Akin

M E M O R A N D U M

May 16, 2023

From: Akin Gump Strauss Hauer & Feld LLP

Re: Summary of the Senate Judiciary Subcommittee on Privacy, Technology, and the Law's hearing on Oversight of A.I.: Rules for Artificial Intelligence

On Tuesday, May 16, 2023, the Senate Judiciary Subcommittee on Privacy, Technology, and the Law held a hearing entitled, "Oversight of A.I.: Rules for Artificial Intelligence." This memorandum provides a high-level summary of the event.

Executive Summary: The Committee emphasized the historic nature of artificial intelligence (AI) while expressing concern for its potential negative impact on intellectual property (IP), disinformation, consumer privacy, and economic and job security. Witnesses advocated for a regulatory regime consisting of licensing and transparency requirements. Members called for the creation of a federal agency, setting international standards, and protecting consumer rights and privacy while avoiding the pitfalls of past attempts to regulate social media and Section 230.

The following witnesses testified before the Committee:

- **Samuel Altman**, CEO, OpenAI;
- **Christina Montgomery**, Chief Privacy & Trust Officer, IBM;
- **Gary Marcus**, Professor Emeritus, New York University.

The following members participated in the hearing:

Chair Richard Blumenthal (D-CT)
Full Committee Chair Dick Durbin (D-IL)
Sen. Amy Klobuchar (D-MN)
Sen. Chris Coons (D-DE)
Sen. Mazie Hirono (D-HI)
Sen. Alex Padilla (D-CA)
Sen. Jon Ossoff (D-GA)
Sen. Cory Booker (D-NJ)
Sen. Peter Welch (D-VT)

Ranking Member Josh Hawley (R-MO)
Full Committee Ranking Member Lindsey Graham (R-SC)
Sen. John Kennedy (R-LA)
Sen. Marsha Blackburn (R-TN)

Opening Statements

Subcommittee Chair Richard Blumenthal (D-CT) Opening Statement

- The underlying advancements of this era are real and promising, but so are the harms. This ranges from weaponized disinformation, housing discrimination, harassment of women, voice impersonation, and deep fake.

- My biggest nightmare is the looming new industrial revolution – the displacements of millions of workers, loss of jobs, and the need to prepare for this in skill training and relocation.

- Sensible safeguards are not an opposition to innovation. We can start with transparency; AI companies should be required to test their systems, disclose known risks, and allow independent researcher access. We can establish scorecards to encourage competition based on safety and trustworthiness. In places where the risks of AI are so extreme, we should impose restrictions or ban their use, especially when it comes to commercial invasions of privacy. We also need to enforce accountability.

Subcommittee Ranking Member Josh Hawley (R-MO) Opening Statement

- I wonder what will we say when we look back at these new technologies, generative AI, language models, and the whole host of AI capacities under development, not just in this country, but in China and the country of our adversaries.

- I hope we can strike a balance between our technological innovation and ethical responsibility to humanity and liberty.

Full Committee Chair Dick Durbin (D-IL) Opening Statement

- The basic question we face is whether or not the issue of AI is a quantitative change or qualitative change. The suggestion I've heard from experts is that it's qualitative.

- When you look at Congress' record in dealing with innovative technology and rapid change, we are not designed for that. I've heard of the positive potential of AI, and it is enormous. Of course, the danger is profound as well.

Witness Testimony

Mr. Samuel Altman Testimony

- We are working to build tools that can make new discoveries and address some of humanity's biggest challenges, like climate change and cancer. Our current systems cannot currently do that but it has been gratifying to watch people get value from what these systems can already do.

- We make significant efforts to ensure safety is built into our systems. Before releasing any new system, OpenAI conducts extensive testing, engages with external experts for reviews and audits, improves the model's behavior, and implements robust safety and monitoring systems.

- Regulatory intervention by governments will be critical to mitigating the risks of increasingly powerful models. For example, the government may consider a combination of licensing and testing requirements for the development and release of AI models above a crucial threshold of capabilities.

- There are several areas where I believe companies can partner with governments, including ensuring that the most powerful AI adheres to a subset of safety requirements, facilitating processes to update safety measures, and examining opportunities to develop global cooperation.

Ms. Christina Montgomery Testimony

- IBM urges Congress to adopt a "precision regulation" approach to AI. This means establishing rules to govern the deployment of AI in specific use-cases, not regulating the technology itself.

- A precision regulation approach would involve 1) different rules for different risks; 2) clearly defined risks; 3) transparency and disclosure requirements for certain uses of AI; and 4) impact assessments for higher-risk AI use-cases.

- Companies active in developing or using AI must have strong internal governance processes, including designating a lead AI ethics official responsible for an organization's trustworthy AI strategy and standing up an AI Ethics Board.

Mr. Gary Marcus Testimony

- The big tech companies' preferred plan boils down to "trust us," but why should we? OpenAI's original mission was to "benefit humanity as a whole, unconstrained by a need to generate financial return." Now, they are largely beholden to Microsoft.

- We obviously need government involved. We need the tech companies involved, big and small. But we also need independent scientists. Allowing independent scientists access to these systems before they are widely released, as part of a clinical trial-like safety evaluation, is a vital first step. Ultimately, we may need something like CERN, which is global and neutral but focused on AI safety.

- AI is among the most world-changing technologies ever, already changing things more rapidly than almost any technology in history. We acted too slowly with social media; many unfortunate decisions got locked in, with lasting consequences.

Q&A Portion

Subcommittee Chair Richard Blumenthal (D-CT) Questions

- The National Institute of Standards and Technology (NIST) already has a Face Recognition Vendor Test (FRVT), and its scorecard provides useful information on the capabilities and flaws of these systems. Should we consider independent testing labs to provide scorecards?
    - **Altman**: That's a great idea, companies should do that test themselves, but dependent audits are also very important.
    - **Marcus**: We need nutrition labels and greater transparency on what goes into these systems.

- I am concerned with the potential economic effects and job losses due to AI. Are you concerned about this?
    - **Altman**: Like all technological revolutions, I expect an impact on jobs, though I am not sure what that looks like yet. However, I believe there will be more jobs on the other side.
    - **Montgomery**: The most important thing to do right now is to prepare the workforce for partnering with AI technologies.
    - **Marcus**: In the long run, artificial general intelligence (AGI) will replace a large portion of human jobs, but we are not there yet.

