

Response by the Centre for Information Policy Leadership to OMB’s Request for Comments on its Proposed Memorandum on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence

Docket number OMB–2023–0020

Submitted December 5, 2023

The Centre for Information Policy Leadership (CIPL)¹ welcomes the opportunity to respond to the request for comments by the Office of Management and Budget (OMB) on its draft memorandum titled "Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence."²

CIPL supports the adoption of risk management practices for uses of AI that impact the rights and safety of the public. As noted in our paper “Ten Recommendations for Global AI Regulation,”³ any regulatory approach to AI should seek to protect fundamental human rights and minimize risks to individuals and society, while enabling development and use of AI for the benefit of both.⁴ A holistic risk-based approach would facilitate practical protective measures that are proportional to the risks and benefits of a particular AI system.⁵ Our paper is enclosed with this submission.

Indeed, OMB’s proposed memorandum recognizes the need to apply a **risk-based approach** by requiring agencies to complete an AI impact assessment.⁶ CIPL has been on the forefront of promoting a risk-based approach for more than 20 years. CIPL’s Accountability Framework⁷ (see Figure 1) includes the core elements for any organizational privacy, data, or technology governance program. An accountability-based program seeks to ensure that organizations (as well as government agencies) implement demonstrable processes and measures that help them comply with applicable legal requirements, adopt best practices, and improve societal trust in legitimate and beneficial uses of data.

¹ CIPL is a global privacy and data policy think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 85+ member companies that are leaders in key sectors of the global economy. CIPL’s mission is to engage in thought leadership and develop best practices that ensure both effective privacy protections and the responsible use of personal information in the modern information age. CIPL’s work facilitates constructive engagement between business leaders, privacy and security professionals, regulators, and policymakers around the world. For more information, please see CIPL’s website at <http://www.informationpolicycentre.com/>. Nothing in this submission should be construed as representing the views of any individual CIPL member company or of the law firm of Hunton Andrews Kurth.

² Request for Comments on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum, 88 FR 75625, Nov. 3, 2023, available [here](#).

³ CIPL, Ten Recommendations for Global AI Regulation, published October 2023, available [here](#).

⁴ *Id.*, p. 6.

⁵ *Id.*

⁶ OMB Proposed Memorandum for the Heads of Executive Departments and Agencies: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence (Draft for Public Review), p. 15, available [here](#).

⁷ See CIPL resources and papers on organizational accountability, available [here](#).

CIPL Accountability Framework



Figure 1

Source: CIPL

An accountability framework expressly requires entities to perform **contextual risk assessments**, which enable them to (1) identify the impact on individuals and society of data and technology uses; (2) weigh the identified and potentially competing risks and benefits; and (3) devise appropriate mitigations and controls that reduce or minimize the risks while also preserving the benefits.

OMB’s proposed memorandum appropriately requires agencies to identify “context-specific risks that are associated with their determined use cases and address them as appropriate.”⁸ It also requires agencies to conduct adequate testing to ensure that the AI, as well as components that rely on it, will work in its intended real-world context.⁹ CIPL supports the OMB’s context-specific approach.

Moreover, consistent with CIPL’s approach, OMB’s proposed memorandum encourages agencies to foster innovation, requiring agencies to improve their ability to use AI in ways that benefit the public and increase mission effectiveness.¹⁰

Indeed, the OMB’s proposed memorandum appears to address all seven elements of CIPL’s Accountability Framework:

1. **Leadership & Oversight:** Each agency must designate a Chief AI Officer, who bears primary responsibility on behalf of the head of the agency for implementing OMB’s memorandum and coordinating implementation with other agencies.¹¹ Moreover, agencies must ensure that AI issues receive adequate attention from each agency’s senior leadership.¹² Agencies identified in the Chief Financial Officer (CFO) Act must establish AI Governance Boards.¹³

⁸ OMB Proposed Memorandum, *supra*, note 6, p. 13.

⁹ *Id.*, p. 16.

¹⁰ *Id.*, p. 8.

¹¹ *Id.*, pp. 3-4.

¹² *Id.*, p. 7.

