Before the
Office of Management and Budget
Executive Office of the President
Washington, DC

In re	
Request for Comments on a Draft Memorandum to the Heads of Executive Departments and Agencies, "Guidance for Regulation of Artificial Intelligence Applications"	Docket No. 2020-00261

COMMENTS OF THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to the request for comments published by the Office of Management and Budget (OMB) in the Federal Register at 85 Fed. Reg. 1,825 (Jan. 13, 2020), the Computer & Communications Industry Association (CCIA) submits the following comments regarding the Guidance for Regulation of Artificial Intelligence Applications.[1]

CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet services. CCIA's member companies employ almost one million workers and generate more than $540 billion in annual revenue.

I. Introduction

CCIA applauds the White House's forward-looking efforts to promote American innovation in artificial intelligence technologies, beginning with Executive Order 13859, Maintaining American Leadership in Artificial Intelligence.[2] The Executive Order launched an impressive strategy that has resulted in important work to maintain the nation's edge in technological development. As outlined in the Office of Science and

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[1] A list of CCIA members is available at https://www.ccianet.org/members.
[2] 84 Fed. Reg. 3,967, Feb. 14, 2019.

Technology Policy's recent annual report on the American Artificial Intelligence Initiative, the Administration has taken a comprehensive approach to policy issues relating to artificial intelligence, including investing in research and development, increasing access to quality datasets, developing standards, and training the workforce of the future.[3]   The breadth of these efforts demonstrates that there are many different policy issues implicated by the development of artificial intelligence technologies, and there are many different roles for the government to play in promoting and encouraging American leadership in these new technologies.

One important immediate step for the government to take to support the growth of artificial intelligence in the United States is to ensure a transparent and flexible regulatory environment that allows American companies to innovate freely. The principles that OMB has proposed in the Guidance for Regulation of Artificial Intelligence Applications provide a strong foundation for agencies to use to craft regulations while maintaining the regulatory certainty that companies need to innovate. As the draft memorandum correctly notes, not all new applications of artificial intelligence raise novel issues, and agencies should consider whether existing policies are sufficient before they rush to regulate. However, in cases where new regulations that affect artificial intelligence may be necessary, this guidance is an excellent place for agencies to begin thinking about the appropriate regulatory actions, and CCIA commends OMB on this thoughtful proposal.

II.   Regulations should prioritize maximizing the benefits of new technologies while minimizing the costs in a risk-based framework.

The guidance appropriately notes that the benefits of artificial intelligence applications must be weighed against potential costs when crafting regulations, and that these costs and benefits must also be compared to the existing systems that do not include artificial intelligence. As Executive Order 12866 notes, agencies should choose regulatory solutions that maximize benefits, including economic, environmental, public health, and safety benefits.[4]   According to estimates, artificial intelligence has the

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[3] Office of Sci. & Tech. Policy, American Artificial Intelligence Initiative: Year One Annual Report, Feb. 2020, https://www.whitehouse.gov/wp-content/uploads/2020/02/American-AI-Initiative-One-Year-Annual-Report.pdf.
[4] Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sep. 30, 1993).

potential to add $13-16 trillion to the global economy by 2030.[5] The United States has the potential to lead the world in artificial intelligence and reap the largest rewards. Areas like healthcare, transportation, and retail could experience large benefits from artificial intelligence. For example, artificial intelligence has the potential to transform the healthcare sector though data-driven diagnostics, identification of pandemics, and imaging diagnostics. The transportation sector is experiencing massive advancements in autonomous vehicles and semi-autonomous features in cars. Although there may be costs associated with some of these technologies, it is essential that government agencies prioritize the maximization of these extraordinary benefits for society as they craft regulation that may affect these technologies.

CCIA agrees with OMB's guidance that regulation of new technologies should be risk-based, and that not every imaginable risk requires mitigation. The aforementioned benefits of artificial intelligence applications are substantial and real, and regulation should only seek to mitigate risks that meet a threshold of magnitude and likeliness that is proportionate to the likely benefits of the technologies. This principle does not just apply to regulation of artificial intelligence; any new technology brings speculation of negative unintended consequences, and regulators should always seek to understand the reality of those risks before taking premature action. As OMB's guidance notes, it is critical that regulation avoid unjustifiably inhibiting innovation. As large as the benefits of artificial intelligence applications are, and as crucial as American leadership in artificial intelligence is to the nation's global competitiveness, an agency should not jeopardize innovation unless regulating is absolutely necessary.

