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Big Headlines, Modest Impact: Putting the U.S. AI Framework in Context

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Background

The U.S. may be about to wipe out the patchwork of state AI laws but not replace it with much. The White House's proposed National Policy Framework for Artificial Intelligence ("The Framework") outlines a potential shift toward a more centralized federal approach to AI regulation, including the preemption of certain state laws.

The Framework focuses on seven categories of proposed Congressional legislation:

1. Protecting children and empowering parents,
2. Safeguarding and strengthening American communities,
3. Respecting intellectual property rights and supporting creators,
4. Preventing censorship and protecting free speech,
5. Enabling innovation and ensuring American AI dominance,
6. Educating Americans and developing an AI-ready workforce,
7. Establishing a Federal policy framework, preempting cumbersome state AI laws.

The Framework is intended to set out a federal AI policy that prevents the patchwork of state AI regulations, which the Framework contends hinders national competitiveness in AI. However, the Framework is best understood as a directional policy signal rather than an immediate compliance development. It does not create binding obligations, and it does not alter existing legal requirements for companies today

What You Need to Know

The Framework would preempt many existing state regulations around AI. States may continue to enforce their own generally applicable laws, including those to prevent fraud, protect consumers, and prohibit child sexual abuse material, but all other state laws related to use of AI and AI development would be preempted by legislation proposed by the Framework. However, the Framework itself proposes few restrictions or guardrails on the use or development of AI, except as it relates to children's use of AI systems and doesn't immediately invalidate any state laws.

This is an important signal of where U.S. AI policy may be headed, particularly with respect to federal preemption and a lighter-touch regulatory approach. However, it does not create immediate legal obligations. For in-house teams, the practical takeaway is: no immediate changes are required, but the direction of travel is worth monitoring as federal legislative efforts develop.

Proposed Legislation and its Impact on State Laws

Establishing a Federal Policy Framework, Preempting Cumbersome State AI Laws

While it is the last category of the Framework, the underlying intent of the Framework is to establish a federal AI policy that preempts state AI laws. The Framework explicitly directs Congress to preempt any state laws that regulate AI development, unduly burden Americans' use of AI for an activity that would be lawful if performed without AI and penalize AI developers for a third-party's unlawful conduct using their models. However, at present, this remains a legislative recommendation. Unless and until Congress enacts implementing legislation, companies must continue to comply with applicable state AI laws, including disclosure requirements, digital replica restrictions, and other state-specific obligations.

The Framework gives wide latitude to AI developers and could reduce the regulatory safeguards that some states have adopted to address AI-related risks. If Congress follows these directions, state laws that some lawmakers see as beneficial would be preempted. The Framework, conversely, does not propose any legislation that would protect Americans against such harms. For example, California, Colorado, New York, Utah and Maine all require some level of disclosure that a consumer is interacting with an AI chatbot. California and Illinois prohibit using AI to create a digital replica of an individual to perform the work the individual would otherwise perform. Given the heavy influence of the film industry in California, it is understandable why actors would not want digital replicas of themselves to "perform" in roles the actor would otherwise have.

Importantly, in the category "respecting intellectual property rights and supporting creators", the Framework directs Congress to consider establishing a federal framework protecting individuals from the unauthorized distribution or comical use of AI-generated digital replicas of their voice, likeness, or other identifiable attributes, with exceptions for parody, satire, news reporting and other works protected by the First Amendment. Unlike in other places in the Framework, Congress is only asked to "consider" enacting such legislation. Arkansas, California, Illinois, Tennessee and New York all have legislation protecting against the unauthorized distribution or commercialization of a digital replica is one's likeness that would be preempted by the Framework, whether Congress chooses to enact similar protections.

Protecting Children and Empowering Parents

The Framework recommends that, for AI platforms likely to be accessed by minors, Congress should:

1. Establish commercially reasonable, privacy protective, age-assurance requirements;
2. Require AI platforms and services to implement features to reduce risks of sexual exploitation and self-harm;
3. Empower parents and guardians with robust tools to manage their children's privacy settings, screen time, content exposure and account controls; and
4. Affirm that existing child privacy protections (including the Children's Online Privacy Protection Rule) applies to AI systems; and
5. Ensure Congress does not preempt states from enforcing their own generally applicable laws protecting children, such as prohibitions on child sexual abuse material, even where the material is generated by AI.

The Framework encourages Congressional legislation that would have significant overlap with the states, who have been particularly active in regulating AI that is accessed by known minors. In some instances, the Framework's proposed legislation would preempt existing state laws designed to protect minors. California and New York have heightened requirements for companion chatbots accessed by known minors, such as periodic reminders that the chatbot is not a person, which would be preempted by legislation enacted in accordance with the Framework.

