



July 18, 2022

Senator Maria Cantwell (@SenatorCantwell, @CommerceDems)
Senator Roger Wicker (@SenatorWicker, @SenateCommerce)
United States Committee on Science, Commerce, and Transportation
Russell Senate Office Building 254
Washington, DC, 20510

Dear Chairman Cantwell, Ranking Member Wicker, and Members of the Senate Commerce Committee:

We write to you regarding the hearing scheduled this week for the next Director of the Office of Science and Technology Policy.¹ We believe it is extremely important for your Committee to determine the status of OSTP’s “Artificial Intelligence Bill of Rights,” perhaps the most significant AI policy initiative in the United States today. We also ask you to ensure that the nominee commits to the finalization of this important bipartisan initiative as soon as possible.

The Center for AI and Digital Policy is a non-profit, educational organization, based in Washington, DC with a global network of experts in the field of AI policy. During the last several years we have undertaken an extensive review of AI policies and practices around the world. This year we published the second edition of *Artificial Intelligence and Democratic Values*, a comprehensive comparative study of 50 countries, including the United States.² (An excerpt from the US country report is attached). Regarding the OSTP initiative, in February we reported,

Although the OSTP issued an update on its “continuing work” on AI that “aligns with our democratic values” in February 2022,³ progress on the AI Bill of Rights and its impact remain unclear.

¹ United States Senate Committee on Commerce, Science, and Transportation, *Nomination Hearing, July 20, 2022* (“U.S. Senator Maria Cantwell (D-Wash.), Chair of the Senate Committee on Commerce, Science, and Transportation, will convene a full committee hearing on Wednesday, July 20, 2022, at 10 a.m. EDT to consider President Biden’s nomination of Dr. Arati Prabhakar to be Director of the White House Office of Science and Technology Policy (OSTP).”), <https://www.commerce.senate.gov/2022/7/nomination-hearing/130ea321-8e50-4479-b146-2cbc20a25ac0>

² CAIDP, *Artificial Intelligence and Democratic Values* (2022), <https://www.caidp.org/reports/aidv-2021/>

³ The White House, *OSTP’s Continuing Work on AI Technology and Uses that Can Benefit Us All* (Feb. 3, 2022) (Footnote 1916 in the original), <https://www.whitehouse.gov/ostp/news-updates/2022/02/03/ostps-continuing-work-on-ai-technology-and-uses-that-can-benefit-us-all/>

At this moment, we are particularly concerned about the status of the AI Bill of Rights. The initiative is essential to address growing concerns about algorithmic bias in the United States, to protect the interests of those subject to AI-based decisions, and to ensure that AI systems are human-centric and trustworthy. The AI Bill of Rights initiative is also important for the United States to maintain stature in the global AI policy realm. *But the surprising delay in finalizing the proposal, coupled with the documented controversy about the influence of private funding on decision-making at the OSTP,⁴ raises issues that should be of immediate concern to this Committee and reviewed at the hearing on Wednesday.*

A brief synopsis of the initiative and the need for the Senate Commerce Committee to obtain commitments from the incoming OSTP Director to move forward the AI Bill of Rights follows.

OSTP Initiative – AI Bill of Rights

On October 22, 2021, the President’s Science Advisor and Director of the White House Office of Science & Technology Policy (OSTP) Dr. Eric Lander and OSTP Deputy Director for Science & Society Dr. Alondra Nelson published a column in Wired titled “**Americans Need a Bill of Rights for an AI-Powered World: The White House Office of Science and Technology Policy is developing principles to guard against powerful technologies—with input from the public,**”⁵ The column was subsequently published on the White House website.⁶ The initiative received widespread, positive coverage.⁷

⁴ See, e.g., Whizy Kim, *The real scandal behind billionaire Eric Schmidt paying for Biden’s science office: Maybe government employees should be paid for with tax dollars, not private philanthropy*, Vox, Mar. 30, 2022, <https://www.vox.com/recode/23001543/eric-schmidt-white-house-office-science-technology-policy-philanthropy-ethical-concerns>

