CHAMBER OF PROGRESS

October 27, 2025

Michael Kratsios
Science Advisor to the President
Director, Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20504

RE: Request for Information - "Regulatory Reform on Artificial Intelligence" (Federal Register Docket No. OSTP–2025–0005)

RECOMMENDATIONS

- ***The federal government should streamline National Environmental Policy Act reviews*** for clean energy projects supporting AI and data infrastructure by expanding programmatic reviews, setting clear timelines, and enforcing firm "shot clocks" to prevent delays and keep projects on schedule.
- ***The Federal Energy Regulatory Commission*** should accelerate interconnection timelines and adopt "first-ready, first-served" queue reforms to reduce backlogs and speed clean energy integration into the grid.
- ***The Departments of Justice and Commerce should be directed by Executive Order to intervene*** in legal cases to defend generative AI training as fair use, challenge excessive statutory damages, and oppose the class certification of enormous numbers of plaintiffs.
- ***OSTP should be similarly directed to submit legislation*** to Congress to reform the currently coercive and market-skewing statutory damages provisions of the Copyright Act, Digital Millennium Copyright Act, and the Federal Rules of Civil Procedure.

Dear Director Kratsios:

On behalf of Chamber of Progress—a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological advances—we appreciate the opportunity to share this response to your Request for Information on Artificial Intelligence Regulatory Reform.

Our comments address two policy areas adversely affecting AI development and deployment: Energy and Copyright.

I. Sustaining U.S. leadership in artificial intelligence will require modernizing the nation's energy and permitting systems to meet the surging power demands of AI infrastructure.

A. The Energy Bottleneck is Threatening AI Innovation

Current limitations in the U.S. electrical grid, including transmission congestion and inadequate generation capacity, are emerging as major constraints on AI-driven economic growth.[1] As artificial intelligence systems scale, their energy demands are outpacing available infrastructure, threatening the nation's ability to maintain leadership in AI innovation and deployment.

Federal policy has a critical role to play in addressing these challenges. The U.S. must foster an environment that supports both AI advancement and the energy infrastructure that underpins it, while engaging with international and standards-setting bodies to ensure that AI governance reflects democratic and Western values. However, existing federal permitting frameworks such as NEPA, the Federal Power Act, and the Bureau of Land Management's renewable energy rules often slow or block vital clean energy and transmission projects. These regulatory bottlenecks have become indirect barriers to AI progress by constraining the power supply essential for continued model training, deployment, and equitable access to compute.

B. Removing Barriers to AI Growth is Essential for American Leadership

The U.S. government should take active steps to facilitate American leadership in AI infrastructure. This includes advancing energy policy, specifically transmission and permitting reform, to ensure that data centers have access to adequate and reliable energy. Strengthening federal authority over transmission is essential. Congress should grant greater authority to a federal agency, such as the Federal Energy Regulatory Commission, to site and permit interstate transmission lines that are deemed to be in the national interest. This would streamline the approval process and, where necessary, allow the use of eminent domain to complete critical projects.

The federal government should also take steps to prevent discriminatory practices that disproportionately burden data centers. This could include implementing federal policies or issuing guidance that restricts states from enacting discriminatory measures. Establishing a national standard for data center electricity rates and ensuring equal access to economic incentives would help create a consistent and fair operating environment across states.

Existing permitting frameworks present serious challenges. Reviews conducted under the National Environmental Policy Act for major renewable energy projects routinely take three to five years or longer.[2] Federal Energy Regulatory Commission interconnection queues under the Federal Power Act are backed up for years, preventing new generation

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[1] *See* https://media.datacenterdynamics.com/media/documents/2025-Data-Center-Power-Report-1_-_Matthew_Westwood.pdf?utm_

[2] *See* https://www.thecgo.org/research/nepa-timelines-for-clean-energy-projects-understanding-delays-in-clean-energy-development/

from reaching the grid.[3] While the Bureau of Land Management has resumed some renewable project reviews, inconsistent permitting guidance and past suspensions have created uncertainty that continues to deter investment in clean energy on federal lands.[4]

The United States should also adopt balanced export control policies that protect national security while supporting the expansion of AI infrastructure and digital exports globally. Maintaining and strategically refining export controls can prevent adversaries from obtaining sensitive technologies without undermining the global competitiveness of U.S. companies. The Bureau of Industry and Security should be adequately resourced and modernized, including through the adoption of AI for supply chain monitoring and counter-smuggling operations. Careful implementation and streamlined export licensing processes are essential to ensure that security measures do not become new barriers to innovation and market growth.

