



June 12, 2023

Travis Hall
National Telecommunications and Information Administration, U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4725
Washington, DC 20230

Re: Docket No. 230407-0093
AI Accountability Policy Request for Comment

Dear Mr. Hall,

Thank you for the opportunity to submit input to the National Telecommunications and Information Administration on how to develop a productive AI accountability ecosystem.

The [Investor Alliance for Human Rights](#) is a collective action platform for responsible investment that is grounded in respect for people's fundamental rights using international human rights frameworks include the [United Nation Guiding Principles on Business and Human Rights](#) and the [OECD Guidelines on Responsible Business Conduct](#) for Institutional Investors. Through our collaboration with civil society, we help to inform and equip investors with expertise and opportunities to address human rights risks (that underpins ESG and financial risks) in their investment activities, from pre-investment decision making through to post-investment stewardship of investment portfolios. We also coordinate actions asking policy makers and standard-setting bodies to create level playing fields for responsible business.

This comment focuses on the perspective of investors as stakeholders who want to be able to make rights-respecting investment decisions in companies that responsibly design, develop, provide, deploy and/or use AI systems within their direct business operations and value-chain relationships. The rapid development and deployment of technology including and in particular AI systems without comprehensive human right due diligence processes in place, has contributed to adverse human rights impact including, *inter alia*: the proliferation of misinformation and viral hate speech, increased levels of illegal surveillance including that which enables immigration policing, attacks on democracy, the censorship of dissident voices, and discrimination against marginalized communities, including racial and gender discrimination due to artificial intelligence and algorithmic bias, exacerbating systemic discrimination. **These harms have affected and continue to affect the financial, business, statutory, legal and reputational risks of companies and represent a real and ongoing risk to investors.**



The need for robust global regulations (for example, regulatory developments like in the EU with the Digital Services Act and the proposed AI Act) poised to incentivize and enable responsible development and use of AI that empowers users, communities, and society, rather than dividing and discriminating against them. The Investor Alliance for Human Rights coordinated Investor Statements in support of robust digital rights regulations including: the [Investor Statement relating to the proposed EU AI Act](#) and the [Investor Statement relating to the Digital Services Act](#).

While the development and use of AI has advanced and continues to have great potential to advance human rights and sustainable development, AI, and in particular the lack of transparency in AI models, can cause and contribute to actual and potential harms such as violations of privacy and freedom from discrimination.

The lack of trustworthy AI poses significant risks to society at large and can lead to reputational, financial, and business risks and losses for companies developing and/or deploying and using AI models and systems. Investors want to be able to make rights-respecting investment decisions in companies that responsibly design, provide, deploy and/or use AI models within their business operations and value-chain relationships. It is imperative that both investors and society are able to trust in the safety and credibility of this technology that holds respect of individuals' and communities' (in particular underserved and marginalized communities) human rights at its core. Particularly for responsible investors seeking long-term value creation and financial returns, establishing regulatory measures to enable trustworthy AI is critical.

Standard setting for companies who develop and/or deploy/use AI should be grounded in fundamental human rights principles as set out in international human rights laws and frameworks. In line with the United Nations Guiding Principles on Business and Human Rights, all companies engaging with this new technology should be expected to publicly commit to respecting human rights, conduct continuous human rights due diligence, and provide effective remedy for any adverse human rights impacts that may occur.

Adopt Mandatory Human Rights Due Diligence Requirements for Developing & Deploying AI Systems

Human rights due diligence processes are a critical and widely accepted part of ensuring the responsible design of products and services, and the conduct of rights-respecting business operations and decision-making that prevents and addresses adverse impacts on relevant stakeholders and rightsholders. This will enable businesses, in the case of AI developers, to develop and design safer products and services, and in the case of AI users (including government and related agencies), to prevent and mitigate harms that may occur from the deployment and use of such products and services.

Incorporating human rights impact assessments into the product and service life cycle will minimize exposure to potential liability, resulting in more stable and sustainable financial returns. Companies will focus on long-term value creation that benefits all relevant stakeholders of the business, including employees, users, communities, and society.



