



October 15, 2023

**By Electronic Mail**

Lisa J. Stevenson, Acting General Counsel  
Robert M. Knop, Assistant General Counsel  
Jennifer Waldman, Attorney  
Federal Election Commission  
Office of the General Counsel  
1050 First Street, NE  
Washington, DC 20463

**RE: Comments of the ACM US Technology Policy Committee  
on Public Citizen Petition for Rulemaking [REG 2023-02]**

Dear Ms. Stevenson:

The Association for Computing Machinery (ACM), founded in 1947 as a non-profit and non-lobbying organization, is the world's largest and longest-established society of individual professionals involved in virtually every aspect of computing. Our over 50,000 members in the United States and 100,000 worldwide serve in government, industry, academia, and the public sector. Many have pioneered and continue to pursue work on the cutting edge of computing, including artificial intelligence.

Through its U.S. Technology Policy Committee (USTPC), ACM strives to provide apolitical technical expertise and analysis to Congress, the Executive Branch, and policymakers throughout our government to inform technology policy. Consistent with this mission, the ACM U.S. Technology Policy Committee (USTPC) hereby submits the following comments in response to the above referenced Petition for Rulemaking.

**The Requested Action Is Not Technology Neutral**

The Petition asks the Commission to clarify that the statute on fraudulent misrepresentation, 52 U.S.C. §30124, applies to "deliberately misleading campaign communications generated through the use of artificial intelligence (AI)." At the outset, we wish to note that the request violates the long-accepted principle of technology neutrality.

The U.S. Government has long held the position that policies, laws, and regulations should be technology neutral,<sup>1</sup> meaning they should not specify, require, or prohibit specific technologies. First expressed by the U.S., the principle was quickly adopted by the European Union and international organizations.<sup>2</sup> To the contrary, the request for rulemaking by Public Citizen specifically addresses the use of a specific technology, AI, to the exclusion of all others. By specifically requesting the Commission amend its regulation on fraudulent misrepresentation to make clear that the statutory prohibition “applies to deliberately deceptive AI-produced content in campaign communications,”<sup>3</sup> the Petition ignores all the other methods and technologies that can be used to create fraudulently deceptive communications.

For example, Adobe Photoshop and classical photomanipulation can be used to create deliberately deceptive content, as can other widely available software applications. A 2014 paper presented at the Australian Information Warfare and Security Conference – long before the mainstream introduction of artificial intelligence – discussed generating fake content from examples rooted in “natural science, magical performances, human deceit, military operations, intrusion detection and previous fake file solutions.”<sup>4</sup> Artificial intelligence is the latest, albeit important, addition to the various technologies used throughout history for the purpose of fraudulent misrepresentation. If the Commission obliges and makes the requested clarification, it could unduly narrow and limit the statute and sow confusion about its applicability to fraudulent content generated by other methods or technologies which might otherwise have been considered within the prohibitions of 52 U.S.C. §30124.

In a digitally enabled world, the Commission could take a technology-neutral approach and provide examples, as a means of clarification, of the myriad ways deliberate fraudulent misrepresentations can be generated and would be prohibited under 52 U.S.C. §30124, without limiting such a clarification to only AI-produced content. Such an approach would be consistent

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<sup>1</sup> *Framework for Global Electronic Commerce*, U.S. Department of Commerce, July 1997, <https://clintonwhitehouse4.archives.gov/WH/New/Commerce/read.html> (“The following principles should, to the extent possible, guide the drafting rules governing electronic commerce....rules should be technology-neutral (i.e., the rules should neither require nor assume a particular technology) and forward looking (i.e., the rules should not hinder the use or development of technologies in the future.”); see also Winston Maxwell, Marc Bourreau, “Technology Neutrality in Internet, Telecoms and Data Protection Regulation, *Computer and Telecommunications L. Rev.*, 2014, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2529680](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2529680).

