

Artificial Intelligence and Democratic Values

United States

National AI Strategy

The United States promotes AI policies that seek to maintain American leadership and to build alliances with other democratic countries. Speaking to the OECD in May, U.S. Chief Technology Officer Michael Kratsios said the OECD AI Principles, “reaffirms a commitment to strengthen public trust, protect civil liberties, and remain true to democratic principles—the principles of freedom, the rule of law, privacy, respect for intellectual property, free, fair, and reciprocal markets, and the inherent dignity of the individual.”¹⁰⁶⁶

The current US position on AI is comprised of a 2020 Presidential Executive Order, a 2019 Executive Order, OMB Guidance for Regulation of AI Applications, and the recommendations of a National Security Commission on AI. The 2019 Executive Order emphasized the need to maintain American leadership in Artificial Intelligence, and sets out a range of policies and practices, including funding, research, training, and collaboration.¹⁰⁶⁷ The Executive Order also describes the need protect “civil liberties, privacy, and American values.” The Agency Guidance also underscores the desire to maintain American leadership, and endorses such values as privacy, civil liberties, human rights, the rule of law, and respect for intellectual property.¹⁰⁶⁸ The Agency Guidance outlines 10 principles, including Fairness and Non-Discrimination, Disclosure and Transparency, to promote innovation and growth for AI.

On December 3, 2020 President Donald Trump issued an Executive Order on Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government.¹⁰⁶⁹ The 2020 Executive Order reflects earlier goals set

¹⁰⁶⁶ U.S. Mission to the OECD, *White House OSTP’s Michael Kratsios Keynote on AI Next Steps* (May 21, 2019), <https://usoecd.usmission.gov/white-house-ostps-michael-kratsios-keynote-on-ai-next-steps/>

¹⁰⁶⁷ The White House, *Executive Order on Maintaining American Leadership in Artificial Intelligence* (Feb. 11, 2019), <https://www.whitehouse.gov/presidential-actions/executive-order-maintaining-american-leadership-artificial-intelligence/>

¹⁰⁶⁸ Office of Management and Budget, *Memorandum for the Heads of Executive Departments and Agencies* (draft), <https://www.whitehouse.gov/wp-content/uploads/2020/01/Draft-OMB-Memo-on-Regulation-of-AI-1-7-19.pdf>

¹⁰⁶⁹ The White House, *Executive Order on Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government* (Dec. 3, 2020),

in the 2019 Executive Order and established common guidance to encourage federal agencies to use AI, consistent with nine principles. The 2020 Executive Order states that the “The ongoing adoption and acceptance of AI will depend significantly on public trust.” The 2020 Executive Order repeatedly emphasizes the need to ensure that “the use of AI remains consistent with all applicable laws, including those related to privacy, civil rights, and civil liberties.” The Office of Management and Budget is directed, by June 2021, to “post a roadmap for the policy guidance that OMB intends to create or revise to better support the use of AI, consistent with this order. This roadmap shall include, where appropriate, a schedule for engaging with the public and timelines for finalizing relevant policy guidance.”

Section 3 of the 2020 Executive Order describe Principles for Use of AI in government. “When designing, developing, acquiring, and using AI in the Federal Government, agencies shall adhere to the following Principles:”

- a) Lawful and respectful of our nation’s values
- b) Purposeful and performance-driven
- c) Accurate, reliable and effective
- d) Safe, secure, and resilient
- e) Understandable
- f) Responsible and traceable
- g) Regularly monitored
- h) Transparent
- i) Accountable

Members of the United States Congress have also proposed legislation for a US national AI strategy. Representatives Robin Kelly (R-Illinois) and Will Hurd (R-Texas) introduced a Congressional Resolution calling for the creation of a US National AI Strategy.¹⁰⁷⁰ Among other points, the Resolution states “Developing and using artificial intelligence in ways that are ethical, reduce bias, promote fairness, and protect privacy is essential for fostering a positive effect on society

<https://www.whitehouse.gov/presidential-actions/executive-order-maintaining-american-leadership-artificial-intelligence/>

¹⁰⁷⁰ Congresswoman Robin Kelly, *ICYMI: Kelly, Hurd Call for Creation of National AI Strategy* (Sept. 18, 2020), <https://robinkelly.house.gov/media-center/press-releases/icymi-hurd-kelly-call-for-creation-of-national-ai-strategy>

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consistent with core United States values.”¹⁰⁷¹ The Resolution also acknowledges the OECD Principles on Artificial Intelligence. The Bipartisan Policy Center has endorsed the Resolution, declaring “we must embrace AI while protecting our civil liberties, modernizing our workforce and education programs, and investing more in R&D.”¹⁰⁷²

The US AI National AI Resolution, a proposal before Congress, emphasizes global leadership, a prepared workforce, national security, research and development, and Ethics, reduced bias, fairness, and privacy. The Resolution would not establish any new agency to regulate AI nor does it make clear which new obligations would exist for those who deploy AI systems. But the Resolution does provide a detailed outline of a US national AI strategy.