Subcommittee Ranking Member Josh Hawley (R-MO) Questions

- If large language models can quite accurately predict public opinion, what will happen when entities take survey information and fine-tune strategies to illicit certain responses?
    - **Altman**: This is one of my areas of concern – the ability of models to persuade and manipulate, especially given the election next year. There are a lot of policies that companies can adopt, but regulations can be helpful. We need guidelines on what disclosures are expected from companies providing these models.

- Let me discuss AI systems trained on personal data, which is the type of data that companies like Google and Meta collect. Can we foresee an AI system that will be trained to know what grabs human attention in the war for attention? Should we be concerned about its corporate applications?

- **Altman**: Yes. Companies are already using AI models to create advertisements predictions on what users will like.
- **Marcus**: Hyper-targeting of advertisements will come.

Full Committee Chair Dick Durbin (D-IL) Questions

- We've learned from Section 230 that we basically absolved the industry of liability. What have we learned from Section 230 that applies to the situation with AI?
  - **Altman**: I don't know what the right answer is, but for new technologies, we need new liability frameworks.

- When it came to new technologies, the government's inclination was to get out of the way. I'm not sure I'm happy with the outcomes as I look at online platforms. Now I've heard from the private sector that they'd like us to establish some liability standards. Can you explain the differences between the past and now?
  - **Montgomery**: We have been calling for precision regulation of AI technologies for years, and technologies need to be deployed responsibly and clearly. AI should be regulated at the point of risk where technology meets society.

- What agency of government can respond to these challenges?
  - **Marcus**: We need a cabinet-level organization. The number of risks and information is large, and we need a lot of coordination.

- How do you give an international agency the authority to regulate AI in a fair way?
  - **Marcus**: It may be inevitable that we expand there. I'd like to see the United States take leadership in this authority.
  - **Altman**: To be effective, we need something global.

Sen. Marsha Blackburn (R-TN) Questions

- We need a federally-given preemption for online privacy and data security, which will involve the Commerce Committee and Judiciary Committee. Who owns the rights to AI-generated artistic materials? How will you compensate creators?
  - **Altman**: Creators deserve control and we need to figure out new ways that creators can succeed.

Sen. Amy Klobuchar (D-MN) Questions

- With primary elections upon us, I am concerned with misinformation. What is your plan to deal with this?
  - **Altman**: The inclination may be to treat this like social media, but it isn't. There are things that the model refuses to generate, but we also have large-scale monitoring of content.

    - **Marcus**: Transparency on the data and the model is essential.

- I am concerned with the impact of AI on IP and on the compensation for local news organizations.
    - **Altman**: If there are things we can do to help news organizations, we will certainly like that.
    - **Marcus**: A lot of news stories will be generated by these bots, which will make it more competitive for local news.

Full Committee Ranking Member Lindsey Graham (R-SC) Questions

- Do you agree that we don't want to repeat the same pitfalls of Section 230 with AI?
    - *All witnesses agreed.*

- Mr. Altman, is your company claiming Section 230 doesn't apply to you?
    - **Altman**: Yes, I don't think Section 230 is the right framework, but we need something new.

- Should AI tools be licensed? Is having an agency overlooking what you do the simplest way to do that? I think we need an agency that can issue a license and also take it away.
    - **Altman**: Yes.
    - **Marcus**: Yes.
    - **Montgomery**: I do not think an agency is necessary. We don't want to slow down regulation to address real risks right now. We have existing regulatory authorities that can regulate in their respective domains.

- China is doing AI research, and if you don't do something about the China part of this, you will never get this right.
    - **Altman**: We don't necessarily have to have a world organization, but there has to be some sort of standard with global effect.

- On military application, how can AI change warfare? For example, could AI create a situation where a drone can select a target itself?
    - **Altman**: It could be done.

Sen. Chris Coons (D-DE) Questions

- How do you decide if a model is safe enough to be deployed? Would it be more effective to have humans identify harmful content and train the AI to avoid that, or give the model a set of values to guide its decision-making?

  - **Altman**: I think giving the model's values up front is important. While these systems are relatively weak and deeply imperfect, we are trying to have people figure out how to make them safer.

- I'm concerned about how we can promote AI in a way that strengthens open markets and democracy. What advice do you have for us on which direction to pursue, and if the EU model on regulating AI based on risk is the right path?
  - **Montgomery**: The conception of the EU AI Act is very consistent with the concept of precision regulation, and that approach makes sense. Any algorithm being used in high-risk contexts should be required to disclose the data being used and the performance of the model.

- What international bodies are best positioned to convene multilateral discussions to promote responsible standards?
  - **Marcus**: I think certainly the United Nations (UN) and United Nations Educational, Scientific and Cultural Organization (UNESCO) should be at the table. The Organization for Economic Co-operation and Development (OECD) has also been thinking about this.

Sen. John Kennedy (R-LA) Questions

- What reforms would you implement?
  - **Montgomery**: It comes back to transparency, such as the disclosure and protection of the data used to train AI, the model and how it performs, and the continuing governance of these models.
  - **Marcus**: I have the following recommendations: 1) a safety review as we use with the Food and Drug Administration (FDA) prior to widespread deployment; 2) a nimble monitoring agency with authority for call-backs; and 3) funding for AI safety research like AI constitutions.
  - **Altman**: I would do the following: 1) form a new agency that would license any efforts above a certain scale of capability; 2) create a set of safety standards; and 3) require independent audits.

Sen. Mazie Hirono (D-HI) Questions

- I can't envision the kind of licensing scheme we'd create to regulate the vastness of AI. What kind of system are you envisioning?
  - **Altman**: As we head towards AGI, that's where the licensing scheme comes in.
  - **Marcus**: The model I gravitate towards is one like the FDA. You have to make a safety case and say why the benefits outweigh the harm, but we probably need elements of multiple agencies.

Sen. Jon Ossoff (D-GA) Questions

- Any regulatory framework will need to include a section defining the scope of regulated activities, tools, and products. What would you include?
    - **Altman**: We could draw a line at systems that need to be licensed in a very intense way, we don't want to stop the open-source community. The easiest way may be to measure the amount of computing that goes into a model. What I'd prefer is to define a certain capability threshold. Models that can persuade or manipulate a person's beliefs, and models that could create novel biological agents could be thresholds.

- We have no national privacy law; do you think we need one? What would be the qualities of such a law that would make the most sense?
    - **Altman**: I think it would be good. A minimum is that users should have the right to opt out or delete their data.

