

October 27, 2025

Filed through www.regulations.gov

Stacy Murphy
Deputy Chief Operations Officer/Security Officer
Office of Science and Technology Policy
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue
Washington, DC 20504

**Re: Request for Information on Regulatory Reform on Artificial Intelligence, 90
Fed. Reg. 46422, pp. 46422-24 (October 27, 2025)**

Dear Ms. Murphy:

The Entertainment Software Association¹ (“ESA”) welcomes the opportunity to respond to the Office of Science and Technology Policy’s (“OSTP”) request for information (“RFI”) from stakeholders on federal statutes, regulations, or agency rules that hinder the development, deployment, or adoption of artificial intelligence (“AI”) technologies.

Because ESA member companies are at the forefront of AI innovation, they welcome the administration’s objective of promoting the development of AI technologies through the elimination of restrictive policies that hamper the ability of U.S. companies to innovate. Therefore, we recommend that OSTP and other federal agencies:

¹ ESA is the U.S. trade association for companies that publish interactive entertainment software for video game consoles, handheld devices, personal computers, and the internet. Our members not only create some of the world’s most engaging interactive experiences for consumers, but they also develop novel technologies that are at the cutting edge, such as virtual, augmented, and mixed reality hardware and software as well as the latest consoles and handheld video game devices.

Every day, millions of Americans play video games. Research has shown that more than 205 million players in the United States drove industry growth to the tune of \$59.3 billion in 2025. In 2023, the industry generated direct economic output of more than \$101 billion, added more than \$66 billion in GDP to the U.S. economy and created over 350,000 jobs.

- maintain a risk-based regulatory perspective that avoids disincentivizing minimal-risk uses of AI technology and training data in entertainment media, such as video games;
- preserve the regulatory and policy space necessary to innovate by encouraging public-private collaboration rather than mandates; and
- resist calls for changes to current intellectual property law.

Video game companies routinely adopt and develop new technologies to improve game development processes. Various forms and iterations of AI technology, including machine learning, have been deployed in games for over two decades as useful tools for a variety of purposes, such as background and terrain generation, processing or analysis of data within the game, and quality control. ESA members consider generative AI to be another emerging technology that will be useful in designing and operating the next generation of video games in areas such as content creation, art generation, animation, sound, or natural language processing (for example, natural speech and responses from non-player characters within the game).

Continue to Support a Risk-Based, Sector-Specific Approach to AI Regulation

A risk-based, proportionate approach to AI governance recognizes the diversity of AI applications and calibrates oversight according to context and potential impact. High-risk applications, where the irresponsible use of AI could result in significant risks to safety, privacy or access to fundamental resources, are best suited for narrowly-tailored regulation. Entertainment software, such as video games and related interactive experiences should be considered low-risk uses for which industry- or sector-specific self-regulation is appropriate.

For example, broad restrictions on otherwise lawful uses of certain types of data for AI training may limit adoption and/or deployment of AI technology for beneficial uses, such as training AI models with video viewer data for the purpose of age assurance. While this is not the intent or purpose of the law, some have sought to apply the Video Privacy Protection Act (“VPPA”) to such video viewer datasets, opening new fronts of liability and litigation for companies seeking to keep children safe online, and counterproductively disincentivizing beneficial uses of that data.

Foster Public-Private Partnerships in AI Development and Governance and Encourage Principles of Voluntary Stakeholder-based Engagement in Standards-Setting

A risk-based regulatory approach to AI governance aligns with principles of responsible innovation and complements ongoing agency efforts already underway in the U.S. government, such as the National Institute of Standards and Technology’s (“NIST”) voluntary AI Risk Management Framework, its Zero Draft process on AI standards and ongoing stakeholder engagement. We urge OSTP to continue supporting existing flexible

regulatory spaces that permit public-private relationships between the government and industry to thrive.

On the formation of AI standards, especially on content authentication and provenance, a one-size-fits-all approach would chill both creativity and innovation. A voluntary, multi-stakeholder process, rather than government mandates, will continue to be key to maintaining U.S. technological competitiveness, both domestically and globally. Standards developed within the framework of voluntary, private sector-led partnerships ensure that they are technologically flexible, internationally interoperable, and likely to lead to broader public adoption.

Existing Intellectual Property Laws are Adequate to Protect Artificial Intelligence Technology in Video Games

Intellectual property (“IP”) rights are vital to the innovative AI technologies incorporated into video games. Robust rules on intellectual property rights that protect inventive technologies and expressive works preserve incentives for companies in the U.S. video game industry to continue producing the engaging content and interactive experiences that consumers want. It also provides a certain assurance for companies as they invent new technologies that allow them to offer players new ways to interact with content.

U.S. IP law—particularly on copyright and patents—has long proven capable of adapting to technological change. For example, courts and the U.S. Copyright Office are already addressing the nuanced issues of authorship, ownership, and the use of copyrighted works in AI training utilizing the current statutory framework of the Copyright Act. Courts and the U.S. Patent and Trademark Office are doing the same on questions of inventorship and patentability within the bounds of the Patent Act.

Because the video game industry has been using AI technology responsibly for decades, we view current U.S. IP law as an adequate framework to analyze AI use cases, and we are recommending no changes to the law at this time. Premature government intervention could introduce uncertainty and potentially disrupt established markets without demonstrable public benefit.

Conclusion

In sum, we would like to express our appreciation to OSTP for seeking input from stakeholders as it considers federal impediments to AI innovation. We ask that OSTP consider that:

- A risk-based and proportionate regulatory approach to AI oversight fosters creativity, innovation, and competitiveness; and
- A voluntary, multi-stakeholder, consensus-driven initiative for content provenance and authentication standards ensures broad participation and technical adaptability; and

- Existing federal intellectual property statutes already provide an adaptable framework for AI innovation.

Together, these principles will ensure that the United States remains a global leader in both AI innovation and creative excellence.

We recommend that OSTP continue to work together with industry stakeholders in these and other matters involving emerging technologies, and we remain available to answer any additional questions you may have. We thank OSTP for its leadership and for the opportunity to contribute to this important policy conversation.

Respectfully submitted,



Bijou Mgbojikwe
Senior Policy Counsel