⁵ Eric Lander and Alondra Nelson, *Americans Need a Bill of Rights for an AI-Powered World: The White House Office of Science and Technology Policy is developing principles to guard against powerful technologies—with input from the public*, Wired, Oct. 8, 2021, <https://www.wired.com/story/opinion-bill-of-rights-artificial-intelligence/>

⁶ The White House, *ICYMI: WIRED (Opinion): Americans Need a Bill of Rights for an AI-Powered World*, Oct. 22, 2021, <https://www.whitehouse.gov/ostp/news-updates/2021/10/22/icymi-wired-opinion-americans-need-a-bill-of-rights-for-an-ai-powered-world/>

⁷ See, e.g., Anjana Ahuja, *A global AI bill of rights is desperately needed, Algorithmic decision-making has long put technology first, with due diligence an afterthought*, Financial Times, Oct. 11, 2021, <https://www.ft.com/content/7e42c58e-b3d4-4db5-9ddf-7e6c4b853366>; Makenzie Holland, *Biden’s top science advisor working on AI bill of rights: A national AI bill of rights could include the rights to transparency and data governance*, Tech Target, Nov. 9, 2021, [https://www.techtarget.com/searchenterpriseai/news/252509301/Bidens-top-science-advisor-working-on-AI-bill-of-right](https://www.techtarget.com/searchenterpriseai/news/252509301/Bidens-top-science-advisor-working-on-AI-bill-of-right;); Steve Ritter, *The U.S. urgently needs an A.I. Bill of Rights*, Fortune, Nov. 12, 2021, (“The nation’s leading scientists believe that artificial intelligence is

In the article, the President’s top science advisors warned that the deployment of artificial intelligence has “led to serious problems.”⁸ They explained that “training machines based on earlier examples can embed past prejudice and enable present-day discrimination.”⁹ They warned that hiring tools can reject applicants who are dissimilar from existing staff despite being well qualified.¹⁰ They described how mortgage approval algorithms could extend decades of housing discrimination into the digital age.¹¹ They also highlighted the fact that the failings of AI disproportionately affect marginalized individuals and communities. “It’s unacceptable to create AI systems that will harm many people,” they wrote, “just as it’s unacceptable to create pharmaceuticals and other products—whether cars, children’s toys, or medical devices—that will harm many people.” They concluded:

Americans have a right to expect better. Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly. Codifying these ideas can help ensure that.¹²

The President’s top science advisors outlined several key elements for the AI Bill of Rights:

- Your right to know when and how AI is influencing a decision that affects your civil rights and civil liberties;
- Your freedom from being subjected to AI that hasn’t been carefully audited to ensure that it’s accurate, unbiased, and has been trained on sufficiently representative data sets;
- Your freedom from pervasive or discriminatory surveillance and monitoring in your home, community, and workplace; and
- Your right to meaningful recourse if the use of an algorithm harms you.

The also outlined several strategies to implement these rights:

- The federal government could refuse to buy software or technology products that fail to respect these rights;
- Federal contractors could be required to use technologies that adhere to this “bill of rights;” and

such a risk that we need another Bill of Rights to protect what makes us human. They are right.”), <https://fortune.com/2021/11/12/ai-bill-of-rights-biden-artificial-intelligence-steve-ritter-mitek-systems/>

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

- New laws and regulations could be adopted.

