Federal Legislative Proposals Pertaining to Generative AI (118th)

This Spring, I [released a list and analysis of bills from the 117th (2021/2022) Congress](#) that would address (or aim to address) risks from generative AI tools.

We are seven months into the 118th Congress, and while the Hill is in Recess, I decided to look at how the generative AI craze is shaping technology policy in the legislative branch. The major shift over the past few months is the framing of "near-term risks" and "existential risks." The bills from the last Congress mostly centered on what is now termed "near-term risks" – concerns lawmakers need to address today: opacity and market power, discrimination, user privacy, manipulation, creation and proliferation of harmful content, etc. An existential risk is more speculative and includes ideas like protecting against artificial general intelligence that can escape data centers or more generally control (destroy?) the human species. The bills introduced in the 118th Congress seem to acknowledge the existence of both sets of harms but thus far represent a scattered approach to preparing for a future with generative AI tools.

Similar to my previous analysis, I am not looking at bills regarding generative AI in the following portfolios: intellectual property, semiconductor supply chain, media literacy, financial services, and workforce. Additionally, I'll be zooming in on how bills address challenges from *generative AI tools* (defined in depth by my friends at Aspen Digital [here](#)).

Because the 118th legislative landscape is changing in real-time and Congress.gov leaves less to be desired as an informational resource, I will likely be missing proposals or behind as I wait for text/markups, etc.

Reach out if you have updates to flag (or if you have the text I am missing): annalenhart@gwu.edu

Creation of New Agencies (and Licensing Regimes)

Over the last few Members have proposed new agencies to oversee issues with data. The challenge they aim to solve is often capacity and speed – technology regulation requires a body of experts that can ongoingly update rules. Recent hearings on generative AI have resurfaced this idea of a new agency, specifically an agency with the power to grant licenses, certificates, and pre-approvals, like an "FDA for AI."

Reintroductions

(H.R. 2701) Online Privacy Act

- No major changes related to generative AI

(S.1671) Digital Platform Commission Act

- Includes a small update to the definition of *digital platform*, I'm not sure it changes the meaning significantly, it still reads like the aim is platforms that connect users (a service in which one user uses a chatbot may evade coverage)
  - *IN GENERAL.—The term "digital platform" means an online service that serves as an intermediary facilitating interactions—(i) between users; and (ii) between users and—(I) entities offering goods and services through the online service; or (II) the online service with respect to goods and services offered directly by the online service, including content primarily generated by algorithmic processes.*

First Introduced this Congress

Sen.Blumenthal/Sen.Hawley Framework
Sen. Blumenthal, Sen. Hawley
Establishes an Independent Oversight Body to oversee the licensing of "sophisticated general-purpose A.I. models (e.g., GPT-4) or models used in high-risk situations (e.g., facial recognition)" Mentions ensuring "legal accountability for harms" (see S.1993) The framework also includes the use of trade policy to "limit the transfer of advanced A.I. models, hardware and related equipment, and other technologies to China, Russia, and other adversary nations, as well as countries engaged in gross human rights violations." The transparency requirements include model cards, researcher access to "data necessary to evaluate A.I. model performance" [I'm really excited to see that text], watermarks and a database of "significant adverse incidents"

Lastly, the framework mentions "right to human review" for critical decisions, consumer "control over how their personal data is used in A.I. systems" and "strict limits" on generative AI involving kids.

(S.2597) Digital Consumer Protection Commission Act of 2023
Sen. Warren, Sen. Graham
Creates a Commission-led agency to write, enforce (along with FTC/DOJ/States) and oversee a suite of laws regarding competition, data protection, and transparency. Most notably, Title IV creates an "Office of Licensing for Dominant Platforms" which grants licenses to "dominant platforms" to operate. Additionally, every year executives at the operator of the dominant platform must certify that they are in compliance with the transparency, data protection and competition, and national security provisions of the bill or risk losing their license. I wrote a 1000+ word post for Tech Policy Press on what this bill may mean for generative AI tools.

Councils, Commissions, Reports and Task Forces

Congress has a long history of writing bills that direct agencies to organize task forces and write reports. It is worth noting that in most cases, the President can create Interagency Task Forces and Federal Advisory Committees without Congress. Reviewing the reports and list of assessments in these proposals, there seems to be some overlap with efforts already put in place by the Advancing American AI Act (passed as part of 2023 NDAA) or by Division E of the National Defence Authorization Act for Fiscal Year 2021. Councils, commissions, and task forces can be a useful tools for bipartisan and interagency collaboration, but Members of Congress should be careful not to ask underfunded and understaffed agencies to do work that is already underway or complete. With that said, it seems that one of Congress' intents is to use these collaboratives and reports to potentially address long-term or existential threats (which seems reasonable at this moment in time).

Reintroductions

(not aware of any yet, most task force/council/report provisions pass as part of packages and often don't need to be reintroduced)

First Introduced this Congress

(S.1356) Assuring Safe, Secure, Ethical, and Stable Systems for AI Act" or the "ASSESS AI Act"

Sen. Bennet (D-CO)

Directs the President to appoint a task force to assess the privacy, civil rights, and civil liberties implications of artificial intelligence (referred to in this section as the "AI Task Force").

