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White House Seeks to Develop AI Bill of Rights and Calls for Feedback on Use of Biometric Data
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White House officials have signaled that they are developing a potential consumer "Bill of Rights" for artificial intelligence (AI), and are broadly seeking information on biometric-based AI technologies. In particular, the White House Office of Science and Technology Policy (OSTP) has issued a public request for information on the use of biometric technologies, which will help guide the development of a set of principles around the use of AI-enabled biometric tech. OSTP also has been holding listening sessions and panels to engage stakeholders on biometric and other AI-related issues.

These initiatives come at a time when AI-driven biometric technology – and facial recognition in particular – has come under scrutiny on both the state and federal fronts. Taken together, they mark a critical opportunity for the public to weigh in on the direction of a federal approach on AI and biometric technology issues.

OSTP Request for Information

On October 8, 2021, OSTP, which advises the President on science and technology, released a Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies. OSTP is soliciting comment until January 15, 2022.

The RFI seeks information on the use of biometric information for identification or inference of emotion, disposition, character, or intent. OSTP is seeking input from a wide range of stakeholders, including industry and industry association groups; civil society and advocacy

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groups; state, local, and tribal governments; academic researchers; technical practitioners specializing in AI and biometrics; and the general public. OSTP has indicated that it is particularly interested in input from parties developing biometric technologies, parties acquiring and using such technologies, and communities impacted by their use.

Overall, the RFI notes that "[m]any concerns have been raised about the use of biometric technology, ranging from questions about the validity of the underlying science; differential effectiveness, outcomes, and harms for different demographic groups; and the role of biometric systems in increasing the use of surveillance technologies and broadening the scope of surveillance practices." At the same time, the RFI flags some benefits, including that "biometric technologies are often presented as a cheaper and more reliable form of identification, and as effective aids in clinical settings for diagnosis and therapeutic use, in addition to their use in public safety such as for finding missing persons and combating child trafficking."

The use cases being considered include:

- The use of facial recognition to control access to resources such as housing, medical records, schools, workplaces, and public benefits;
- Facial or voice analysis in employment (e.g., to screen potential hires for trustworthiness and competence), education (e.g., to detect risks to safety, determine student focus and attention in the classroom, and monitor online exams), and advertising (e.g., to determine responses to advertising displays or track behavior in physical shopping contexts);
- Keystroke analysis for detection of medical conditions and cognition or mood;
- The use of gait recognition, voice recognition, and heart rate analysis for inference of level of cognitive ability and performance in health care (e.g., for stroke recovery and aids for autistic individuals); and
- Inferring intent (and mal-intent) in public settings.

Development of an AI 'Bill of Rights'

Concurrent with the release of the RFI, Dr. Eric Lander, the President's Science Advisor and Director of OSTP, and Dr. Alondra Nelson, OSTP Deputy Director for Science & Society, published an opinion piece announcing the OSTP's plans to work with a broad coalition of stakeholders to develop "a 'bill of rights' for an AI-powered world."

While Dr. Lander and Dr. Nelson advise that further discussion is necessary to clarify what rights would be included, the article offers a few proposals for consideration:

- The right to know when and how AI is influencing a decision that affects civil rights and civil liberties;
- Freedom from being subjected to AI that has not been carefully audited to ensure that it is accurate, unbiased, and has been trained on sufficiently representative data sets;
- Freedom from pervasive or discriminatory surveillance and monitoring in your home, community, and workplace; and

- The right to meaningful recourse if the use of an algorithm results in harm.

Ongoing Public Consultation

Stakeholder engagement for developing a "Bill of Rights for an Automated Society" has begun in earnest with the OSTP announcing, on November 10, 2021, the launch of a series of listening sessions and events. OSTP held two virtual public listening sessions – on November 18 and November 29 – discussing past, current, and anticipated uses of biometric technologies; where and how these technologies are being used; who is using them; what current principles, practices, or policies govern their use; and who is, or may be, impacted by their use or regulation.

OSTP also co-hosted six events to address the risks, harms, benefits, and policy opportunities of AI and other automated technologies where "data-driven technologies intersect with the lives of Americans." The first of these events, "Consumer Rights and Protections," held on November 15, considered the impact of AI-enabled consumer products, advanced platforms and services, "Internet of Things" (IoT) devices, and smart city products and services on individual consumers and communities. Other events addressed the impacts of the uses of AI in the criminal justice system, equal opportunities and civil justice, democratic values, social welfare and development, and the health care system.

As the Administration appears to be at the beginning stages of formulating an approach to AI and biometric technology, the outcome of this engagement will directly affect the federal approach, and could signal further agency or other executive action.