- When you think about implementing a regulatory regime, should the government design the law in a way that forbids certain capabilities in potential or forbid certain actions as they are executed?
    - **Altman**: Yes, both should be included. There should be limits on what a deployed model is capable of and what it actually does.

Sen. Cory Booker (D-NJ) Questions

- How should Congress go about forming an agency or using existing regulations?
    - **Marcus**: We need to convene international meetings with experts from the federal level. Science has to be a very important part of this.

- I'm concerned with the potential mass corporate concentration in this field. Are you worried about this?
    - **Altman**: There are dangers and benefits. If there are fewer of us you have to keep an eye out on, that may be a benefit.
    - **Marcus**: There's a risk of technocracy combined with oligarchy where a small number of people influence large groups of people.

Sen. Peter Welch (D-VT) Questions

- We absolutely have to have an agency, and the scope of engagement needs to be defined by us. Last year, I introduced the *Digital Platform Commission Act* (H.R.7858), which we are planning to reintroduce. What are some of the perils of an agency?
    - **Altman**: The United States has to continue to lead, and an agency may slow down industry in such a way that China could make progress. The regulatory burden should be on the small set of companies as we don't want to slow down smaller models.

- **Marcus**: The other peril is regulatory capture. If we appear to be doing something but it's more like greenwashing, we just keep out the little players.
- **Montgomery**: Agency or not, we need to hold companies responsible for the AI they are deploying.

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Akin

M E M O R A N D U M

May 17, 2023

From: Akin Gump Strauss Hauer & Feld LLP

Re: Summary of House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet Hearing on Artificial Intelligence and Copyright

On Wednesday, May 17, 2023, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet held a hearing titled "Artificial Intelligence and Intellectual Property: Part I — Interoperability of AI and Copyright Law." This memorandum provides a high-level summary of the hearing.

Executive Summary: The Committee discussed various scenarios in which the use of artificial intelligence (AI) would infringe upon copyright laws and the fair use doctrine. Members expressed concern over creator compensation and credit, potential AI involvement in deep fakes and misinformation, and the challenges in applying copyright laws to AI. Witnesses advocated for artist protection and creator involvement in the construction of potential AI regulations.

The following witnesses testified before the Committee:

- **Sy Damle**, Partner, Latham & Watkins LLP, former General Counsel of the U.S. Copyright Office;
- **Chris Callison-Burch**, Associate Professor of Computer and Information Science, University of Pennsylvania; Visiting Research Scientist, Allen Institute for Artificial Intelligence
- **Ashley Irwin**, President, Society of Composers and Lyricists;
- **Dan Navarro**, Grammy-nominated songwriter, singer, recording artist, and voice actor;
- **Jeffrey Sedlik**, President & CEO, PLUS Coalition; Member, Joint Committee on Ethics in AI; professional photographer.

The following members participated in the hearing:

Chair Darrell Issa (R-CA)
Rep. Scott Fitzgerald (R-WI)
Rep. Cliff Bentz (R-OR)
Rep. Ben Cline (R-VA)
Rep. Lance Gooden (R-TX)
Rep. Kevin Kiley (R-CA)
Rep. Russell Fry (R-SC)
Rep. Nathaniel Moran (R-TX)

Ranking Member Hank Johnson (D-GA)
Full Committee Ranking Member Jerrold Nadler (D-NY)
Rep. Ted Lieu (D-CA)
Rep. Deborah Ross (D-NC)
Rep. Adam Schiff (D-CA)
Rep. Zoe Lofgren (D-CA)
Rep. Madeleine Dean (D-PA)
Rep. Glenn Ivey (D-MD)

Rep. Laurel Lee (R-FL)

Member Opening Statements

Chair Darrell Issa (R-CA) Opening Statement

- The advent of artificial general intelligence (AGI) has sparked a profound transformation in the creation, distribution, and consumption of a new form of creative work. It presents both challenges and opportunities for creative works and copyright holders.

- There will be individuals and companies on each side who will not want to move – including Microsoft, Meta, and Google.

- We must address the concerns surrounding the unauthorized use of copyrighted material while recognizing that the potential of generative AI can only be achieved with massive amounts of data, far more than available outside copyright.

- We could have substituted copyright for patents or other areas of innovation and have substantially the same hearing. For once, Congress may not do either of the things we're known for, which is nothing at all or overreact.

Ranking Member Hank Johnson (D-GA) Opening Statement

- As AI takes on a larger role, we need to consider how our copyright system treats AI. Both in terms of how we should treat the "inputs" of copyright works used to train AI models, and whether the new "outputs" generated by AI should be eligible for copyright protection itself.

- A foundational principle of copyright law generally requires users of copyrighted works to obtain the permission of the copyright owner. While most inputs into generative AI systems consist of copyright-protected works, they are typically used without consent or licenses. Some argue this constitutes fair use, but I'm hard-pressed to understand how a system that rests almost entirely on the works of others and can be commercialized, owes nothing to the owners of the works.

- Even if we determine AI systems must seek permission, that only leads to more questions. For example, what sort of licensing systems should be required? What would represent fair representation? What degree of transparency should be built in AI models? How do we ensure that proper credit is attributed to copyrighted works?

- Whether or not an AI-generated work is eligible to be copyrighted, such works will and have been competing in the marketplace against human-authored works.

Full Committee Ranking Member Jerrold Nadler (D-NY)

- At its core, the fundamental question we must address is how we can promote innovation and further development of generative AI models while protecting the rights of creators.

- The solutions to this issue are far from clear. What is the proper way to license these works and monitor compliance? What sort of transparency and accountability should we build into these systems?

- As we wrestle with the inputs, there are equally thorny questions about the outputs. How should copyright laws treat works generated by AI models? We must consider whether the copyright office has the tools and resources it needs. There are also important questions on the impact of AI-generated works on the market for human-generated works.

Witness Opening Statements

Mr. Sy Damle Opening Statement

- The way we regulate AI will directly determine whether the United States will continue to lead the world in AI development, or whether another country will take up that mantle.

- Every new technological development has led to similar fears, and in hindsight, none of those fears came to fruition. There is no reason to believe generative AI is any different. Like the camera or the myriad creative tools adopted since, generative AI will be not a replacement for, but an engine of human creativity.

- Copyright's well-established fair use doctrine is the best way to balance the competing interests in the AI space. With the benefit of over 100 years of principle and precedent, our courts are well-equipped to differentiate between fair and infringing uses.