The task force includes representatives from major agencies including chief privacy and civil liberties officers from agencies, representative(s) from National Artificial Intelligence Advisory Committee's to:

- assess existing policy, regulatory, and legal gaps for artificial intelligence (referred to in this section as "AI") applications and associated data, as of the date of enactment of this Act; and
- make recommendations to Congress and the President for legislative and regulatory reforms to ensure that uses of artificial intelligence and associated data in Federal Government operations comport with freedom of expression, equal protection, privacy, civil liberties, civil rights, and due process.
- The assessments and recommendations should:
  - Address the application of Federal antidiscrimination laws to Federal Government use of AI;
  - Address the application of Federal disparate impact standards to Federal Government use of AI;
  - Address Artificial intelligence validation and auditing for Federal Government use of AI;
  - Address artificial intelligence risk and impact assessment reporting regarding Federal Government use of AI; and
  - Address institutional changes to ensure sustained assessment and recurring guidance on privacy and civil liberties implications of artificial intelligence applications, emerging technologies, and associated data;
- Recommendations should also include
  - baseline standards for Federal Government use of biometric identification technologies, including facial recognition, voiceprint, gait recognition, and keyboard entry technologies;
  - proposals to address any gaps in Federal law, including regulations, with respect to facial recognition technologies in order to enhance protections of privacy, civil liberties, and civil rights of individuals in the United States;
  - baseline standards for the protection and integrity of data in the custody of the Federal Government; and
  - best practices and contractual requirements to strengthen protections for privacy, information security, fairness, nondiscrimination, auditability, and accountability in artificial intelligence systems and technologies and associated data procured by the Federal Government; and
- Additional Assessment
  - whether existing and proposed AI regulations are appropriately balanced against

> critical law enforcement and national security needs;
> - ○ ongoing efforts to regulate commercial development and fielding of artificial intelligence and associated data in light of privacy, civil liberties, and civil rights implications, and, as appropriate, consider and recommend institutional or organizational changes to facilitate applicable regulation; and
> - ○ the utility of establishing a new organization within the Federal Government to provide ongoing governance for and oversight over the fielding of artificial intelligence technologies by Federal agencies as technological capabilities evolve over time, including—
>   - ■ the review of Federal funds used for the procurement and development of artificial intelligence; and
>   - ■ the enforcement of Federal law for commercial artificial intelligence products used in government.

(H.R.4223) National AI Commission Act

Rep. Lieu (D-CA), Rep. Buck (R-CO), Rep. Eshoo (D-CA), Rep. Wittman (R-VA)

Creates a Bipartisan Commission

Focus of the Commission:

"(1) in general, conduct its work to ensure, through its review and recommendations as described in this subsection, that through regulation the United States is mitigating the risks and possible harms of artificial intelligence, protecting the United States leadership in artificial intelligence innovation and the opportunities such innovation may bring, and ensuring that the United States takes a leading role in establishing necessary, long-term guardrails to ensure that artificial intelligence is aligned with values shared by all Americans;

(2) review the Federal Government's current approach to artificial intelligence oversight and regulation, including—

(A) how such oversight and regulation is distributed across agencies

(B) the capacity of agencies to address challenges relating to such oversight and regulation; and

(C) alignment among agencies in their approaches to such oversight and regulation

(3) recommend any governmental structures that may be needed to oversee and regulate artificial intelligence systems, including the feasibility of an oversight structure that can oversee powerful artificial intelligence systems with a general purpose through a careful, evidence-based approach; and

(4) build upon previous Federal efforts and international best practices and efforts to develop a binding

risk-based approach to regulate and oversee artificial intelligence applications through identifying applications with unacceptable risks, high or limited risks, and minimal risks"

(S.2293) AI Leadership To Enable Accountable Deployment Act" (AI LEAD Act)

Sen. Peters (D-MI), Sen. Cornyn (R-TX)

Directs OMB to establish a Chief Artificial Intelligence Officers Council.

Mandates that Agencies create a position for a "Chief Artificial Intelligence Officer" that then serves on an interagency council.

"The Council shall—

(1) promote coordination regarding agency practices relating to the design, acquisition, development, modernization, use, operation, sharing, risk management, and performance of artificial intelligence technologies;

(2) ensure interagency coordination regarding Federal artificial intelligence activities;

(3) share experiences, ideas, best practices, and innovative approaches relating to artificial intelligence; and

(4) assist the [OMB] as necessary, in—

(A) the identification, development, and coordination of multi-agency projects and other initiatives to improve Government performance; and

(B) the management of risks relating to developing, obtaining or using artificial intelligence, including by—

(i) promoting the development and use of efficient, common, and shared approaches to key processes that improve the delivery of services for the public; and

(ii) soliciting and providing perspectives on matters of concern to the Council, as appropriate, from and to [various other officer's councils], industry, academia, etc"

(H.R.3369) Artificial Intelligence Accountability Act

Rep. Harder (D-CA), Rep.Kelly (D-IL)

Directs the Assistant Secretary of Commerce for Communications and Information to conduct a study on accountability measures for artificial intelligence systems, which shall include an analysis of the following:

- How accountability measures are being incorporated into artificial intelligence systems used by communications networks (including telecommunications networks and social media platforms) and electromagnetic spectrum sharing applications.
- How accountability measures for artificial intelligence systems can facilitate the closing of the digital divide and assist the promotion of digital inclusion in the United States.
- How accountability measures may reduce risks related to artificial intelligence systems, including cybersecurity risks.
- The effectiveness of the most commonly used accountability measures for artificial intelligence systems.
- Barriers and challenges related to the creation of adequate accountability measures for artificial intelligence systems.

(H.R.4704, S.2399) Artificial Intelligence and Biosecurity Risk Assessment Act

Sen. Markey (D-MA), Sen. Budd (R-NC)

Directs the Assistant Secretary for Preparedness and Response "shall conduct risk assessments and implement strategic initiatives or activities to address whether technical advancements in artificial intelligence, such as open-source artificial intelligence models and large language models, can be used intentionally or unintentionally to develop novel pathogens, viruses, bio-weapons, or chemical weapons."