Together, these bottlenecks constrain the buildout of clean and reliable energy, hindering the development of data centers and AI clusters that are essential for continued technological leadership and economic growth.

C. Policy Actions Are Needed to Accelerate AI-Ready Energy

To ensure that the United States can meet the energy demands of AI and data infrastructure, federal agencies should take coordinated action to modernize environmental reviews, expedite transmission and interconnection, and improve permitting across federal lands.

1) Modernize NEPA implementation and accelerate project reviews

The federal government should streamline reviews under the National Environmental Policy Act for clean energy projects that directly support AI and data infrastructure. Expanding the use of programmatic environmental reviews and establishing clear timelines for environmental impact statements would reduce the multi-year delays that currently slow progress. Creating firm “shot clocks” for federal reviews is an effective way to ensure accountability and prevent indefinite hold-ups, helping projects stay on schedule.[5] These reforms would accelerate renewable generation, grid expansion, and data center development critical to national AI competitiveness.

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[3] *See* https://emp.lbl.gov/news/grid-connection-backlog-grows-30-2023-dominated-requests-solar-wind-and-energy-storage

[4] *See* https://www.reuters.com/business/energy/us-restarts-solar-storage-permitting-agency-gaps-hit-projects-2025-04-22/

[5] *See* https://ifp.org/time-limit-on-injunctions/

2) Expedite transmission and interconnection

The Federal Energy Regulatory Commission should be directed to accelerate interconnection timelines under 18 C.F.R. § 35.28[6] and adopt "first-ready, first-served" queue reforms to address the extensive backlogs in connecting new generation to the grid. Under the traditional "first-come, first-served" approach, projects are reviewed strictly in the order they apply, even when many are speculative or not yet ready to build, resulting in long delays for viable projects waiting behind them. A "first-ready, first-served" system instead prioritizes projects that have secured land, permits, and financing, allowing shovel-ready renewable projects to move forward more quickly.

The PJM Interconnection, which manages the grid in the Mid-Atlantic region, offers a clear example. More than 2,000 renewable energy projects were stalled in its interconnection queue under the old "first-come, first-served" system, leading to delays of up to five years.[7] PJM has since transitioned to a "first-ready, first-served" cluster review process that prioritizes shovel-ready projects, helping to reduce backlogs and speed up grid connections for viable clean energy developments.[8]

Federal agencies should also empower the Department of Energy to designate National Interest Electric Transmission Corridors that connect renewable energy resources to high-demand AI and data regions. These corridors would enable the rapid buildout of long-distance transmission infrastructure necessary to support national computing and data capacity.

D. Modernization Drives Economic Growth

Accelerating renewable energy is not deregulation; it is modernization that drives economic growth. A modernized permitting and transmission framework can unlock private investment, expand clean infrastructure, and power the next generation of AI innovation. Streamlined federal processes do more than speed approvals. They strengthen the foundation for long-term national competitiveness by creating jobs, lowering costs, and positioning the United States at the forefront of the global clean energy economy.

A faster transition to clean energy supports both climate goals and broad-based prosperity. As renewable technologies scale, they become more cost-efficient, increasingly outcompeting natural gas in most markets. Recent analyses and charts from leading research organizations demonstrate that renewables now offer a clear and growing cost advantage, highlighting how clean energy delivers both affordability and stability compared to fossil fuels.[9] This cost trajectory provides economic resilience while reducing exposure to the volatility of natural gas prices.

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[6] *See* https://www.ecfr.gov/current/title-18/chapter-I/subchapter-B/part-35/subpart-C/section-35.28
[7] *See* https://www.utilitydive.com/news/ferc-pjm-interconnection-reform-plan-queue/637717/
[8] *Id.*
[9] *See* https://rmi.org/affordability-not-volatility-renewables-cost-advantage-grows/

Ensuring that the next wave of AI runs on affordable, reliable, and sustainable power is essential to maintaining U.S. leadership in both technology and economic strength. Modernizing America's energy policy is not only a climate imperative but also an economic strategy for enduring growth in the AI era.

II. Present Copyright Damages and Class Action Procedure Impede AI Development

On July 23, 2025, the President announced his Administration's AI Action Plan and signed three related Executive Orders to effectuate it. Appropriately, his remarks at that "Winning the AI Race" event went further to directly link the success of the AI Action Plan to "a common sense application of artificial [intelligence] and intellectual property rules."

