

requirements implement a common sense principle: section 5 does not hold people liable for innocent conduct that may have unwittingly facilitated someone else's violation.

Other areas of the law abide by the same common-sense principle. In *Metro-Goldwyn-Mayer Studios Inc. v. Grokster*, for example, the Supreme Court again confronted the question of whether a product with both infringing and noninfringing uses violated the copyright laws.<sup>59</sup> In that case, the product was peer-to-peer file sharing software that was commonly used to share copyrighted music and films without authorization.<sup>60</sup> Although the copyright laws do not prohibit a product "capable of commercially significant noninfringing uses" even if it were also capable of substantial infringement,<sup>61</sup> the makers of the peer-to-peer filesharing software distributed their product with the intention of promoting infringement.<sup>62</sup> Imposing copyright liability on a party who distributed a product with the intention of facilitating infringement was consistent with "principles recognized in every part of the law."<sup>63</sup>

The point here is not to identify exhaustively the circumstances in which the provision of a product or service with lawful and unlawful potential uses may violate section 5. I instead argue only that, at the very least, precedent and common-sense "principles recognized in every part of the law" require that the government must show that a defendant knew that he was participating in someone else's unfair or deceptive act or practice when he provided that product or service.

### III

I dissent from the filing of this complaint for an additional reason. We may file an administrative action alleging a section 5 violation only if such an action "would be to the interest of the public."<sup>64</sup> I do not believe this action is in the public interest for two reasons.

First, the Commission's aggressive move into AI regulation is premature. AI is the subject of heated rhetoric. Doomsayers warn that AI will take our

jobs, hopelessly blur the distinction between fact and fiction, and maybe even threaten the survival of human civilization. AI companies do not forcefully resist all these claims, given that predictions about the incredible potential for AI may be useful as these companies compete for investment dollars and engineering talent. But the Commission should not succumb to the panic or hype. Generative AI technology is impressive, but it is also nascent. Neither its naysayers nor its cheerleaders really understand its potential, or whether it represents substantial progress toward "artificial general intelligence" (AGI)—machine intelligence matching both the breadth and power of the human mind, the holy grail of AI research.<sup>65</sup> That ignorance is not a reason to plunge headlong with aggressive regulation. It is a reason to stay our hand.

As our country has always done, we should give this industry the space to realize its full potential—whatever that turns out to be. America is the greatest commercial power in the history of the world in no small part because of its tolerant attitude toward innovation and new industry. There has never been a better place in the world to have a new idea than the United States. We should go to great lengths to ensure that remains the case.

When people use generative AI technology to lie, cheat, and steal, the law should punish them no differently than if they use quill and parchment.<sup>66</sup> But Congress has not given us the power to regulate AI. It has tasked us with enforcing the prohibition against unfair or deceptive acts and practices. If our enforcement incidentally captures some AI-generated conduct, so be it.<sup>67</sup> But we should not bend the law to get at AI. And we certainly should not chill innovation by threatening to hold AI companies liable for whatever illegal use some clever fraudster might find for their technology.

Second, the complaint implicates important First Amendment interests. The First Amendment constrains the government's authority to regulate the inputs of speech.<sup>68</sup> The Commission

today holds a company liable under section 5 for a product that helps people speak, quite literally. The theory on which the complaint rests would permit the Commission to proscribe Microsoft Word merely because someone may use it to create a fake review, or Adobe Photoshop merely because someone used it to create a false celebrity endorsement. The danger this theory poses to free speech is obvious. Yet because the technology in question is new and unfamiliar, I fear we are giving short shrift to common sense and to fundamental constitutional values.

I respectfully dissent.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Solicitation of Nominations for Appointment to the World Trade Center Health Program Scientific/Technical Advisory Committee

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (STAC), in accordance with provisions of the James Zadroga 9/11 Health and Compensation Act of 2010, as amended. The STAC consists of 17 members including experts in fields associated with occupational medicine, pulmonary medicine, environmental medicine, environmental health, industrial hygiene, epidemiology, toxicology, and mental health, and

Federal limitations on political expenditures on the ground that such expenditures are a necessary ingredient to the sort of mass political communication protected by the Speech Clause; *McConnell v. FEC*, 540 U.S. 93, 251 (2003) (Scalia, J., concurring in part, concurring in the judgment in part, and dissenting in part) ("To a government bent on suppressing speech, this mode of organization presents opportunities: Control any cog in the machine, and you can halt the whole apparatus."). See also *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 591-93 (1983) (striking down a tax on paper and ink as an unconstitutional restriction of the freedom of speech and of the press); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250-51 (1936) (striking down statute taxing the sale of advertisements in publications with a weekly circulation greater than 20,000 copies).

