

Before the
United States Equal Employment Opportunity Commission
Washington, D.C.

In re

Navigating Employment Discrimination in AI
and Automated Systems: A New Civil Rights
Frontier

Meeting of January 31, 2023

COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

On behalf of the Computer & Communications Industry Association (CCIA)¹ and in response to the notice from the January Commission meeting, we write to respectfully comment on the use of automated systems, artificial intelligence, and related technologies in the field of employment. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. CCIA members are at the forefront of research and development in emerging technology fields such as artificial intelligence and machine learning, quantum computing, and the Internet of Things.

While CCIA shares the Commission's concerns and agrees more work can and must be done to study the potential implications of this automated system and related technologies, we caution against any overly prescriptive approach to AI and related technologies. We appreciate the opportunity to further detail our views on some of the benefits created by these technologies and opportunities for the Commission to provide guidance, foster collaborations, and facilitate the sharing of best practices.

¹ For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

I. Benefits of Using Automated Systems and Related Technologies in Employment

“Artificial intelligence” is a broad term,² often referring to numerous specific technologies that incorporate artificial intelligence, including machine learning and facial recognition. It is estimated that artificial intelligence has the potential to add \$13-16 trillion to the global economy by 2030.³ The United States has the potential to lead the world in artificial intelligence and reap the largest rewards in sectors like healthcare, transportation, and retail. For example, the use of AI has helped alleviate the intense healthcare sector through data-driven diagnostics, identification of pandemics, and imaging diagnostics.

Algorithmically-informed decision-making is equally complex and often misunderstood.⁴ These technologies are data-driven and can efficiently process massive amounts of data to create gains in productivity and accuracy, as well as create various pro-competitive efficiencies and consumer benefits in countless sectors.⁵ In the lending marketplace, the use of AI has increased access to financial credit and lowered interest rates across demographic groups when compared to traditional models. Businesses continue to improve their automated systems, investing resources into new technology, such as Meta’s Variance Reduction System, that seek to operate in more equitable ways and reduce the risk of algorithmic discrimination.⁶

² 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), <http://ai100.stanford.edu/2016-report>.

³ Discussion Paper, McKinsey, *Notes from the AI frontier: Applications and value of deep learning* (April 2018) <https://www.mckinsey.com/featured-insights/artificial-intelligence/notes-from-the-ai-frontier-applications-and-value-of-deep-learning>; PWC, *Sizing the Prize: What’s the Real Value of AI for Your Business, and How Can You Capitalize?*, <https://www.pwc.com/gx/en/issues/analytics/assets/pwc-ai-analysis-sizing-the-prizereport.pdf>.

⁴ See Mike Masnick, *The Latest Version Of Congress’s Anti-Algorithm Bill Is Based On Two Separate Debunked Myths & A Misunderstanding Of How Things Work*, Techdirt (Nov. 11, 2021), <https://www.techdirt.com/2021/11/10/latest-version-congressss-anti-algorithm-bill-is-based-two-separate-debunkedmyths-misunderstanding-how-things-work/>.

⁵ Arash Aghlara, *Decision Automation Benefit*, FLEXRULE (Sept. 2020), <https://www.flexrule.com/archives/decision-automation-benefits/>

⁶ Roy L. Austin, *An Update on our Ads Fairness Efforts*, META (Jan. 9, 2023), <https://about.fb.com/news/2023/01/an-update-on-our-ads-fairness-efforts/>

The Commission's draft Strategic Enforcement Plan recognizes employers' increasing use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, and make or assist in hiring decisions. The use of the technologies has yielded tremendous benefits for employers of all sizes and employees of all abilities with online recruitment and job advertising, applicant screening, and qualitative assessments. Moreover, these tools have helped employers improve their hiring procedures and process, such as using AI-driven neuroscience games to assist in identifying new traits and considerations like Emotion and Generosity.⁷ Cost savings for organizations of all sizes enables resources to be allocated to other important interests and priorities beyond hiring, including DEI initiatives.

With the United States still facing serious labor shortages in both the public and private sectors,⁸ the Commission and the federal government have an opportunity to prioritize the advancements of these technologies for the betterment of society. Current and future workforces will depend on a mix of using traditional hiring methods and automated employment decision tools. The government and private sector should continue to collaborate to foster and develop public trust in AI and its use in other sectors.