OMB AI Guidance for Agencies

In November 2020, the US Office of Management and Budget issued *Guidance for Regulation of Artificial Intelligence Applications*.¹⁰⁷³ The Guidance follows from the Executive on American Leadership in AI and states that “when considering regulations or policies related to AI applications, agencies should continue to promote advancements in technology and innovation, while protecting American technology, economic and national security, privacy, civil liberties and other American values, including the principles of freedom, human rights, the rule of law, and respect for intellectual property.” The Memorandum is explicitly addressed to AI applications “developed and deployed outside of the federal government.

The *OMB Guidelines on AI* restate key goals for the Stewardship of AI applications:

- Public Trust in AI
- Public Participation
- Scientific Integrity and Information Quality

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https://hurd.house.gov/sites/hurd.house.gov/files/Resolution%20Text%20HURDTX_030.xml.pdf

¹⁰⁷² Bipartisan Policy Center, *BPC: National AI Strategy Resolution A Critical Step* (Sept. 16, 2020), <https://bipartisanpolicy.org/press-release/bpc-national-ai-strategy-resolution-a-critical-step/>

¹⁰⁷³ OMB, *Guidance for Regulation of Artificial Intelligence Applications* (Nov. 17, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-06.pdf>

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- Risk Assessment and Management
- Benefits and Costs
- Flexibility
- Fairness and Non-discrimination
- Disclosure and Transparency
- Safety and Security
- Interagency Cooperation

The OMB Guidelines encourage communications to the public, describing both the benefits and risks “in a manner that promotes public trust and understanding of AI.” The Guidelines continue, “agencies should communicate this information transparently by describing the underlying assumptions and uncertainties regarding expected outcomes, both positive and negative.”

There are provisions in the *OMB AI Guidelines* that are controversial. The OMB recommends that agencies “promote public access to government data and models where appropriate but fails to note whether such government data is personal data or may be subject to protections under federal law.

Facial Recognition

There are wide-ranging protests in the United States against the deployment of facial recognition technology. In May 2019, San Francisco became the first city in the U.S. to ban the use of facial recognition technology by city agencies.¹⁰⁷⁴ The city supervisor said, “It’s psychologically unhealthy when people know they’re being watched in every aspect of the public realm, on the streets, in parks.” Other cities, including Cambridge, Oakland, and Portland followed. In October 2019, California enacted a moratorium on the use of facial recognition technology in police body cameras.¹⁰⁷⁵ The bill prohibits the use of biometric surveillance technology, which includes facial-recognition software, in police body cameras. It also prohibits police from taking body-camera footage and running it through facial-recognition software at a later time. It

¹⁰⁷⁴ Kate Conger, Richard Fausset and Serge F. Kovalski, *San Francisco Bans Facial Recognition Technology* (May 14, 2019), <https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>

¹⁰⁷⁵ California Legislative Information, *AB-1215 Law enforcement: facial recognition and other biometric surveillance* (Oct. 9, 2019),

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does not prevent state and local police from using facial-recognition technology in other ways, such as in stationary cameras, and it does not apply to federal agencies such as the FBI.¹⁰⁷⁶

A bill introduced in the United States Congress would ban the use of facial recognition by law enforcement agencies.¹⁰⁷⁷ The Facial Recognition and Biometric Technology Moratorium Act would make it illegal for any federal agency or official to “acquire, possess, access, or use” biometric surveillance technology in the US. It would also require state and local law enforcement to bring in similar bans in order to receive federal funding.¹⁰⁷⁸ The bill was introduced by Senators Ed Markey Jeff Merkley, and Representatives Pramila Jayapal and Ayanna Pressley.

