

I. Summary

1. This complaint concerns Zoom Video Communications, Inc. (“Zoom”) unfair and deceptive use of artificial intelligence (AI) and machine learning (ML) techniques. These business practices are contrary to the material and express representations set out in the Second Revised Terms of Service and the 2020 Consent Order with the Commission.¹ The recent changes to Zoom’s Terms of Service do not resolve concerns about Zoom’s current and proposed use of AI and ML techniques. Zoom’s adoption of AI and ML techniques place at risk the privacy, autonomy, and security of the users of its services. The Federal Trade Commission should open an investigation to determine whether Zoom has violated the FTC Act, the 2020 Zoom Consent Order,² and the guidance the FTC has set out regarding AI products and services. If violations are found, the FTC should enjoin Zoom from such unlawful activities, delete data wrongfully obtained and models wrongfully derived, and provide other remedies as set out in this complaint.

2. Zoom gathers facial images, voice recordings, geophysical location, and more.³ Zoom routinely obtains private confidential communications from lawyers, doctors, accountants, religious leaders, educational services, medical counseling services, and others. According to Zoom, “Half a million businesses globally use Zoom for their critical communications including

¹ Zoom, *Terms of Service*, Effective Date: Aug. 11, 2023 (“Second Revised Terms of Service”, <https://explore.zoom.us/en/terms/>)

² FTC, *In the Matter of Zoom Video Communications, Inc., Agreement Containing Consent Order*, FTC Matter/File Number: 192 3167, Nov. 9, 2020 (“2020 Zoom Consent Order”), <https://www.ftc.gov/system/files/documents/cases/1923167zoomacco2.pdf>; FTC, *Aiming for truth, fairness, and equity in your company’s use of AI*, (April 2021), <https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>.

³ Wired, *Zoom Became a Part of Daily Life. It Needs to Tell Users Exactly How It’s Using Their Data*, August 10, 2023, <https://www.wired.com/story/zoom-became-a-part-of-daily-life-it-needs-to-tell-users-exactly-how-its-using-their-data/>

8 of the 10 largest U.S. banks, 9 of the top 10 U.S. hospitals, 7 of the top 10 global pharmaceutical companies, 22 of the 25 largest K-12 school districts in America.”⁴ Zoom’s services are used for therapy for mental health patients,⁵ to stream surgical procedures,⁶ immersive learning experiences,⁷ and legal counseling of clients,⁸

3. Zoom’s Terms of Service (ToS), product offerings and business practices are unfair and deceptive, contrary to the 2019 consent decree between Zoom and FTC, and contravenes the FTC guidance on deployment of artificial intelligence systems.⁹

4. The FTC has routinely carried out enforcement against companies for violations of privacy when the company has engaged in “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.”¹⁰

II. Parties

5. The Center for AI and Digital Policy (CAIDP) is a leading, independent, non-profit, research and education organization, incorporated in Washington, DC. CAIDP’s global network of AI policy experts and advocates spans 80 countries.¹¹ CAIDP provides training to

⁴ Zoom Blog, *how the World Connects: Why Half a Million Businesses Choose Zoom*, November 2, 2021, <https://blog.zoom.us/how-the-world-connects/>

⁵ Zoom Customer Stories, https://explore.zoom.us/en/customer_stories/the-dorm/

⁶ Zoom Customer Stories, https://explore.zoom.us/en/customer_stories/moffitt-cancer-center/

⁷ Zoom Education, <https://explore.zoom.us/en/industry/education/solutions/higher-ed/>

⁸ Zoom Customer Stories, https://explore.zoom.us/en/customer_stories/cooley/

⁹ FTC, *Keep your AI claims in check*, Business Blog (February 2023), <https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check>; FTC, *Chatbots, deepfakes, and voice clones: AI deception for sale*, FTC, Business Blog, (Mar. 20, 2023), <https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale>; FTC, *The Luring Test: AI and the engineering of consumer trust*, Business Blog, (May 1, 2023), <https://www.ftc.gov/business-guidance/blog/2023/05/luring-test-ai-engineering-consumer-trust>

¹⁰ 15 U.S.C. § 45 (2006)

