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July 31, 2026

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: AI Policy Statement; Matter No. P264200

To the Federal Trade Commission:

The Consumer Technology Association® ("CTA") appreciates the opportunity to respond to the Federal Trade Commission's ("FTC") request for comment on its proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems.[1]

CTA is North America's largest technology trade association, representing more than 1200 companies, 80 percent of which are startups and small businesses. CTA also owns and produces CES®, which convened tech leaders and over 4100 exhibiting companies in Las Vegas in January. Our members are the world's leading innovators, helping support more than 17 million American jobs.

CTA has a strong interest in this proceeding because our members both develop and deploy AI. While some CTA members build foundation models and other AI platforms, nearly every CTA member now uses AI to improve products, serve customers, increase productivity, and compete more effectively. As AI becomes a routine part of business operations across the economy, regulatory uncertainty, litigation risk, and inconsistent legal standards can increase costs, reduce competition, and slow innovation. Conversely, clear national rules that reduce unneeded compliance burdens will help American companies compete and accelerate AI adoption.

CTA shares the FTC's goal of ensuring that AI systems are trustworthy, and we support empowering consumers through greater transparency. AI can improve consumers' lives through better health outcomes, greater convenience and choice, and enhanced accessibility. Consumers should have access to the full range of AI technologies and tools—including those that prioritize objectives other than pure factual accuracy—along with information about their purposes and limitations.

CTA shares the Administration's goal of ending the emerging patchwork of state AI regulation stifling innovation and competition. Although the proposed policy statement

[1] Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems, 91 Fed. Reg. 41638 (July 7, 2026) ("Proposed Policy Statement").

addresses preemption for a limited set of state laws, the FTC should call on Congress to more broadly and expressly preempt state law.

<u>The FTC Should Avoid Limiting Consumer Choices, Safety Measures, Free Speech, and Innovation</u>

Consumers should be able to use different types of AI systems. As the proposed policy statement recognizes, an AI system may have other objectives that must be balanced with factual accuracy.[2] Consumers should be free to choose systems that prioritize creativity, hypothetical or theoretical analysis, humor, imagination, opinion, novelty, or any other lawful objective. The FTC should clarify that its proposed framework applies only where an AI system purports to solely deliver factual information and consumer reliance on that information would be reasonable.

Further clarification is also critical because pure factual accuracy may sometimes be in tension with other lawful objectives and counter to reasonable consumer expectations. For example, if a consumer asks a large language model whether bleach can be mixed with ammonia, the purely factual answer is "yes." But a safer answer would be to explain that the combination will produce a toxic gas. Indeed, the reasonable consumer would expect the AI system to provide such a warning.

The FTC should clarify that design choices to promote security, fraud prevention, and user safety, and to prevent or mitigate possibly illegal, offensive, or hateful content, are presumptively consistent with reasonable consumer expectations. Without this clarification, the FTC may inadvertently steer AI systems toward presenting users with unexpected or harmful content they don't want, didn't ask for, and expect AI systems to limit.

To eliminate this ambiguity, the Commission should establish a concrete safe harbor for good-faith harm-prevention design choices, generalizing and extending its existing cybersecurity carve-out.[3] That safe harbor should cover at minimum: (i) design choices made to prevent or minimize illegal content, including child sexual abuse material, and content facilitating violence; (ii) design choices made to minimize the risk that a user encounters unexpected graphic, sexually explicit, or violent material absent a clear affirmative user intent to encounter such content; and (iii) content-filtering decisions made in good faith to comply with applicable law (e.g., child safety laws), or to detect, prevent, or respond to fraud or threats to the security and integrity of systems, accounts, and data. Design choices in these categories are presumptively within consumers' reasonable expectations and should be expressly protected from scrutiny under Section 5 of the FTC Act,[4] not merely acknowledged in a general statement of principle.

The safe harbor should also expressly cover good-faith fraud-prevention and user-safety design choices—such as warning a user that a request or transaction appears to be a scam or an impersonation attempt, or declining to facilitate a transaction the

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[2] *Id*. at 41641.
[3] *Id*. at 41640 n.40.
[4] *See* 15 U.S.C. § 45(a).

system reasonably identifies as fraudulent—on the same rationale as the cybersecurity limitations the Commission already recognizes. Like those limitations, such choices are presumptively consistent with reasonable consumer expectations and are not a deceptive suppression of accuracy.

Additionally, the FTC's unclear definition of "ideological objectives"[5] risks chilling First Amendment-protected speech. AI systems and their developers exercise a form of editorial discretion in curating, filtering, and shaping outputs. The Supreme Court's decision in *Moody v. NetChoice, LLC* confirms that editorial discretion is constitutionally protected against government compulsion to produce or suppress particular content.[6]

The threat of Section 5 liability based on vague standards could lead developers and deployers to limit or homogenize outputs, running afoul of their First Amendment right to editorial discretion on their platforms. More, this would harm the entire ecosystem, limiting the editorial discretion of the people creating AI systems, stifling the free flow of information to users, and narrowing the range of options available to consumers. This free flow of information is exactly what the First Amendment is designed to protect.

