

Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Washington, DC 20230

In the Matter of)
)
Privacy, Equity, and Civil Rights) Docket No. NTIA-2023-0001
) RIN 0660-XC05
)

COMMENTS OF
CONSUMER TECHNOLOGY ASSOCIATION

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Consumer Technology Association[®] (CTA)¹ submits this response to the National Telecommunications and Information Administration’s (NTIA’s) request for comment (RFC)² addressing issues at the intersection of privacy, equity and civil rights.

I. INTRODUCTION

Technological innovations are connecting individuals, such as those in rural areas or with disabilities, to critical services in ways not possible even a few years ago. These technologies—especially emerging technologies—hold promise to unleash an array of consumer benefits, such as reducing health inequities and assisting individuals with disabilities. To fully recognize these benefits, the technologies often rely on large amounts of data collection and use as well as groundbreaking technologies like artificial intelligence (AI) and machine learning (ML).

CTA’s diverse membership protects consumer privacy and builds data security programs that adapt to evolving technologies and threats. Building and retaining consumer trust in the

¹ As North America’s largest technology trade association, CTA[®] is the tech sector. Our members are the world’s largest innovators—from startups to global brands—helping support more than 18 million American jobs. CTA owns and produces CES[®]—the most influential tech event in the world.

² Privacy, Equity, and Civil Rights Request for Comment, 88 Fed. Reg. 3714 (Jan. 20, 2023), <https://www.federalregister.gov/documents/2023/01/20/2023-01088/privacy-equity-and-civil-rights-request-for-comment> (NTIA RFC).

collection, use and protection of their data is vital to providing cutting-edge products and services. Consistent with this commitment to trust and safety, CTA promotes responsible automated decision-making practices. For example, CTA, working with stakeholders, has adopted numerous guiding principles and standards that help to mitigate and aim to prevent harms like those described in NTIA’s RFC and related listening sessions. As explained by CTA’s President and CEO Gary Shapiro, these principles and standards reflect a risk-based approach to consumer data that both ensures both consumer privacy and fosters business innovation.³

Industry standards and collaboration with government (such as through developing NIST’s AI Risk Management and Privacy Frameworks) have been successful in developing baseline standards for the treatment of consumer information and, therefore, help address privacy, equity and civil rights concerns. Even so, CTA agrees with NTIA Administrator Alan Davidson that “[p]rivacy rights shouldn’t change when you cross state lines.”⁴ Indeed, CTA supports “a federal privacy standard to ensure consistency and clarity for consumers and innovators when it comes to consumers’ personal information.”⁵ A comprehensive federal privacy law should complement existing sector-specific privacy regulations and enforcement without creating duplicative or contradictory requirements and enforcers.

³ Gary Shapiro, *We Need a Federal Privacy Law – Not a Patchwork of State Laws*, Morning Consult (May 6, 2019), <https://morningconsult.com/opinions/we-need-a-federal-privacy-law-not-a-patchwork-of-state-laws>.

⁴ Remarks of Alan Davidson, Assistant Sec’y of Comme’ns & Info., NTIA, “Building on the Dream: Privacy, Equity, and Civil Rights” at Georgetown Law Institute for Technology Law & Policy and the Center on Privacy & Technology (Jan. 18, 2023), <https://ntia.gov/spechttestimony/2023/time-action-intersection-privacy-and-civil-rights>.

⁵ CTA, Advocacy: Privacy and Security, <https://www.cta.tech/Advocacy/Issues/Privacy-and-Security> (last visited Mar. 1, 2023).

As NTIA develops a report analyzing whether and how commercial data practices can affect marginalized or underserved communities, CTA urges that NTIA acknowledge the immense benefits that technologies that incorporate consumer data provide businesses and consumers. In addition to the need for comprehensive federal privacy legislation, the report should also focus on collaborative, voluntary risk mitigation strategies.