The President, with direct reference to the training of generative AI models on copyrighted information, unequivocally endorsed a central tenet of copyright law (the idea/expression dichotomy) that undergirds application of the Fair Use Doctrine: "When a person reads a book or an article, you've gained great knowledge. That does not mean that you're violating copyright laws…." Accordingly, he concluded, for the AI Action Plan to succeed "we have to allow AI to use that pool of knowledge without going through the complexity of contract negotiations, of which there would be thousands for every time we use AI."

The President's pronouncements, however, do not have the force of law and, at this writing, powerful legacy corporate copyright owners and individuals enabled by opportunistic class action trial counsel are seeking massive statutory damages from pioneering generative AI developers big and small. They do so to stop precisely the kind of fair use-enabled model training the President identified as essential to the success of his AI Action Plan – and to the nation's security and economic future.

Indeed, in more than 50 pending federal cases, scores of named plaintiffs (and potentially millions of future class claimants) base their allegations of direct and indirect copyright infringement primarily on the automated large-scale acquisition of unlicensed training data from the internet. Many also seek enormous additional statutory damages for claimed violation of the Digital Millennium Copyright Act meant to deter breach of "technological protection measures" applied to copyrighted works.

***OSTP's present RFI asks**: "(ii) What specific Federal statutes, regulations, or policies present barriers to AI development, deployment, or adoption…?"*

Chamber of Progress respectfully suggests:

A. AI investment and innovation are directly hindered by outdated Copyright Act and Digital Millennium Copyright Act (DMCA) statutory damages regimes that radically prejudice AI developer defendants and must be reformed.

The Copyright Act [17 U.S.C. §504(c)] provides for up to $150,000 in statutory damages for each work found to be willfully infringed. In cases of non-willful infringement, they can still be assessed at $750–$30,000 per work. DMCA [17 U.S.C. §1203(c)] damages are potentially smaller – between $200 and $2500 – but they apply "per act of circumvention," not per work as under the Copyright Act. Up to triple that amount may be awarded for repeat violations.

Large language model generative AI systems necessarily train on millions of works, many of them copyrighted. These statutory damages provisions invariably make defendant AI developers' economic exposure an existential risk, particularly if a company is small and young. That's particularly true because completing litigation often is the only way to determine whether a solid fair use defense ultimately will prevail.

Indeed, the magnitude of possible damages is so astronomically large that even established and well-resourced developers cannot make a rational or fact-based economic settlement or licensing calculus, and are thus coerced into settlement. This scenario is not a hypothetical, as the $1.5 billion settlement recently approved by the Court in the *Bartz* case – the largest in copyright history – makes clear.

The settlement math is sobering but straightforward. For example:

If 10 million works are at issue, then the potential maximum liability under the Copyright Act could total *$1.5 trillion*. Of course, the odds of losing in an uncertain legal environment in which both technology and the law are in constant flux are vastly greater, as is potentially the number of works used for training. Under the DMCA, with its per violation (not work) penalties, settlement calculi are similarly warped by volume.

The same skewed math also prevents the development of any economically rational market for licensing training data. As things stand, the market license price of a training dataset isn't set by negotiation, ordinary supply and demand relationships, or any fair assessment of the value of any one copyrighted work among millions in a dataset. Rather, it's determined by defendants' best guesses as to the ultimate cost of potentially catastrophic litigation. That increases the odds that license fee demands will more likely resemble ransom rather than rational compensation.

Bottom line: as configured in Title 17, statutory damages are a de facto tax on AI innovation.

It's not surprising that the market-warping and potentially company-killing penalties regime with which generative AI developers must now contend is so ill-fitted to the President's AI innovation objectives and generative AI development. Adopted in 1976 and 1998 respectively, the Copyright Act and DMCA damages provisions are now outdated.

Statutory damages were structured a quarter or half century ago in a regime meant for discrete acts (*e.g.*, the unauthorized copying and/or distribution of copies of a finite number of copyrighted works). But GenAI training and inference involve mass ingestion, transformation, and output generation across thousands or millions of works, often in ways that blur or depart from traditional "copying" paradigms.

Nor does current law map well to model-building that treats millions of works as input rather than individually curated works for human consumption. While an AI developer might view a large corpus as one training set, the statute would calculate damages for each work in the set (or each DMCA violation). That asymmetry amplifies risk in ways Congress could not have anticipated.

