
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

**RE: Comments of the Association for Competitive Technology, Policy Statement
Concerning the Suppression of Accuracy in Artificial Intelligence Systems,
Matter No. P264200, Docket No. FTC-2026-0859**

The Association for Competitive Technology (ACT) appreciates the opportunity to respond to the Federal Trade Commission's (FTC) proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence (AI) Systems. The proposed statement addresses the application of the prohibition on deceptive acts or practices in Section 5 of the Federal Trade Commission Act to companies that market AI systems.¹ ACT represents startup and small and medium-sized software developers and connected device companies that are building, deploying, and commercializing technology across consumer, enterprise, industrial, health, education, and emerging AI markets.

The small businesses ACT represents are frequently the source of novel technical approaches and real-world applications, yet they have limited resources to interpret uncertain regulatory standards or build bespoke compliance programs. The policy choices agencies make can determine whether innovative tools reach consumers or whether regulatory uncertainty causes smaller firms to delay development or avoid entering new markets.

ACT supports enforcement against actual deception. Where a company materially misrepresents an AI product's capabilities, objectives, accuracy, or suitability for a particular task, the longstanding requirements of Section 5 should apply. However, the final statement should preserve the distinction between actionable deception and legitimate product design, safety practices, disclosures, and product differentiation. It should require case-specific evidence of a material misrepresentation, provide clear and

¹ Federal Trade Commission, Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems, at 1 (July 7, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/ai-policy-statement_0.pdf.

predictable standards for small developers, and reflect the distinct roles and interdependencies of actors across the AI value chain.

I. Background and Statement of Interest

ACT is a global policy trade association for startups and small and medium-sized technology companies. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with our members to promote a policy environment that rewards innovation while providing resources that help them raise capital and continue to build incredible technology.

The value of the domestic ecosystem ACT represents, which we call the app economy, is approximately \$1.8 trillion and supports 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.² ACT members develop software, connected devices, AI-enabled tools, enterprise applications, digital health products, productivity services, cybersecurity solutions, and other technologies that depend on access to trusted distribution channels, technical infrastructure, and complementary business relationships.

AI tools have become an essential part of these companies' operations. Seventy-five percent of ACT members report using generative AI, and the figure for all forms of AI is closer to 100 percent.³ Members use internal and fine-tuned models to improve efficiency and support functions such as financial management, email marketing automation, product development, and cybersecurity. Clear Section 5 guidance therefore matters not only to companies that build foundation models, but also to small application developers and users who integrate AI into products and workflows.

II. ACT Comments on the Proposed Policy Statement Concerning the Suppression of Accuracy In Artificial Intelligence Systems

The Commission should continue to enforce against actual deception involving AI.

AI products and services are not exempt from Section 5. When companies lie about what an AI product can do, and the elements of a deception case under the FTC Act are clearly met, the Commission has firm authority to act. The established test requires a

² ACT, The App Economy: The Backbone of American Innovation: Fast Facts (2023), https://actonline.org/wp-content/uploads/Fast-FactS_Website.pdf.

³ Morgan Stevens, State of Confusion: How a Patchwork of AI Laws Hurts Small Businesses and U.S. Competitiveness, ACT (updated Oct. 30, 2025), <https://actonline.org/2025/10/10/state-of-confusion-how-a-patchwork-of-ai-laws-hurts-small-businesses-and-u-s-competitiveness/>.

representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances and that is material to their conduct or decision regarding a product or service.⁴ That familiar framework is capable of addressing false or misleading claims about accuracy, efficacy, performance, intended use, or other material characteristics.

ACT supports enforcement where a company represents that its system is designed to achieve a stated objective faithfully and accurately but knowingly markets or presents a materially different product in a manner likely to mislead reasonable consumers. This approach protects consumers while preserving technology-neutral enforcement. The final policy statement should make clear that Section 5 applies to deceptive conduct, not AI standing alone. Government intervention to address AI should target actual harm, not hypothetical risks, and liability should rest primarily with those who misuse the technology rather than its developers.⁵ A policy statement should not create a new substantive obligation governing how every AI system must be designed.