(S.2346) Strategy for Public Health Preparedness and Response to Artificial Intelligence Threats
Sen. Markey (D-MA), Sen. Budd (R-NC)
Directs the Secretary of Health and Human Services to consult with experts and stakeholders to prepare and submit a report outlining "a strategy for public health preparedness and response and biodefense to address the risks of misuse of artificial intelligence that present a threat to national health security

Risk Assessment & Transparency

Last Congress included first of their kind transparency and risk assessment proposals, but none included specifics on training data transparency or red teaming for general purpose AI. Additionally, the researcher access bills all focused on social media. It will be interesting to see if transparency provisions specific to generative AI tools come out in the next few months.

Reintroductions

(S.2892, H.R.5628) Algorithm Accountability Act

- No major changes related to generative AI (but to be clear, this bill is a very important part of the AI accountability conversation, check out how I think it applies to generative AI tools in my 117th analysis)

(H.R.4568, S.2225) Terms-of-service Labeling, Design and Readability Act (TLDR Act)

- No major changes related to generative AI but I wrote about how Section 2(e) has the potential to make any disclosures related to algorithms/data processing easier to study, track and compare.

(S.483) Internet Platform Accountability and Consumer Transparency Act (Internet PACT Act) (slight name change from past Congress')

- No major changes related to generative AI

(S.1876) Platform Accountability and Transparency Act (PATA)

- No major changes related to generative AI

(S.2325, H.R. 4624) Algorithmic Justice and Online Platform Transparency Act

- No major changes related to generative AI

First Introduced this Congress

| (S.2765) Advisory for AI-Generated Content Act |
| --- |
| Sen. Ricketts (R-NE) |
| Mandates that an *"AI-generating entity"* include watermarks on *"covered AI-generated material"* where covered material centers around impersonation.

 The bill's definitions are interesting because "artificial intelligence" is not defined and therefore could potentially include any automated or logic-based processing (automatic photo lighting adjustment?).

 (1) AI-GENERATING ENTITY.—The term "AI-generating entity" means an entity that generates, creates, or otherwise produces AI-generated material.

 (2) AI-GENERATED MATERIAL.—The term "AI-generated material" means artificial intelligence technology that can produce various types of content, including text, images, audio, or synthetic data.

 (4) COVERED AI-GENERATED MATERIAL.—The term "covered AI-generated material" means AI-generated material that—

 (A) impersonates a specific individual or group of individuals;

 (B) is represented as original material by the AI-generating entity that produced the material, including with respect to artwork, songs, or news media; or

 (C) meets such criteria as the Commission may establish. |
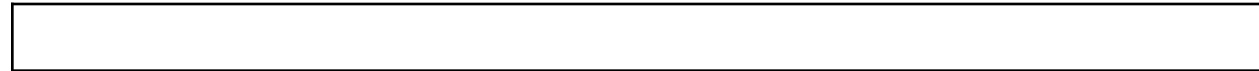
(S.3003) Post Office Services for Trustworthy Identity (POST ID) Act

Sen Cassidy (R-LA) and Sen Wyden (D-OR)

Creates a service to help businesses/individuals conduct identity verification

From the one pager:

- *Allows, but does not require, the USPS to offer identity verification and related service to the private sector, building on their existing capabilities which are currently available only to government agencies.*
- *Authorizes USPS to issue authenticators to verified individuals, such as physical security keys, for use in future interactions.*
- *Authorizes the USPS to conduct identity proofing at any USPS location, or through their authorized employees at any other location, such as the home of the individual being verified.*
- *Subject to the consent of the individual being verified, allows for enrollment in or creation of digital accounts or systems as may be convenient for the individual, including concurrent enrollment in multiple accounts or systems.*

Schumer's SAFE Innovation Framework

Sen. Schumer + AI Caucus(?)

Honestly, this "framework" lacks reference to concrete policies. With that said, there is an explicit call out to some sort of transparency such as a nod to the "public needs to know about an AI system, data, or content"

([H.R. 3044](#), [S.1596](#)) Require the Exposure of AI–Led Political Advertisements Act" or the "REAL Political Advertisements Act"

Rep. Clarke (D-NY), Sen. Klobuchar (D-MN)

The bill expands the definition of communications under existing FEC regulations and includes qualified political advertisement.

If a communication described in [the updated definition] contains an image or video footage that was generated in whole or in part with the use of artificial intelligence (generative AI), the communication shall include, in a clear and conspicuous manner, a statement that the communication contains such an image or footage.

Goes on to describe requirements for text or graphic communications, audio communication and video communications

"(B) QUALIFIED POLITICAL ADVERTISEMENT.—For purposes of this paragraph, the term 'qualified political advertisement' means any advertisement (including search engine marketing, display advertisements, video advertisements, native advertisements, and sponsorships) that—

"(i) is made by or on behalf of a candidate; or

"(ii) communicates a message relating to any political matter of national importance, including—

"(I) a candidate;

"(II) any election to Federal office; or

"(III) a national legislative issue of public importance. [this last part broadens the scope considerably]

Relation to previous work: This bill is a narrowly tailored version of Clarke's [DEEP FAKE Accountability Act](#) (which the Congresswoman introduced last Congress, well before generative AI was in the zeitgeist). By narrowing it, she is able to highlight a forthcoming concern and place the bill in the House Admin jurisdiction. However, like with other ad disclosure policies, by sticking with political ads under FEC's framework the bill leaves out a wide range of political content, whereas DEEP FAKE Accountability Act mandates disclosures on all doctored content, including watermarking in generative AI tools.