Section 5 is deliberately technology-neutral and forward-looking, and because AI is evolving far more rapidly than regulation, the FTC's existing, flexible Section 5 authority is precisely the type of framework Congress intended to address emerging technologies. Consistent with that—and with the proposed policy statement's point that liability should not flow merely from the fact of the output alone[7]—Section 5 liability should remain tied to material misrepresentations likely to affect reasonable consumer decision-making, rather than to differences in model architecture or good-faith engineering and design choices standing alone.

Unclear standards also have broader competitive consequences. Companies facing uncertain liability are more likely to narrow product offerings, delay new features, or avoid entering the market altogether. Those costs fall hardest on startups and smaller companies, reducing consumer choice and weakening competition across the AI ecosystem.

<u>The FTC Should Set Different Expectations for Developers and Deployers</u>

AI developers and deployers may play different roles in shaping the outputs of AI systems. AI value chains can be complex. For example, one company might develop a large language model that a second company integrates into a specific customer service chatbot application that a third company purchases and customizes to use with its customers.

The FTC should recognize these roles and that responsibility should be tailored to an organization's role in the AI output at issue. Output may be attributable to inputs at various stages of the AI lifecycle, including model development, training, system

[5] Proposed Policy Statement at 41638.
[6] *See* 603 U.S. 707, 734 (2024).
[7] *See* Proposed Policy Statement at 41641 n.46.

prompts, or user interfaces. In other cases, a deployer may have a customer that can direct the AI tool to behave in ways that affect the outputs that third-party end users see. Responsibility should be placed on the party in the best position to provide an appropriate disclosure to end users. Conversely, a party that neither develops nor deploys the AI system, and that supplies only neutral security or attestation infrastructure that does not shape the system's outputs, makes no representation about the accuracy of those outputs and should bear no Section 5 responsibility for outputs it does not control. Assigning responsibility to the wrong party would increase compliance costs throughout the AI value chain, discourage adoption by businesses that rely on AI tools, and create barriers for companies seeking to compete using AI-enabled products and services. To reduce the cost of compliance and ease consumer understanding, the FTC should provide specific characteristics and examples of satisfactory disclosures.

Congress Should Act to Preempt State AI Laws

CTA has long advocated for a single nationwide rulebook for AI to end the chaotic patchwork of state laws.[8] As the FTC recognizes, having a preemptive, national AI regulatory framework would protect and promote American "innovation and competition by providing national regulatory clarity and certainty."[9] A fractured landscape of state regulation creates unneeded compliance costs for companies of every size, particularly startups and small businesses. It also reduces competition by forcing companies to devote resources to navigating fifty different legal regimes rather than improving products and competing in the marketplace. A single national framework would lower compliance costs, provide regulatory certainty, and allow American companies to innovate and compete more effectively.

Unfortunately, the implied preemption discussed in the policy statement is insufficient to address these challenges and will likely be litigated for years. Meanwhile, regulatory uncertainty will continue to stall AI investment. American innovators need regulatory clarity and uniformity as soon as possible, and across a wide range of AI issues. Congressional action to expressly preempt state regulation of AI consistent with the exceptions outlined in the White House's legislative recommendations ensures American AI innovators can compete, scale, and thrive.[10] Congress prevented a patchwork of state Internet laws in the 1990s. The FTC and the White House should work with Congress to do the same for AI.

Conclusion

The FTC should clarify the proposed policy statement, and Congress should enact a national AI framework that expressly preempts conflicting state laws. Together, these steps will protect consumers, preserve competition, reduce unneeded compliance costs,

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[8] *See, e.g.*, CTA, *National AI Policy and Regulatory Framework* (Sept. 13, 2023), https://cdn.cta.tech/cta/media/media/pdfs/ai-policy.pdf.
[9] Proposed Policy Statement at 41639.
[10] *See* The White House, *National Policy Framework for Artificial Intelligence – Legislative Recommendations* (Mar. 2026), https://www.whitehouse.gov/wp-content/uploads/2026/03/03.20.26-National-Policy-Framework-for-Artificial-Intelligence-Legislative-Recommendations.pdf.

and strengthen America's leadership in AI. Clear national rules will allow businesses of every size to continue investing in and adopting AI technologies that benefit consumers, workers, and the broader economy.

Thank you for the opportunity to comment.

Sincerely,

CONSUMER TECHNOLOGY ASSOCIATION

/s/

J. David Grossman
Vice President, Policy & Regulatory Affairs

/s/

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