Written Statement of Gary Shapiro, President and CEO, Consumer Technology Association
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Senate AI Insight Forum: Privacy & Liability

Thank you for the opportunity to join you to discuss artificial intelligence (AI) and its relationship to privacy, liability, and social media.

The Consumer Technology Association represents the $488 billion U.S. consumer technology industry, which supports more than 18 million U.S. jobs. CTA's membership is over 1300 American companies – 80% of which are small businesses and startups. We also own and produce CES®, the world's most powerful technology event.

I have been fortunate to lead our industry association for more than three decades, as American entrepreneurs at both start-ups and larger companies developed and introduced innovative and life-changing products and services, created jobs, and grew the economy. I have appreciated our government's efforts to foster American innovation. The American government, in bipartisan fashion, has rejected calls by legacy industries for laws and rules that would impede the development of innovative new products and services.

CTA's efforts ensured the legality of VCR recording technology, guided the transition to the world's best HDTV system and helped create a global legal framework for the commercial Internet. CTA supported opening GPS to commercial use, led efforts to allow a robust drone industry, spearheaded the effort to create "airplane mode" and developed scores of standards for newer technologies such as video streaming, wearables, and health technology devices. Most recently, at CTA's request the United Nations added technology to its list of fundamental human securities.

Now, CTA members and CES exhibitors are shaping the future of AI technology through industry leadership and pro-innovation advocacy. AI holds huge potential to improve our world, and our members represent the cutting edge of a trend that will transform how we communicate, do business, and take care of one another.

<u>The promise of AI</u>

AI and machine learning hold the key to solving our most pressing societal challenges.

In healthcare, AI promises to improve medical diagnosis and treatment. By analyzing extensive patient data, AI can enhance the accuracy of disease diagnosis, predict disease outbreaks, and personalize treatment plans. Machine learning algorithms can assist in early disease detection, drug discovery, and even enable precision robotic surgery, ultimately making health care more accessible and improving patient outcomes.

AI also supports environmental conservation. AI equips us with valuable tools to monitor and manage critical issues like climate change, deforestation, and wildlife preservation. Through the analysis of satellite and sensor data, AI acts as a sentinel, tracking environmental shifts,

predicting natural disasters, and optimizing resource allocation for sustainable practices, contributing to a healthier planet.

Education, the cornerstone of progress, is on the cusp of transformation through AI. Personalized learning platforms, driven by AI, adapt to individual student needs, offering self-paced learning and providing targeted feedback. AI also takes on administrative burdens, enabling educators to focus on their true mission: teaching the next generation.

AI-enabled self-driving vehicles are reshaping transportation and mobility. Advances in self-driving technology promise to reduce traffic accidents, alleviate congestion, lower fuel consumption, and enhance transportation efficiency. AI's can also reduce emissions and improve our public transportation systems, making travel more accessible.

AI's impact on agriculture is revolutionary. By optimizing crop management, increasing yields, and reducing the use of pesticides and water resources, AI helps address food security and sustainability challenges. Precision agriculture, facilitated by machine learning, promises a more efficient and sustainable future for farming.

AI is a transformative technology and will reshape industries, improve quality of life for millions of people, and drive economic growth. However, AI also presents unique challenges and risks, including concerns about privacy, liability, and societal impact. Government and the private sector must work as partners to address these challenges and unlock innovation.

CTA supports responsible AI innovation

CTA takes a comprehensive approach to AI. This includes engaging in public policy at the national, state and international levels; developing and publishing consensus standards related to AI definitions, AI in healthcare, managing bias, and information disclosure; and producing market research focused on trends and public perceptions around AI.[1]

We worked with member companies to develop and publish a National AI Policy Framework[2] ("the Framework") which lays out the elements of a regulatory framework intended to set guardrails for companies developing and deploying AI systems. The Framework provides businesses flexibility to adopt AI risk management measures tailored to the specific risk profile of the AI systems they develop, deploy, and/or implement, rather than focusing on specific aspects or details of rapidly evolving AI technology. The Framework (1) encourages appropriate guardrails and outcomes and (2) ensures that AI systems are safe, trustworthy, effective, ethical, and legal.

[1] CTA Outlines Approach Governing AI Policy, Research and Standards, September 13, 2023,
[2] National AI Policy and Regulatory Framework. October 2023.

The Framework relies upon, and explicitly incorporates, elements of the NIST AI Risk Management Framework (NIST RMF), which was developed through a highly collaborative process with feedback from industry and other key stakeholders. Consistent with the NIST RMF, the CTA Framework adopts a risk-based approach to regulation of AI systems, contains generally applicable AI governance requirements, and allocates certain responsibilities based on whether the business is a developer, deployer or implementer of the AI system. Significantly, the Framework recognizes that certain entities are already subject to sector-specific regulations and provides safe harbor protections for entities that have self-certified or obtained a third-party certification of compliance with an accepted AI risk management or governance standard.

