

The White House Releases A Blueprint for an AI Bill Of Rights: What's In The Blueprint And How It May Impact The Design And Development Of Artificial Intelligence

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On October 4, 2022, The White House Office of Science and Technology Policy (“OSTP”) released the Blueprint for an AI Bill of Rights to help guide the design, development, and deployment of artificial intelligence (AI) and other automated systems in an effort to protect the rights of Americans. The Blueprint is the result of a year-long study to develop this framework including the input of people from many backgrounds via panel discussions, public listening sessions, meetings, a formal request for information, and other outreach formats.

Of note, the Blueprint includes a technical companion, which offers supportive guidance in the actual implementation of the recommendations contained in the Blueprint itself.

The AI Problem

In its press release, The White House acknowledged the great utility of artificial intelligence (“AI”) technologies in driving innovations, such as enabling early cancer detection or helping farmers grow food more efficiently. The release also highlighted the increasing surveillance performed by these same technologies, and the potential adverse effects of the use AI in this way on members of the populace.

The Blueprint's Five Common Sense Protections

The AI Bill of Rights outlines five common sense protections to which every American should be entitled. They are:

- Safe and effective systems;
- Algorithmic discrimination protections;
- Data privacy;
- Notice and explanation; and
- Human alternatives, consideration, and fallback.

These suggested protections stem from OSTP's encouragement of the ethical design of artificial intelligence systems.

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Data Privacy Implications

The Blueprint contains express provisions meant to protect Americans from abusive data practices via built-in protections. Moreover, it is meant to provide individual consumers with agency over how data about them is used.

The Blueprint states that consumers should know (1) when an automated system is being used and understand (2) how and why it contributes to outcomes that impact consumers.

Additionally, and in keeping with recently-passed data privacy laws, such as the California Consumer Privacy Act, as amended by the California Privacy Rights Act, the Blueprint contains a recommendation for the ability to opt-out, where appropriate, and have access to a real live person who can quickly consider and remedy any problems individuals may encounter with AI systems.

Artificial Intelligence in Other Guidance and Laws

A core goal of this Blueprint is to embed algorithmic discrimination protections into the design and development of artificial intelligence systems. The idea behind this principle is that consumers should not face discrimination by algorithms and systems should be used and designed in an ethical way. The Blueprint suggests the use of independent evaluation and plain language reporting in the form of algorithmic impact assessments, including disparity testing results and mitigation information as well as making the results of these assessments public whenever possible to confirm that these protections are in place.

The federal government is one of several entities looking at how automated tools affect citizens. New York City recently passed a law relating to automated employment decision tools. The law prohibits employers or an employment agency from using automated employment decision tools to screen a candidate or employee for an employment decision unless the tool has been subject of a Bias Audit within one year prior to the use of such tool, and the results of the most recent bias audit are made publicly available on the employer's website prior to the use of such tool.

Furthermore, the Equal Employment Opportunity Commission launched an agency-wide initiative to ensure that the use of software, including AI, machine learning, and other emerging technologies used in hiring and other employment decisions comply with the federal civil rights laws that the EEOC enforces. The Commission noted that while AI systems may offer new opportunities for employers, they also have the potential to discriminate.

The future of AI may depend largely on these laws and similar guidance from the federal government. Businesses should be aware of which laws and guidance impact them, and how best to utilize AI for their businesses.