May 31, 2024

Information Technology Laboratory
National Institute of Standards and Technology
100 Bureau Drive
Gaithersburg, Maryland 20899

RE: Comments of ACT | The App Association to the National Institute of Standards and Technology, *NIST AI 100-5: A Plan for Global Engagement on AI Standards*

ACT | The App Association (App Association) appreciates the opportunity to submit views to the National Institute of Standards and Technology (NIST) regarding its responsibilities under the Executive order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (AI), including the development of a plan for global engagement on the creation of AI standards. We support NIST's goal of helping designers, developers, users, and evaluators of AI systems evolve in knowledge, awareness, and best practices to better manage risks across the AI lifecycle.

The App Association represents small business innovators and startups in the software development and high-tech space located across the globe.[1] As the world embraces mobile technologies, our members create the innovative products and services that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lives. Today, that digital economy is worth more than $1.8 trillion annually and provides over 6.1 million American jobs.[2] App Association members create innovative software and hardware technology solutions and are at the forefront of incorporating artificial intelligence (AI) into their products and processes.

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[1] ACT | The App Association, *About*, *available at* http://actonline.org/about.

[2] ACT | The App Association, *State of the U.S. App Economy: 2023*, https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf

AI tools are having, and will continue to have, substantial direct and indirect effects on Americans. Some forms of AI are already in use to improve American consumers' lives today. Moving forward, across use cases and sectors, generative AI has incredible potential to improve American consumers' lives through faster and better-informed AI content creation using both distributed cloud computing and on-device processing. As an example, healthcare treatments and patient outcomes stand poised to improve disease prevention and conditions, as well as efficiently and effectively treat diseases through automated analysis of X-rays and other medical imaging. AI will also play an essential role in self-driving vehicles and could drastically reduce roadway deaths and injuries. As a further example, AI-driven software products and services revolutionized the ability of countless Americans with disabilities to achieve experiences in their lives far closer to the experiences of those without disabilities.

We strongly support the development of an international engagement strategy to drive the worldwide development and implementation of AI-related consensus standards, cooperation and coordination, and information sharing. We strongly urge NIST's strategy to align with our detailed recommendations the App Association provided on implementation of the United States Government National Standards Strategy for Critical and Emerging Technology, which are appended to this comment as **Appendix 1**.

In addition, recognizing that, while AI is already demonstrating its impressive potential, the same tools are also raising a variety of unique considerations for policymakers. We support the development of AI RMF profiles, including to address generative AI, and urge for alignment with the following principles and themes:

1. **Harmonizing and Coordinating Approaches to AI**

   A wide range of federal, local, and state laws prohibit harmful conduct regardless of whether the use of AI is involved. For example, the Federal Trade Commission (FTC) Act prohibits a wide range of unfair or deceptive acts or practices, and states also have versions of these prohibitions in their statute books. The use of AI does not shield companies from these prohibitions. However, federal and state agencies alike must approach the applicability of these laws in AI contexts thoughtfully and with great sensitivity to the novel or evolving risks AI systems present. Congress and other policymakers must first understand how existing frameworks apply to activities involving AI to avoid creating sweeping new authorities or agencies that awkwardly or inconsistently overlap with current policy frameworks.

2. **Quality Assurance and Oversight**

Policy frameworks should utilize risk-based approaches to ensure that the use of AI aligns with any relevant recognized standards of safety, efficacy, and equity. Small software and device companies benefit from understanding the distribution of risk and liability in building, testing, and using AI tools. Policy frameworks addressing liability should ensure the appropriate distribution and mitigation of risk and liability. Specifically, those in the value chain with the ability to minimize risks based on their knowledge and ability to mitigate should have appropriate incentives to do so. Some recommended areas of focus include:

- Ensuring AI is safe, efficacious, and equitable.
- Encouraging AI developers to consistently utilize rigorous procedures and enabling them to document their methods and results.
- Encouraging those developing, offering, or testing AI systems intended for consumer use to provide truthful and easy-to-understand representations regarding intended use and risks that would be reasonably understood by those intended, as well as expected, to use the AI solution.