¹¹ CAIDP, caidp.org

future AI policy leaders¹² and publishes annually the *Artificial Intelligence and Democratic Values Index*.¹³ CAIDP aims to ensure that artificial intelligence and digital policies promote a better society, more fair, more just, and more accountable – a world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law. As such CAIDP has a particular interest in ensuring protection of consumers from abusive and deceptive trade practices. CAIDP previously filed a complaint with the FTC regarding OpenAI which the Commission subsequently pursued.¹⁴

6. Zoom was founded in 2011, is publicly traded (NASDAQ:ZM) and headquartered in San Jose, California.¹⁵ Zoom’s headquarters are located at 55 Almaden Boulevard, 6th Floor, San Jose, CA 95113. At all times material to this complaint, Zoom’s course of business, including the acts and practices alleged herein, has been and is, in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 45.

7. Zoom is one of the largest video conferencing companies in the world. Zoom’s “current customer base spans numerous industry categories, including education, entertainment/media, enterprise infrastructure, finance, government, health care, manufacturing, nonprofit/not for profit and social impact, retail/consumer products, and software/internet.”¹⁶

¹² CAIDP, *AI Policy Clinic*, <https://www.caidp.org/global-academic-network/ai-policy-clinic/>

¹³ CAIDP, *Reports*, <https://www.caidp.org/reports/>

¹⁴ CAIDP, *In the Matter of Open AI* (FTC 2023), <https://www.caidp.org/cases/openai/>; Cecilia Kang and Cade Metz, *F.T.C. Opens Investigation Into ChatGPT Maker Over Technology’s Potential Harms: The agency sent OpenAI, which makes ChatGPT, a letter this week over consumer harms and the company’s security practices*, *The New York Times*, July 13, 2023, <https://www.nytimes.com/2023/07/13/technology/chatgpt-investigation-ftc-openai.html>

¹⁵ Zoom, *About us*, <https://explore.zoom.us/en/about/>

¹⁶ Zoom, *Annual Report Fiscal 2023*, Part I, Item 1. Business, Our Customers, pg. 10, <https://investors.zoom.us/static-files/50e0c380-f4bd-4a16-80e3-da56b64017ce>

III. Jurisdiction

8. The Federal Trade Commission may “prosecute any inquiry necessary to its duties in any part of the United States,” FTC Act Sec. 3, 15 U.S.C. Sec. 43, and is authorized “to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions . . . Federal credit unions . . . and common carriers...”¹⁷ Section 5 of the FTC Act prohibits unfair and deceptive acts and practices and empowers the Commission to enforce the Act’s prohibitions.¹⁸

IV. Factual Background

A. Zoom’s embrace of AI and ML techniques

9. In the 2023 Shareholder Letter, Zoom’s CEO stated:

AI is nothing new for us. Two of our largest acquisitions were AI companies and AI has long supported our virtual background, noise suppression, gesture recognition, and transcription and translation technologies. At the end of FY23, we launched Zoom Virtual Agent, an intelligent conversational AI and chatbot solution for the Contact Center.¹⁹

10. The Zoom further CEO stated:

We are adapting a federated AI strategy that combines our proprietary AI models, models from leading AI companies like OpenAI, and select customer models. By embedding this flexible, scalable AI approach into more workflows, we hope to

¹⁷ FTC Act Sec. 6(a), 15 U.S.C. Sec. 46(a). 130.

¹⁸ 15 U.S.C. § 45.

¹⁹ Zoom Fiscal 2023 Shareholder Letter, <https://investors.zoom.us/static-files/03ec903d-da7b-42da-9604-9ecef53e6bc8> (“2023 Zoom Shareholder Letter”)

provide our customers with richer, more actionable insights that empower them to work smarter and serve their customers better.²⁰

11. The 2023 Annual Report Zoom provides the following descriptions of the Zoom Virtual Agent and Zoom IQ for Sales:²¹

Zoom Virtual Agent

Zoom Virtual Agent is an intelligent conversational AI and chatbot solution that uses natural language processing and machine learning to accurately understand and instantly resolve issues for customers. It became available in January, 2023.