II. INNOVATORS ARE USING DATA, ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING TO BENEFIT HISTORICALLY UNDERSERVED COMMUNITIES

NTIA rightfully highlights that modern data collection and processing “transformed how we identify, access, and obtain important life necessities and opportunities.”⁶ Consumers benefit from industry’s efficient use of data to connect them to a vast array of opportunities and services. And studies show that, as the digital economy continues to grow, consumers increasingly appreciate the exchange between their data and customized services.⁷ The proliferation of AI and ML technologies are meeting and exceeding consumers’ expectations for personalized services while also improving outcomes for consumers in numerous areas, such as healthcare and accessibility for individuals with disabilities.⁸

A. The Consumer Technology Industry Is Advancing Accessibility for Individuals with Disabilities

Innovations in health technology and accessibility for individuals with disabilities were on display at CES 2023. As in years past, the CTA Foundation CES 2023 Eureka Park

⁶ See NTIA RFC at 3716.

⁷ See CTA, *Data Privacy: U.S. Consumer Attitudes & Behaviors*, at 20-21 (Mar. 2022) (noting that almost half of U.S. adults would share their personal information to access special offers and discounts, as well as thinking that their experience will improve if they provide information to healthcare providers and banks).

⁸ See Comments of the Consumer Technology Association, *Trade Regulation Rule on Commercial Surveillance and Data Security*, Docket No. FTC-2022-0053, at 15-18 (filed Nov. 21, 2022) (CTA ANPR Comments).

Accessibility Contest Winners utilized AI and ML, in addition to microphones and sensors, to assist individuals with disabilities in common situations like playing sports, listening in a crowded environment or understanding someone wearing a mask.⁹ Other use cases included enhancing spatial awareness for a wheelchair user through an attachment that leverages echolocation technology.¹⁰

Similarly, AI and ML are providing new opportunities for individuals with disabilities. For instance, CES Innovation Awardee BEDSORE-M applies AI and ML technology to track patient's lying posture to accurately measure and analyze for bedsores prevention.¹¹ AI and ML are powering technologies that provide information automatically to individuals with disabilities and others through, for example, the Speech Accessibility Project,¹² automatic alt text,¹³ real-

⁹ CTA Foundation, *Eureka Park Accessibility Contest*, <https://www.cta.tech/Who-We-Are/CTA-Foundation/Eureka-Park-Accessibility-Contest> (last visited Mar. 1, 2023).

¹⁰ See, e.g., Kat Zigmont, *Kat's Top Five Innovations at CES 2023*, World Institute on Disability (Jan. 17, 2023), <https://wid.org/kats-top-five-innovations-at-ces-2023> (discussing, among other innovations, Braze Mobility).

¹¹ CTA, *CES 2023 Innovation Award Product: Machine Vision Bedsores Management Mat (BEDSORE-M)*, [https://www.ces.tech/innovation-awards/honorees/2023/honorees/m/machine-vision-bedsores-management-mat\(bedsore-m\).aspx](https://www.ces.tech/innovation-awards/honorees/2023/honorees/m/machine-vision-bedsores-management-mat(bedsore-m).aspx) (last visited Mar. 1, 2023).

¹² Speech Accessibility Project, University of Illinois Urbana-Champaign, <https://speechaccessibilityproject.beckman.illinois.edu> (last visited Mar. 1, 2023) (The Speech Accessibility Project is a partnership between the University of Illinois Urbana-Champaign, tech companies and advocate groups that facilitates research to make voice recognition technology more useful for people with a range of diverse speech patterns and disabilities).

