



THE FUTURE OF FREE SPEECH

Comments to the Federal Trade Commission

**RE: Proposed Policy Statement Concerning the Suppression of Accuracy
in Artificial Intelligence Systems**

AI Policy Statement; Matter No. P264200

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Comments of:

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Before the Federal Trade Commission Re: Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems

The Future of Free Speech is an independent, nonpartisan think tank located at Vanderbilt University. We work to reaffirm freedom of expression as the bedrock of free and thriving societies through actionable research, empowering tools, and principled advocacy. The Future of Free Speech seeks to create a world where everyone's right to freedom of expression is protected by law and reinforced by a culture that tolerates diverse viewpoints.

The outputs of generative AI models are protected expressions. In *Moody v. NetChoice*,¹ the Supreme Court reaffirmed that an entity which compiles and curates speech has editorial discretion to do so. Developers exercise precisely that discretion when they select training materials, shape model behavior, and set output policies, just as courts have recognized for search results.² And the Court held that users have a right to receive expression conveyed through innovative methods.³ As Justice Brennan stated in his concurrence, "it would be a barren marketplace of ideas that had only sellers and no buyers."⁴

The liability conditions under Section 5 authority that the FTC cites on whether outputs reflect undefined "ideological objectives," and it singles out particular political viewpoints for suspicion. If the Commission enforces in that way, it would directly adjudicate truth and ideological valence of individual answers to contested questions. In addition, the First Amendment recognizes no general exception for speech the government deems false, and restrictions targeting disfavored ideas draw the most exacting scrutiny.⁵ Neither may the government compel "balance" in expression of a private entity.⁶

¹ 603 U.S. 707 (2024).

² See *Zhang v. Baidu.com Inc.*, 10 F. Supp. 3d 433 (S.D.N.Y. 2014).

³ *Packingham v. North Carolina*, 582 U.S. 98, 108 (2017); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965); *Lamont v. Postmaster General*, 381 U.S. 301, 305 (1965).

⁴ *Lamont* at 308.

⁵ *United States v. Alvarez*, 567 U.S. 709 (2012).

⁶ *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).



The Commission's deception authority reaches concrete, material, falsifiable claims in commercial speech. It does not give the agency power to treat aspirational marketing language, qualified by express warnings that outputs may be inaccurate, as a guarantee that a model pursues no objectives beyond the users'. Labeling an enforcement theory as fraud does not dissolve constitutional limits.⁷

The FTC's Statement is non-binding guidance, but it is still chilling speech under the First Amendment. Its effect is that AI companies, facing liability exposure, will tune their systems toward whatever the administration in power prefers.

The FTC must resist the temptation to become a speech regulator. The First Amendment draws a clear line that the government may not dictate what private parties say or host, even under the banner of consumer protection. We urge the Commission to affirm its commitment to constitutional limits and decline to pursue enforcement actions that would interfere with the expressive freedom of private entities.

Respectfully submitted,

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The Future of Free Speech

⁷ See *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600 (2003).