The White House subsequently encouraged public participation in the development of the AI Bill of Rights.¹³ The White House announced several ways for the public to “join this mission and share their perspectives,” including responses to a Request for Information and emails to OSTP. As the OSTP stated, “If you would like to provide input into the OSTP Bill of Rights for an Automated Society policy process, email us at AI-equity@ostp.eop.gov.”¹⁴

The OSTP also announced public listening sessions and “six public events that will bring together stakeholders to discuss the risks and benefits artificial intelligence holds for democratic participation.” The public events highlighted:

- Consumer Rights and Protections
- The Criminal Justice System
- Equal Opportunities and Civil Justice
- Artificial Intelligence and Democratic Values
- Social Welfare and Development
- The Healthcare System

The listening sessions were held as were the public events. But to date there has been no report published and no outcomes from these meeting. There has been no summary provided regarding the public request for comments to OSTP regarding AI. The Request for Information on Public and Private Sector Uses of Biometric Technologies opened on October 8, 2021, and closed on January 15, 2022.¹⁵ No further information has been provided regarding this initiative. There was a brief mention of the OSTP AI Bill of Rights in early February 2022 blog post:

OSTP has issued a call for the development of an [AI Bill of Rights](#), and is working closely with both domestic and international partners across bilateral and multilateral venues to advance development, adoption, and oversight of AI in a manner that aligns with our democratic values.¹⁶

¹³ The White House, *Join the Effort to Create A Bill of Rights for an Automated Society*, November 10, 2021, <https://www.whitehouse.gov/ostp/news-updates/2021/11/10/join-the-effort-to-create-a-bill-of-rights-for-an-automated-society/>

¹⁴ Id.

¹⁵ Notice of Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies, 86 FR 56300-302, Oct. 8, 2021, <https://www.federalregister.gov/documents/2021/10/08/2021-21975/notice-of-request-for-information-rfi-on-public-and-private-sector-uses-of-biometric-technologies>

¹⁶ Lynne Parker, Director, National AI Initiative Office, and Rashida Richardson, Senior Policy Advisor for Data and Democracy, *OSTP’s Continuing Work on AI Technology and Uses that Can Benefit Us All*, Feb. 3, 2022, <https://www.whitehouse.gov/ostp/news->

In a recent interview with the OSTP Director, the AI Bill of Rights was described as OSTP’s “biggest policy push.”¹⁷ According to the interview, “the bill of rights [was] due out in early May.”

The problems with the deployment of AI identified by Dr. Nelson and Dr. Lander in the October 2021 article have not subsided. By all accounts, these problems are growing worse. As Timnit Gebru and Margaret Mitchell, two leading experts on Artificial Intelligence, wrote recently in *The Washington Post*, “The race toward deploying larger and larger models without sufficient guardrails, regulation, understanding of how they work, or documentation of the training data has further accelerated across tech companies.”¹⁸

CAIDP Interest in AI Bill of Rights

In November 2021, CAIDP expressed strong support for the initiative. Writing in *The Washington Spectator*, Dr. Lorraine Kisselburgh and Marc Rotenberg underscored the importance of the AI Bill of Rights and made several recommendations: 1) aim for a small number of clear, powerful principles, 2) build on prior initiatives, 3) proceed on a bipartisan basis, and 4) proceed without delay.¹⁹ Kisselburgh and Rotenberg concluded, “As the leading developer of AI technologies, the United States carries a unique responsibility to get this right. The President’s science advisors have launched a critical initiative. Their recommendations should build on earlier work and lead to concrete outcomes.”²⁰

In May 2022, CAIDP launched a public petition to the OSTP in support of the AI Bill of Rights.²¹ The petition to the Deputy Director begins “We are writing to you regarding the need to

updates/2021/10/22/icymi-wired-opinion-americans-need-a-bill-of-rights-for-an-ai-powered-world/

¹⁷ Nancy Scola, *Can Alondra Nelson Remake the Government’s Approach to Science and Tech? The new director of OSTP is asking hard questions about equity in science and tech. But how much power will she have?* POLITICO, Apr. 28, 2022, <https://www.politico.com/news/magazine/2022/04/28/alondra-nelson-profile-ostp-eric-lander-resignation-00027604>