<sup>2</sup> Chris Reed, “Taking Sides on Technology Neutrality,” *Script-ed*, Vol. 4, No. 3, Sept. 2007, <https://script-ed.org/wp-content/uploads/2016/07/4-3-Reed.pdf>.

<sup>3</sup> Second Submission: Petition for Rulemaking to Clarify that the Law Against “Fraudulent Misrepresentation” (52 U.S.C. §30124) Applies to Deceptive AI Campaign Communications), Public Citizen, July 13, 2023, <https://www.citizen.org/article/second-submission-petition-for-rulemaking-to-clarify-that-the-law-against-fraudulent-misrepresentation-applies-to-deceptive-ai-campaign-communications/>.

<sup>4</sup> Ben Whitham, “Design requirements for generating deceptive content to protect document repositories,” 15<sup>th</sup> Australian Information Warfare Conference, Dec. 1-3, 2014, <https://ro.ecu.edu.au/cgi/viewcontent.cgi?article=1055&context=isw>.

with longstanding U.S. Government policy and would avoid “hardwiring” a specific technology into laws and regulations. Alternatively, the Commission could choose to decline the requested clarification because the statute is neutral as written and is silent on any specific technology used; if the content is a fraudulent misrepresentation developed by AI, it would be covered under the law, just as fraudulent content developed by other means would be.

A further problem with only focusing on AI is that the meaning of the term has broadened over the last few years so that many standard technologies are sometimes referred to as AI. The requested clarification of the statute would oblige the FEC to clarify what is included as “AI” technology. This taxonomy problem in public discourse and within the scientific community is a result of the rapid growth of AI. Thus, any clarification of the statute could be problematic because the meaning of “AI” is often ambiguous<sup>5</sup> and the consensus of what technology is within the field of AI is very fluid.

### Fraudulent Misrepresentations Used to Influence Voters

Deceptive content and fraudulent misrepresentation are serious problems affecting elections and numerous other areas of society. The statute 52 U.S.C. §30124 only applies to a candidate or employee or agent of the candidate who fraudulently misrepresents that they are acting for or on behalf of another candidate, political party, or employee or agent thereof in a manner that is damaging to the other candidate or falsely misrepresenting the other candidate for purposes of soliciting contributions or donations. This is a very narrow view of the use of fraudulent misrepresentations in a digital world and does not address the use of a wide swath of potential fraudulent misrepresentations in elections.

Since the Commission is focusing on the issue of fraudulent misrepresentations, it may want to consider expanding its analysis beyond the conduct prohibited by 52 U.S.C. §30124. The Commission, for example, could seek input on the various ways deceptive content, fraudulent misrepresentations, and disinformation about the time, place and manner of voting can be used in an election to influence voters or interfere with voting or registering to vote, vote tabulation, or vote reporting. In 2020, the American Bar Association passed two Resolutions focused on the impact of disinformation operations in elections, with accompanying reports that provide valuable data and examples.<sup>6</sup>

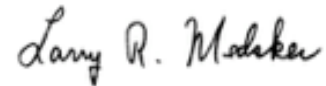
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<sup>5</sup> Matt O’Shaughnessy, “One of the Biggest Problems in Regulating AI is Agreeing on a Definition” Carnegie Endowment for International Peace Commentary, October 6, 2022 <https://carnegieendowment.org/2022/10/06/one-of-biggest-problems-in-regulating-ai-is-agreeing-on-definition-pub-88100>

<sup>6</sup> Resolution 300A, American Bar Assn., Aug. 2020, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/300a-annual-2020.pdf>; Resolution 300B, American Bar Assn., Aug. 2020, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/300b-annual-2020.pdf>.

USTPC recognizes this suggestion extends beyond the scope of the requested rule-making, so it will refrain from offering further comments at this time, but it and ACM's expert members stand ready to provide additional input to the Commission if it decides to explore how it might regulate disinformation and fraudulent content.

Respectfully submitted,

A handwritten signature in black ink that reads "Larry R. Medsker". The signature is written in a cursive, slightly slanted style.

Dr. Larry Medsker  
Chair