¹³ *Using AI to Improve Photo Descriptions for People Who Are Blind and Visually Impaired*, Meta (Jan. 19, 2021), <https://about.fb.com/news/2021/01/using-ai-to-improve-photo-descriptions-for-blind-and-visually-impaired-people> (automatic photo description technology recognizes more than 1,200 objects and concepts—then generates descriptions that can be read aloud to people who are blind or with low vision through a screen reader).

time captioning¹⁴ and sign-language recognition and enlargement.¹⁵ In addition, AI is helping facilitate conversations for those individuals with limited mobility and speaking capabilities, as well as providing critical alerts for those who are deaf or hard of hearing.¹⁶

B. Technologies Incorporating Data and AI/ML Are Especially Promising for Advancing Health Equity

AI, telehealth and digital health solutions promote equity and inclusion by delivering better outcomes and providing critical services that benefit underrepresented communities.¹⁷ Consumer data is also powering technological solutions that can reduce bias and improve healthcare outcomes for underrepresented communities.¹⁸ CTA supports the development of these beneficial technologies.

¹⁴ See, e.g., *Use live captions in a Teams meeting*, Microsoft, <https://support.microsoft.com/en-us/office/use-live-captions-in-a-teams-meeting-4be2d304-f675-4b57-8347-cbd000a21260> (last visited Mar. 1, 2023); *View live transcription in a Teams meeting*, Microsoft, <https://support.microsoft.com/en-us/office/view-live-transcription-in-a-teams-meeting-dc1a8f23-2e20-4684-885e-2152e06a4a8b> (last visited Mar. 1, 2023); *Accessibility – Collaboration that works for everyone*, Webex by Cisco, <https://www.webex.com/accessibility.html> (last visited Mar. 1, 2023); *Google Meet accessibility*, Google, <https://support.google.com/meet/answer/7313544?hl=en> (last visited Mar. 1, 2023); *BlueJeans Accessible Video Conferencing*, BlueJeans by Verizon, <https://www.bluejeans.com/products/meetings/accessibility> (last visited Mar. 1, 2023); *Accessibility – Hearing*, Apple, <https://www.apple.com/accessibility/hearing> (last visited Mar. 1, 2023).

¹⁵ See, e.g., Press Release, Samsung, [Expanding Accessibility with Samsung] (Feb. 9, 2021), <https://news.samsung.com/global/expanding-accessibility-with-samsung-2-audio>; *Accessibility – Hearing*, Apple, <https://www.apple.com/accessibility/hearing> (last visited Mar. 1, 2023).

¹⁶ Irelyne Lavery, *Can AI be used to help people with disabilities? Experts say yes, with the ‘right data set’*, Global News (Jan. 29, 2023), <https://globalnews.ca/news/9440455/artificial-intelligence-disability/> (describing an AI tool that allows “people with limited mobility and speaking capability to have conversations using a headset that understands what they want to say” and a software application “designed to automate listening by notifying users of sounds, including fire alarms and door knocks, through a smart device”).

¹⁷ *Advancing Health Equity Through Technology*, CTA & Connected Health Initiative (Nov. 2021), https://shop.cta.tech/collections/research/products/advancing-health-equity-through-technology?_ga=2.118112393.1269585260.1676253089-26891220.1670515018.

¹⁸ See, e.g., Irelyne Lavery, *Can AI be used to help people with disabilities? Experts say yes, with the ‘right data set’*, Global News (Jan. 29, 2023) (explaining how AI tools help identify bias in employment opportunities for individuals with disabilities and assist employers with incorporating more inclusive language).

CTA continues to collaborate with stakeholders to leverage technology and expertise to promote policies and standards that improve healthcare results for minorities and underrepresented communities. CTA is proud to be a leader and convener of the Health Equity and Access Leadership (HEAL) Coalition, a group comprising nearly 35 organizations spanning the entire health ecosystem.¹⁹ In November 2021, HEAL released a white paper, *Advancing Health Equity Through Technology*, which outlines policy recommendations to increase the use and adoption of trustworthy digital health tools to improve the digital health disparities that were highlighted by the pandemic.²⁰ More recently, CTA released *Driving Consumer Adoption of Digital Health Solutions* that reveals new data on the perceptions, sentiments and usage of different digital health tech devices and solutions among healthcare providers and consumers.²¹