¹⁸ Timnit Gebru and Margaret Mitchell, *Opinion We warned Google that people might believe AI was sentient. Now it’s happening*, *The Washington Post*, June 17, 2022, <https://www.washingtonpost.com/opinions/2022/06/17/google-ai-ethics-sentient-lemoine-warning/>

¹⁹ Lorraine Kisselburgh and Marc Rotenberg, *Next Steps on U.S. AI Bill of Rights*, *The Washington Spectator* (Nov. 2, 2021), <https://washingtonspectator.org/ai-bill-of-rights/>

²⁰ *Id.*

²¹ CAIP, *Support the OSTP AI Bill of Rights: CAIDP Statement to the US Office of Science and Technology Policy Regarding the AI Bill of Rights* (May 18, 2022), <https://www.caidp.org/statements/ostp/>

move forward the proposal for a Bill of Rights for the Age of Artificial Intelligence.” The petition gathered support from leading computer scientists, human rights advocates, and experts in technology policy.

In June 2022, with growing concern about the status of the AI Bill of Rights, CAIDP initiated an urgent Freedom of Information Act request to the OSTP. Here is a brief summary of the status of the FOIA request.

- On June 20, 2022, CAIDP sent a FOIA request to the OSTP about the AI Bill of Rights and requested expedited processing, which is crucial for the timely release of documents to the public and the Congress. We explained that “there is a ‘compelling need’ to inform the public’ about the status of the OSTP AI Bill of Rights.”
- On June 28, the OSTP denied our request for expedited processing.
- On June 30, we appealed the denial of expected processing and filed a new request for expedited processing, pointing to the President’s nomination of a new Director and the pending nomination hearing. We noted “the upcoming Congressional hearing for the next OSTP director and Congressional review of the Agency’s activities.”
- In a subsequent email, CAIDP explained to OSTP that it was required by law to make a determination on the appeal by July 10, 2022 but suggested July 18, 2022 as a possible alternative.
- On July 15, OSTP notified CAIDP that it would address CAIDP’s appeal on August 3, 2022, two weeks after the scheduled hearing before the Senate Commerce Committee
- On July 15, CAIDP contacted the Office of Government Information Services, the federal FOIA ombudsman, to alert it to the violation of federal law by the OSTP.

Depending on what happens today, July 18, 2022 (when the OSTP determination on the administrative appeal is due), it is possible that CAIDP will proceed with a lawsuit against the OSTP for failing to comply with federal law and the agency's own regulations regarding the processing of appeals for expedited processing for FOIA requests.

We will provide the Senate Commerce Committee with complete documentation of the CAIDP Freedom of Information Act request to the Office of Science and Technology Policy regarding the AI Bill of Rights later today.

The United States and Global AI Policy

There is no question that the United States is currently in competition with China for leadership in the field of Artificial Intelligence. Your Committee is well aware of this issue. But the United States is also in a competition with China and the European Union for leadership in the field of AI policy. As you also know, the European Union is moving forward with the EU AI

Act.²² The Court of Justice of the European Union, the high court of the EU, has just issued a ruling that establishes limits on the use of machine learning techniques that implicate fundamental rights.²³ The Council of Europe intends to establish an international convention for AI.²⁴ And China has recently adopted comprehensive privacy legislation, based on the GDPR, and new regulations for recommendation algorithms.²⁵ Further regulation is anticipated. And China's regulatory frameworks, coupled with its technological ambitions, will pose a direct challenge to democratic values.

The United States established a leadership role in global AI policy with support for the OECD AI Principles and the G20 AI Guidelines,²⁶ as well as the statement issued at the 2021 G7 summit in support of algorithmic transparency.

Without a coherent framework for AI policy, which the OSTP AI Bill of Rights could provide, the United States risks replaying the privacy era and ceding leadership on this critical policy issue to others. Only this time, the outcome could be the Beijing effect.

Next Steps

We repeat our statement that it is extremely important for your Committee to determine the status of OSTP's proposed "Artificial Intelligence Bill of Rights." And we ask you again to ensure that the nominee commits to the finalization of the initiative as soon as possible.