- Some groups have proposed statutory or collective licensing regimes under which any use of copyright-eligible content to train an AI model would trigger a payment obligation. I believe this would be a mistake. Successfully training an AI model requires using many billions of pieces of content, so the scope of any statutory or collective licensing scheme would be many orders of magnitude larger than any similar scheme in the history of American law.

Mr. Chris Callison-Burch Opening Statement

- The topic we are discussing today goes far beyond copyright, it is about the value of work.

- Current large language models are trained on roughly a trillion words, and current image generation systems are trained on hundreds of millions of images and their captions. Many or most of the items in the training data are copyrighted.

- During the pre-training phase, AI systems acquire a wealth of general knowledge, which serves as the foundation for their subsequent fine-tuning and specific task performance. I believe pre-training these systems fall within fair use and that internet-era court precedents likely established this is the case.

- I do believe the output of these systems could infringe upon copyright. It's worth Congress to consider legislation to better shape copyright to better govern things like copyrightable characters or extend copyright to the right of publicity.

Mr. Ashley Irwin Opening Statement

- The rapid introduction of generative AI systems is seen as an existential threat to the livelihood and continuance of our creative professions unless immediate steps are taken on legal, interpretive, and economic fronts to address these emerging issues.

- We are simply advocating for the creation of a policy framework that ensures generative AI is developed and utilized responsibly, ethically, and with respect for human creators and copyright so that the creative arts – that are the real engine of generative AI - can continue to flourish.

- I believe AI companies, and their generative models, should adhere to the fundamental "Three Cs": credit, consent, and compensation.

- Three of the issues that I wanted to raise today are: 1) Generative AI has been equipped using copyright-protected human-authored works and programmed to mimic those works without consent, compensation, or credit; 2) Copyright information (metadata) has been removed during the ingestion process of these models; and 3) The market will be diluted due to AI-generated works and as a result, copyright protection should not be granted to AI-generated works.

- If we do not protect and nurture our human creators, we risk losing one of our greatest exports and its profound influence. It is essential to prioritize policies and regulations that safeguard the intellectual property and copyright of creators and preserve the diverse and dynamic U.S. cultural landscape.

Mr. Dan Navarro Opening Statement

- Training AI to mimic professional performers or "generate" new works based on millions of copies of published songs and recordings presents a host of legal implications, from

copyright infringement to violations of rights of publicity and trademark, to name, voice, and likeness abuses.

- By marginalizing and, ultimately, abandoning the fundamental human spark in music creation, we are inviting a future that sees fakes as real and that debases our art and culture with soulless "brown food product" mediocrity.

- To fight for human creativity, I was proud to help launch the Human Artistry Campaign, which is based on the seven core principles:

  - First, musicians will use this latest technology to do great new things;

  - Second, human-created works will remain essential in our lives;

  - Third, the use of copyrighted works for AI purposes – and the use of voices and likenesses of professional performers – requires permission;

  - Fourth, governments should not create new copyright or other IP exemptions that allow AI developers to exploit creators without permission or compensation;

  - Fifth, copyright should only protect the unique value of human intellectual creativity;

  - Sixth, trustworthiness and transparency are essential to the success of AI and the protection of creators;

  - Seventh, creators must have a seat at the table, not just developers.

Mr. Jeffrey Sedlik Opening Statement

- Most AI developers and platforms build their businesses by exploiting billions of creators' works without authorization from copyright owners. The creation and use of copies of protected works for AI ingestion and generation purposes is a copyright infringement on a massive scale.

- AI developers must be required not only to obtain advance permission to ingest and exploit creative works but to also compensate creators directly or through collective licensing schemes such as the American Society for Collective Rights Licensing.

Q&A Portion

Rep. Scott Fitzgerald (R-WI) Questions

- Do you believe the United States Copyright Office was correct in denying copyright for the lack of ultimate creative control as they did in their decision on Zarya of the Dawn?

- **Damle**: I think they got it right, but they were addressing an extreme example. There will be a grey area where humans and AI create outputs. In that situation, where the human is exercising control over the AI and there is an iterative process, you should have copyrightable output.

Rep. Cliff Bentz (R-OR) Questions

- Do you think we have the technology available to sort these conflicts out after the fact, and if not, how do we prevent it?
  - **Navarro**: As a creator, if I get too close to something, like John Lennon or Ray Charles, I will pull back. If I don't, there are legal remedies.
  - **Damle**: In cases like Led Zeppelin and Blurred Lines, copyright did not stay within its proper bounds. The courts decided that borrowing somebody's music style counted as copyright infringement, which threw the music industry into chaos. Thankfully, we have seen a return back of the core principles of the Copyright Act, which we have seen in recent cases like the Ed Sheeran case.

Chair Darrell Issa (R-CA) Questions

- We have discussed credit, permission, and compensation. Credit seems like something Congress could mandate, potentially requiring that database inputs could be searchable. How would you quantify compensation?
  - **Navarro**: I believe in free market negotiations with regard to this, I don't believe in compulsory licenses.

Full Committee Ranking Member Jerrold Nadler (D-NY)

- What threats do generative AI pose to composers and songwriters? What actions should we take to ensure your work is protected?
  - **Irwin**: One thing the music industry has done well is collective licensing. This is more easily applied to music compared to other works of art.

- Transparency in AI training models is a concern, transparency to the end-user is critical. Should some sort of disclosure of work AI-generated works to be included?
  - **Burch**: That is valuable, especially with things like deep fakes or elections. There are technological devices that are being innovated to mark AI-generated works, like a watermark. It's not an industry-wide practice and right now it is up to the user of the AI system to disclose.

Rep. Ben Cline (R-VA) Questions

- What challenges are involved in using technologies like digital watermarks, tags, and metadata for works trained by AI?
  - **Sedlik**: We have matured technologies to identify these works, such as steganography. Creators use embedded metadata to pass information into their

images so they can be identified, however, that is stripped off by social media platforms. We would benefit from a change to the law to make it illegible to remove embedded rights metadata.

- You have discussed the trend towards the use of technology by industry, is that happening too slowly?
    - **Burch**: There is no equivalent of compulsory licenses in generative AI. It's impossible to understand how much of the output of a system is due to Steven King or to a random Reddit poster. This is one of the issues in establishing a compulsory license.