Industry is thoughtfully incorporating new tools to improve health outcomes and consumer will benefit as industry responsibly incorporates new technologies and consumer data going forward. The FDA has approved more than 500 AI and ML healthcare systems.²² Clinical AI use cases are predominantly focused on image recognition, which allows the AI system to identify specific diseases such as hemorrhagic stroke and certain cancers.²³ A recent draft study

¹⁹ Press Release, CTA, *Health, Tech, Government Leaders Join CTA and CHI Coalition to Address Health Disparities Amplified by COVID-19* (Sept. 30, 2020), <https://www.cta.tech/Resources/Newsroom/Media-Releases/2020/September/Health,-Tech,-Government-Leaders-Join-CTA-and-CHI>.

²⁰ *Advancing Health Equity Through Technology*, CTA & Connected Health Initiative (Nov. 2021), https://shop.cta.tech/collections/research/products/advancing-health-equity-through-technology?_ga=2.118112393.1269585260.1676253089-26891220.1670515018.

²¹ Jim Fellingner, *Driving Consumer Adoption of Digital Health Solutions*, CTA (Feb. 27, 2023), <https://www.cta.tech/Resources/Newsroom/Media-Releases/2023/February/Driving-Consumer-Adoption-of-Digital-Health-Soluti>.

²² See Dave Fornell, *FDA has now cleared more than 500 healthcare AI algorithms*, HealthExec (Feb. 6, 2023), <https://healthexec.com/topics/artificial-intelligence/fda-has-now-cleared-more-500-healthcare-ai-algorithms>.

²³ *Id.*

prepared for the U.S. Department of Health and Human Services found that “disparities were reduced when race and ethnicity were incorporated into an algorithm in an intentional effort to tackle known racial and ethnic disparities in resource allocation.”²⁴ CTA supports incorporating consumer data such as race, ethnicity, religion, sexual orientation, gender identity and disability status when used to reduce disparities and create equity.

C. AI and Data-Reliant Technologies Are Benefiting Consumers in Many Ways

Advances in AI technologies and applications are improving the consumer experience in other aspects of life as well. CES 2023 featured numerous consumer products such as AI-powered TVs, advanced graphic computer chips, real-time translating ear buds, as well as improvements with electric vehicles, charging and smart agriculture.²⁵ Continued investments in AI will yield positive economic dividends while also providing advantages to businesses and improving consumers’ experience. As highlighted above, data collection is a critical component of producing accurate AI outcomes, as well as mitigating and improving long-standing disparities among racial minorities and underrepresented communities. NTIA should ensure that its recommendations recognize this important and accepted relationship between industry data collection practices and expected consumer benefits.

²⁴ See Draft Comparative Effectiveness Review – *Impact of Healthcare Algorithms on Racial and Ethnic Disparities in Health and Healthcare*, Effective Health Care Program, Agency for Healthcare Research and Quality, at 6, <https://effectivehealthcare.ahrq.gov/products/racial-disparities-health-healthcare/draft-report> (last visited Mar. 1, 2023).

²⁵ See, e.g., Stephanie Condon, *The best robots and AI innovations at CES 2023*, ZDNET (Jan. 7, 2023), <https://www.zdnet.com/article/best-robots-ai-ces-2023>; Kyle Wiggers, *Here’s a roundup of the top AI-powered products we saw at CES 2023*, TechCrunch (Jan. 5, 2023), <https://techcrunch.com/2023/01/05/heres-a-roundup-of-the-top-ai-powered-products-we-saw-at-ces-2023>.