As the President's former Science Advisor and the current Deputy Director of the OSTP stated last year, "*It's unacceptable to create AI systems that will harm many people . . . Americans have a right to expect better. Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly.*"²⁷

²² CAIDP, *The EU Artificial Intelligence Act*, <https://www.caidp.org/resources/eu-ai-act/>

²³ CJEU - C-817/19 - Ligue des droits humains v. Conseil des Ministres, Judgement, 21 June 2022,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=261282&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=335316>; See also, Marc Rotenberg, *CJEU PNR Decision Unplugs the "Black Box,"* *European Data Protection Law Review*, 3/2022 (forthcoming)

²⁴ CAIDP, *Council of Europe AI Treaty*, <https://www.caidp.org/resources/coe-ai-treaty/>

²⁵ *China Regulates Algorithms*, CAIDP Update 3.02 (Jan. 11, 2022),

<https://www.caidp.org/app/download/8367906563/CAIDP-Update-3.02.pdf>

²⁶ National Telecommunications and Information Administration, United States Department of Commerce, *U.S. Joins with OECD in Adopting Global AI Principles*, May 22, 2019, <https://www.ntia.doc.gov/blog/2019/us-joins-oecd-adopting-global-ai-principles>

²⁷ Eric Lander and Alondra Nelson, *Americans Need a Bill of Rights for an AI-Powered World:*



That powerful warning will mean little if the Senate Commerce Committee fails to address the AI Bill of Rights during the OSTP nomination hearing this week.

Thank you for your attention to this issue.

We ask that this statement be entered into the hearing record.

Sincerely,

A handwritten signature in blue ink that reads "Marc Rotenberg".

Marc Rotenberg
CAIDP President

A handwritten signature in black ink that reads "Merve Hickok".

Merve Hickok
CAIDP Chair and Research Director

A handwritten signature in black ink that reads "Karine Caunes".

Karine Caunes, PhD
CAIDP Global Program Director

A handwritten signature in black ink that reads "Lorraine G. Kisselburgh".

Lorraine G. Kisselburgh, PhD
CAIDP Board Member

/s/

Len Kennedy
CAIDP Board Member

The White House Office of Science and Technology Policy is developing principles to guard against powerful technologies—with input from the public, Wired, Oct. 8, 2021 (emphasis added), <https://www.wired.com/story/opinion-bill-of-rights-artificial-intelligence/>

Artificial Intelligence and Democratic Values (2022)

UNITED STATES (country report – excerpt)

Evaluation

The US lacks a unified national policy on AI but President Biden, and his top advisors, have expressed support for AI aligned with democratic values. The United States has endorsed the OECD/G20 AI Principles. The White House has issued two Executive Orders on AI that reflect democratic values, a federal directive encouraging agencies to adopt safeguards for AI. The most recent Executive Order also establishes a process for public participation in the development of federal regulations on AI through the rulemaking has yet to occur. The overall US policy-making process remains opaque, and the Federal Trade Commission has failed to act on several pending complaints concerning the deployment of AI techniques in the commercial sector. But the administration has launched new initiatives and encouraged the OSTP, NIST, and other agencies to gather public input. There is widespread objection to the use of facial recognition, and both Facebook and the IRS have canceled facial recognition systems, following widespread protests. But concerns remain about the use of facial surveillance technology across federal agencies by such US companies as ClearviewAI. 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.

CAIDP Artificial Intelligence and Democratic Values (2022) (PDF)

<https://www.caidp.org/app/download/8376927963/AIDV-Index-2021.pdf>

CAIDP Artificial Intelligence and Democratic Values (2022) (EPUB)

<https://www.caidp.org/app/download/8376928563/AIDV-Index-2021.epub>

CAIDP Artificial Intelligence and Democratic Values (2022) (Related material)

<https://www.caidp.org/reports/aidv-2021/>