- You advocated against granting AI any special IP exemptions. Would you advocate for changing the law to make training AI with copyrighted works a type of infringement?
    - **Navarro**: I believe that as technologies progress, guardrails need to be modified and improved.

Rep. Ted Lieu (D-CA) Questions

- Let's say I create a generative AI internet application related to music for commercial purposes. To train it, I scrape the entire internet for all of Taylor Swift's copyrighted songs without her permission. Would I have to compensate her in any way?
    - **Damle**: It would depend on the way you train the AI model. Some AI models may be trained in a way that could extend the bounds of fair use. It will be a case-by-case determination. In a situation where you extract non-protected facts from copyrighted works and use those facts to generate new work, then under copyright law, that is not infringement. If you are just training them, that is fair use.

- Internet applications like YouTube pay a licensing fee to Taylor Swift when downloading her songs, what's the difference?
    - **Damle**: The difference is that in those cases, they are taking the work and streaming it to end-users. That is a public performance of her work.

- Let's say ChatGPT lets you put out Taylor Swift lyrics, what happens? What if I take my motto and I generate a new song similar to a Taylor Swift song lyrically?
    - **Damle**: The first case might be an issue that exceeds the bounds of fair use. However, the second case would not be an infringement because the basic principle of the Copyright Act is replicating someone's style.
    - **Burch**: If someone is learning from Taylor Swift, the decision of whether they are violating copyright does not occur when they are listening to the song and learning to perform, it's when they release an album and whether that album is sufficiently similar to Taylor Swift.

- As you know, voice cannot be copyrighted. What if I take my motto and these lyrics, then generate a song with a voice very similar to Taylor Swift's voice? Would that be copyright infringement?
    - **Damle**: You'd have to look at other bodies of law. In terms of copyright law, I do not believe that would be illegal.

- Many artists already use AI in their creative works and don't disclose that. How would you define what types of AI they need to disclose?
    - **Burch**: Works that involve substantive use of generative AI are not copyrightable at the moment. I believe AI will be used in a collaborative way with humans, and the humans using it deserve that copyright. Whether or not they acknowledge it depends on the use of it.

Rep. Lance Gooden (R-TX) Questions

- It seems as this develops, we'd like to see more transparency in the process. Is it unrealistic to ask that we know if a particular song was influenced from somewhere?
    - **Burch**: That involves the output of generative AI systems rather than training. I think there is a valid case to be made that copyright should be reshaped to protect against a case where I, as a user of an AI system, ask it to generate something that mimics a particular artist. I think there should be an opt-out option for artists to explicitly exclude their work from the vast amount of training data we have.

- Do you believe there will be more of a push to copyright AI works?
    - **Damle**: I think we are at the early stages of where we draw the line. The principle here is that you need sufficient human authorship in the creative process to warrant protection.

Rep. Deborah Ross (D-NC) Questions

- The U.S. Copyright Office considers several factors when evaluating the question of fair use, including the amount of the copyrighted work used. This strikes me as a key factor in AI training as well.

- Is it a common industry practice to record how copyrighted works are used to train an AI dataset? Would this benefit the development of a compensation system?
    - **Burch**: The tricky part of creating a compensation scheme is that there's a trillion words worth of text in our training data set and each author represents a vanishingly small amount of that.

Rep. Kevin Kiley (R-CA) Questions

- I wonder if copyright law is well suited to the matter at hand. I worry that the issues we are discussing will be obsolete in a matter of years.

Rep. Adam Schiff (D-CA) Questions

- In what circumstances would artists be willing to license their works?
  - **Navarro**: Every artist has their own demarcation of what should or should not do with their works.
- How do you see disinformation as a danger?
  - **Navarro**: The dangers of disinformation is highlighted by the rise in deep fake, which is an issue with the right of publicity.

Rep. Russell Fry (R-SC) Questions

- Can you identify inadequacies of our existing laws to address copyright and AI?
  - **Damle**: There are a lot of questions that need to be answered on whether AI output is protectable by copyright. This is such a new issue. We will have hard questions in spaces where there is an iterative process between the human author and AI.

- Do we need a new set of rules? Do existing contract laws address this?
  - **Damle**: I think existing law is well suited to address all the questions we discussed today.

Rep. Zoe Lofgren (D-CA) Questions

- I believe AI will upend a lot of careers, ranging from law to medicine. Is it possible to reach an agreement like the Music Modernization Act so that creators can be fairly compensated?
  - **Burch**: There are a lot of practical issues that make this hard to achieve. There might be a market for licensing images and songs that companies voluntarily enter into.
  - **Sedlik**: Images are data, but they are not unprotected facts. The output may or may not resemble my work, but the input is infringed.

Rep. Madeleine Dean (D-PA) Questions

- Is the creation of models being done in a way that respects the right of creators?
  - **Sedlik**: Some AI platforms are beginning to adapt their systems to account for creator rights.
  - **Navarro**: It's really the wild west out there, we are in the process.
  - **Irwin**: At the moment, no.

- What is the effect of this technology on the job market?
  - **Burch**: I fear we are on the precipices of mass unemployment. That probability is very small, but such a dire outcome that you need to consider some sort of legislation. Dealing with this as a copyright issue almost entirely misses the point.

Rep. Laurel Lee (R-FL) Questions

- When Congress fails to be clear, we leave judges to be policymakers. I'd like you to elaborate on your conclusion that our existing statuary framework is enough to take on this challenge?
    - **Damle**: Fair use has existed for about 200 years, and has dealt with massive shifts in technology. My perspective has come from looking at that long history.
    - **Burch**: I think it's worth considering the outputs of these systems, which are not currently covered by current laws.

Rep. Glenn Ivey (D-MD) Questions

- Are there other steps we need to take to protect our communities from fabrications and deep fakes?
    - **Burch**: Absolutely. Any media literacy we teach should include these elements.

# # #

Akin

M E M O R A N D U M

May 16, 2023

From: Akin Gump Strauss Hauer & Feld LLP

Re: Summary of the Senate Homeland Security and Governmental Affairs Committee's hearing on Artificial Intelligence in Government

On Tuesday, May 16, 2023, the Senate Homeland Security and Government Affairs Committee held a hearing on "Artificial Intelligence in Government." This memorandum provides a high-level summary of the event.

Executive Summary: The Committee discussed best practices in implementing Artificial Intelligence (AI) in the federal government. Members expressed concerns over AI risks, including shortages in available technologically literate employees, privacy protection, and potential censorship. The panel witnesses emphasized the importance of privacy, consistent standards and definitions, and the need for federal leadership through the creation of a chief AI officer for agencies.