Zoom IQ for Sales

Zoom IQ for Sales is conversation intelligence software for Zoom Meetings and Zoom Phone, which provides sales teams with meaningful and actionable insights from their customer interactions to improve seller performance and enhance customer experiences by merging call analytics with CRM data.

12. On March 27, 2023, Zoom announced a business deal with OpenAI technologies to promote the expansion of ZoomIQ.²²

13. On May 16, 2023, Zoom announced a business deal with Anthropic to expand the Federated Approach to AI.²³

14. Zoom's launch of ML-based services in 2023 followed earlier services based on emotion recognition.

²⁰ Id.

²¹ Zoom, *Annual Report Fiscal 2023*, Part I, Item 1. Business, Our Platform, pg. 9,10 <https://investors.zoom.us/static-files/50e0c380-f4bd-4a16-80e3-da56b64017ce> [Hereinafter 2023 Zoom Annual Report]

²² Zoom Press Release, *Zoom announces the expansion of Zoom IQ, the smart companion that empowers collaboration and unlocks potential*, March 27, 2023, <https://investors.zoom.us/news-releases/news-release-details/zoom-announces-expansion-zoom-iq-smart-companion-empowers>

²³ Zoom Press Release, *Zoom Partners with Anthropic to Expand Federated Approach to AI*, May 16, 2023, <https://investors.zoom.us/news-releases/news-release-details/zoom-partners-anthropic-expand-federated-approach-ai>

15. Zoom IQ for Sales uses what Zoom terms as “conversation intelligence software” and is directed towards business or commercial customers for accelerating revenue.²⁴ According to Zoom’s Whitepaper²⁵ conversation intelligence technology runs silently in the background and automatically surfaces insights from calls with customers.

16. Zoom IQ’s product page²⁶ states that Zoom IQ can “Track words and expressions across customer conversations and get proactive alerts that help assess opportunity health, gather competitor intelligence, or help ensure products are effectively positioned” and helps “Review meetings and calls faster and get better continuously with insights such as talk-listen ratio, talking speed, sentiment analysis, and more.” (*emphasis added*)

17. The Zoom IQ for Sales Support page states “Zoom IQ utilizes developing AI technology and Zoom IQ features may provide incorrect, inaccurate, misleading, or offensive responses.”²⁷

18. The Zoom Virtual Agent product page states that “Natural language processing intelligently detects what each user truly needs and provides the best possible answer.”²⁸

19. Zoom’s Blog post states that “Zoom Virtual Agent automatically crawls and learns from your knowledge bases and FAQs to deliver accurate answers immediately...Zoom Virtual Agent gives your powerful insights into the voice of your customers.”²⁹

²⁴ Zoom, *IQ for Sales*, <https://explore.zoom.us/en/conversational-intelligence/>

²⁵ Zoom, *Win More with Conversation Intelligence*, <https://explore.zoom.us/en/lp/metrygy-conversation-intelligence-to-improve-sales/>

²⁶ Zoom, *IQ For Sales*, <https://explore.zoom.us/en/conversational-intelligence/>

²⁷ Zoom Support, *How Zoom IQ free trial features handle your data*, <https://support.zoom.us/hc/en-us/articles/16269138857229-How-Zoom-IQ-free-trial-features-handle-your-data->

²⁸ Zoom, *Virtual Agent*, <https://explore.zoom.us/en/products/contactcenter/features/virtual-agent/>

²⁹ Zoom Blog, *Meet Zoom Virtual Agent*, January 24, 2023, <https://blog.zoom.us/meet-zoom-virtual-agent/>

20. Zoom’s product support page for virtual agent has a section on “intent management” and states “Zoom Virtual Agent admins can coach queries to improve model accuracy by collecting chat messages from customer interaction.”³⁰ The prerequisite for using the “intent management” feature is “Basic, Pro, Business, Education, or Enterprise account”³¹ (*emphasis added*)

21. Zoom has been developing and investing in emotion recognition technology for evaluating a user’s sentiment or engagement level.³² Zoom’s AI-based products are deployed across a wide variety of industries and for a wide variety of purposes.

