



1 North Castle Dr.  
Armonk, NY 10504

June 5, 2023

The Honorable Richard Durbin  
Hart Senate Office Building  
Room 711  
Washington, D.C. 20510

Dear Chairman Durbin,

Please find enclosed my responses to questions for the record received following my appearance before the Subcommittee on Privacy, Technology, and the Law hearing held on June 16<sup>th</sup>, 2023, titled "Oversight of AI: Rules for Artificial Intelligence".

Sincerely,

A handwritten signature in blue ink, appearing to read 'Christina Montgomery', with a horizontal line underneath.

Christina Montgomery  
Chief Privacy and Trust Officer  
IBM

Cc: The Honorable Lindsey Graham  
Ranking Member, Senate Committee on the Judiciary

The Honorable Richard Blumenthal  
Chairman, Senate Judiciary Subcommittee on Privacy, Technology, and the  
Law

The Honorable Josh Hawley  
Ranking Member, Senate Judiciary Subcommittee on Privacy, Technology,  
and the Law

Responses to Questions for Christina Montgomery  
Chief Privacy and Trust Officer  
IBM

Questions from Chairman Richard Durbin

1. In February, the Judiciary Committee held a hearing on kids' online safety. During that hearing, witness Emma Lembke testified regarding the toll social media took on her as she grew up. She explained, "As my screen time steadily increased, my mental and physical health suffered."

This is an experience shared by too many kids today. From 2015 to 2021, the time kids spent each day on social media rose to nearly three hours—an increase of almost 60 percent in six years. Over a similar time period, CDC data showed a massive spike in negative mental health outcomes for our kids—particularly teen girls. By 2021, 42 percent of teens reported persistent feelings of sadness or hopelessness, and nearly one in three teenage girls said they had seriously considered suicide.

I am concerned that artificial intelligence could exacerbate this problem.

- a. In light of our experience with social media, is there a way to safely deploy artificial intelligence so it does not make the current mental health crisis our kids are experiencing even worse?
- b. If so, what specific protections are necessary to minimize the potential harms artificial intelligence may pose to kids?

As an enterprise-focused business, IBM's exposure to direct-to-consumer products and services is limited. We recognize there is a growing concern among policymakers and the public around the impact that digital platforms may be having on America's youth, and we are appreciative of members' efforts to address this issue. IBM believes that AI can be deployed in a manner that is both safe and effectively balances competing trade-offs.

This requires rules and guardrails governing the technology's usage to be appropriately targeted to those entities that are actually deploying AI systems that interact with individuals. Additionally, Congress can address many of the concerns associated with potential harms to children in the online domain by passing comprehensive federal privacy legislation. Creating guardrails for data collection and

use would have a significant effect on ensuring children and vulnerable populations are better protected from online harms.

**2. What specific guardrails and/or regulations do you support that would allow society to benefit from advances in artificial intelligence while minimizing potential risks?**

IBM has long recommended that AI be governed according to the principles of “precision regulation” – that is, rules should aim to address specific harms and be targeted to those entities that are best equipped to remediate problems. Specifically, IBM supports:

- Different rules for different risk profiles of AI applications;
- Guidance on AI end-uses or categories of AI-supported activity that are inherently high-risk;
- Disclosure requirements for consumer-facing uses of AI;
- Impact assessments for high-risk AI systems;
- Mechanisms for identifying gaps in the existing regulatory system – areas where AI may potentially pose a direct harm to consumers but which cannot be effectively remedied with existing regulatory authorities;
- Federal preemption of state laws addressing similar concerns; and
- Enforcement via relevant regulatory agencies with technical expertise, rather than through a private right of action.

**3. During the hearing, Mr. Altman testified that “a new framework” is necessary for imposing liability for harms caused by artificial intelligence—separate from Section 230 of the Communications Decency Act.**

- a. Do you agree with Mr. Altman that a new framework is necessary for imposing liability for harms caused by artificial intelligence?
- b. If so, what features do you consider most important for such a liability framework?

Although there may be discrete situations in which the deployment of an AI system presents a novel new theory of harm that requires reexamining the distribution of liability, for the most part we believe there is wisdom in the existing body of common law that will work through these questions. As such, IBM does not believe that a new framework for addressing liability questions is required for AI.

However, IBM also does not believe that Section 230 liability protections should be ported into the realm of AI use-cases. Indeed, IBM has been supportive of broader reforms to Section 230, recognizing that the challenges presented by the Internet today may not have been fully considered back in 1996, when the law was passed. As noted previously, IBM also supports updating U.S. laws regarding data collection and use through the adoption of a national privacy law. Such a law could incorporate accountability mechanisms for AI systems used to make consequential decisions that impact individuals.

### Questions from Senator Richard Blumenthal

1. **Training data is crucial to foundational models like GPT-4, where content such as news, art, music, and research papers are used to create and refine AI systems, largely material aggregated from the internet. This content represents the labor, livelihoods, and careers of artists, experts, journalists, and scientists.**

**How should we make sure AI systems respect, acknowledge, and compensate the labor of individuals whose work is used to train AI models?**

IBM believes that responsible AI development requires that AI systems be trained on lawfully accessed data, and that such developments also not train AI systems designed to create infringing works.

It should be noted that there are already tools available (such as Robots.txt files) to copyright holders, such as artists and authors, to prevent their works from being accessed online for any purpose, including training an AI system. However, more needs to be done, and many developers and deployers of generative AI systems are already taking steps to protect artists, authors, and content owners, by using mechanisms like content licensing that can help avoid unauthorized use of protected content (though it is worth noting that certain uses, such as computational analysis, may be lawful uses of data or are otherwise lawful uses under fair use or similar arguments).