Consensus-based industry standards are critical to AI governance and regulatory compliance. As an American National Standards Institute (ANSI) accredited standards development organization, CTA has eight published AI standards. The most recent is *Artificial Intelligence in Health Care: Practices for Identifying and Managing Bias (ANSI/CTA-2116).*

Looking internationally, we see undesirable extremes in other governmental approaches to AI policy. China's AI regulation imposes significant obligations on AI ecosystem entities and end users to protect the interests of the Chinese government and its national security interests, to the detriment of personal privacy protections for individual citizens. The European Union has gone in the opposite direction. EU laws and rules designed to allow personal control of data will curb innovation and investment in AI technology and will saddle companies, especially small entities, with burdensome compliance obligations. To remain the world's innovation leader, America must find a better balance.

On the trade front, the recent unilateral decision by the U.S. Trade Representative to withdraw from essential digital trade provisions at the WTO, such as those pertaining to cross-border data flows, data localization, non-discrimination for digital products, and the protection of software source code, hurts American companies both large and small. It sends a troubling signal that the U.S. is not focused on removing trade barriers that hinder the growth of AI technologies developed by American companies. Congress should take the lead in directing the Administration to reconsider its position and advocate for opening global markets to U.S. exports of AI technologies through the implementation of high-standard digital trade rules.

<u>Achieving a national privacy law</u>

Data, privacy and AI are intertwined. As we refine the considerations around rules and guardrails for AI at the national level, we should ensure a national approach to protecting consumer privacy. Consumer trust must be a central tenet of the products and services developed by the technology industry. Trust is earned when companies are good stewards of their consumers' data. CTA believes a balanced approach to regulating AI and privacy will ensure consumer data is protected and enable businesses to grow and innovate.

CTA advocates for a comprehensive federal data privacy law that preempts state laws. A uniform, technology-neutral, national standard that provides consistent protections across technologies, companies, agencies, and state borders are the bedrock prerequisite to ensure consumer trust, continue data-driven innovation, and safeguard data. A preemptive federal privacy law is the most effective way to achieve such consistency. Legislation that merely sets one standard and allows states to add additional requirements will confuse consumers and developers, discouraging innovation. A state-centric approach simply does not work in a digital economy, where data flows across borders in a matter of seconds.

Failing to pass federal privacy legislation will cost the American economy more than $1 trillion (about $3100 per person in the United States) over ten years. More than $200 billion of that will be paid by small businesses.[3] As a result, resources that could go toward creating jobs or investing in research will instead be spent on compliance costs and legal bills created by the current state-by-state patchwork of privacy laws. Without Congressional action, we will end up with different laws in all 50 states, placing the United States at a competitive disadvantage as other nations enact comprehensive privacy laws.

Ensuring a balanced and rational approach to liability

The United States, as the most innovative country in the world, should have legal guidelines around AI that both safeguard users and foster innovation. These guidelines should offer clear legal certainty, ensuring that users, innovators, and investors can easily understand and follow the law. They should be tailored to address real risks rather than theoretical or exaggerated scenarios. Most importantly, these guidelines should shield AI innovators from frivolous and unfounded lawsuits.

Congress has recognized the need to shield new technologies from abusive litigation. In the 1990s, both the Digital Millennium Copyright Act and Section 230 of the Communications Decency Act provided protection to platforms against defamation and copyright infringement lawsuits, as long as they met specified conditions. These laws have enabled American companies to flourish in the digital era and secure a leading position in the global technology industry.

We firmly believe that our foundational principles governing intellectual property and product liability are resilient and adaptable enough to accommodate the emergence of AI. For instance, the legal doctrine of fair use remains relevant and indispensable as a critical element in the training of generative AI. The law makes it clear that mere reading, even by individuals with the capacity for verbatim memory and recitation, cannot form the basis for an infringement claim. Copyright precedent maintains that even ephemeral or transitory storage that serves a lawful

[3] "The Looming Cost of a Patchwork of State Privacy Laws." Information Technology and Innovation Foundation. January 24, 2022.

purpose is not an infringing reproduction. It is only the final work product that should potentially raise concerns about copyright infringement.

Likewise, our product liability frameworks are well-suited to address AI-related questions. Over the past few decades, many new technologies have required courts to consider a continuous series of novel product liability inquiries. On the whole, the courts have shown their ability to address these questions effectively.

Congress can help create a liability environment for AI that is pro-innovation and pro-consumer. Policymakers should routinely assess and update product liability laws to keep pace with the evolving AI landscape and tackle new risks and challenges. Flexibility and adaptability are needed in maintaining a balanced legal framework. At the same time, Congress should be cautious in imposing novel burdens on AI development or inadvertently opening the door to opportunistic lawsuits that could sideline American AI innovators. Such actions would delay the transformative benefits of AI and provide a leadership opportunity to China and other economic rivals.

Conclusion

The United States has been the indisputable global leader in transformative innovation in the Internet age. Many nations have sought to replicate the economic success and global influence of the U.S. tech sector, but none have succeeded. As we move into the era of generative AI, we are at the next frontier in this global race. Many countries recognize that generative AI will give a huge advantage in economic, military, and societal realms. The mantle of global leadership now hinges on whether we lead on generative AI.

No single policy decision or government action will guarantee American primacy in AI. Still, we are hopeful that industry and government we can work together on a broad range of policies around AI. That collaboration will put the United States and our citizens in the best possible position to lead in and benefit from the dividends of generative AI and other AI tools that emerge in the years to come.