B. Federal Rules of Civil Procedure and judicial precedent governing class action litigation badly distort the generative AI development ecosystem, inhibiting both innovation and competition.

As detailed above, Copyright Act and DMCA statutory damages are coercive when applied to a modern environment unforeseen when they were enacted. They are exponentially moreso, however, when sought in class action copyright infringement litigation brought under Rule 23 of the Federal Rules of Civil Procedure.

While statutory damages can quickly run into the billions based solely on maximum penalties and the number of works or violations at issue, class certification multiplies that already enormous liability by a third variable: hundreds of thousands or potentially millions of plaintiffs. Present class action procedural rules and precedent thus dramatically amplify the high stakes of generative AI developers' decision-making: settle for a massive sum or face financial annihilation.

C. Inherent asymmetrical risk enabled by disproportionate statutory damages and class action law further thwart AI development by inhibiting the judicial development of fair use precedent and related market certainty.

These problems all stem from the inherent asymmetry of risk in generative AI copyright cases faced by each of the parties. Plaintiffs face only bounded downside risks (their own litigation costs) but unbounded upside (statutory damages multiplied by and class certification). Conversely, defendant generative AI developers face limited upside (vindication of a fair-use defense) and catastrophic downside (large legal expenses and existential damages).

Changing this innovation-killing, settlement-compelling dynamic will also produce greater legal certainty surrounding generative AI training and copyright law by allowing more of the 50+ pending cases to proceed to trial and/or appeal, perhaps ultimately to the Supreme Court. Such ultimate appeals have been critical to the evolution of fair use precedent, particularly the Supreme Court's 1994 decision elevating the importance of

analyzing whether a use is "transformative" in weighing the Copyright Act's four fair use factors [17 U.S.C. §107].

In turn, the comparative certainty that comes with such authoritative guidance would mitigate the asymmetry in risk analysis caused by anachronistic statutes that threaten to impede maximum American generative AI development, as the President intends.

D. The President can and should take immediate Executive action.

The current combination of virtually unbounded statutory damages and their multiplication by class action has created a dysfunctional marketplace in which licensing practices, litigation strategies, and the arc of innovation are determined not by creative value or technological merit, but by justifiable fear of legal action. This coercive dynamic forces settlements, suppresses judicial clarification of fair use, and entrenches uncertainty that keeps smaller innovators out of the market.

For the United States to maintain leadership in AI innovation consistent with the President's directives and copyright's constitutional purpose – "to promote the progress of science and useful arts" – the Executive Branch should urgently seek to rationalize the present legal environment for generative AI development by engaging in all appropriate judicial cases and designing and advancing innovation-compatible reform of the current statutory damages and class certification frameworks.

Chamber of Progress thus respectfully urges the President, by Executive Order, to immediately:

- Direct the Departments of Justice and Commerce to:
    - actively identify and act upon all opportunities to intervene, file amicus briefs, or otherwise engage in all appropriate cases to:
        - advance the President's publicly announced copyright-related policy with respect to generative AI development by arguing that defendants' claims of fair use in acquiring and transforming copyrighted training data in the national, and thus the public, interest;
        - oppose and rebut plaintiff assertions that the source of such copyrighted training data should factor significantly in courts' fair use determinations;
        - devise and advance before appropriate courts at the damages stage of litigation all credible arguments that heavily compounded statutory damages contravene the Constitution's Due Process Clause (and all other applicable law); and

        - challenge the certification of large plaintiff classes in generative AI copyright cases on all appropriate grounds.

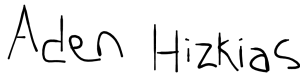
    - develop internal Department guidelines and best practices for successfully pursuing all of the foregoing, to be periodically updated; and

- Task the White House's Office of Science and Technology Policy to convene and manage an inter-agency process to develop for submission to Congress in 2026 comprehensive legislation consistent with these comments. Specifically, such legislation would reform the statutory damages provisions of the Copyright Act and DMCA, and Rule 23 of the FRCP, to render them non-coercive and thus promote innovation and the development of generative AI technology in the national and public interest.

Conclusion

Chamber of Progress recognizes that both judicial intervention and statutory reform are complex and time-consuming. That said, we will never know what the threats posed by the present legal regime have already cost the nation in terms of foregone generative AI innovation. There is little time to waste.

Sincerely,



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