III. CTA AND ITS MEMBERS PRIORITIZE SOUND PRIVACY AND DATA SECURITY PRACTICES, WHILE PROVIDING CUTTING-EDGE PRODUCTS AND MEETING CONSUMER NEEDS

The consumer technology industry is continuously iterating on new and better tools to protect consumer privacy and security. CTA’s members recognize the importance of protecting consumer data, as well as ensuring that new technologies and products include robust cybersecurity features.²⁶ Consistent with the risks of the data incorporated into different types of emerging technologies, CTA’s membership developed robust commitments to build strong privacy and security protections. For example:

- In 2021, CTA developed a set of voluntary principles—the Guiding Principles for the Privacy of Personal Health Data (Principles)—for companies to incorporate and for consumers to access “so that they can learn about CTA’s Principles and make informed choices about the apps and companies with whom they choose to interact.”²⁷
- To address cybersecurity threats, CTA helped to develop: (1) the Industry Consensus on IoT Device Security Baseline Capabilities; (2) Cyber Crisis: Foundations for Multi-Stakeholder Coordination; and (3) the Smart Policy to Secure Our Smart Future.²⁸
- CTA’s automaker members signed onto the Alliance for Automotive Innovation’s *Consumer Privacy Protection Principles for Vehicle Technologies and Services* in 2018. Every major automotive original equipment manufacturer is a signatory.²⁹

CTA and its members have also supported NIST’s Privacy Framework, recommending that the agency embrace “[p]ublic-private partnerships and flexible, non-prescriptive standards”

²⁶ See CTA ANPR Comments at 4-6.

²⁷ *Guiding Principles for the Privacy of Personal Health Data*, CTA, at 3 (2021), <https://cdn.cta.tech/cta/media/media/membership/pdfs/final-cta-guiding-principles-for-the-privacy-of-personal-health-and-wellness-information.pdf>.

²⁸ *Advocacy: Privacy and Security*, CTA, <https://www.cta.tech/Advocacy/Issues/Privacy-and-Security> (last visited Mar. 1, 2023).

²⁹ *Automotive Privacy*, Alliance for Automotive Innovation, <https://www.autosinnovate.org/privacy> (last visited Mar. 1, 2023).

for privacy.³⁰ Many tech companies have been actively working with NIST and other agencies on privacy approaches. CTA also published a research report on consumer concerns regarding privacy and technology.³¹ The report recommended that when engaging with consumers, companies and service providers should: (1) provide data transparency; (2) ensure that consumers know how to protect themselves; and (3) focus on data security.³²

In addition to protecting consumer privacy and data, CTA members are pursuing a variety of approaches to ensure that AI and ML technologies are maximizing consumer benefits while mitigating and minimizing risks. For instance, CTA members are focusing on recruiting and retaining a diverse workforce to ensure that the development teams for their products reflect the consumers who will use those products.³³ Federated learning, an ML approach that learns from a user's interaction with a given device while keeping all the training data on the device, so that the data does not need to be shared with a server, is another method by which some companies are promoting the development of responsible and trustworthy AI.³⁴ CTA members are also partnering with the federal government to develop voluntary standards to mitigate risks in AI systems. NIST's AI Risk Management Framework (AI RMF) is a great example of this

³⁰ Comments of the Consumer Technology Association, *NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management*, at 2 (filed Oct. 24, 2019), https://www.nist.gov/system/files/documents/2019/10/25/r_nemeth_cta_nist_privacy_framework_comment_10.24.2019_final-c3_508.pdf.

³¹ *Data Privacy: U.S. Consumer Attitudes & Behaviors*, CTA (Mar. 2022), <https://shop.cta.tech/products/data-privacy-u-s-consumer-attitudes-and-behaviors>.

³² *Id.* at 34.

³³ See, e.g., CTA's Diversity and Inclusion Working Group, <https://www.cta.tech/Membership/Member-Groups/Diversity-and-Inclusion-Working-Group> (lasted visited Mar. 3, 2023) (Emphasizing how CTA engages with its members on developing and fostering a more diverse and inclusive tech ecosystem); *Diversity and Inclusion: Driving Sustainable Change in the Workplace*, CTA (Sept. 2021) (A white paper describing the importance of diversity and inclusion in the workplace, as well as highlighting areas for improvement).