Reasonable consumer expectations should be assessed in the context of the product and use case.

The final statement should recognize that the objectives reasonably expected of an AI system will vary according to the product’s stated purpose, intended audience, use case, surrounding representations, and disclosures. The proposed statement asserts that AI companies have represented that their systems aim to produce the “best output possible” within technological and resource constraints.⁶ But “best output” is not a uniform or self-defining product standard. For example, the best response for a creative-writing tool, a child-appropriate assistant, an enterprise cybersecurity product, and a domain-specific health application may reflect significantly different objectives.

Accuracy is often an important and *reasonably* expected objective, but AI systems routinely balance accuracy with relevance, clarity, safety, privacy, cybersecurity, intellectual property protections, age appropriateness, explainability, legal requirements, and the user’s stated purpose. ACT calls on developers to prioritize safety, effectiveness, transparency, data privacy and security, and other relevant considerations from the earliest stages of design, while using risk-management approaches that scale to the

⁴ FTC v. Moses, 913 F.3d 297, 306 (2d Cir. 2019).

⁵ Kedharnath Sankararaman, Has the FTC Been Overreaching? The Balance Between AI Regulation and Innovation, ACT (Feb. 5, 2025), <https://actonline.org/2025/02/05/has-the-ftc-been-overreaching-the-balance-between-ai-regulation-and-innovation/>.

⁶ FTC, Proposed Policy Statement, *supra* note 1, at 6.

potential harms posed in intended use scenarios.⁷ Those design choices should not themselves be treated as evidence that a developer has intentionally produced an inferior or deceptive product.

The proposed statement acknowledges that AI systems are likely to pursue multiple explicit and implicit objectives simultaneously and that users may reasonably expect systems to balance succinctness, clarity, relevance, accuracy, and other objectives.⁸ The final statement should make that principle central to the analysis. It should avoid suggesting that a reasonable consumer necessarily expects every AI system to maximize factual accuracy above all other legitimate objectives, regardless of context.

ACT agrees that there is a clear line between legitimate design choices (safety filtering, compliance with applicable law, privacy and security protections, age-appropriate design, etc.) and the covert, undisclosed steering of outputs toward objectives a reasonable consumer would not expect. Where a developer discloses that its system prioritizes particular objectives, a reasonable consumer is not misled, while instances of a developer secretly degrading the accuracy consumers were led to expect in order to serve undisclosed commercial or ideological ends may give rise to Section 5 liability.⁹ Anchoring the analysis to disclosure and to the net impression created for consumers, rather than to the mere existence of safety or alignment measures, will ensure that the Commission can protect consumers without chilling the practices that make AI trustworthy.

A contextual approach would examine the user's request, the product's stated function, the developer's express and implied representations, the deployment environment, the relevant audience, and the system's disclosures. It would also distinguish factual claims from context-dependent nonfactual outputs. This would better align the statement with the Commission's existing requirement to assess a practice from the perspective of a consumer acting reasonably in the circumstances.

The Commission should require case-specific evidence of a material misrepresentation.

The final statement should confirm that liability requires a case-specific showing of the elements of a Section 5 deception claim. The Commission should identify the challenged output practice and explain how it changes the net impression created by the company's marketing, product interface, or other representations. It should not infer deception merely

⁷ ACT, AI Roles & Interdependency Framework 1-2 (May 2024), <https://actonline.org/wp-content/uploads/ACT-AI-Roles-Interdependencies-Framework-final-text-May-2024-UK-English.pdf>.

⁸ FTC, Proposed Policy Statement, *supra* note 1, at 7.

⁹ See FTC, Proposed Policy Statement, *supra* note 1, at 8–9 (explaining that a clear and conspicuous disclosure can prevent an otherwise deceptive net impression).

because a system has alignment processes, output controls, safety mechanisms, or other design parameters.

AI outputs are probabilistic and can vary based on prompts, context, user settings, and downstream configuration. An isolated response may not establish the objectives of a system or the overall impression conveyed to consumers. Enforcement should instead rely on concrete evidence concerning the relevant claims, the challenged design choice, the resulting outputs, and the effect on consumers.