(H.R.3831) AI Disclosure Act of 2023

Rep. Torres (D-NY)

Requires Generative artificial intelligence (no definition in the bill text) to include on any output generated by such artificial intelligence the following: "Disclaimer: this output has been generated by artificial intelligence."

(S.2691) AI Labeling Act of 2023

Sen. Schatz (D-HI), Sen. Kennedy (R-LA)

Mandates disclosures on AI generated content.

"Each generative artificial intelligence system that, using any means or facility of interstate or foreign commerce, produces image, video, audio, or multimedia AI-generated content shall include on such AI-generated content a clear and conspicuous disclosure"

Requirements include:

- *The disclosure shall include a clear and conspicuous notice, as appropriate for the medium of the content, that identifies the content as AI-generated content.*
- *The output's metadata information shall include an identification of the content as being AI-generated content, the identity of the tool used to create the content, and the date and time the content was created.*
- *The disclosure shall, to the extent technically feasible, be permanent or unable to be easily removed by subsequent users.*

The bill includes provisions for AI-generated text:

"Each artificial intelligence system that, using any means or facility of interstate or foreign commerce, produces text AI-generated content (including through an artificial intelligence chatbot) shall include a

clear and conspicuous disclosure that identifies the content as AI-generated content and that is, to the extent technically feasible, permanent or unable to be easily removed by subsequent users."

The bill recognizes that generative AI tools will be have both a direct to consumer business model and a business to business (B2B) to consumer model and obliges developers of generative AI systems to *"implement reasonable procedures to prevent downstream use of such system without the disclosures required"* by:

- *requiring by contract that end users and third-party licensees of the system refrain from removing any required disclosure;*
- *requiring certification that end users and third-party licensees will not remove any such disclosure; and*
- *terminating access to the system when the entity has reason to believe that an end user or third-party licensee has removed the required disclosure.*

In the case of B2B applications, similar obligations fall to third-party licenses, which must *"implement reasonable procedures to prevent downstream use of such system without the disclosures required under this section, including by:"*

- *requiring by contract that users of the system refrain from removing any required disclosure;*
- *requiring certification that end users will not remove any such disclosure; and*
- *terminating access to the system when the third-party licensee has reason to believe that an end user has removed the required disclosure.*

[I'm assuming the points above can be achieved through a terms of service, which highlights the importance of ToS readability, see TLDR Act]

Lastly the bill creates a "AI-Generated Content Consumer Transparency Working Group"

Relation to previous work: This is the first bipartisan bill aimed at labeling content from generative AI tools. The most notable difference when compared to Rep. Clarke's DEEP FAKE Accountability Act (which the Congresswoman introduced last Congress, well before generative AI was in the zeitgeist) is that the responsibility for ensuring users do not remove the disclosures falls to the developers and third party providers of generative AI tools. DEEP FAKE Accountability Act includes a criminal penalty for "Whoever knowingly alters an advanced technological false personation record to remove or meaningfully obscure the disclosures."

(S.1801, H.R.3806) Language-Inclusive Support and Transparency for Online Services (LISTOS) Act

Rep. Lujan (D-NM), Rep.Cardenas (D-CA)

LISTOS as an adjective in Spanish means *smart/cleaver* and as a verb means *ready*, nicely done staff who named the bill!

Mandates transparency regarding disparities in content moderation policy enforcement across languages:

- Mandates that platforms (see my interpretation of that definition below) report on content moderation staffing (location, language proficiency) and how content moderation staff are supported (training, mental health support, difference among regions and languages spoken)
- Mandets reporting of performance metrics to ensure content moderation decisions (automated or otherwise) are consistent across languages
- Includes additional reporting on monetization across languages, in-language review, translation and review processes, content moderation outcome measures by language
- Mandates that covered platforms provide user tools and platform policies in all languages in which the platform offers its services
- Authorizes funding for the United States Agency for International Development (USAID) to research the prevalence and impact of online hate, abuse, and misinformation in non-English languages.

"(2) COVERED PLATFORM.—The term "covered platform" means a website, internet application, or mobile internet application that—
*(A) allows users to create, share, view, **or** search for **and access user-generated or third party content**, including a social media platform, online search engine, and a service with direct or group messaging capabilities; and*
(B) has had at least 10,000,000 monthly active users for 3 or more of the past 12 months within the United States."

My understanding is that this definition is only meant to cover platforms that disseminate user generated content but I could see a world where a court interprets "access" not as access to the original user generated or third party content but as a call to an underlying model informed by user generated or third party content (generative AI tools). I suggest the sponsors clarify this definition.

To be clear, generative AI tools do content moderate (they call it curation in part to distance themselves from social media) but curation takes place within the training data used to create the base LLM, the models that may be integrated with the base LLM and the often fine-tuned applications built on top of

base models. It is well understood that LLMs work best for English language users and reporting on these discrepancies could be useful but will require a different bill structure that recognizes the layers of curation within a generative AI tool.

Assuming this bill only covers interactive computer services (dissemination of user generated content) it would play an important role in ensuring that platforms are monitoring the prevalence of synthetic media in a range of language and cultural contexts.

Data Protection

This country STILL needs a comprehensive privacy law. Given the challenges at the federal level, many states have passed new laws. I have not been able to review their definitions to understand their impact on generative AI tools, but there are the questions to consider when reviewing any data protection bills:

- What is included in the definition of personal information?
    - Information that is reasonably linkable (would it include generative AI prompts)?
    - Public data (often scraped for training data)?