However, the Framework requires Congress to ensure that it does not preempt states from enforcing their own generally applicable laws protecting children. All states (other than Alaska, Colorado, Massachusetts, Ohio, Vermont and Washington D.C.) have updated their criminal laws to ensure that AI-generated images and deepfakes of minors are considered child sexual abuse material. These criminal statutes explicitly would not be preempted by legislation drafted following the Framework.

Some states (including California, Maryland, Nebraska, Vermont and South Carolina) have passed Age Appropriate Design Codes that apply to all online services, not just AI platforms and services. Kentucky has brought a case against Character.AI for failing to protect minors and alleging violation of its comprehensive state data protection act. It is likely, although not explicit, that the Framework does not intend for the proposed legislation to preempt application of these Age Appropriate Design Codes and state comprehensive data protection laws as they relate to children.

Safeguarding and Strengthening American Communities

The Framework seeks to support the expansion of AI development, including the infrastructure required for the growing AI industry, while providing protection for taxpayers. To accomplish this, the Framework recommends that Congress ensure residential ratepayers do not experience an increase in electricity costs, streamline federal permitting for AI infrastructure construction, support law enforcement efforts to combat AI- engaged impersonation scams and fraud that target vulnerable populations, and provide AI resources to small businesses, such as grants and tax incentives. The Framework does not provide guidance for how to ensure residential ratepayers are not responsible for the additional costs caused by large AI data centers in their communities.

The Framework also directs Congress to ensure appropriate agencies in national security have sufficient technical capacity to understand frontier AI model capabilities and associated national security considerations. California and New York have enacted similar legislation that governs the development of frontier AI models that considers risks beyond those posed to national security. These include obligations for developers of large frontier models to write, implement, comply with, and clearly and conspicuously publish a frontier AI framework that describes how the frontier model was developed, the identified risks and how they have been mitigated, reporting requirements if a critical safety incident occurs, and penalties that can be assessed by state Attorney Generals for failure to comply with these requirements. Colorado has similar legislation that applies more generally to high-risk AI systems. Given the Framework's recommendation that Congress preempt state AI laws, specifically those designed to regulate AI development, California, Colorado and New York's laws would be preempted by the federal government's narrower risk assessment for the development of AI models.

Respecting Intellectual Property Rights and Supporting Creators

The Framework gives more leeway to Congress with respect to IP issues and merely directs them to consider enabling a licensing framework or collective rights system to allow collectively negotiated compensation from AI providers, although the Framework states that if Congress does pass such legislation, the legislation cannot address when or whether the licensing framework is required.

The Framework also asks Congress to consider establishing a federal framework protecting individuals from the unauthorized distribution or comical use of AI-generated digital replicas of their voice, likeness, or other identifiable attributes, with exceptions for parody, satire, news reporting and other works protected by the First Amendment. As noted above, this would preempt similar restrictions in multiple states even if not enacted by Congress.

Preventing Censorship and Protecting Free Speech

The Framework directs Congress to prevent the United States government from coercing technology providers, including AI providers, to ban, compel, or alter content based on partisan or ideological agendas and provide an effective means for Americans to seek redress from the Federal Government for agency efforts to censor expression on AI platforms or dictate the information provided by an AI platform.

This would essentially give Americans a private right of action to sue Federal agencies that the individual believes is somehow requiring the AI platform to produce certain outputs that they believe is based on partisan or ideological agendas.

Enabling Innovation and Ensuring American AI Dominance

The Framework intends to remove barriers to innovation and accelerate deployment of AI applications. To accomplish this, Congress is directed to establish a regulatory sandbox for AI applications and provide resources to make federal datasets accessible to industries and academia in AI-ready formats for use in training AI models and systems. The Framework does not specify what data would be included in the federal datasets. The Framework instructs Congress not to create a new federal rulemaking body to regulate AI and instead support development and deployment of sector-specific AI applications through existing regulatory bodies.

Removing the ability to create a new rulemaking body specifically to address the risks from AI could result in a patch-work of industry standards that apply to one AI system that is used across industries and would task agency employees with little expertise in AI to develop regulations. While intended to grant maximum flexibility to AI developers, this could result in regulations that are inconsistent or do not reflect the reality of the technology being regulated.

Educating Americans and Developing an AI-Ready Workforce

In an albeit tacit nod to the concerns around AI replacing workers, the Framework instructs Congress to ensure existing education programs and workforce training incorporate AI training, bolster capabilities at land-grant institutions to provide technical assistance and develop AI youth development programs, and expand Federal efforts to stuck trends in task-level workforce realignment.