Submission to the Office of Science and Technology Policy's Request for Information on the Development of an Artificial Intelligence (AI) Action Plan

This document is approved for public dissemination. The document contains no business-proprietary or confidential information. Document contents may be reused by the government in developing the AI Action Plan and associated documents without attribution.

March 15, 2025

The Open Markets Institute welcomes the opportunity to respond to the Office of Science and Technology Policy's (OSTP) Request for Information on the Development of an Artificial Intelligence (AI) Action Plan. **Through this response, we propose an alternative approach to the proposed AI Action Plan and associated AI policy. We set forth our proposals for building an innovative and competitive AI ecosystem that leads the world and secures US national security by creating a more level playing field and fairer market for the benefit of the public interest rather than corporate profit.**

The Open Markets Institute (OMI) is a non-profit organization based in Washington, D.C. and Brussels, Belgium dedicated to promoting fair and competitive markets and promoting and defending free speech. Our mission is to safeguard our political economy from concentrations of private power that undermine a fair competition and threaten liberty, democracy, and prosperity. Open Markets and its Center for Journalism and Liberty regularly provides expertise on policies related to competition, emerging technology, and freedom of speech to Federal and state governments, lawmakers, competition authorities, courts, and journalists.

Background

The global AI ecosystem is highly concentrated, which undermines innovation, security, and resiliency and thus any AI Action Plan should include a focus on redressing these anticompetitive dynamics to ensure a flourishing, pluralistic, rights-based market for this transformative technology. Just three companies — Google, Amazon, and Microsoft — collectively hold two-thirds of the global market share in cloud computing,[1] the method by which most AI companies access computing resources for model training and inference. Nvidia holds 90% of the market for graphics processing units (GPUs), the chips that allow data centers to be optimized for AI.[2] And Big Tech has acquired or engaged in "acqui-hires" of some of the

---

[1] "Cloud is a Global Market - Apart from China," SRG Research, August 21, 2024, https://www.srgresearch.com/articles/cloud-is-a-global-market-apart-from-china.

[2] Nauman Khan, "NVIDIA Crushes Rivals: Secures Unprecedented 90% of GPU Market in Q3 2024," *Yahoo Finance,* December 12, 2024, https://finance.yahoo.com/news/nvidia-crushes-rivals-secures-unprecedented-102235255.html.

most promising AI startups, leading to a consolidation of talent[3] in a few firms, replicating the same dynamics that we saw in the first two decades of the internet, which resulted in highly concentrated markets for search, social media, and the like.

A concentrated AI market controlled by a few powerful players presents challenges beyond mere market competition. It stifles innovation by reducing incentives for established players to develop new solutions. It leaves consumers with fewer options for AI products, including safe AI models or small models that are less harmful to the environment. It also impacts the security and resilience of a society as more and more services and critical infrastructure, from government services to healthcare to financial systems, are dependent on a handful of actors, leaving entire societies vulnerable to foreign attacks. And it undermines free speech, as companies such as X and Meta deploy their own AI models to automate control over their social media platforms, identifying political dissidents and banning social media accounts.[4] This consolidation of power threatens not only market dynamics and consumer outcomes but also innovation, the environment, and the foundations of democracy itself.

We challenge the U.S. government's current framing of priorities in AI, which focuses largely on ensuring American dominance in the global AI market, as evidenced by the Executive Order on Removing Barriers to American Leadership in Artificial Intelligence. As a transatlantic organization, we strongly believe in the power of international cooperation on key issues related to AI, a transformational technology that transcends borders. We welcome actions taken by competition authorities to align and cooperate with each other, such as the EU and the UK Competition and Markets Authority (CMA)'s agreement of joint cooperation[5] and the joint statement by the U.S. Federal Trade Commission (FTC), Department of Justice (DOJ), UK CMA, and European Commission on the importance of antitrust enforcement in AI.[6] This alignment is essential when it comes to governing global technologies involved in AI development and deployment.

The proposed AI Action Plan equates innovation with protection of US monopolistic technology companies, namely Google, Amazon, Microsoft, Meta, and Apple. Empirical research shows that these massive, dominant companies are less innovative than startups and SMEs due to bureaucratic and organizational barriers to taking risks and deters external innovation. For example, these companies are actively undermine innovation with "killer acquisitions," "acqui-hires," and entering into "partnerships" (which act as de facto mergers), leading to fewer firms, less competition and greater concentration that can create single points of failure.