- What provisions are tied to personal information (transparency, data portability, deletion rights, security, etc)?

- Is there a Duty of Care? Or language to suggest that covered entities are responsible for minimizing and protecting personal information?

- Is there a Duty of Loyalty? Or language to suggest that covered entities can only use data in ways that users expect and would not cause the user harm?
    - Would covered entities be responsible for harms (financial, physical, reputation, discrimination) to consumers caused by processing their personal information (processing a generative AI prompt)?
    - Would covered entities be able to use data created in the context of an internet forum, mobile application, etc for something totally different like training an LLM without expressed consent?

NOTE: Many members introduce bills related to data protection in specific sectors such as health care or education, I am not including sector-specific privacy bills but chances are they would impact the use of generative AI tools.

Reintroductions

(S.744) Data Care Act of 2023

- No major changes related to generative AI

(H.R. 2801) Protecting the Information of our Vulnerable Adolescents Children and Youth Act (Kids PRIVACY)

- No major changes related to generative AI.
- They figured out how to add the "A" to the acronym which I think we all appreciate.

(S.1418) Children and Teens' Online Privacy Protection Act

- The version of COPPA 2.0 reintroduced on May 3, 2023 was similar to the version from the 117th, however on July 27, 2023 the bill was modified (see redline from friends at FPF)
- No meaningful changes related to generative AI tool, however, the Committee added clarity regarding audio data that includes a stipulation that audio files can only be used for "the stated purpose" and immediately deleted (impacts training data)

First Introduced this Congress

(not aware of any yet)

Product Design Considerations (and Bright Line Restrictions)

Over the last few Congresses' Members have proposed laws that mandate or restrict features of online platforms or suggest that operators of online tools face product liability. With the emergence of generative AI tools, there has been a heightened focus on the need for "bright lines" – areas where AI is simply not allowed: Children? Weapons? etc.

Reintroductions

(S.1409) Kids Online Safety Act (KOSA)

- The version of KOSA reintroduced on May 2, 2023, was similar to the version from the 117th, however on July 27, 2023 the bill was modified (see IAPP and FPF's redline here).
- The definition of covered platform has narrowed and no longer includes "an online platform that connects to the internet." And online platform seems to only cover social media or services that

"predominantly provides a community forum for user generated content." This likely means the provisions of the bill no longer cover generative AI tools
  ● But, similar to other social media-centered bills, the provisions may address concerns regarding the proliferation of AI generated content on social media platforms

(S.2708) Deceptive Experiences to Online Users Reduction (DETOUR) Act
  ● Many definitions have been added/refined but the overall goal of mandating that large online services do not design user interfaces to impair user autonomy remains

(H.R. 5534) Banning Surveillance Advertising Act of 2023
  ● No major changes related to generative AI.

First Introduced this Congress

(S.2770) Protect Elections from Deceptive AI Act
Sen. Klobuchar (D-MN), Sen. Hawley (R-MO), Sen. Coons (R-ME), Sen. Collins (R-ME)
Amends the Federal Election Campaign Act by adding a prohibition on distribution of materially deceptive AI-generated audio or visual media. *Except as provided in subsection (c), a person, political committee, or other entity may not knowingly distribute materially deceptive AI-generated audio or visual media of a covered individual, or in carrying out a Federal election activity, with the intent to—(1) influence an election; or (2) solicit funds.* Definition of "deceptive AI-generated audio or visual media" *The term 'deceptive AI-generated audio or visual media' means an image, audio, or video that—* *"(A) is the product of artificial intelligence or machine learning, including deep learning techniques, that—* *"(i) merges, combines, replaces, or superimposes content onto an image, audio, or video, creating an image, audio, or video that appears authentic; or*

"(ii) generates an inauthentic image, audio, or video that appears authentic; and

"(B) a reasonable person, having considered the qualities of the image, audio, or video and the nature of the distribution channel in which the image, audio, or video appears—

"(i) would have a fundamentally different understanding or impression of the appearance, speech, or expressive conduct exhibited in the image, audio, or video than that person would have if that person were hearing or seeing the unaltered, original version of the image, audio, or video; or

"(ii) would believe that the image, audio, or video accurately exhibits any appearance, speech, or expressive conduct of a person who did not actually exhibit such appearance, speech, or expressive conduct.

Part (A)(i) is really interesting and seems to blur into advanced image/audio/video editing as opposed to image/audio/video generated solely by a prompt. Notably, this definition does not include text-based content.

Relation to previous work: Earlier this year Rep. Clarke and Sen. Klobuchar introduced the [REAL Political Advertisements Act](#)which mandates labels (see transparency section) on content created with generative AI tools

---

(S.1865) Transparent Automated Governance Act (TAG Act)

Senator Peters (D-MI), Senator Braun (R-IN), Senator Lankford (R-OK)

Requires agencies to provide "disclosure and opportunity for appeal when using certain automated systems and augmented critical decision processes."

The Director of OMB issues guidance to agencies regarding the required appeals process including what notices to the public should look like, how an appeals process could work, processes for alternative review independent of the augmented critical decision process, etc

Where

(2) AUGMENTED CRITICAL DECISION PROCESS.—The term "augmented critical decision process" means the use by an agency, or by a third party on behalf of the agency, of an automated system to determine or substantially influence the outcomes of critical decisions.

