf.
[6] EPIC, *EPIC v. DOJ (Criminal Justice Algorithms)* https://epic.org/foia/doj/criminal-justice-algorithms/.
[7] *See Id.* and EPIC, *EPIC v. DHS (FAST Program)* https://epic.org/foia/dhs/fast/.
[8] EPIC, Petition to OSTP for Request for Information on Artificial Intelligence Policy (July 4, 2018), https://epic.org/privacy/ai/OSTP-AI-Petition.pdf.
[9] EPIC, Request for Information on Update to the 2016 National Artificial Intelligence Research and Development Strategic Plan, National Science Foundation, 83 FR 48655 (Oct. 26, 2018), https://epic.org/apa/comments/EPIC-Comments-NSF-AI-Strategic-Plan-2018.pdf.
[10] Complaint and Request for Investigation, Injunction, and Other Relief, *In re HireVue* (Nov. 6, 2019), https://epic.org/privacy/ftc/hirevue/EPIC_FTC_HireVue_Complaint.pdf.
[11] Complaint and Request for Investigation, Injunction, and Other Relief, *In re Airbnb* (Feb. 27, 2019), https://epic.org/privacy/ftc/airbnb/EPIC_FTC_Airbnb_Complaint_Feb2020.pdf.
[12] *In re: Petition for Rulemaking Concerning Use of Artificial Intelligence in Commerce*, EPIC (Feb. 3, 2020) https://epic.org/privacy/ftc/ai/EPIC-FTC-AI-Petition.pdf.
[13] *EPIC AI Policy Sourcebook 2020* (EPIC 2020), https://epic.org/bookstore/ai2020/.

The Universal Guidelines for Artificial Intelligence ("UGAI"), a framework for AI governance based on the protection of human rights, were set out at the 2018 Public Voice meeting in Brussels, Belgium.[14] The Universal Guidelines have been endorsed by more than 250 experts and 60 organizations in 40 countries.[15] The UGAI comprise twelve principles:

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.
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.**[16] 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.

The OECD AI Principles[17] were adopted in 2019 and endorsed by 42 countries—including the United States, several European Countries, and the G20 nations.[18] The OECD AI Principles establish international standards for AI use:
1. **Inclusive growth, sustainable development and well-being.** AI should benefit people and the planet.

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[14] *Universal Guidelines for Artificial Intelligence*, The Public Voice (Oct. 23, 2018) [hereinafter *Universal Guidelines*], https://thepublicvoice.org/ai-universal-guidelines/

[15] *Id.*

[16] *Id.*

[17] *Recommendation of the Council on Artificial Intelligence*, OECD (May 21, 2019) [hereinafter *OECD AI Principles*], https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449;

[18] *U.S. Joins with OECD in Adopting Global AI Principles*, NTIA (May 22, 2019), https://www.ntia.doc.gov/blog/2019/us-joins-oecd-adopting-global-ai-principles.

2. **Human-centered values and fairness.** AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards – for example, enabling human intervention when necessary – to ensure a fair and just society.
3. **Transparency and explainability.** There should be transparency and a responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them.
4. **Robustness, security and safety.** AI systems must function in a robust, secure and safe way throughout their life cycles and potential risks should be continually assessed and managed.
5. **Accountability.** Organizations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.[19]

Conclusion

The FCC should support the establishment of a strong regulatory framework to ensure AI transparency and accountability within the agency and the private sector. Applying these principles to government use of AI will help establish oversight mechanisms to avoid inappropriate applications of the technology, minimize the opacity of public decision-making, and avoid arbitrary government action. For private uses, legislation and regulation can establish a baseline standard for AI through the aforementioned requirements and associated threats of penalty. The lines separating government and corporate uses of AI are also becoming increasingly blurred, which necessitates uniform rules across public and private sectors. The Technological Advisory Council should identify the risks posed by AI and recommend regulations based on the principles outlined above to protect consumers, ensure equity, and enhance transparency as AI systems are adopted.

There is broad consensus internationally that strong regulations are necessary to curb abuses of AI systems. Civil society, governments, inter-governmental organizations, and the private sector groups all support these principles for ethical and rights-based approaches to AI.[20] This (rare) consensus indicates widespread recognition of the need to regulate AI proactively and meaningfully.

Respectfully Submitted,

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[19] *OECD AI Principles*, *supra* note 15.
[20] *Rome Call for AI Ethics*, The Vatican (Feb. 28th, 2020) http://www.academyforlife.va/content/dam/pav/documenti%20pdf/2020/CALL%2028%20febbraio/AI%20Rome%20Call%20x%20firma_DEF_DEF_.pdf.