³⁴ See CTA ANPR Comments at 5.

collaboration between industry and government—creating a voluntary framework that can be customized to guide how companies of any size approach risk management in AI systems.³⁵

NTIA’s recommendations should focus on incentivizing companies to voluntarily adopt the AI RMF.

CTA’s experience with standards development shows that there is no one-size-fits-all approach to cybersecurity and privacy, particularly across sectors:

- In November 2022, CTA released *The Use of Artificial Intelligence in Health Care: Managing, Characterizing, and Safeguarding Data* which was developed by CTA’s Artificial Intelligence Committee.³⁶ The document “identifies the current recommended practices for managing, characterizing, and safeguarding data for developing artificial intelligence-based applications in health care.”
- In November 2021, CTA published *Guidelines for Developing Trustworthy Artificial Intelligence Systems (ANSI/CTA-2096)*, which “describes principles of trustworthy artificial intelligence (AI), and a method for reporting to stakeholders how a particular AI application or system follows these principles.”³⁷
- In collaboration with 20 industry associations, coalitions and standards bodies, CTA developed *Security for Connected Consumer Devices: A Manufacturer’s Guide*.³⁸

CTA also has several standards in progress about cybersecurity for consumer robotics, ML systems and managing data in AI and ML systems.

³⁵ National Institute of Standards & Technology, AI Risk Management Framework, <https://www.nist.gov/itl/ai-risk-management-framework> (last visited Mar. 1, 2023); see also Comments of the Consumer Technology Association, NIST AI Risk Management Framework: Second Draft, Docket No. 21076-01510 (filed Sept. 29, 2022); Comments of the Consumer Technology Association, RFI – NIST AI Risk Management Framework, Docket No. 21076-01510 (filed Sept. 15, 2021), <https://www.nist.gov/system/files/documents/2021/09/16/ai-rmf-rfi-0087.pdf>.

³⁶ *The Use of Artificial Intelligence in Health Care: Managing, Characterizing, and Safeguarding Data (ANSI/CTA-2107)*, CTA (Nov. 2022), <https://shop.cta.tech/products/the-use-of-artificial-intelligence-in-health-care-managing-characterizing-and-safeguarding-data-ansi-cta-2107>.

³⁷ *Guidelines for Developing Trustworthy Artificial Intelligence Systems (ANSI/CTA-2096)*, CTA, at i (Nov. 2021), <https://shop.cta.tech/a/downloads/-/d8ec4559f62f20b9/8475bea3841a7a78/download>.

³⁸ *Security for Connected Consumer Devices: A Manufacturer’s Guide*, CTA (Nov. 2019), <https://shop.cta.tech/a/downloads/-/aa27cbccba5d35f3/c697696fbb588a09/download>.

NTIA should also recognize that new innovations are providing higher levels of consumer protections. Privacy-enhancing technologies, or PETs, are advanced industry approaches that minimize the amount of data that companies process while still unleashing the data's full "commercial, scientific and social potential."³⁹ PETs involve techniques taken from cryptography and statistics that can help minimize the amount of data processed in providing services.⁴⁰ Companies also use PETs for test data management, data exchanges during financial transactions, exchanges of patients' electronic health records, and allowing the transfer of sensitive data between parties. Examples of PETs include secure multi-party computation, on-device learning and differential privacy –

- Secure Multi-Party Computation (SMPC) is a cryptographic technique that allows different parties to work together to analyze a dataset without revealing the data to one another.⁴¹ As NIST explains, SMPC "allows multiple distrustful parties to securely compute a function over their private inputs" that "ensures privacy of the inputs and outputs."⁴²
- On-Device Learning modifies the AI model by training algorithms "based on the new local data that a device (or set of devices) encounters."⁴³ On-device learning can improve the performance of AI "by personalizing to an individual user or adapting a shared model among a group of users and their environment."
- Differential Privacy is a technique that can be used on its own or applied to prevent the re-identification of data that is not individually identifiable. Differential privacy functions

³⁹ Cem Dilmegani, *Top 10 Privacy Enhancing Technologies & Use Cases in 2023*, AIMultiple, <https://research.aimultiple.com/privacy-enhancing-technologies> (last updated Dec. 21, 2022).