---

[3] AI eating software, ACCEL (2024) at 32, https://cdn.prod.website-files.com/6643a08d305ab77f8c7566b6/670f22a19ea69a94f9710c1a_16%20October%20-%20Accel%202024%20Euroscape.pdf.

[4] Mickey Carroll, "Elon Musk accused of censoring right-wing X accounts who disagree with him on immigration," *Sky News*, December 28, 2024, https://news.sky.com/story/elon-musk-accused-of-censoring-right-wing-x-accounts-who-disagree-with-him-on-immigration-13280740?dcmp=snt-sf-twitter.

[5] "EU and Britain agree on cooperation in antitrust investigations," *Reuters*, October 29, 2024, https://www.reuters.com/markets/eu-britain-agree-cooperation-antitrust-investigations-2024-10-29/.

[6] "FTC, DOJ, and International Enforcers Issue Joint Statement on AI Competition Issues," Federal Trade Commission, press release, July 23, 2024, https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-doj-international-enforcers-issue-joint-statement-ai-competition-issues.

Lastly, we take issue with the administration's de-regulatory stance and its argument that regulation hampers innovation. Rather, regulation of the market can ensure that we obtain the outcomes we seek, those that are beneficial to humanity, uphold democracy, and ensure robust competition among a variety of options. The importance of the AI industry should not exempt corporations from abiding by existing competition, labor, environmental, privacy, copyright, and transparency laws, as is currently the case. The government must not allow law-breaking to become a competitive advantage. Doing so constitutes a "race to the bottom," leaving Americans exploited for their personal data and labor, left with a dearth of options for AI products, deprioritized in terms of energy access, and overall worse off.

The current oligopolization of the AI market hurts innovation far more than regulation does, a lesson that should again be evident from previous eras of technological innovation. To correct this market failure, we propose that the AI Action Plan should emphasize the use of antitrust enforcement, strengthened copyright protections for AI inputs, and pro-competitive policy to check Big Tech's monopoly power and enable fair competition for all.

Our Vision for an AI Action Plan

We imagine an alternative policy framework focused on competition, infrastructure and access, supporting democratic and responsible AI development, and protecting creators and publishers.

Competition and Anti-Monopoly Measures

Competition authorities — the FTC and the DOJ — should use existing merger control rules, including Section 7 of the Clayton Act, to scrutinize, and if necessary, block mergers and partnerships. They should also use existing antitrust laws, such as the Sherman Act and the Federal Trade Commission Act, to investigate and prohibit dominant platforms from engaging in anticompetitive practices.

When monopolistic behavior is found to have occurred, enforcers should quickly impose remedies designed not only to prevent abusive conduct but *also* to open up markets and foster innovation. Such remedies should include the divestment or sale of parts of a corporation, especially business lines that cause a substantial conflict of interest such as cloud. Other remedies could include interoperability and data portability between different foundation models as well as restrictions on how data can be leveraged across different business lines (as the DOJ recommended in its proposed remedies[7]).

---

[7] See Courtney C. Radsch, "Letter to the U.S. Department of Justice Antitrust Division on the Google search monopoly case," Open Markets Institute and Center for Journalism & Liberty, November 19, 2024, https://www.openmarketsinstitute.org/publications/cjl-omi-urges-doj-to-break-googles-search-monopoly; Karina Montoya and Courtney C. Radsch, "Beyond court remedies in the Google Search case: A competition reform for the search ecosystem," *Concurrences*, no. 1 (January 2025), https://static1.squarespace.com/static/5efcb64b1cf16e4c487b2f61/t/67aa2433158bfc091e597712/1739203635721/Concurrences_Radsch+%26+Montoya.pdf.

The FTC should continue its critical investigations and enforcement actions of dominant technology corporations, as it is poised to do with the upcoming lawsuit against Meta Platforms seeking the breakup of Facebook, WhatsApp, and Instagram.

Leveraging Current Legal Frameworks to Regulate AI Companies

Relevant enforcement authorities should hold AI platforms accountable to existing privacy, copyright, contract, and consumer protection laws, environmental and labor standards, and horizontal AI laws. Ensuring compliance with the letter and spirit of existing laws, regulations and commitments could curb dominant players' power and their ability to exploit or abuse those dependent on their services.

For example, applicable contract laws and consumer protection laws, including the FTC Act and the CCPA, should be used to the greatest extent possible to hold AI companies accountable for violating their terms of service or amending terms of service and privacy policies secretly or retroactively. This includes instances where companies surreptitiously adopt more permissive data practices to train AI models on user data or share user data with third parties for AI training. In some cases, remedies could and should include the deletion of both data and resulting algorithms, as this can be a more effective remedy for redressing the anticompetitive behavior and advantages gained, than a fine.

