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LAW FOR A DYNAMIC FUTURE

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I'm Andy Jung, Associate Counsel at TechFreedom: a nonprofit think tank dedicated to promoting the progress of technology that improves the human condition. TechFreedom seeks to advance public policy that encourages experimentation and innovation. To that end, I'm here today to celebrate open-source artificial intelligence, especially as it relates to NIST guidance documents.

In July, NTIA released a *Report on Dual-Use Foundation Models with Widely Available Model Weights*. The report asserts that "innovation and research" are likely "the main benefits of openness."[1] Quoting the Federal Trade Commission, the report explains that "[t]he history of traditional open-source software provides a vision of the value that could result from the availability of open-weights AI models—including enabling greater innovation, driving competition, improving consumer choice, and reducing costs."[2]

Despite these benefits, NIST's U.S. AI Safety Institute recently released a draft guidance document that is inherently hostile to open-source AI models.[3] NIST AI 800-1 identifies best practices for AI developers to manage risk.[4] The guidance, however, fails to distinguish between open and closed-source models.

Some of NIST's best practices do not apply to open-source models at all, and those that do apply ignore the marginal benefits of open-sourcing. Many of NIST's recommendations would prevent open-source models altogether.

NIST should craft guidance that is consistent with NTIA's "cautious yet optimistic path" for open-source AI.[5] Here, NIST should release separate guidance documents for open and closed-source models. At a minimum, NIST should amend the current guidance to clarify which practices apply to open source versus closed. As NTIA explained, the government must "avoid targeting" open-source models "with restrictions that are unduly stricter than alternative systems that pose a similar balance of benefits and risks."[6]

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[1] NAT'L TELECOMM. & INFO. ADMIN., DUAL-USE FOUNDATION MODELS WITH WIDELY AVAILABLE MODEL WEIGHTS (2024), https://www.ntia.gov/sites/default/files/publications/ntia-ai-open-model-report.pdf.

[2] *Id.* at 31 (quoting Staff in the Office of Technology, *On Open-Weights Foundation Models*, FTC (July 10, 2024), https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/07/open-weights-foundation-models).

[3] *See* TechFreedom, Comments on Managing Misuse Risk for Dual-Use Foundation Models, NIST AI 800-1 (Sept. 9, 2024), https://techfreedom.org/wp-content/uploads/2024/09/TechFreedom-NIST-AI-800-1-Comments.pdf.

[4] U.S. AI SAFETY INST., NIST AI 800-1 (2024), https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.800-1.ipd.pdf.

[5] NAT'L TELECOMM. & INFO. ADMIN., DUAL-USE FOUNDATION MODELS WITH WIDELY AVAILABLE MODEL WEIGHTS 4 (2024).

[6] *Id.* at 10.

Respectfully submitted,

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