The following witnesses testified before the Committee:

- **Richard A. Eppink**, Of Counsel, ACLU of Idaho Foundation;
- **Taka Ariga**, Chief Data Scientist, U.S. GAO;
- **Lynne E. Parker**, Ph.D., Associate Vice Chancellor and Director, AI Tennessee Initiative University of Tennessee;
- **Daniel E. Ho**, Professor, Stanford Law School;
- **Jacob Siegel**, Writer.

The following members participated in the hearing:

Chair Sen. Gary Peters (D-MI)
Sen. Margaret Hassan (D-NH)
Sen. Jacky Rosen (D-NV)
Sen. Alex Padilla (D-CA)
Sen. Jon Ossoff (D-GA)

Ranking Member Sen. Rand Paul (R-KY)
Sen. James Lankford (R-OK)
Sen. Rick Scott (R-FL)

Opening Statements

Chair Sen. Gary Peters (D-MI) Opening Statement

- U.S. leadership is essential for our global economic competitiveness. We should adopt and employ AI to enhance lives, but also to address potential risks and harms. Potential bias in AI applications could have severe implications. AI algorithms often lack transparency and accountability in their conclusions.

- AI also presents privacy concerns because of the enormous amounts of data it can collect, which current privacy law does not anticipate. Finally, we need to ensure the federal workforce is ready to procure and oversee AI systems.

- Today's hearing is the second in a series I plan to convene on AI. We will be discussing the need to conduct inventories of current government AI applications, requiring ongoing audits, and considering responsible standards that need to be met.

Ranking Member Sen. Rand Paul (R-KY) Opening Statement

- For years, federal agencies have colluded with private organizations and social media companies to combat what they deem "disinformation." The purpose, so they claimed, was to combat foreign misinformation, but in reality, it was working to censor domestic speech.

- Since 2020, the federal government has awarded over 500 contracts and grants related to misinformation or disinformation. While the grant awardees and their proprietary AI differ, their goals are consistent: to mine the internet, identify conversations harmful to the preferred narrative, and prevent the viral spreading of ideas.

- During the COVID-19 pandemic, we witnessed accelerated use of AI to monitor and suppress public debate on issues like masks, natural immunity, and the virus's origin. The U.S. is engaging in the same activities we criticize other countries for, but unlike China or North Korea, the U.S. tries to conceal its activities by employing front companies.

- This should not be a partisan issue. We need to get to the bottom of how the federal government uses AI to violate privacy.

Witness Testimony

Dr. Lynne E. Parker Testimony

- Federal uses of AI are becoming increasingly transparent, as agencies make available their AI use-case inventories in compliance with Executive Order (EO) 13960 and the Advancing American AI Act (S.1353). The extreme variety in AI use cases makes it difficult to develop a flexible approach to responsible government use of AI. I recommend the following:

    - OMB should prioritize and resource their work on federal guidance for the use of AI in government by addressing use cases, encouraging responsible adoption, and being operational for practical use by agencies;

    - Federal agencies should use the National Institute of Standards and Technology (NIST) AI Risk Management Framework during the design, development, procurement, use, and management of AI;

    - Agencies should have to have current and regularly updated AI strategic plan;

    - Agencies should hire and resource chief AI officers for overseeing AI strategies;

    - An AI interagency chief AI officers counsel should be created;

- The proposed chief AI officers counsel should review use-case inventories for common applications, and identify processes that can be transformed by AI in a manner consistent with civil rights;
- Congress should provide agencies with AI innovation funds as part of annual budgets;
- The Office of Personnel Management (OPM) should prioritize and resource their work on the AI occupational series;
- A national initiative for an AI education framework should be developed, analogous to NIST's national initiative for cybersecurity education;
- The National AI Research Resource should be funded to help develop new AI talent.

Mr. Taka Ariga Testimony

- AI is undeniably an integral part of a functioning digital fabric, but the government is not immune from the consequences of this powerful technology.
- On the workforce front, Government Accountability Office (GAO) has reported on mission-critical gaps in federal expertise on science and technology. In our November 2021 report, we gathered perspectives from tech leaders across federal, academic, and nongovernment entities to explore establishing a digital services academy to improve the federal pipeline of highly trained digital talent. GAO remains committed to trust-but-verify for AI accountability.

Mr. Daniel E. Ho Testimony

- The U.S. government can seize this moment in AI modernization. But strategic leadership, investment, and modernization will be necessary to create a culture of innovation. Government should lead by example with AI.
- Getting a talented workforce into the government is the single most important step in this process. There is a critical gap in leadership, strategic planning, and capacity. It's not just compensation that is the cause for this, it's the perception that it's too difficult to perform meaningful technological work in government. I have four recommendations:
  - Strategic leadership from the government to coordinate and drive forward trustworthy AI innovation. Empower chief AI officers to ensure senior leadership drives this;
  - Congress should establish new pathways for technical talent in government;
  - Government procurement is critical to spur innovation and development of rights-preserving privacy-enhancing technologies;

- Invest in digital infrastructure. Government data, not just web data, is crucial to developing AI.

Mr. Richard A. Eppink Testimony

- I've worked for over a decade to challenge secret decisions made by algorithms that impact the disabled community in Idaho. Once we opened that black box, we found it was built on corrupt data. The system was ruled unconstitutional, yet a decade later, we're still litigating for due process.

- This is dangerous because 1) black boxes conceal government uses of AI; 2) they conceal how the systems work, including the bad data that they're trained on; and 3) they prevent accountability. I offer the following solutions:

  - The people these AI systems make decisions about should be involved in their development, implementation, and evaluation;

  - Government agencies must implement constitutional rights through regulation and enforcement specific to AI systems;

  - Transparency requirements and governance standards must apply to these systems from before they start until after they finish.

Mr. Jacob Siegel Testimony

- Warfare has spurred the development of transformative technologies, including AI. When I was deployed to Afghanistan in 2012, the military turned to new information technologies to fill strategic voids. On fronts like defeating the Taliban, our success remained illusory, but the U.S. developed the capacity to build huge databases backed by AI and algorithms.

- The gap between our metrics of success and reality on the ground was a result of measuring the wrong things and translating critical policy questions into data. If we want to seriously use AI and computation, then there won't be a human explainable story of what's happening inside.