¹³ *Id.*

2. Risk Assessment: As mentioned above, agencies must complete an AI impact assessment before using AI presumed to impact the rights and safety of the public.¹⁴
3. Policies & Procedures: Each agency must submit to OMB and post publicly on the agency’s website either a plan to achieve consistency with the memorandum, or a written determination that the agency does not use and does not anticipate using covered AI.¹⁵
4. Transparency: Agencies must annually submit an inventory of its AI use cases to OMB and subsequently post a public version on the agency’s website.¹⁶ Agencies must ensure that the AI’s entry in the use case inventory serves as adequately detailed and generally accessible documentation of the system’s functionality that provides public notice of the AI to its users and the general public.¹⁷
5. Training & Awareness: Agencies must ensure there is sufficient training and oversight for operators of the AI to interpret and act on the AI’s output.¹⁸
6. Monitoring & Verification: Agencies must conduct ongoing monitoring and establish thresholds for periodic human review.¹⁹
7. Response & Enforcement: Upon identifying new or significantly altered risks to rights or safety, agencies must take steps to mitigate those risks, including, as appropriate, through updating the AI to reduce its risks or implementing non-technical mitigations, such as greater human oversight.²⁰

CIPL has produced a considerable portfolio of thought leadership specifically related to AI governance. We incorporate the following documents by reference and invite the OMB to review them individually:

- In October 2023, CIPL published “Ten Recommendations for Global AI Regulation,” which seeks to guide AI policymaking and regulation to ensure the development and deployment of accountable, responsible, and trustworthy AI.²¹ (We have attached this paper as part of our submission).
- In June 2023, CIPL submitted a response to the U.S. National Telecommunications and Information Administration’s Request for Comments on Artificial Intelligence Accountability.²²
- In March 2023, CIPL submitted a response to the California Privacy Protection Agency’s Invitation for Preliminary Comments on Proposed Rulemaking for cybersecurity audits, risk assessments, and automated decision-making.²³

¹⁴ *Id.*, p. 15.

¹⁵ *Id.*, p. 4.

¹⁶ *Id.*

¹⁷ *Id.*, p. 18.

¹⁸ *Id.*, p. 17.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Supra*, note 3.

²² CIPL Response to NTIA Request for Comment on AI Accountability Policy, June 12, 2023, available [here](#).

²³ CIPL Response to the CPPA’s Invitation for Preliminary Comments on Proposed Rulemaking on Cybersecurity Audits, Risk Assessments, and Automated Decisionmaking, March 27, 2023, available [here](#).

- In November 2022, CIPL filed comments on the Federal Trade Commission’s Advanced Notice of Proposed Rulemaking on commercial surveillance and data security, which addressed, among other things, artificial intelligence.²⁴
- In October 2022, CIPL published a white paper outlining ten key recommendations for regulating artificial intelligence in Brazil.²⁵
- In September 2022, CIPL submitted a response to the UK Department for Digital, Culture, Media & Sport on its Consultation on establishing a pro-innovation approach to regulating AI.²⁶
- In July 2021, CIPL submitted a response to the European Commission’s Consultation on the Draft Artificial Intelligence Act.²⁷
- In March 2021, CIPL published a paper on delivering a risk-based approach to regulating artificial intelligence.²⁸
- In March 2020, CIPL submitted formal comments to the Office of the Privacy Commissioner of Canada in response to its proposals for ensuring appropriate regulation of artificial intelligence.²⁹
- Also in March 2020, CIPL published a paper exploring the various ways in which the EU General Data Protection Regulation regulates the development and use of artificial intelligence by organizations processing personal data.³⁰
- In February 2020, CIPL published a report that provides insights into emerging solutions for delivering trusted and responsible AI.³¹
- In January 2019, CIPL submitted formal comments to the International Conference of Data Protection and Privacy Commissioners on its Declaration on Ethics and Data Protection in Artificial Intelligence.³²
- In November 2018, CIPL published its first report on AI, which describes AI’s capabilities as well as AI’s challenges to compliance with traditional data protection laws and norms.³³

²⁴ CIPL Comments on the FTC’s ANPR on Commercial Surveillance and Data Security, submitted Nov. 21, 2022, available [here](#).

²⁵ CIPL’s Top Ten Recommendations for Regulating AI in Brazil, published October 4, 2022, available [here](#).

²⁶ CIPL Response to UK Department for Digital, Culture, Media and Sport (DCMS) Policy Paper on Establishing a Pro-innovation Approach to Regulating AI, submitted Sept. 23, 2022, available [here](#).

²⁷ CIPL Response to the EU Commission’s Consultation on the Draft AI Act, submitted July 29, 2021, available [here](#).

