Schumer Framework May Forge US Model On AI Governance

By **Alan Charles Raul and Rimsha Syeda** (September 5, 2023)

This summer, Senate Majority Leader Chuck Schumer proposed a distinctive new framework to develop a comprehensive artificial intelligence regulatory policy that is intended to be adamantly bipartisan and committed, as a first principle, to preserving innovation and intellectual property rights.

In parallel, the framework will implement the necessary guardrails to ensure the safe and responsible evolution of AI.

As required by AI's fast-paced evolution, legislative action is intended to move unusually quickly through Congress with opportunities for input from AI experts.

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Given that the senate majority leader is publicly committed to this, and that the U.S. Chamber of Commerce has expressed an open mind toward the initiative, it could become an approach that ends up gaining traction in Congress and forging the U.S. model for AI governance.

Schumer also added a number of AI proposals to the version of the current National Defense Authorization Act that has passed the Senate. Of likely interest to financial institutions, the NDAA bill would require federal financial regulators to issue reports that analyze how AI is and ought to be used by the industry and by regulators.

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By way of benchmarking, companies may also be interested to know that the U.S. Department of Defense has stood up an Office of the Chief Digital and Artificial Intelligence Officer, which is funded by the NDAA, and the new NDAA legislation calls for the establishment of a chief artificial intelligence officer for the Department of State.

The SAFE Innovation Framework

On June 21, in a major speech at the Center for Strategic International Studies, invoking visionary references to Presidents John F. Kennedy and Theodore Roosevelt, Schumer presented his novel approach for the development of a sweeping artificial intelligence regulatory scheme.

He described the potential for AI in transcendent terms: "AI could be our most spectacular innovation yet, a force that could ignite a new era of technological advancement, scientific discovery, and industrial might."

Most notably, however, Schumer said his approach will stress innovation and bipartisanship — and the need for Congress to move much more quickly than the typical legislative process. He calls his initiative the SAFE Innovation Framework.

Schumer's SAFE acronym translates into Security, Accountability, Foundations and Explainability.

Schumer described AI as "world-altering," but he warned of "real dangers" too. The dangers he highlighted included "job displacement, misinformation, a new age of weaponry, and the risk of being unable to manage this technology altogether."

Perhaps most surprising, however, was Schumer's repeated insistence that "[w]e must come up with a plan that encourages — not stifles — innovation … Let me repeat: our framework must never lose sight of what must be our north star — innovation."

He also explained, of course, that innovation must take place inside a broader framework that includes the necessary safeguards to curb the threats posed by AI. He emphasized the need for guardrails that would regulate how AI is developed, audited and deployed. Guardrails should "align with democracy" and promote America's foundations, which include human liberty, civil rights and justice.

Schumer also acknowledged that achieving the goal of innovation, while simultaneously implementing the necessary guardrails, will involve considerable challenge.

He noted, in particular, the difficulties in balancing collaboration and competition, agreeing on the necessary level of federal intervention, and fairly distributing the gains made through AI. He stressed that IP rights would have a special and important place within this framework.

The security concerns he cited refer to both workforce issues and national security.

Regarding workforce risks, Schumer analogized the problem to the impacts of globalization, which the majority leader says were associated with extensive job loss, erosion of the middle class and harm to certain communities, asserting that AI could worsen those effects:

> AI will reshape the knowledge economy — impacting workers in sales, marketing, coding, software development, banking, law and other skilled occupations. Many assumed these jobs would always be safe, but that is not the case. The erosion of the middle class — already one [of] America's most serious problems — could get much worse with AI if we ignore it and don't take measures to prevent job loss or misdistribution of income.

He additionally emphasized that AI can be used to advance national defense and protect American strategic interests.

But, at the same time, AI deployments could also jeopardize national security. Schumer discussed several risks, including the risks of misinformation, especially during elections, and AI in the hands of bad actors with an agenda of extortionist financial gain or political unrest.

On accountability, the aim of his framework is to safeguard children's personal data and mental health; deter the exploitation of addictions, financial problems and mental illnesses; ensure worker protections and guard against racial bias in hiring; and protect IP rights.

He further noted that "algorithms represent the highest level of intellectual property for AI developers. Forcing companies to reveal their IP would be harmful, it would stifle innovation, and it would empower our adversaries to use them for ill." The framework supports regulating the development, auditing and deployment of AI to address these concerns.

The foundations prong of the framework is focused on promoting the causes of human liberty, civil rights and justice.

On its own, AI neither supports nor opposes those values. The majority leader explained that "[i]f we don't set the norms for AI's proper uses, [adversaries who do not uphold the same values] will leap ahead of us and set the rules for AI."

Schumer draws particular attention to shielding America's electoral process against new AI threats such as deepfakes and other mis- or disinformation.

Finally, Schumer outlined the importance of explainability, which is focused on transparency.

Users may not understand the reasoning behind complex algorithms and why the AI system provided one response over another, and thus systems should be transparent with the sources of their answers.

Schumer noted, "Even the experts don't always know why these algorithms produce the answers they do. It's a black box." He recommends Congress make this issue a top priority and emphasizes that companies must take the lead in helping solve this problem.