(4) CRITICAL DECISION.—The term "critical decision" means an agency determination, including the assignment of a score or classification, related to the status, rights, property, or well-being of specific individuals or groups, the outcome of which—

(A) is likely to meaningfully differ from one individual or group to another; and

(B) meaningfully affects access to, or the cost, terms, or availability of—

(i) education and vocational training;

(ii) employment;

(iii) essential utilities, including electricity, heat, water, and internet;

(iv) transportation;

(v) any benefits or assistance under any Federal public assistance program or under any State or local public assistance program financed in whole or in part with Federal funds;

(vi) financial services, including access to credit or insurance;

(vii) asylum and immigration services;

(viii) healthcare;

(ix) housing, lodging, or public accommodations; and

(x) any other service, program, or opportunity a determination about which would have a legal, material, or significant effect on the life of an individual, as determined by the Director.

Relation to previous work: This proposal builds off of the Senator's work on the Advancing American AI Act (S.1353) [Passed as part of the 2023 NDAA] in the 117th which requires specified federal agencies to take steps to promote artificial intelligence (AI) while aligning with U.S. values, such as the protection of privacy, civil rights, and civil liberties, including risk considerations, it also mandated that prepare and maintain an inventory of AI systems (available here)

(S.1993) To waive immunity under section 230 of the Communications Act of 1934 for claims and charges related to generative artificial intelligence

Sen. Hawley (R-MO), Sen. Blumenthal (D-CT)

Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended—

(1) in subsection (e), by adding at the end the following:

"(6) NO EFFECT ON CLAIMS RELATED TO GENERATIVE ARTIFICIAL INTELLIGENCE.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit any claim in a civil action or charge in a criminal prosecution brought under Federal or State law against the provider of an interactive computer service if the conduct underlying the claim or charge involves the use or provision of generative artificial intelligence by the interactive computer service."; and

(2) in subsection (f), by adding at the end the following:

"(5) GENERATIVE ARTIFICIAL INTELLIGENCE.—The term 'generative artificial intelligence' means an artificial intelligence system that is capable of generating novel text, video, images, audio, and other media based on prompts or other forms of data provided by a person."

Relation to previous work: There have been a few Section 230 carve-out proposals aimed at holding platforms accountable for algorithmically promoted content but this is the first I know of focused on the "use or provision" of AI.

(S.1291) Protecting Kids on Social Media Act

Sen. Schatz (D-HI), Sen. Cotton (R-AR), Sen.Murphy (D-CT), Sen. Britt (R-AL)

The bill prohibits children under the age of 13 from using social media, users under 18 need parental

consent, and prohibits the use of recommender systems to users under 18.

The definition of Social Media Platform is an online application that "allows users to create accounts to publish or distribute to the public or to other users text, images, videos, or other forms of media content." I do not think this will include stand-alone generative AI tools but it would limit teen's interaction with content generated by AI and disseminated on social media platforms.

(S.1626) AI Shield for Kids Act (ASK Act)

Sen.Scott (R-FL)

Forbids an entity from offering "a minor (under 18) user of the product any artificial intelligence feature, including an artificial intelligence chat feature, as part of the product unless a parent or guardian of the minor user affirmatively grants consent to accept that artificial intelligence feature on behalf of the minor user"

(H.R.2894, S.1394) Block Nuclear Launch by Autonomous Artificial Intelligence Act of 2023

Rep. Lieu (D-CA), Rep. Buck (R-CO), Sen. Markey (D-MA),

Prohibits the use of federal funds to use an autonomous weapons system that "is not subject to meaningful human control" to launch a nuclear weapon.

(H.R.4611) Candidate Voice Fraud Prohibition Act

Rep. Espaillat (D-NY), Rep. Carson (D-IN)

[ban on voice prints created with generative AI in political communication]

Prohibits *"materially deceptive audio generated by artificial intelligence which impersonate a candidate's voice and are intended to injure the candidate's reputation or to deceive a voter into voting against the candidate"*

Specifically, *"no person, political committee, or other entity may distribute such a communication if the communication [defined in the bill]—*

(1) contains materially deceptive audio generated by artificial intelligence which impersonates a candidate's voice;

(2) is distributed with actual malice;

(3) is intended to injure the candidate's reputation or to deceive a voter into voting against the candidate; and

(4) is distributed—

(A) within 90 days of a general, special, or runoff election of the office sought by the candidate; or

(B) within 60 days of a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate for the office sought by the candidate."

Where *"the term 'generated by artificial intelligence' means audio or video audio that is created, in whole or in part, by a computer-based learning algorithm that is able to successfully mimic the pitch, pace, and tone, or any combination thereof, of an actual person's voice."*

AI for the Public Benefit

Many lawmakers have come to understand that artificial intelligence capabilities could offer benefits for the public and that the government plays a role in funding research or applications that otherwise may not be addressed by the private market.

Reintroductions

(H.R.1024) Humane and Existing Alternatives in Research and Testing Sciences Act of 2022" or the "HEARTS Act of 2022" (But it was introduced in 2023)

Rep. Pappas (D-NH), Rep. Calvert (R-CA)

The version from the 117th did not include any mention of AI.