*FTC v. Moses*, 913 F.3d 297, 306-07 (2d Cir. 2019); *FTC v. Com. Planet, Inc.*, 815 F.3d 593, 600 (9th Cir. 2016) (similar); *FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1203-04 (10th Cir. 2005) (similar); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989) (similar).

<sup>59</sup> 545 U.S. 913 (2005).

<sup>60</sup> *Id.* at 919-20.

<sup>61</sup> *Id.* at 931-32.

<sup>62</sup> *Id.* at 934-35.

<sup>63</sup> *Id.* at 935 (quoting *Kalem Co. v. Harper Bros.*, 222 U.S. 55, 63 (1911)).

<sup>64</sup> 15 U.S.C. 45(b).

<sup>65</sup> Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson, A Look Behind the Screens: Examining the Data Practices of Social Media and Video Streaming Services, at 11 n.44 (Sept. 19, 2024).

<sup>66</sup> *Id.* at 10-11.

<sup>67</sup> I support, for example, the complaint and settlement that we announce today against DoNotPay for deceiving consumers about the capabilities of its generative AI service. Concurring Statement of Commissioner Andrew N. Ferguson, In the Matter of DoNotPay, Inc. (Sept. 25, 2024).

<sup>68</sup> See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 16, 19-20 & n.18, 44-45 (1976) (per curiam) (striking down

representatives of WTC responders as well as representatives of certified-eligible WTC survivors.

**DATES:** Nominations for membership on the STAC must be received no later than November 11, 2024. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nominations should be mailed to NIOSH Docket 229-L, c/o Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24-4, Atlanta, Georgia 30329-4027, or emailed to [nioshdocket@cdc.gov](mailto:nioshdocket@cdc.gov).

**FOR FURTHER INFORMATION CONTACT:** Tania Carreón-Valencia, Ph.D., M.S., Designated Federal Officer, World Trade Center Health Program Scientific/Technical Advisory Committee, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop R-12, Atlanta, Georgia 30329-4027. Telephone: (513) 841-4515 (this is not a toll-free number); Email: [TCarreonValencia@cdc.gov](mailto:TCarreonValencia@cdc.gov).

**SUPPLEMENTARY INFORMATION:** The World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (STAC) reviews scientific and medical evidence and makes recommendations to the Administrator of the WTC Health Program on additional Program eligibility criteria and, upon request, additional WTC-related health conditions, reviews and evaluates policies and procedures used to determine whether sufficient evidence exists to support adding a health condition to the List of WTC-Related Health Conditions (List), makes recommendations regarding individuals to conduct independent peer reviews of the scientific and technical evidence underlying a final rule adding a condition to the List, and provides consultation on research regarding certain health conditions related to the September 11, 2001, terrorist attacks.

Nominations are sought for individuals with the expertise and qualifications necessary to accomplish the Committee's objectives. The Administrator of the WTC Health Program is seeking nominations for members fulfilling the following categories:

- Two occupational physicians, one of whom should have experience treating WTC rescue and recovery workers;
- Environmental medicine/environmental health professional;
- Toxicologist;
- Epidemiologist;

- Representative of WTC responders; and
- Representative of certified-eligible WTC survivors.

Members may be invited to serve for four-year terms. Selection of members is based on candidates' qualifications to contribute to accomplishing STAC objectives. More information on the Committee is available at <https://www.cdc.gov/wtc/stac.html>.

Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. NIOSH identifies potential candidates and provides a slate of nominees for consideration to the Director of the Centers for Disease Control and Prevention (CDC) for STAC membership each year; CDC reviews the proposed slate of candidates and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in October, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address);
- The category of membership (environmental medicine or environmental health specialist, occupational physician, pulmonary physician, representative of WTC responders, certified-eligible WTC survivor representative, industrial hygienist, toxicologist, epidemiologist, or mental health professional) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that

demonstrates the candidate's suitability for the nominated membership category along with an indication of whether the candidate is currently enrolled in the WTC Health Program; and

- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (e.g., CDC, National Institutes of Health, Food and Drug Administration).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) has scheduled a public meeting. Information about ACHDNC and the agenda for this meeting can be found on the ACHDNC website at <https://www.hrsga.gov/advisory-committees/heritable-disorders/index.html>.

**DATES:** Thursday, November 14, 2024, from 10 a.m. to 4 p.m. eastern time (ET).

**ADDRESSES:** This meeting will be held via webinar. While this meeting is open to the public, advance registration is