AI oversight should focus on clear cases of deception or fraud, and enforcement actions should rely on concrete evidence rather than theoretical concerns. The final statement should ensure that it reinforces that distinction. It should also retain the proposal's useful recognition that ordinary hallucinations resulting from technological or resource limitations are different from a design decision to prioritize objectives contrary to users' reasonable expectations.¹⁰ Misrepresenting the likelihood or severity of hallucinations may be actionable, but the existence of an error should not by itself establish deception.

The proposed statement addresses deception and expressly reserves the question of unfairness.¹¹ To the extent the Commission later considers whether a practice is unfair, the statutory standard would independently require proof that the practice causes or is likely to cause substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.¹² That evidence-based test points in the same direction as the deception analysis, confirming that liability should follow demonstrated, material consumer harm and not the mere presence of design choices a developer has disclosed or that consumers can reasonably avoid.

Small developers need clear and predictable guidance.

Smaller firms do not have the same ability as the largest companies to absorb prolonged uncertainty, hire extensive counsel, or maintain large compliance teams. For smaller firms, uncertainty itself is a cost. Terms such as “best output,” “unexpected objectives,” and “ideological objectives” may be difficult to apply consistently without further explanation. Unclear guidelines may force companies to hesitate in developing AI tools, fearing enforcement or regulatory action, and regulatory uncertainty can stifle market

¹⁰ FTC, Proposed Policy Statement, *supra* note 1, at 8.

¹¹ See FTC, Proposed Policy Statement, *supra* note 1, at 8 n.45 (taking no position on whether the practices discussed may also be unfair).

¹² 15 U.S.C. § 45(n) (an act or practice is not unfair unless it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition”).

confidence and slow down beneficial innovation. The final statement should therefore provide practical conduct examples.

The Commission should clarify how it will determine when an implied representation arises from marketing language, a product interface, or the nature of a particular service; how it will assess systems that are expressly optimized for multiple objectives; how safeguards and user-selected settings will be treated; and what forms of disclosure can correct or qualify a potential misimpression.

Concrete conduct examples would give small developers workable safe harbors and help ensure that enforcement reaches covert deception rather than ordinary, disclosed design. ACT urges the FTC to reflect the following examples in its guidance:

- A developer that clearly and conspicuously discloses, at or near the point of use, that its system filters or declines certain content for safety, security, or legal-compliance reasons should not, without more, be deemed to have deceived consumers by applying that filter;
- A system that is openly optimized for a particular objective, such as brevity, a target reading level, age-appropriateness, or a specialized domain, and that discloses that design should not be treated as misrepresenting its general accuracy; and
- A downstream developer that accurately describes its own product should not be held liable for undisclosed characteristics of an upstream model it neither controls nor represents.

Requirements placed on small business AI developers and users should be based on demonstrated harms, and actors with the knowledge and ability to minimize risks should bear corresponding appropriate responsibilities that scale to them.¹³ The final statement should reflect those principles rather than establishing an open-ended expectation that every small developer continuously identify and disclose every possible objective or variation in model behavior.

A coherent national approach should reduce, not compound, state-by-state burdens.

ACT agrees that the growing patchwork of state AI requirements creates significant compliance challenges. A fragmented landscape can impose direct and indirect costs on small businesses, from legal expenses and operational burdens to delayed products, reduced access to foundational tools, and lost opportunities for growth and investment. A

¹³ ACT, AI Roles & Interdependency Framework, *supra* note 7, at 1.

single national framework would reduce compliance burdens and bring much-needed certainty.

The Commission can contribute to that certainty by articulating a consistent, technology-neutral application of existing federal consumer protection law. The final statement should make clear that the same established deception test applies across jurisdictions and technologies, with liability based on the company's actual representations, the reasonable expectations created in context, and the materiality of the alleged deception. This approach would provide national clarity without requiring small businesses to redesign products around uncertain assumptions about accuracy or system objectives.