Establishes the National Center for Alternatives to Animals in Research and Testing within National Institutes of Health

The Center shall *"(1) provide assistance (including funding) to federally funded researchers to incentivize the development and qualification of nonanimal methods, such as advanced cell cultures or technology such as 3D organoids, microphysiological systems, induced pluripotent adult stem cell models, in silico modeling, advanced imaging systems, artificial intelligence, and other innovative methods"*

First Introduced this Congress

(H.R. 2980) DOE and NSF Interagency Research Act

Rep. Stevens (D-MI), Rep. Baird (R-IN)

Directs the Department of Energy and National Science Foundation to collaborate on a range of research projects including:

"modeling and simulation, machine learning, artificial intelligence, data assimilation, large-scale data analytics, predictive analysis, and advanced computational, storage, and networking capabilities in order to optimize algorithms for purposes related to energy and climate"

[(H.R.1713](#)) DOE and USDA Interagency Research Act

Rep. Lucas (R-OK), Rep. Lofgren (D-CA)

Directs the Department of Energy and Department of Agriculture to collaborate on a range of research projects including:

"modeling and simulation, machine learning, artificial intelligence, data assimilation, large scale data analytics, and predictive analysis in order to optimize algorithms for purposes related to agriculture and energy, such as life cycle analysis of agricultural or energy systems"

[Cassidy's HELP Committee Report/Framework-ish](#)

Sen.Cassidy

The Senate Health, Education, Labor & Pensions Staff recently released a report that argues that *"as the U.S. Senate begins to consider legislation to address AI, we must account for the specific context in which AI's capabilities are applied. **A sweeping, one-size-fits-all approach for regulating AI will not work and will stifle, not foster, innovation"***

It goes on to lay out the potential benefits and risks to various applications of AI ("computers, or computer-powered machines, exhibiting human-like intelligent capabilities") in medicine, education and the workforce, including interactions with existing laws.

[(H.R. 5077)](#) Creating Resources for Every American To Experiment with Artificial Intelligence Act of 2023 (CREATE AI Act)

Rep.Eshoo (CA-16), Rep.McCaul (TX-10), Rep.Beyer (VA-08), Rep.Obernolte (CA-23), Sen.Heinrich (D-NM), Sen.Young (R-IN), Sen.Booker (D-NJ), and Sen.Rounds (R-SD**)**

Establishes the National AI Research Resource (NAIRR) which has a range of goals:

"(1) spur innovation and advance the development of safe, reliable, and trustworthy artificial intelligence research and development;

(2) improve access to artificial intelligence resources for researchers and students of artificial intelligence, including groups historically underrepresented in STEM;

(3) improve capacity for artificial intelligence research in the United States; and

(4) support the testing, benchmarking, and evaluation of artificial intelligence systems developed and deployed in the United States."

Namely, the NAIRR provides researchers (higher ed, non-profits, federally funded agencies) with computational resources, datasets, educational tools and AI testbeds (collaboration with National Institute of Standards and Technology)

Relation to previous work: This proposal is a direct result of the NAIRR Task Force Act, which became law in the FY2021 National Defense Authorization Act. The legislation established a task force to develop a detailed roadmap for the development of a national AI resource for AI research. This January, the NAIRR Task Force released its final report with a roadmap for standing up a national research infrastructure. The *CREATE AI Act* includes many of the recommendations of the NAIRR Task Force.

(H.R.206) Healthy Technology Act

Rep. Schweikert (R-AZ)

Federal Food, Drug, and Cosmetic Act so that 'practitioner licensed by law to administer such drug' includes artificial intelligence and machine learning technology that are:

"(A) authorized pursuant to a statute of the State involved to prescribe the drug involved; and (B) approved, cleared, or authorized under section 510(k), 513, 515, or 564." (various types of FDA approval)

Competition in Digital Markets

The 117th Congress was filled with historic competition reform proposals. The politics have shifted since Rep. Cicilline's departure from the House. It will be interesting to see if the generative AI craze invigorates concerns over market powers (particularly in the cloud market).

Reintroductions

(S.2033) American Choice and Innovation Online Act

- No major changes related to generative AI.

First Introduced this Congress

(not aware of any yet)

Government Procurement of AI

In recent months there has been more discussion about adding guardrails into the government's process for procuring AI (generative AI tools and critical decisions systems). Again, this is **not a new policy idea**. There were a few proposals last Congress which I grouped as "risk assessment and transparency."

S.1353 Advancing American AI Act which became law last Congress directed *"Secretary of Homeland Security, with the participation of the Chief Procurement Officer, the Chief Information Officer, the Chief Privacy Officer, and the Officer for Civil Rights and Civil Liberties of the Department and any other person determined to be relevant by the Secretary of Homeland Security, shall issue policies and procedures for the Department related to—(A) the **acquisition and use of artificial intelligence**; and (B) considerations for the risks and impacts related to artificial intelligence-enabled systems, including associated data of machine learning systems, to ensure that full consideration is given to—(i) the privacy, civil rights, and civil liberties impacts of artificial intelligence-enabled systems; and (ii) security against misuse, degradation, or rending inoperable of artificial intelligence-enabled systems"*

Additionally, H.R. 4468, Artificial Intelligence for Agency Impact Act, a proposal introduced by Rep. Maloney (D-NY) in the House directs the head of select agencies to *"establish an AI Strategy, Objectives, and Metrics Plan that contains strategies, objectives, and metrics for the trustworthy adoption of artificial intelligence by the agency to better achieve the mission of the agency to serve the people of the United States."*

This Congress has already seen a few proposals related to procurement, listed in other sections above.

LEAD Act directs *"The head of each agency shall establish an artificial intelligence strategy for the trustworthy adoption of artificial intelligence by the agency to better achieve the mission of the agency to serve the people of the United States." which includes "How the agency will work with the private sector to ensure that procured artificial intelligence systems or capabilities include protections to safeguard the rights and safety of individuals and to secure Federal Government data and other information."*

TAG Act directs the Director of OMB to issue guidance *"with respect to automated systems that contribute to augmented critical decision processes and interact with the public, guidance for how agencies shall design, develop, procure, or update those automated systems to provide plain language notice to individuals not later than the time and at the place of interaction with such an automated system that they are interacting with such an automated system"*

(S.1577) Oversee Emerging Technology Act
Sen. Bennet (D-CO)
Requires nearly every agency to designate a senior leader as an "emerging technology lead" to: "(1) advise the covered agency on the responsible use of emerging technologies, including artificial intelligence;   (2) provide expertise on responsible policies and practices;   (3) collaborate with interagency coordinating bodies; and   (4) provide input for procurement policies."