²⁸ CIPL Recommendations on Adopting a Risk-Based Approach to Regulating Artificial Intelligence in the EU, published March 22, 2021, available [here](#).

²⁹ CIPL Comments on the Office of the Privacy Commissioner of Canada’s Consultation on Proposals for Ensuring Appropriate Regulation of Artificial Intelligence, submitted March 12, 2020, available [here](#).

³⁰ Artificial Intelligence and Data Protection How the GDPR Regulates AI, published March 12, 2020, available [here](#).

³¹ CIPL AI Second Report: Hard Issues and Practical Solutions, published Feb. 27, 2020, available [here](#).

³² CIPL Comments on the International Conference of Data Protection and Privacy Commissioners Declaration on Ethics and Data Protection in Artificial Intelligence, submitted January 25, 2019, available [here](#).

³³ CIPL AI First Report: Artificial Intelligence and Data Protection in Tension, published Oct. 10, 2018, available [here](#).

Moreover, CIPL will be releasing a **new report on accountable AI governance** in the near future; we look forward to sharing that report with OMB upon publication.

CIPL also has a rich history of convening stakeholders for thoughtful and meaningful discussions on AI. For example:

- In November 2023, CIPL hosted a roundtable discussion in Brussels exploring the latest developments on the EU AI Act, how some long-established data protection principles may be in tension with AI, and concrete examples of current best practices to address risks and challenges.³⁴
- In October 2023, in the margins of the UK’s AI Safety Summit, CIPL co-hosted a London event with AI Fringe that delved into best practices from organizations building and implementing programs and procedures for responsible AI development, deployment, and compliance.³⁵
- Also in October 2023, CIPL hosted a side event at the 45th Global Privacy Assembly in Bermuda that explored a range of important questions associated with the responsible development and deployment of AI and considered concrete examples of current best practices and attempts to address the risks and challenges.³⁶
- In September 2023, CIPL hosted its annual Executive Retreat in Washington, DC, which focused on the future of AI, responsible innovation, the challenges posed by emerging technologies, the implications of AI’s rapid rise for data regulation, policy, enforcement, and more.³⁷
- In June 2023, CIPL hosted a roundtable that shed light on the technology that underpins generative AI and explored the challenges encountered while developing generative AI tools.³⁸
- In May 2023, CIPL hosted a webinar on the evolving role of the Chief Privacy Officer amidst the rapid acceleration in and adoption of generative AI and other AI tools.³⁹
- In May 2022, CIPL hosted a roundtable discussion with MEP Dragoş Tudorache on the European Commission’s proposed AI Act.⁴⁰
- In April 2022, CIPL hosted a roundtable discussion with MEP Axel Voss on the European Commission’s proposed AI Act.⁴¹

³⁴ Responsible AI in Focus: Regulatory Developments and Emerging Best Practices, held Nov. 15, 2023 (noted [here](#)).

³⁵ Building Trust in AI: Regulation and Industry Best Practices, held Oct. 31, 2023 (noted, with takeaways, [here](#)).

³⁶ Responsible AI in Practice: Risk Assessments, Responsibility of Different Parties, and Transparency, held Oct. 18, 2023 (noted, with highlights, [here](#)).

³⁷ Great Expectations: Meeting the Demands of Digital Ethics, Innovation, and Compliance in an Era of Rapid Technological Change, held Sept 19-20 (noted [here](#)).

³⁸ Demystifying Generative AI, held June 29, 2023.

³⁹ See “Quo Vadis, CPO? An Evolving Role in Changing Times,” published on LinkedIn June 2, 2023: <https://www.linkedin.com/pulse/quo-vadis-cpo-evolving-role-changing/>.

⁴⁰ EU AI Act State of Play - with MEP Dragoş Tudorache, held May 23, 2022.

⁴¹ EU AI Act State of Play - with MEP Axel Voss, held April 21, 2022.

- In March 2021, CIPL organized a roundtable entitled “EU Approach to Regulating AI—How Can Experimentation Help Bridge Innovation and Regulation?”⁴²

Given our breadth of knowledge, CIPL welcomes the opportunity to share our expertise at future hearings if needed.

⁴² See “CIPL Organizes Webinar on EU Approach to Regulating AI and Regulatory Experimentation,” posted April 2, 2021, Privacy & Information Security Blog, Hunton Andrews Kurth, available [here](#).