3. Thoughtful Design

Policy frameworks should encourage design of AI systems that are informed by real-world workflows, human-centered design and usability principles, and end-user needs. AI systems should facilitate a transition to changes in the delivery of goods and services that benefit consumers and businesses. The design, development, and success of AI should leverage collaboration and dialogue among users, AI technology developers, and other stakeholders to have all perspectives reflected in AI solutions.

4. Access and Affordability

Policy frameworks should enable products and services that involve AI systems to be accessible and affordable. Significant resources may be required to scale systems. Policymakers should also ensure that developers can build accessibility features into their AI-driven offerings and avoid policies that limit their accessibility options.

5. Bias

The bias inherent in all data, as well as errors, will remain one of the more pressing issues with AI systems that utilize machine learning techniques in particular. Regulatory agencies should examine data provenance and bias issues present in the development and uses of AI solutions to ensure that bias in datasets does not result in harm to users or consumers of products or services involving AI, including through unlawful discrimination.

6. Research and Transparency

Policy frameworks should support and facilitate research and development of AI by prioritizing and providing sufficient funding while also maximizing innovators' and researchers' ability to collect and process data from a wide range of sources. Research on the costs and benefits of transparency in AI should also be a priority and involve collaboration among all affected stakeholders to develop a better understanding of how and under which circumstances transparency mandates would help address risks arising from the use of AI systems.

7. Modernized Privacy and Security Frameworks

The many new AI-driven uses for data, including sensitive personal information, raise privacy questions. They also offer the potential for more powerful and granular privacy controls for consumers. Accordingly, any policy framework should address the topics of privacy, consent, and modern technological capabilities as a part of the policy development process. Policy frameworks must be scalable and assure that an individual's data is properly protected, while also allowing the flow of information and responsible evolution of AI. A balanced framework should avoid undue barriers to data processing and collection while imposing reasonable data minimization, consent, and consumer rights frameworks.

8. Ethics

The success of AI depends on ethical use. A policy framework must promote many of the existing and emerging ethical norms for broader adherence by AI technologists, innovators, computer scientists, and those who use such systems. Relevant ethical considerations include:
- Applying ethics to each phase of an AI system's life, from design to development to use.
- Maintaining consistency with international conventions on human rights.
- Prioritizing inclusivity such that AI solutions benefit consumers and are developed using data from across socioeconomic, age, gender, geographic origin, and other groupings.
- Reflect that AI tools may reveal extremely sensitive and private information about a user and ensure that laws require the protection of such information.

9. Education

Policy frameworks should support education for the advancement of AI, promote examples that demonstrate the success of AI, and encourage stakeholder engagements to keep frameworks responsive to emerging opportunities and challenges.

- Consumers should be educated as to the use of AI in the service(s) they are using.
- Academic education should include curriculum that will advance the understanding of and ability to use AI solutions.

10. Intellectual Property

The protection of intellectual property (IP) rights is critical to the evolution of AI. In developing approaches and frameworks for AI governance, policymakers should ensure that compliance measures and requirements do not undercut safeguards for IP or trade secrets.

The App Association also urges NIST's efforts to align with our recommendations on the roles and interdependencies in the AI value chain, which support the theme of a shared responsibility for safety and efficacy. This document proposes clear definitions of stakeholders across the healthcare AI value chain, from development to distribution, deployment, and end use; discusses roles for supporting safety, ethical use, and fairness for each of these important stakeholder groups that are intended to illuminate the interdependencies between these actors, thus advancing the shared responsibility concept; and makes each actors' discussed roles with AI RMF functions. This framework is appended to this comment letter as **Appendix 2**.

The App Association appreciates NIST's consideration of the above views. We urge NIST to contact the undersigned with any questions or ways that we can assist moving forward.

Sincerely,

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