NDAA FY 2024

The NDAA always has a few provisions related to AI. Many Members who lead on the bills described above are trying to get their proposals into the NDAA FY 2024.

The Federation of American Scientists is tracking the NDAA Amendments here.

(S.3050) Artificial Intelligence Advancement Act of 2023

Sen. Rounds (R-SD), Sen. Schumer (D-NY), Sen. Young (R-IN), Sen. Heinrich (D-NM)

This text combines a handful of ideas introduced by the Senators as NDAA Amendments back in July:
- Report on Artificial Intelligence Regulation in Finacial Services Industry
- Artificial Intelligence Bug Bounty Programs
- Vulnerability Analysis Study for Artificial Intelligence- Enabled Military Applications
- Report on Data Sharing and Coordination

(S.2103, H.R.3932) Intelligence Authorization Act for Fiscal Year 2024

Key Committee Leaders throughout the NDAA process

Subtitle B includes a few AI provisions of note.

SEC. 511 expands the "annual assessment of economic and technological capabilities of the People's Republic of China." to include:

"(I) A detailed assessment, prepared in consultation with all elements of the working group—

"(i) of the investments made by the People's Republic of China in—(I) artificial intelligence; (II) next-generation energy technologies, especially small modular reactors and advanced batteries; and (III) biotechnology;"

The report should identify the "competitive practices of the People's Republic of China " relating to these technologies.

SEC. 514. Outlines policies to be "established by Director of National Intelligence for artificial intelligence capabilities."

"(1) IN GENERAL.—In carrying out subsection (a)(1), not later than 1 year after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2024, the Director of National Intelligence, in consultation with the heads of the elements of the intelligence community, shall establish the policies described in paragraph (2).

"(2) POLICIES DESCRIBED.—The policies described in this paragraph are policies for the acquisition, adoption, development, use, coordination, and maintenance of artificial intelligence capabilities that—

"(A) establish a lexicon relating to the use of machine learning and artificial intelligence developed or acquired by elements of the intelligence community;

"(B) establish guidelines for evaluating the performance of models developed or acquired by elements of the intelligence community, such as by—

"(i) specifying conditions for the continuous monitoring of artificial intelligence capabilities for performance, including the conditions for retraining or retiring models based on performance;

"(ii) documenting performance objectives, including specifying how performance objectives shall be developed and contractually enforced for capabilities procured from third parties;

"(iii) specifying the manner in which models should be audited, as necessary, including the types of documentation that should be provided to any auditor; and

"(iv) specifying conditions under which models used by elements of the intelligence community should be subject to testing and evaluation for vulnerabilities to techniques meant to undermine the availability, integrity, or privacy of an artificial intelligence capability;

"(C) establish guidelines for tracking dependencies in adjacent systems, capabilities, or processes impacted by the retraining or sunsetting of any model described in subparagraph (B);

"(D) establish documentation requirements for capabilities procured from third parties, aligning such requirements, as necessary, with existing documentation requirements applicable to capabilities developed by elements of the intelligence community and, to the greatest extent possible, with industry standards;

"(E) establish standards for the documentation of imputed, augmented, or synthetic data used to train any model developed, procured, or used by an element of the intelligence community; and

"(F) provide guidance on the acquisition and usage of models that have previously been trained by a third party for subsequent modification and usage by such an element.

SEC. 515. Directs the president to create a "strategy for submittal of notice by private persons to Federal agencies regarding certain risks and threats relating to artificial intelligence."

(b) Strategy required.—Not later than 180 days after the date of the enactment of this Act, the President shall establish a strategy by which vendors and commercial users of artificial intelligence systems, as well as independent researchers and other third parties, may effectively notify appropriate elements of the United States Government of—

(1) information security risks emanating from artificial intelligence systems, such as the use of an artificial intelligence system to develop or refine malicious software;

(2) information security risks such as indications of compromise or other threat information indicating a compromise to the confidentiality, integrity, or availability of an artificial intelligence system, or to the supply chain of an artificial intelligence system, including training or test data, frameworks, computing environments, or other components necessary for the training, management, or maintenance of an artificial intelligence system;

(3) biosecurity risks emanating from artificial intelligence systems, such as the use of an artificial intelligence system to design, develop, or acquire dual-use biological entities such as putatively toxic small molecules, proteins, or pathogenic organisms;

(4) suspected foreign malign influence (as defined by section 119C of the National Security Act of 1947 ([50 U.S.C. 3059(f)](50 U.S.C. 3059(f)))) activity that appears to be facilitated by an artificial intelligence system; and

(5) any other unlawful activity facilitated by, or directed at, an artificial intelligence system.

(c) Elements.—The strategy established pursuant to subsection (b) shall include the following:

(1) An outline of a plan for Federal agencies to engage in industry outreach and public education on the risks posed by, and directed at, artificial intelligence systems.

(2) Use of research and development, stakeholder outreach, and risk management frameworks established pursuant to provisions of law in effect on the day before the date of the enactment of this Act or Federal agency guidelines.

States

EPIC recently released [its report "State of State AI Policy"](#) for the most recent session.