National Security Commission on AI

The US Congress established the National Security on AI in 2018.¹⁰⁷⁹ The Commission has issued several reports and made recommendations to Congress. The National AI Commission issued an interim report in November 2019, which was criticized for its lack of attention to democratic values.¹⁰⁸⁰ In a more recent report *Key Considerations for Responsible Development and Fielding of Artificial Intelligence*, the Commission recommends “Employ[ing] technologies and operational policies that align with privacy preservation, fairness, inclusion, human rights, and [the] law of armed conflict.”¹⁰⁸¹

¹⁰⁷⁶ Rachel Metz, California lawmakers ban facial-recognition software from police body cams (Sept. 13, 2019), <https://www.cnn.com/2019/09/12/tech/california-body-cam-facial-recognition-ban/index.html>

¹⁰⁷⁷ Congress.gov, *S. 4084 - Facial Recognition and Biometric Technology Moratorium Act of 2020* (June 25, 2020), <https://www.congress.gov/bill/116th-congress/senate-bill/4084>

¹⁰⁷⁸ MIT Technology Review, *A new US bill would ban the police use of facial recognition* (June 26, 2020), <https://www.technologyreview.com/2020/06/26/1004500/a-new-us-bill-would-ban-the-police-use-of-facial-recognition/>

¹⁰⁷⁹ *National Security Commission on AI*, Home, <https://www.nscai.gov/home>

¹⁰⁸⁰ National Security Commission on AI, *Interim Report* (Nov, 2019), <https://www.epic.org/foia/epic-v-ai-commission/AI-Commission-Interim-Report-Nov-2019.pdf>

¹⁰⁸¹ National Security Commission on AI, *Key Considerations and Responsible Development and Fielding of Artificial Intelligence* (July 22, 2020), https://drive.google.com/file/d/1_zkNkT3Trz3rtFc8KVrEBNlg2R9MaUpi/view

JAIC

The Joint Artificial Intelligence Center (JAIC) is a research center within the Department of Defense. The mission of the JAIC is to “transform the DoD by accelerating the delivery and adoption of AI to achieve mission impact at scale.¹⁰⁸² The JAIC has recently undertaken an ambitious agenda to “accelerate the adoption of AI across every aspect of the military’s warfighting and business operations.”¹⁰⁸³ The new mission set is in contrast to the JAIC’s introductory goal, which was to jumpstart AI in DoD through pathfinder projects.

Algorithmic Transparency

The United States does not have an overarching privacy law, such as the GDPR, nor is there a privacy agency, and there is no general law that establishes a right of algorithmic transparency. There are several laws and legal principles that provide a basis in practices to access algorithms. There are also several laws pending in Congress that would establish a right of algorithmic transparency. For example, the Online Privacy Act requires human review of an automated decision. Another bill in the Senate, the Algorithmic Accountability Act of 2019, directs the Federal Trade Commission to require companies to conduct AI impact assessments to determine if their algorithms are “inaccurate, unfair, biased, or discriminatory.”

At the state level, the recently enacted California Consumer Privacy Rights Act (CPRA) updates the states privacy law and establishes a right to limit algorithmic profiling. Businesses responding to requests for access are required to include meaningful information around the logic behind the decision-making processes and the likely outcome of the process with respect to the consumer.¹⁰⁸⁴ A former U.S. federal official said the CPRA would impose “new requirements for businesses to protect personal

¹⁰⁸² U.S. Department of Defense, Chief Information Officer, *Vision: Transform the DoD Through Artificial Intelligence*. <https://dodcio.defense.gov/About-DoD-CIO/Organization/JAIC/>

¹⁰⁸³ Scott Maucine, *JAIC entering new phase of life, will create teams to help DoD adopt AI* (Nov. 26, 2020), <https://federalnewsnetwork.com/defense-main/2020/11/jaic-entering-new-phase-of-life-will-create-teams-to-help-dod-adopt-ai/>

¹⁰⁸⁴ Briana Falcon, Devika Kornbacher, *Prop 24 Gets A Yes: California Privacy Rights Act To Become Law*, J.D. Supra (Nov. 5, 2020), <https://www.jdsupra.com/legalnews/prop-24-gets-a-yes-california-privacy-21838/>

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information, including by ‘reasonably’ minimizing data collection, limiting data retention, and protecting data security. It also strengthens accountability measures by requiring companies to conduct privacy risk assessments and cybersecurity audits, and regularly submit them to regulators. In addition, it supplements the individual rights in the CCPA with new notification requirements, clarifies that individuals have the right to opt out of both the ‘sale’ and ‘sharing’ of personal information, and adds protections for a new category of ‘sensitive data.’”¹⁰⁸⁵