⁴⁰ Press Release, Meta, *What Are Privacy-Enhancing Technologies (PETs) and How Will They Apply to Ads?* (Aug. 11, 2021), <https://about.fb.com/news/2021/08/privacy-enhancing-technologies-and-ads>.

⁴¹ Cem Dilmegani, *In-Depth Guide Into Secure Multi-Party Computation in 2023*, AIMultiple, <https://research.aimultiple.com/secure-multi-party-computation> (last updated Jan. 5, 2023).

⁴² *Privacy-Enhancing Cryptography*, NIST, <https://csrc.nist.gov/Projects/pec/pec-tools> (last visited Mar. 1, 2023).

⁴³ Joseph Soriaga, *Enabling on-device learning at scale: Our latest AI research to personalize and adapt models while keeping data private*, Qualcomm: OnQ Blog (Oct. 27, 2021), <https://www.qualcomm.com/news/onq/2021/10/enabling-device-learning-scale>.

by adding “noise” to a dataset to prevent reidentification.⁴⁴ Indeed, NIST explains that one of the benefits of differential privacy is that it “assumes all information is identifying information, eliminating the challenging (and sometimes impossible) task of accounting for all identifying elements of the data.”⁴⁵

NTIA’s report should acknowledge the various ways that industry is working to set standards for consumer privacy and cybersecurity. CTA also urges NTIA to recommend ways in which new technologies, such as PETs, can further enhance data privacy and cybersecurity.

IV. COMPREHENSIVE FEDERAL PRIVACY LEGISLATION SHOULD COMPLEMENT EXISTING SECTOR-SPECIFIC LAWS AND ENFORCEMENT, WHILE AVOIDING DUPLICATIVE OR CONTRADICTORY REGIMES

CTA and NTIA both agree that Congress must pass comprehensive federal privacy legislation.⁴⁶ As a complement to future comprehensive federal legislation, section-specific laws and regulations will continue to address many of the potential harms around equity and civil rights. NTIA should be mindful of how its recommendations align with existing federal and state laws, because furthering the “patchwork” of privacy laws is causing confusion and disparity for consumers.

Many companies abide by the requirements found in the Gramm-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA), the Children’s Online Privacy Protection Act, and the Federal Communication Commission’s customer proprietary network information rules, to name a few. The GLBA Safeguards Rule, for example, already imposes technical requirements on many entities, including multi-factor authentication,

⁴⁴ *Differential Privacy*, Apple, at 1, https://www.apple.com/privacy/docs/Differential_Privacy_Overview.pdf (last visited Mar. 1, 2023).

⁴⁵ Joseph Near et al., *Differential Privacy for Privacy-Preserving Data Analysis: An Introduction to our Blog Series*, NIST: Cybersecurity Insights (July 27, 2020), <https://www.nist.gov/blogs/cybersecurity-insights/differential-privacy-privacy-preserving-data-analysis-introduction-our>.

⁴⁶ See CTA ANPR Comments at 1-2 (emphasizing CTA’s advocacy for a federal privacy law); Comments of the National Telecommunications and Information Administration Regarding Commercial Surveillance ANPR R11004, Docket No. FTC-2022-0053, at 3-4 (Nov. 21, 2022).

encryption, access controls, penetration testing, and periodic risk assessments, among other security specifications.⁴⁷ In addition, covered entities have robust privacy obligations under HIPAA, as well as data security requirements that allow covered entities to take a risk-based approach to data security.⁴⁸ Regulators are effectively enforcing these sector-specific requirements, and NTIA should avoid recommendations that conflict with current obligations under these existing laws. Likewise, new recommendations should not seek to impose duplicative regulations or new enforcers where an area is already working. Doing so would create additional regulatory burden without benefit.