Lastly, given the enormous financial opportunity presented by federal contracts and the potential to affect markets, public procurement policy should be reformed to limit Big Tech capture of federal contracts, especially where critical measures of national security or safety are concerned.

Infrastructure and Access

Given its centrality in the AI ecosystem and the digital economy more generally, cloud computing should be treated as a public utility and regulated accordingly, with an emphasis on fair, transparent, and non-discriminatory access and pricing. This would ensure that Big Tech firms are no longer able to leverage their control of computing power to benefit their own services, pick winners and steer the broader trajectory of AI innovation.

In addition, regulators should ensure antidiscrimination and neutrality principles for cloud services. In the absence of those, they should investigate the potential for censorship at the cloud infrastructure level, given the lack of net neutrality protections. They have been criticized for privileging certain customers, functions, geographies, and sectors over others in terms of access, speed, and security.[8] And they have the power to censor specific users, such as journalists or political dissidents or anyone else they want, with impunity. This is not a hypothetical threat, as was demonstrated by Amazon's move to suspend Parler, a right-wing social media platform, from AWS in the wake of the January 6 Capitol attack;[9] Amazon's termination of WikiLeaks'

---

[8] Courtney C. Radsch, "Trump V. Tech: What Is Censorship and Who Gets To Do It?" Medium. https://medium.com/center-for-media-data-and-society/trump-v-tech-what-is-censorship-and-who-gets-to-do-it-a567b6a341df.
[9] Alex Fitzpatrick, "Why Amazon's Move to Drop Parler Is a Big Deal for the Future of the Internet," *TIME,* January 21, 2021, https://time.com/5929888/amazon-parler-aws/.

AWS service under political pressure from U.S. Senator Joseph Lieberman on the grounds of national security;[10] and Google and Amazon's blocking of the practice of "domain fronting,"[11] a practice used by Signal — a secure messaging platform relied upon by dissidents and journalists — to evade censorship in countries like Egypt, Iran, Qatar, and the UAE.[12]

Market concentration amplifies these dangers to free speech, as organizations banned from Big Tech's infrastructure have few alternatives for reaching users. Treating the cloud as a public utility and regulating it as such would bring the cloud further under public control and decreasing the likelihood that Big Tech can arbitrarily cut off or deprioritize service to users for various reasons.

Supporting Democratic and Responsible AI Development

In the realm of industrial policy, the government should invest in building public computing capacity. In order to undermine Big Tech's power in the cloud computing space, viable alternatives must be available, and given the tech corporations' anticompetitive behavior, the government must step in and provide investment for the development of alternatives.

The government can build up public compute capacity in many ways, including the direct provision of compute — such as the US Department of Energy's supercomputers and the National AI Research Resource (NAIRR) — and decentralized provision, which would create distributed networks of smaller facilities.[13] Any programs for the provision of public compute should prioritize accessibility and affordability for smaller actors, including startups, SMEs, researchers, and academic institutions.

The AI Action Plan should also ensure that the government invests in open-source AI development and adoption. Open-source AI that is fully transparent about model weights and training data[14] can be a vital check to Big Tech's power in that they offer accessible and democratic alternatives to models owned by or partnered with Big Tech.

Enforce Existing IP laws and Protect Creators

The U.S government and relevant authorities must also enforce existing intellectual property (IP) laws, including copyright laws, in order to create a more balanced and fairer marketplace in which all play by the same rules and ensure that the AI industry is not able to develop its wealth and power by stripping value from the intellectual property of creators and publishers.

---

[10] John Naughton, "WikiLeaks Row: Why Amazon's Desertion Has Ominous Implications for Democracy," *The Guardian*, December 11, 2010, sec. Technology, https://www.theguardian.com/technology/2010/dec/11/wikileaks-amazon-denial-democracy-lieberman.
[11] Bruce Schneier, "Censorship in the Age of Large Cloud Providers," *Lawfare,* June 7, 2018, https://www.lawfaremedia.org/article/censorship-age-large-cloud-providers.
[12] "A letter from Amazon," Signal, May 1, 2018, https://signal.org/blog/looking-back-on-the-front/.
[13] Matt Davies and Jai Vipra, "Computing Commons," Ada Lovelace Institute, February 7, 2025, https://www.adalovelaceinstitute.org/report/computing-commons/.
[14] "The Open Source AI Definition – 1.0," Open source Initiative, https://opensource.org/ai/open-source-ai-definition.