Mandatory HRDD should include:

- Ongoing human rights impact assessments (HRIAs) to identify and mitigate harms from AI systems and ensure the ongoing protection of and accountability to stakeholders and rights holders across the AI value chain. HRIAs should be undertaken by businesses and the public sector, both AI developers and AI users, at all stages of the product and service cycle - from design to deployment and end-use taking into account potential contexts for such use or misuse, and resultant unintended harms.
- A robust and clear methodology for a human rights impact assessment process that has specific criteria relevant to AI systems must be developed with the involvement of the digital rights experts including engagement with external stakeholders and rightsholders.
- Meaningful engagement with rights holders and civil society that is sensitive to all groups of society and takes into account the particular adverse impacts on individuals and groups who may be at heightened risk of harms due to marginalization, vulnerability, and/or intersectionality (whether based on gender identity, ethnicity, disability, age, sexual orientation, health, religion, or other protected classes) is critical to effectively identifying and responding to actual and potential harmful impacts.
- Human rights due diligence efforts, including human rights impact assessments, must be made public within a reasonable time after being conducted and completed by both private and public sector developers and users.

Mandate Stakeholder & Rightsholder Participation

An accessible and effective mechanism for meaningful stakeholder engagement in developing, implementing and enforcing regulatory measures to enable trustworthy AI is critical. Establishing ongoing engagement and discussion with an advisory group of external stakeholders and civil society organizations to serve as a 'bridge' between the regulators and broader civil society and other stakeholders, thereby operationalizing meaningful stakeholder engagement that is safe, ongoing, inclusive, participatory, and widely accessible.

Prohibitions on AI models and systems posing Unacceptable Risks and High Risks

In developing regulations to enable trustworthy AI, it is important to also prohibit the use of AI that pose an unacceptable and high risk of violating human rights. Examples of such risks include:

- Subliminal, manipulative, exploitative techniques that causes or is likely to cause the person or another person physical or psychological harms.



- Real-time remote biometric identification systems in publicly accessible spaces to all AI providers and users including law enforcement, and both public and private sector actors.
- All forms of social scoring including the use of [biometric categorization systems](#) to track, categorize, and judge people in publicly accessible spaces; or to categorize people based on protected characteristics (for example, ethnic origin, race, disability, sexual orientation) in any circumstances.
- ‘Predictive policing’, i.e. AI systems used by [law enforcement and criminal justice authorities to make predictions](#), profiles, or risk assessments for the purpose of predicting crimes; or AI-based individual risk assessment and [profiling systems in the migration context](#).

Implement Safeguards for AI systems for Law Enforcement / National Security Purposes

Broad exemptions on the development and use of AI systems for national security purposes must be scrutinized to ensure that use by military, law enforcement, and other public or private entities using AI systems for national security purposes do not override the rule of law and fundamental rights.

The use of “security” technology has been known to infringe upon human rights including through, inter alia, targeting of protestors (e.g., via biometric recognition); having a chilling effect on the exercise of people’s rights or resulting in the silencing of dissenting and opposition voices (e.g., through removal of “terrorist” content on the internet); or where technology designed for security and military arenas is re-deployed for public and civil use (e.g., use of surveillance tools to adhere to pandemic rules) without assessing adverse and harmful impact, even if unintended.

Remedy and Accountability

Any regulation must ensure accountability for harms which businesses cause or contribute to and should enable and support the provision of adequate and effective remedy. Depending upon their connection to a harm, businesses should provide for, cooperate in, or use leverage to ensure remediation of adverse impacts of AI systems and products and services in their global value chains and within their operations. This would include:

- Right to an effective remedy for those whose rights under the AI Act have been infringed as a result of the putting into service of an AI system.
- Creation of a mechanism for individuals and public interest organizations to lodge a complaint with national supervisory authorities for a breach of regulations or other measures relating to AI systems that undermine fundamental rights or the public interest.

AI is a fast-moving domain, and regulations to be enacted must have clear mechanisms and processes to keep pace with technological development. Generating trust in AI technology will require a commitment to transparency, fairness and accountability, as well as a willingness to invest in developing robust



regulatory frameworks. The responsibility should be placed on companies and public sector entities developing and using AI systems to ensure that these products and services are not causing harm.

Conclusion

Investors as financial actors that provide the capital for the growth, development and deployment of AI and AI systems are important stakeholders in enabling trustworthy AI.

We believe the NTIA's efforts to create an AI accountability ecosystem are of great importance to investors, as supports a sustainable and resilient economy and democracy. We look forward to participating in the ongoing discussion on this issue.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Anita Dorett", is positioned below the "Yours sincerely," text.

Anita Dorett
Director, Investor Alliance for Human Rights