- AI appears destined to move further from human understanding; yet there's no chance the U.S. government or corporations abandon it. Nor would this be a desirable outcome, as it would cede the competitive space to China. There is a vital national interest in advancing AI, but at present the government seems to want it to censor information. Continuing in this direction would end the American way of life.

Q&A Portion

Chair Sen. Gary Peters (D-MI) Questions

- How did the clients who are suing the Idaho Medicaid Program for failing to disclose its algorithm used to substantially cut recipient healthcare services learn of this automated system?

  - **Eppink**: The Idaho system when we got started, like many today, was not disclosed to anyone outside of the Idaho agency. After a half dozen families contacted me, I figured I'd send a letter, and I got one back saying that the system was a trade secret. Once we knew it was a secret, we filed a lawsuit to find out more.

- We're hearing a lot about Chat-GPT. The system you're discussing was relatively simple. What do you think of that fact?
  - **Eppink**: Black boxes are black boxes no matter how big. Even though the Idaho system was just an Excel, it took us many months, possibly years, to get all the info on which it was built. Federal AI standards are not built to solve the complexity of systems, but for the harms they are causing. I don't think we need new standards for new tech; what we did in Idaho should be able to apply.

- Clearly, you believe there's not enough transparency. What do you recommend?
  - **Eppink**: Standards and enforcement specific to AI and automated decision-making. We have basic American principles like due process, but the courts and agencies struggle to apply those in this new context. We know the court litigation is too unwieldy; it won't meet the proliferation of these systems.

- Some government AI uses are high-risk, like facial recognition, but there are low-risk uses, too, like when the forest service classifies tree canopies. Should testing, auditing, and procurement requirements differ by the system, and how should the government decide high versus low risk?
  - **Parker**: Extreme cases are getting attention now, but we want to encourage the use of AI in mundane cases, too. Evaluating risks per use case is important, not onerous regulations of simple use cases.

- The GAO has created a toolkit to audit AI systems used by the government and you're piloting it now. Can you tell us more about how the pilot is going, any roadblocks, and whether it would be feasible for all agencies to use the GAO accountability framework?
  - **Ariga**: We have a number of audits using it and other oversight entities are using it. There are three challenges: (1) our framework looks at the AI lifecycle, but the agency can use more domain-specific guidance; (2) we need policies around the notion of privacy and compliance; and (3) we need a digital-ready workforce to implement.

Ranking Member Sen. Rand Paul (R-KY) Questions

- I don't fear AI if the Bill of Rights is protected. Domestically, do you think part of the solution would be to e restrict this technology from being used to hinder speech?
  - **Siegel**: Yes. In the domestic context, it's unconstitutional. However, it's very difficult to enforce "disinformation" standards and make distinctions between foreign and domestic actors.

Sen. James Lankford (R-OK) Questions

- Could you define what the responsible use of AI and AI innovation is?

  - **Parker**: Defining the processes agencies must abide by as they look at AI use cases and risks will help us understand what is "responsible." But theoretically, there are a number of principles we've converged on. These are things like "safe and effective," that how systems work is consistent with their intended use, accountability, and others.
  - **Ho**: There is agreement on privacy protection, non-discrimination, and safety. The frontier is taking these principles into practice, where having leadership and talent in government agencies is critical.

- From the perspective of researchers asking for access to government data, there is a concern about what available data exists and that agencies will want more data on individuals. Privacy seems to be losing the battle so people can do more with AI. Where am I off?
  - **Ho**: Privacy is paramount, and as we have noted, national privacy legislation would be important here. Some of the most acute privacy concerns are in the small number of tech companies.
  - **Eppink**: The cost and time necessary to analyze the data is inaccessible, and the data often is corrupted not only by the creation of the data but by years of bias in the data.

Sen. Rick Scott (R-FL) Questions

- AI has productive uses but also can threaten children. What guardrails are needed?
  - **Ariga**: At GAO, we believe in trust-but-verify; we want to be able to assess practices adopted by agencies to ensure they align with our principles.

- Snapchat admitted its AI tech is experimental; is it alarming that Snapchat would force users to use its chatbox features unless they pay to get it off?
  - **Ariga**: GAO's role is to provide oversight; if an agency decides to use tech like Snapchat, we'd do a rigorous assessment. We'll be interested in hearing the legal rationale of any government structure arriving at such decisions.

- Do parental guardians have a right to revoke consent without paying a fee?
  - **Ariga**: We'd take the approach of looking at programmatic implementation and see if it agrees with our accountability principles.

- It appears unelected administrative officials in DHS and others have urged censorship on disinformation. What are the dangers in the government colluding with big tech to censor?
  - **Siegel**: The dangers can't be overstated. It's incompatible with democracy and self-government. You can't have free and fair elections when there's mass censorship at scale.

- What do you think about the dangers of government funding and moving towards AI to censor online?
  - **Siegel**: The greater risk is censorship that is effectively invisible by using AI to trap speech and narratives on the wire, meaning that instead of waiting for publishing and directed censorship, we'd see AI used to censor information before it's ever published. That could happen in forums in which we've come to expect mass censorship, like Facebook. Google was censoring Google Docs during the pandemic.

Sen. Margaret Hassan (D-NH) Questions

- AI researchers have highlighted potential public safety risks posed by AI, including providing dangerous information to bad actors or running counter to the intent of designers. What can the government do to support or coordinate research to improve the safety of AI?
    - **Ariga**: In our framework, we laid out practices that agencies can adopt, such as considering whether AI is necessary in a use case.

- Congress created the National AI Strategy to establish goals, priorities, and metrics for agency work on AI. But it doesn't require a strategic focus on safeguards to prevent AI from being used in a manner that harms the country and society. Could those be incorporated?
    - **Parker**: We need an approach to govern the responsible use of AI. We could have a 2-part approach, such as creating chief AI officers per agency and a Chief AI Officers Counsel led by OMB to coordinate across the agencies and provide leadership and expertise.

- As AI advances, deepfakes will become harder to identify and debunk, and in the hands of adversaries, they pose a deep threat. How do you assess the government's current efforts on this and how can it prepare for a future with realistic deepfakes?
    - **Parker**: There are some activities in this space to do things like watermarking to determine how a particular data, image, or video came from. If we could watermark these kinds of images in a way that allows us to trace back their origins would be a step forward. On top of that are governance approaches, but the technical approach would help.