Leading AI corporations plan to invest approximately $1 trillion in AI development over the next five years.[15] This massive investment relies heavily on training and grounding data that often includes creative and information works collected from creators and publishers without permission, compensation or credit. These companies have strategically ignored copyright law around the world while resting on a flimsy fair use argument in the US and, in many cases, willingly broken copyright,[16] to gain commercial advantage before regulatory frameworks can adapt.

The government should establish an opt-in protocol for AI training data collection that honors copyright principles, protects creators' and publisher rights, and ensures technology companies operate with proper authorization while abiding by the law.[17] A consent-based approach is essential to protect the sustainability and competitiveness of America's creative industries against unauthorized exploitation. The decisions we make now regarding data usage rights will significantly impact the integrity of our information ecosystem and, by extension, our democratic values.

While technology corporations speculate about potential transformative benefits of AI systems, the safety and effectiveness of generative AI relies heavily on access to high-quality training data.[18] Therefore, establishing regulatory frameworks to ensure fair compensation for creators is not just about protecting their rights – it is also about preserving the very source of innovation that AI companies depend upon for advancement and ensuring creators are still incentivized to create.

Conclusion

The rapid spread of AI presents an inflection point for American society and our economic system. The policy decisions made by the U.S. government today will determine whether AI serves concentrated corporate interests or functions as a democratic technology that benefits the public interest and promotes US leadership and national security. We urge the administration to pivot away from its current approach of prioritizing Big Tech dominance and instead embrace a framework that promotes genuine competition, prevents dangerous consolidation of power that undermines security and resiliency and ensures equitable access to AI infrastructure — all of which will allow innovation to thrive.

The measures we have outlined — continued antitrust enforcement, regulation of cloud computing as a public utility, investment in public compute resources, support for open-source

---

[15] Erum Manzoor, "Comparing Major Companies' AI Spending in 2024 and the Challenge of Productionizing AI Solutions," *AIM Councils,* 6 November 2024, https://council.aimresearch.co/comparing-major-companies-ai-spending-in-2024-and-the-challenge-of-productionizing-ai-solutions/.

[16] See Suchir Balaji, "When does generative AI qualify for fair use?", 23 October 2024, https://suchir.net/fair_use.html, and Kate Knibbs, "Meta Secretly Trained Its AI on a Notorious Piracy Database, Newly Unredacted Court Docs Reveal," *WIRED*, January 9, 2025, https://www.wired.com/story/new-documents-unredacted-meta-copyright-ai-lawsuit/.

[17] Courtney C. Radsch, "The case for consent in the AI data gold rush," *Brookings*, January 16, 2025, https://www.brookings.edu/articles/the-case-for-consent-in-the-ai-data-gold-rush/.

[18] Courtney C. Radsch, "AI Needs Us More Than We Need It," *Washington Monthly*, October 29, 2024, http://washingtonmonthly.com/2024/10/29/ai-needs-us-more-than-we-need-it/.

alternatives, and protection of copyright — represent a comprehensive strategy to create a more fair, innovative, and competitive AI ecosystem. By adopting these recommendations, the government can help ensure that AI development and deployment serves the public interest rather than further entrenching the power of dominant technology corporations at the expense of the government and the public.

Additional OMI background and expertise:

The Open Markets Institute has authored policy briefs and original reports on the topics of technology and market concentration. In November 2023, we released our flagship report on corporate power and AI, "AI in the Public Interest: Confronting the Monopoly Threat." We followed up this work with a report in partnership with the Mozilla Foundation, "Stopping Big Tech from Becoming Big AI" and an Expert Brief on AI and Market Concentration. In addition, OMI's Center for Journalism and Liberty has authored multiple pieces on the harms of concentration in the AI value chain to journalism and free speech through proprietary policy papers such as "What is the Value of Journalism to AI?" and publishing commentary in Brookings, *Tech Policy Press*, and *Washington Monthly*.

In addition, OMI has supported numerous public authorities in the U.S., UK, and EU with technology policy advice and enforcement actions. We have submitted recommendations to U.S. Department of Justice Antitrust Division in support of its proposed final judgement in the case that found Google held an illegal monopoly over search and text advertising and to the UK Competition and Markets Authority (CMA) to consider structural separation in its Google general search services investigation. We have also supported the European Commission's DG Competition's case on Google's monopolistic practices in online advertising technology ('adtech'). We have provided strategic policy advice to the UK CMA and the French competition authority. Lastly, we have provided comments to the UK in response to its consultation on artificial intelligence and copyright, urging the Intellectual Property Office to adopt an opt-in approach to copyright to protect the creative industries.