October 30, 2023

President Biden Issues Executive Order on Safe, Secure and Trustworthy Artificial Intelligence

The sweeping EO aims to establish new safety and security standards, including calling on HHS to create an AI taskforce and strategic plan on responsible AI

President Biden on Monday (October 30) signed an Executive Order (EO) on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (AI). According to a White House Fact Sheet, the EO "establishes new standards for AI safety and security, protects Americans' privacy, advances equity and civil rights, stands up for consumers and workers, promotes innovation and competition, advances American leadership around the world, and more." The EO outlines federal priorities on AI, deploys numerous agencies to develop standards and safeguards, and instructs the creation of a White House AI Council to coordinate cross-agency activities. The far-reaching order places new safety obligations on AI developers and calls for agencies to both mitigate the technology's risks while evaluating their own use of the tools. The EO also includes additional actions aimed at ensuring AI advances equity and civil rights, a continuance of the Administration's previous actions, including its Blueprint for an AI Bill of Rights and Executive Order directing agencies to combat algorithmic discrimination. The White House previously secured voluntary commitments from 15 companies on the leading edge of AI, to help move towards safe, secure, and trustworthy development of AI technology.

Before signing the EO, President Biden said, "One thing is clear – to realize the promise of AI and avoid the risk, we need to govern this technology; there's no other way around it in my opinion, it must be governed… Without the right safeguards in place, AI can lead to discrimination, bias and other abuses." He also called on Congress to pass bipartisan legislation to "stop big tech from collecting data from kids and teenagers online… to ban targeted advertising to children… [and] to limit the personal data these companies collect on us." The President on Tuesday (October 31) is scheduled to meet with Senate Majority Leader Chuck Schumer (D-NY) and a bipartisan AI working group. He concluded by calling this an "inflection point," with AI presenting enormous potential for "exploring the universe, fighting climate change, ending cancer as we know it, and so much more… As [AI] expands the boundary of human possibility, it tests the bounds of human understanding. This landmark executive order is a testament to what we stand for: safety, security, trust, openness." In her remarks, Vice President Kamala Harris stressed that the actions taken in the U.S. will serve as an international model and that "technology with global impact requires global action." Vice President Harris on Tuesday (October 31) is scheduled to travel to the UK to attend a global summit on AI.

Broadly, the order outlines eight guiding principles for governing AI:

- **Ensuring safety and security**. The Biden administration will develop guidelines, standards, and best practices for AI safety and security, including evaluating and auditing AI capabilities, to promote consensus industry standards. Among other actions, the order deploys the Defense Production Act to

require that companies building the most advanced AI systems perform and report on safety tests, or "red-team testing," before rolling out their products.

- **Protecting consumer privacy**. This includes establishing guidelines that agencies can use to evaluate privacy techniques used in AI and to protect personal data.
- **Advancing equity and civil rights.** This includes providing guidance to landlords and federal contractors to help avoid AI algorithms furthering discrimination, and creating best practices on the appropriate role of AI in the justice system
- **Protecting consumers.** This includes directing the Department of Health and Human Services (HHS) to evaluate potentially harmful AI-related health care practices, creating resources on responsible use of AI by educators and clearly labeling AI-generated content.
- **Supporting workers.** This includes reporting on the potential labor market implications of AI and researching how the federal government can support workers affected by labor market disruptions.
- **Promoting innovation and competition.** This includes expanding grants for AI research in areas like climate change, updating the criteria for highly skilled immigrant workers to stay in the U.S., and creating a pilot program implementing the National AI Research Resource (NARR).
- **Strengthening American leadership abroad.** This includes leading efforts to establish a strong international framework for managing the risks and harnessing the benefits of AI, including encouraging international allies and partners to support voluntary commitments similar to U.S. companies.
- **Managing risks from federal agencies' use and procurement of AI.** This includes developing guidance for federal agencies and accelerating the government's hiring of workers skilled in the field.

Specifically, regarding AI in health care, the order calls on HHS to:

- **Create an HHS AI Task Force** within 90 days, in consultation with the Secretaries of Defense and Veterans Affairs to **develop a strategic plan within a year on the responsible use of AI**, including the development, maintenance and use of predictive and generative AI-enabled technologies in health care delivery and financing.

- **Craft a strategy** within 180 days to determine **whether AI is sufficiently high-quality** in specific areas, evaluating the performance of AI-enabled health care tools and infrastructure needs for enabling pre-market assessment and post-market oversight of AI-enabled technology.

- Consider appropriate actions to **advance the understanding of and compliance with Federal nondiscrimination laws** by HHS providers, as to how they relate to AI, within 180 days.

- **Create an AI safety program** within 365 days, in consultation with the Secretaries of Defense and Veterans Affairs, to receive reports of – and actively remedy – harms or unsafe health care practices involving AI, such as a framework for identifying and capturing clinical errors resulting from AI.

- **Develop a strategy for regulating the use of AI or AI-enabled tools in drug development** processes within 365 days, including defining principles required for appropriate regulation throughout each phase of drug development, identifying areas of future rulemaking and potential for public-private partnerships.

- **Publish a plan within 180 days addressing the use of automated or algorithmic systems** in the implementation by States and localities of **public benefits and services** administered by the agency.

While the order does not have the force of law, it empowers federal agencies to use their existing authorities and enforcement tools. The order, for example, directs the Federal Trade Commission (FTC) to consider whether to exercise existing authorities to ensure fair competition in the AI marketplace and that consumers and workers are protected from potential harms – a mission that Chair Lina Khan has already publicly embraced.

Administration officials have said the action items in the executive order will be implemented within 90 days to a year, with items related to safety and security coming first.

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