ACT appreciates the Commission's consideration of potential overlaps between federal and state laws in the context of AI accuracy and consumer protection. AI developers increasingly face inconsistent, and at times conflicting, obligations (arising both among the states and between state and federal requirements) that no single small company can fully reconcile. As a matter of principle, that fragmentation undermines innovation and diverts scarce resources from building products to navigating divergent compliance regimes, delays beneficial tools, and falls hardest on the smallest firms. Without opining on the question of whether existing federal law preempts state AI mandates, ACT urges the Commission to promote a single, clear, and predictable national approach.

The final statement should distinguish developers, deployers, and downstream users.

The proposed statement frequently refers to an "AI company," but AI systems are developed and used through an interdependent value chain. Relevant actors can include foundation-model developers, general AI-platform developers, use-case or domain-specific platform developers, AI solution developers, deploying organizations, and end users. Each actor has different information, technical capabilities, contractual relationships, and control over the system's final presentation and use.

Responsibility should attach to the actor that made or controlled the relevant representation, selected or materially altered the challenged objective, and possessed the knowledge and practical ability to prevent or correct the alleged deception. A small application developer may control its own marketing and user interface but have limited visibility into an upstream foundation model. A deploying organization may configure the system, determine the context in which it is used, and communicate its capabilities to consumers. An end user may disregard instructions or use a lawful tool to create deceptive content. Treating those actors as interchangeable would create uncertainty and weaken incentives to place mitigation responsibilities where they can be most effective.

ACT's AI Roles & Interdependency Framework recommends that those in AI value chains with the ability to minimize risks based on their knowledge and ability have appropriate responsibilities and incentives to do so.¹⁴ The final statement should incorporate that principle by requiring the Commission to identify the relevant actor, representation, control, and causal connection in each case. Liability should not automatically flow upstream or downstream across the entire AI value chain.

Neutral and general-purpose AI tools should not be treated as deceptive because they can be misused.

The final statement should also avoid implying that an upstream provider is deceptive merely because a downstream actor can configure or use a general-purpose tool in a misleading way. Many AI systems are neutral tools with substantial legitimate uses. Holding their developers liable for every foreseeable downstream misuse would require companies either to withdraw useful products or attempt to ensure their technologies cannot possibly facilitate consumer harm, which can be prohibitively expensive for small firms.

Any attempt to extend liability to an upstream provider should remain tied to established means-and-instrumentalities principles, including proof of the provider's own actionable conduct and the relevant knowledge or purpose.¹⁵ An upstream provider should face liability only where it furnished the means to deceive with knowledge that its tool would be used to deceive consumers, or with the purpose of facilitating that deception, and not where it offered a lawful, general-purpose tool that a downstream actor later misused. The mere possibility that a product can be used unlawfully should not establish Section 5 liability.

This distinction is consistent with the Commission's decision to set aside the *Rytr* order, which recognized that actors who use AI to violate the law or deceive consumers about a product's capabilities should be held accountable, but that aggressive enforcement unsupported by facts or law is not in the public interest.¹⁶ Preserving that line will allow the Commission to focus its resources on actual fraud and deception while giving small developers confidence to create lawful, general-purpose tools.

¹⁴ Id. at 1.

¹⁵ See Dissenting Statement of Commissioner Andrew N. Ferguson, In re Rytr LLC, Matter No. 2323052, at 5-7 (Sept. 25, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-rytr-statement.pdf; Concurring Statement of Commissioner Andrew N. Ferguson, In re Sitejabber, Matter No. 2323060, at 2-3 (Nov. 6, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-sitejabber-concurring-statement.pdf.

¹⁶ Order Reopening and Setting Aside Order at 5, In re Rytr LLC, FTC Docket No. C-4806 (Dec. 22, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/Rytr-Order.pdf.

III. Conclusion

ACT supports the Commission's continued enforcement of longstanding Section 5 protections against concrete and material deception involving AI. Where companies materially misrepresent an AI product's capabilities or accuracy, established consumer-protection law should apply.

A predictable, evidence-based approach will better serve consumers, innovation, and competition. ACT appreciates the opportunity to provide these comments and looks forward to continued engagement with the Commission.

Sincerely,



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