Sen. Jacky Rosen (D-NV) Questions

- We know China is pushing to be a standards-issuing country. It coordinates national standards across government and industry by targeting emerging tech, like quantum computing, big data, 5G, and more. Can you describe the importance and impact of U.S. participation in these international standards-setting bodies, including for AI?
    - **Ho**: If it's possible to have international cooperation schemes with like-minded countries, there's a way to address this current question of who builds, owns, and guides these AI systems. One proposal is for the multilateral AI research institute.

- Earlier this year, NIST released its AI Risk Management Framework. Three months later, the White House Office of Science and Tech Policy issued its own blueprint for an AI Bill of Rights; how should the private sector view this?
    - **Parker**: NIST AI risk management framework applies to any use case of AI and evaluating what risk a use case has. The White House blueprint comes at a specific category of AI applications that may harm society in terms of civil rights and privacy. I would say that after applying the NIST framework, high-risk identified consequences should be consulted with the White House blueprint.
    - **Ho**: There are commonalities between the two documents' principles. What I've seen is a real struggle of how to bring it into practice when agencies are thinking about piloting,

evaluating, and implementing AI use cases. That's why we need to build pathways for talent into agencies to successfully navigate and implement these policies.

- On workforce challenges, our existing cyber shortages are significantly impacting national security. How can we use AI in the short term to overcome cybersecurity skill shortages across agencies?
    - **Parker**: Certain AI applications are improving individual productivity. This includes being able to use AI in mundane ways to manage paperwork and identify ways we can better address the needs of American consumers. It's challenging to say we can use AI as a substitute for people since it's more of a collaborative tool right now. One quick step is to leverage programs like the Intergovernmental Personnel Act to get industry and academia into government.
    - **Ho**: One estimate says we need 40,000 positions in the public sector for cyber security, so these pathways are critical. It's not just a matter of salary scales; it's also providing opportunities for technical talent to perform meaningful work

Sen. Alex Padilla (D-CA) Questions

- Some argue it'd be more cost-effective to buy off-the-shelf AI tools, but government in-house tools are important for complying with relevant regulations and pursuing agency missions. What factors should go into building in-house government tools?
    - **Eppink**: To the extent a government or state-funded agency needs or wants to use AI decision-making, we need transparency behind the tools and data relied upon.

- What are some short-term steps Congress can take to help agencies hire and retain tech talent in AI?
    - **Parker**: There are a number of barriers right now to having that expertise. One is salary and understanding the skills and knowledge needed to fill a particular AI role. If the occupational series OPM is working on were developed, it'd help us to identify the skills and knowledge needed for AI jobs in the government, and that'd give us the ability to reach out to those with these skills and to train for these skills through boot camps. The challenge is scaling it, so Congress could fund these boot camps.
    - **Ho**: The other part is building on STEM education. The U.S. has been a magnet for top scientific and tech talent, but increasingly international students are choosing to leave.

- As we talk about building trust and accountability, law enforcement activity is an area where the public has the least insight and oversight. Can you speak to the unique challenges of guarding against bias and ensuring accountability and equity in law enforcement's use of AI?
    - **Ho**: Technical talent and the ability of that talent to work with domain experts will be critical for internal accountability.

Sen. Jon Ossoff (D-GA) Questions

- As these technologies become more ubiquitous, modular, and incorporated into plugins and software suites, how do we fundamentally define what it is that we are regulating? How would you define the scope of tech as the subject of interest and requiring additional scrutiny?

- **Parker**: I look at it in terms of systems, typically data-driven, that learn and change behavior over time, and that do tasks frequently attributed to human intelligence in the past.
- **Ho**: I agree with Dr. Parker. A lot of regulations refer back to the NDAA definition, which is relatively expansive. One way to handle this would be to have further guidance and clarification from relevant offices.

- Is it about the use case or capability? Is it the purpose for which it's used that defines whether it's regulated technology or the qualities of the software?
  - **Ho**: We can go with the capabilities of the software. But when it comes to the actual regulation, it's important to look at the particular use cases to identify posed risks.

- One of the things I've been grappling with is that given the massive open-source datasets, the capacity for predictive behavioral modeling is potentially significant. Perhaps with a high degree of integrity, this technology can assign probabilities for future individual conduct. The risk here is that prosecutors and agencies may use it to justify surveillance and warrants. How do you think about that risk and how should Congress think about it?
  - **Eppink**: We have at best principles to start thinking about how to build these systems safely and democratically, but they're not being built that way right now. We are not there yet, so we have to go beyond these jumping-off points we've discussed today by creating clear governance and including affected populations in how these systems are built.
  - **Parker**: One way to move forward is for the subcommittee on AI and law enforcement to be established. It's a subcommittee of a national AI advisory committee of experts across sectors of interest.

- In government there's a lot of focus on insider threats, whether in an intelligence context or otherwise. When we think of autonomous actors within public agencies who are not humans, how do we think about the risk of co-opting and manipulation? That these tools themselves could pose insider threats of unauthorized disclosure or network access to penetrate government systems?
  - **Parker**: There's a question of what could be and what is true today. With Ai systems right now, there are technologies to track human behaviors and determine if individuals are doing what they should be doing. There's also the question of whether these general AI systems will have the capability of digging into our systems and what we'll do about that, but I don't think they exist today.

- Are there certain government functions that you would nominate to being ruled out of being supplemented or guided by AI?
  - **Parker**: Launching of nuclear weapons.
  - **Eppink**: We can look to life, liberty, property, and privacy in the Constitution and ensure there is transparency, inclusion, reliability, and independent auditing and testing of those programs before they be deployed in government uses.

Chair Sen. Gary Peters (D-MI) Closing Question

- In terms of legislating, what would be the number-one item we should prioritize in thinking of future legislation on this?
    - **Siegel**: Transparency and enforcing transparency in the use of AI, such as collusion between government and corporations and privacy issues.
    - **Ho**: Getting technical talent into the federal workforce.
    - **Parker**: We're suffering now from a lack of leadership and prioritization on these topics. One quick thing we could do is to appoint those chief AI officers at each agency, where they're given the responsibility and resources to oversee the use of AI and AI strategy. We also should establish a coordination body like a chief AI officer's counsel.
    - **Ariga**: Disclosure where discretionary decision-making is being made; but fundamentally a digital-ready workforce will make that possible.
    - **Eppink**: The experts on these systems are the people these systems make decisions about. Congress needs to ensure that the people the decisions are made about are included in the process.

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