A separate California ballot initiative concerning AI-based profiling for criminal justice was defeated. Proposition 25 would have removed the right of people accused of a non-violent crime to secure their release by posting bail or by order of a judge with an automated system of computer-generated predictive modelling. Civil rights groups favored Proposition 24 and opposed Proposition 25.¹⁰⁸⁶ Alice Huffman, President of California NAACP stated, that “Prop. 25 will be even more-discriminatory against African Americans, Latinos and other minorities. Computer models may be good for recommending songs and movies, but using these profiling methods to decide who gets released from jail or who gets a loan has been proven to hurt communities of color.” Regarding the California Privacy Rights Act, Huffman stated, “Prop. 24 allows consumers to stop companies from using online racial profiling to discriminate against them.”

OECD AI Principles

The United States fully supported the OECD AI policy process, endorsed the OECD AI Principles, and is a founding member of the Global Partnership on AI. The OECD notes that the United States has taken several steps to implement the AI Principles.

Public Participation and Access to Documents

The United States government provides access to all final policy proposals concerning AI. Federal agencies have undertaken public rulemakings and requested public comment. However, the National Security Commission attempted to keep secret its deliberations. A federal

¹⁰⁸⁵ Cameron F. Kerry and Caitlin Chin, *By passing Proposition 24, California voters up the ante on federal privacy law*, Brookings (Nov. 17, 2020), <https://www.brookings.edu/blog/techtank/2020/11/17/by-passing-proposition-24-california-voters-up-the-ante-on-federal-privacy-law/>

¹⁰⁸⁶ <https://vig.cdn.sos.ca.gov/2020/general/pdf/complete-vig.pdf>

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court later determined that the AI Commission had violated US open government laws and was required to make both its records and its meetings open to the public.¹⁰⁸⁷ Oddly, the AI Commission makes agency documents available on a proprietary platform rather than an agency website.¹⁰⁸⁸

Human Rights

The United States endorsed the Universal Declaration for Human Rights, published a detailed annual report on human rights, and generally ranks highly for the protection of human rights. Freedom House scored the United States at 86/100, raising concerns about the integrity of the political process and the functioning of government.¹⁰⁸⁹ On transparency, Freedom House noted, “The administration also operates with greater opacity than its immediate predecessors, for example by making policy and other decisions without meaningful input from relevant agencies and their career civil servants.”

The United States is not a member of the Council of Europe but did sign and ratify the COE Convention on Cybercrime,¹⁰⁹⁰ as COE conventions are open for ratification by non-members states. The US could ratify the COE Modernized Privacy Convention as well as any future COE Convention on AI.

Evaluation

The United States endorsed the OECD/G20 AI Principles. The White House has issued two Executive Orders on AI that reflect democratic values, a federal directive encourages agencies to adopt safeguards for AI, and the US Chief Technology officer has underscored US commitment to democratic values. The most recent Executive Order also establishes a process for public participation in agency rulemaking on AI through the Office of Management and Budget. But the overall US policy-making

¹⁰⁸⁷ *EPIC v. AI Commission, Seeking Public Access to the records and meetings of the NSCAI*, <https://www.epic.org/foia/epic-v-ai-commission/>

¹⁰⁸⁸ National Security Commission on AI, *Interim Report and Third Quarter Recommendation* (Oct. 2020) (federal agency report stored on a Google drive server), https://drive.google.com/file/d/1jg9YlNagGI_0rid-HXY-fvJOAejlFliy/view

¹⁰⁸⁹ Freedom House, *Freedom in the World 2020 – United States* (2020), <https://freedomhouse.org/country/united-states/freedom-world/2020>

¹⁰⁹⁰ Council of Europe, *Chart of signatures and ratifications of Treaty 185, Convention on Cybercrime* (Status as of Nov. 11, 2020), <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures>

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process has been opaque, the National Security Commission on AI has resisted public participation, and the Federal Trade Commission has failed to act on several pending complaints concerning the deployment of AI techniques in the commercial sector. Concerns have been raised about the export of facial surveillance technology by such US companies as Clearview AI. The absence of a legal framework to implement AI safeguards and a federal agency to safeguard privacy also raises concerns about the ability of the US to monitor AI practices.