The Congressional and Public Process to Effectuate the SAFE Innovation Framework

The SAFE Innovation Framework does not currently advance any legislative text.

Instead, to carry out the framework, Schumer calls for a wholly new process to develop policies that can handle the extraordinary pace at which AI is progressing.

Rather than the traditional long-winded process in legislative committees, the majority leader intends to roll out a series of what he called "AI insight forums" later this fall to guide the development of rules through a consciously bipartisan process.

The forums seek to invite top AI experts to come to Congress and participate in a "new and unique approach to developing AI legislation."

Schumer's timeline for legislation is not days or years, but rather, months. He anticipates the insight forums will focus on topics such as:

- AI innovation;
- Copyright and IP;
- Use-cases and risk management;
- Workforce;
- National security;
- Guarding against doomsday scenarios;
- AI's role in our social world;

- Transparency, explainability and alignment; and
- Privacy and liability.

Schumer repeatedly emphasized the need for nonideological leadership on AI.

He identified specific Republican as well as Democratic lawmakers to guide the initiative, and stated that tackling AI must be done on a bipartisan basis.[1]

AI must be distinguished from the "typical partisan fights of Congress," considering that AI will impact both the left and right without discrimination.

Before the AI Insight forums take place in the fall — likely in September and October — on July 9, Schumer released a "Dear Colleague" letter revealing the Democratic Party's policy goals for the upcoming session, in which AI was a central focus, and announcing that senators will participate in a classified, all-senators briefing with the DOD and other parts of the intelligence community.

Schumer wrote in the letter that he intends to "build on [his] SAFE Innovation Framework."

The all-senators briefings took place between July 11 and July 26. The first briefing focused on the state of AI as it stands today. The second briefing was a classified presentation on AI's national security implications.

In the third briefing, taking place days before the August recess, senators heard from top government experts to learn about the future of artificial intelligence. Connecticut Sen. Richard Blumenthal said that the bipartisan panel discussed the "tremendous positive benefits of AI, the variety of what AI is, and overwhelmingly the need to invest and for the federal government to be involved."

Given the majority leader's professed commitment to innovation, bipartisanship and protection of IP rights — along with corresponding guardrails, the framework could elicit support from the business community. Notably, the Chamber of Commerce tweeted out an initial receptivity to the framework.[2]

Schumer has also promoted the inclusion of several AI provisions in his manager's amendment to the bipartisan National Defense Authorization Act.[3]

Schumer's proposals and other AI amendments in the NDAA include:

- Requiring reports from federal financial regulators that analyze how AI is and ought to be used by the industry and by regulators;

- A bug bounty program for AI at the Defense Department that would incentivize people spotting potential issues with their use of the tool;

- Requiring the Defense Department to issue a report laying out ways to improve data sharing and interoperability in its use of AI;

- Requiring the department to coordinate with other federal agencies to conduct risk studies for the use of AI; and

- Establishing a chief AI officer of the Department of State, who may also serve as chief data officer to oversee adoption of AI in the department and to advise the secretary of state.[4]

In all, the SAFE Innovation Framework — and perhaps even Schumer's other efforts to increase the pace of the senatorial race to legislate on AI — may have the potential to generate thoughtful understanding and governance of AI within a possibly meaningful time frame.

The senate majority leader's salient commitments to "starting from scratch," promoting innovation, relying on bipartisanship, and protecting national security and democratize values could prompt the kind of out-of-the-box thinking that AI governance is going to need.

Ultimate success will depend of course not only on execution of the initiative itself, but also on challenges triggered by the blistering speed of actual AI research and deployment on the ground.

And, if you have any doubts about all of this, just ask ChatGPT to predict the future!

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[1] "To deepen the spirit of bipartisanship," Senator Schumer established a group [of] Senators to lead on this issue: Senators Heinrich [(D-NM)], Young [(R-IN)], Rounds [(R-SD)] and myself [(D-NY)]. "We will also rely on our Committee Chairs to help us develop the right proposals: Chairman Cantwell [(D-WA)], Peters [(D-MI)], Klobuchar [(D-MN)], Warner [(D-VA)], Durbin [(D-IL)], as well as their Republican ranking members. We also need all members who've spoken on AI to join us: Senators Bennet [(D-CO)], Thune [(R-SD)], Blumenthal [(D-CT)], Blackburn [(R-TN)], Hawley [(R-MO)] and many others."

[2] The Chamber of Commerce tweeted, "We appreciate Senator Schumer's commitment to

ensuring the US remains a global leader in AI. The Chamber of Commerce and business community are ready and willing to engage in these important bipartisan discussion to achieve balanced policy and regulatory frameworks on AI."

[3] Senator Schumer stated in his floor remarks, "My amendment, which I worked on with Senators Rounds, Young, and Heinrich, will increase data sharing with [the Department of Defense], increase reporting on AI's use in the financial services industry, create a "bug bounty program" where ethical hackers help us find vulnerabilities in our defenses, and much, much more."

[4] And note that the Department of Defense already has a Chief Digital and Artificial Intelligence Officer in place; see https://www.ai.mil/.