V. NTIA’S REPORT SHOULD EMPHASIZE COLLABORATION TO ADDRESS POTENTIAL CONCERNS RELATED TO PRIVACY, CIVIL RIGHTS AND EQUITY

CTA urges that NTIA acknowledge the immense benefits that AI and technologies that incorporate consumer data provide to both businesses and consumers, while also focusing on collaborative, voluntary risk mitigation strategies. Continued stakeholder engagement is critical to ensure that any risk mitigation efforts address tangible harms facing consumers while also promoting beneficial and innovative use cases. For instance, NTIA could recommend that federal agencies establish training testbeds, which can allow companies to identify and mitigate bias in AI and ML technologies before deploying them. NTIA could also recommend that federal agencies permit “policy prototyping,” which allows stakeholders to work with the government to use testbeds to better understand a policy’s value and impact.⁴⁹ NTIA’s recommendations should

⁴⁷ 16 C.F.R. § 314.4.

⁴⁸ See *Summary of the HIPAA Privacy Rule*, Department of Health and Human Services, <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited Mar. 1, 2023); 45 C.F.R. § 164.306(b) (allowing covered entities to “use any security measures” to “reasonably and appropriately implement” HIPAA’s data security rules).

⁴⁹ See Verena Kontschieder, *Prototyping in Policy: What For?!*, Stanford Law (Oct. 22, 2018), <https://conferences.law.stanford.edu/prototyping-for-policy/2018/10/22/prototyping-in-policy-what-for>.

underscore existing efforts across the federal government to set effective standards and develop comprehensive policies on emerging technologies—as well as the existing sector-specific activities in health and finance, among other sectors.⁵⁰ In addition, NTIA should support public-private partnerships among the federal government, industry and advocacy groups to raise consumer awareness, enhance digital literacy, support access to device and develop industry-specific best practices for emerging technologies.

NTIA’s recommendations should encourage collaboration with a diverse range of stakeholders. This includes making sure that the U.S. government is working with industry at home, as well as with its international partners, to ensure that AI risk mitigation and other standards are uniform or harmonized, interoperable and do not stifle innovation. The U.S. should be a leader in setting global AI standards, and should especially focus on working closely with counterparts in the European Union to ensure that the European approach to regulating technology does not negatively impact businesses in the U.S.⁵¹

VI. CONCLUSION

Industry will continue to develop and implement standards that protect consumer privacy, while also delivering immense benefits to businesses and consumers. This includes building and maintaining critical partnerships with government agencies in developing voluntary standards for privacy and other emerging technologies.

⁵⁰ See, e.g., *NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0*, NIST (Jan. 16, 2020), <https://doi.org/10.6028/NIST.CSWP.01162020>; *AI Risk Management Framework (AI RMF 1.0)*, NIST (Jan. 2023), <https://doi.org/10.6028/NIST.AI.100-1>; National AI Initiative, ai.gov (last visited Mar. 1, 2023).

⁵¹ For instance, NTIA should consider how the U.S. and EU can collaborate ahead of the enactment of the EU AI Act to implement reciprocity agreements in an effort to avoid negative outcomes, such as what occurred with the dissolution of the U.S.-EU Privacy Shield.

CTA urges NTIA to acknowledge these benefits in its report while also emphasizing the need for continuing collaboration between industry and the government to identify and address potential harms from emerging technologies. CTA also urges NTIA to support a risk-based approach as it evaluates its governance policy for emerging AI technologies and reiterates the importance of relying on established standards and best practices, like the AI Risk Management Framework from NIST. Government and industry should continue to work together to support additional studies on the effects of technology on equity and civil rights. NTIA's report should also emphasize the need for Congress to pass a comprehensive federal privacy law to end the confusing patchwork of state privacy regimes, as well as complement existing sectoral privacy laws to address potential equity and civil rights harms.

Respectfully submitted,

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