III.   Flexibility is critical when regulating new technologies.

CCIA appreciates OMB's recommendation that regulatory and non-regulatory approaches to artificial intelligence applications should be flexible. The term "artificial

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[5] Mickensey Global Inst., *Notes from the AI Frontier: Modeling the Impact of AI on the World Economy* (Sept. 2018), at 13, https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Artificial%20Intelligence/Notes%20f rom%20the%20frontier%20Modeling%20the%20impact%20of%20AI%20on%20the%20world%20econo my/MGI-Notes-from-the-AI-frontier-Modeling-the-impact-of-AI-on-the-world-economy-September-2018.ashx; PWC, *Sizing the Prize: What's the Real Value of AI for Your Business, and How Can You Capitalize?*, at 3, https://www.pwc.com/gx/en/issues/analytics/assets/pwc-ai-analysis-sizing-the-prize-report.pdf.

intelligence" is very broad and the exact definition is a subject of controversy.[6] The term artificial intelligence is often used generally to refer to a large number of other specific technologies that incorporate artificial intelligence, including machine learning, robotics, computer vision, and facial recognition.[7] While these technologies are all related to the field of artificial intelligence, they are different from one another and carry different potential benefits and risks. Like most new technologies, these areas of artificial intelligence are evolving very quickly, and are ill suited to an overly prescriptive regulatory framework. Any new regulations that affect technologies, including artificial intelligence, should be technology-neutral, and apply to outcomes rather than prescribing specific technical practices. By focusing on mitigating negative outcomes, rather than prescribing practices for specific technologies, regulators allow innovators to continue evolving tools for new purposes and benefits to society. In the fast-moving technology industry, an inflexible regulatory framework would become outdated quickly and stifle innovation in the United States.

IV.   **Non-regulatory recommendations for promoting artificial intelligence**

As the OMB guidance explains, there are many ways that the Administration can support U.S. leadership in artificial intelligence development outside of regulation. One important step the Administration can take is to increase the amount of high-quality datasets that are available to the research community and industry. As the White House noted in its annual report on the American AI Initiative, the government should make federal datasets and models more available to the research community, while still maintaining the security and privacy of those datasets.[8] In its guidance to agencies, OMB has helpfully identified fairness and non-discrimination as priorities for agencies to consider when regulating artificial intelligence applications. Incomplete and flawed datasets can result in flawed outcomes when algorithms are making decisions. To increase the quality and fairness of artificial intelligence applications, better datasets are an important factor. Therefore, the Administration can further the goal of fair and non-discriminatory outcomes while also promoting increased U.S. leadership in artificial

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[6] *See* Stone, et. al., *Artificial Intelligence and Life in 2030: One Hundred Year Study on Artificial Intelligence: Report of the 2015-2016 Study Panel, Stanford University*, (Sept. 2016), at 12, http://ai100.stanford.edu/2016-report.
[7] *See id.* at 9.
[8] OSTP Annual Report at 10.

intelligence research and development by increasing access to government datasets to researchers.

CCIA also supports OMB's recommendation for agencies to consider alternative non-regulatory approaches to policy issues affecting artificial intelligence applications, including sector-specific policy guidance, voluntary frameworks, and voluntary consensus standards. As previously noted, quickly evolving technologies are particularly ill suited to rigidly prescriptive regulatory frameworks. Government and industry need to work together to develop solutions to policy challenges while continuing to allow flexibility for innovation. Industry and the advocacy community are already collaborating on many of the difficult policy considerations relating to artificial intelligence, including fairness, transparency, the future of work, and economic impacts.[9] Through multistakeholder processes, policy guidance, and voluntary frameworks and standards, the U.S. government can facilitate and participate in these collaborative conversations with industry and the advocacy community to advance proposals that solve policy challenges while serving the Administration's goal of maximizing the benefits of artificial intelligence applications for Americans.

V.   **Conclusion**

CCIA commends the White House and OMB staff for this thoughtful guidance as agencies consider regulations that would affect innovative new technologies including artificial intelligence applications. The guidance is a valuable component of the White House's broader forward-looking American Artificial Intelligence Initiative. As an association that represents companies that use artificial intelligence for a broad range of purposes and consumer benefits, CCIA is particularly pleased that the guidance focuses on maintaining a flexible, risk-based regulatory environment that carefully weighs the benefits and the costs of these innovative new technologies. CCIA also encourages the Administration to continue to work collaboratively with industry through non-regulatory proposals to address emerging policy issues.

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[9] *See, e.g.*, Partnership on AI, which includes over 100 industry and advocacy members, conducting research and thought leadership to advance understanding of AI technologies, https://www.partnershiponai.org/.

Sincerely,

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