II. Opportunities for Guidance and Collaboration

Innovation brings new opportunities with improvements to existing technologies and the creation of new tools. Despite these rapid advancements, the decisions and activities driven by AI are still largely subject to Title VII of the Civil Rights Act of 1964, the Americans with

⁷ Shlomik Silbiger, *The Pymetrics Games – Overview and Practice Guidelines*, Oxford University Career Services (Nov. 21, 2021) <https://www.careers.ox.ac.uk/article/the-pymetrics-games-overview-and-practice-guidelines>

⁸ Jennifer Liu, *Roughly 47 million people quit their jobs last year: 'All of this is uncharted territory'*, CNBC (Feb. 1, 2022) <https://www.cnbc.com/2022/02/01/roughly-47-million-people-quit-their-job-last-year.html>

Disabilities Act, and other existing civil rights laws. The Commission and the Department of Justice have utilized these authorities to protect individuals against discrimination and bring appropriate enforcement actions.

CCIA has cautioned against rushed attempts to regulate AI systems, which are complex and warrant adequate understanding to reach intended outcomes appropriately.⁹ For example, the National Artificial Intelligence Initiative (NAII) – established by bipartisan federal legislation – is tasked with ensuring continued US leadership in AI R&D while preparing the present and future US workforce for the integration of AI systems across all sectors of the economy and society. Importantly, NAII is doing so in partnership with academia, industry, non-profits, and civil society organizations. Most recently, the U.S. Congress passed the AI Training Act to help federal employees responsible for purchasing and managing AI technologies better understand the capabilities and risks they pose to the American people.

Any new technology brings speculation of negative unintended consequences but not every possible risk requires mitigation. Regulators should continue to seek ways to understand the reality of the risks before taking premature action. We encourage lawmakers to reach out to companies to learn about the advances in their automated systems towards responsible and trustworthy AI,¹⁰ including adopting forward looking principles to enable transparency.¹¹

Organizations could benefit from increased guidance and sharing of best practices, enabling employers of all sizes to learn about important risks and considerations in using these

⁹ CCIA Testimony, *DC B24-0558 – Stop Discrimination by Algorithms AI Act of 2021*, (Sept. 21, 2022), <https://ccianet.org/wp-content/uploads/2022/09/2022-09-22-CCIA-Comments-on-DC-B24-0558-Stop-Discrimination-by-Algorithms-to-DC-Comm.-on-Govt.-Ops-and-Facilities.pdf>

¹⁰ Christophe Dupuy et al., *Advance in Trustworthy Machine Learning at Alexa AI*, Amazon Science (April 28, 2022) <https://www.amazon.science/blog/advances-in-trustworthy-machine-learning-at-alexai>

¹¹ Report, *Policy Principles for Enabling Transparency of AI Systems*, Information Technology Industry Council (Sept. 2022), <https://www.itic.org/documents/artificial-intelligence/TIIsPolicyPrinciplesforEnablingTransparencyofAISystems2022.pdf>

tools. CCIA encourages the Commission to consider alternative non-regulatory approaches to policy issues affecting artificial intelligence applications, including enforcement guidance and sharing of frameworks and consensus standards. Developing “Trustworthy AI” will require a comprehensive approach and extensive collaboration between all stakeholders. The Commission can look at the National Institute of Standards and Technology's AI Risk Management Framework, a voluntary and flexible framework that was the result of significant collaboration between government, industry, civil society, and other stakeholders. Additionally, the NIST AI Playbook helps organizations navigate and incorporate the frameworks' considerations like trustworthiness in the design, development, deployment, and use of AI systems. Industry and the advocacy community continue to collaborate on many of the difficult policy considerations relating to artificial intelligence, including fairness, transparency, the future of work, and economic impacts.¹²

CCIA hopes the Commission will continue to contribute to this ongoing discussion with its efforts like the Artificial Intelligence and Algorithmic Fairness Initiative and the accompanying technical assistance document to help organizations account for the intersection of AI and disability discrimination. Lawmakers should continue to study and review forthcoming best practices by technical experts to help inform the development of national standards and regulations.

III. Conclusion

CCIA and its members thank the Commission for the opportunity to provide written comments. We appreciate the Committee's consideration of these comments and stand ready to

¹² 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/>.

provide additional information as the Commission considers proposals related to the use of these technologies and tools in the field of employment.

Respectfully submitted,

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