22. Twenty-eight human rights organizations called on Zoom “to halt any plans it has for emotion tracking software aimed at assessing users’ engagement and sentiment.”³³

23. Human rights groups have argued that the use of AI systems for emotion recognition like facial recognition is prone to produce discriminatory and biased outcomes especially when deployed in the context of evaluations, recruitments, academic assessments and can encourage workplace surveillance practices.³⁴

³⁰ Zoom Virtual Agent Support, *Coaching Intent Queries*, March 28, 2023, <https://support.zoom.us/hc/en-us/articles/13841626310925-Coaching-intent-queries>

³¹ *Id.*

³² Protocol, *Companies are using AI to monitor your mood during sales calls. Zoom might be next*, April 13, 2022, <https://www.protocol.com/enterprise/emotion-ai-sales-virtual-zoom>

³³ CBS News, *More than two dozen human rights groups call on Zoom to halt emotion tracking software plans*, May 11, 2022, <https://www.cbsnews.com/news/human-rights-groups-zoom-emotion-tracking-software-plans/>

³⁴ Fight for the Future, *Letter to Zoom on Emotion Analysis Software*, May 10, 2022, <https://www.fightforthefuture.org/news/2022-05-11-letter-to-zoom/>

24. Researchers predict that virtual meeting analytics that quantify engagement based on biometric data gathered during a Zoom call can escalate into new forms of bossware.³⁵

B. Zoom modified the Terms of Service to promote AI and ML techniques

25. After the introduction of AI-based products,³⁶ Zoom made changes to its ToS which allowed it to access user data for training artificial intelligence models.

26. The Original ToS stated as follows:

“CUSTOMER CONTENT

10.1 Customer Content. You or your End Users may provide, upload, or originate data, content, files, documents, or other materials (collectively, “Customer Input”) in accessing or using the Services or Software, and Zoom may provide, create, or make available to you, in its sole discretion or as part of the Services, certain derivatives, transcripts, analytics, outputs, visual displays, or data sets resulting from the Customer Input (together with Customer Input, “Customer Content”); provided, however, that no Customer Content provided, created, or made available by Zoom results in any conveyance, assignment, or other transfer of Zoom’s Proprietary Rights contained or embodied in the Services, Software, or other technology used to provide, create, or make available any Customer Content in any way and Zoom retains all Proprietary Rights therein. You further acknowledge that any Customer Content provided, created, or made available to you by Zoom is for your or your End Users’ use solely in connection with use of the Services, and that you are solely responsible for Customer Content.

10.2 Service Generated Data; Consent to Use. Customer Content does not include any telemetry data, product usage data, diagnostic data, and similar content or data that Zoom collects or generates in connection with your or your End Users’ use of the Services or Software (“Service Generated Data”). As between you and Zoom, all right, title, and interest in and to Service Generated Data, and all Proprietary

³⁵ Canvas8, *Zoom’s biometric AI renews concerns about data privacy*, January 12, 2023, <https://www.canvas8.com/library/signals/2023/01/12/zooms-biometric-ai-renews-concerns-about-data-privacy>

³⁶ Melissa Goldin, *Zoom says it isn’t training AI on calls without consent. But other data is fair game*, AP Fact Check, AP News, August 9, 2023, https://apnews.com/article/fact-check-zoom-ai-privacy-terms-of-service-06ff47e47439c2173390a4ca1389f652?utm_campaign=SocialFlow&utm_medium=APFactCheck&utm_source=Twitter

Rights therein, belong to and are retained solely by Zoom. You agree that Zoom compiles and may compile Service Generated Data based on Customer Content and use of the Services and Software. You consent to Zoom's access, use, collection, creation, modification, distribution, processing, sharing, maintenance, and storage of Service Generated Data for any purpose, to the extent and in the manner permitted under applicable Law, including for the purpose of product and service development, marketing, analytics, quality assurance, machine learning or artificial intelligence (including for the purposes of training and tuning of algorithms and models), training, testing, improvement of the Services, Software, or Zoom's other products, services, and software, or any combination thereof, and as otherwise provided in this Agreement. In furtherance of the foregoing, if, for any reason, there are any rights in such Service Generated Data which do not accrue to Zoom under this Section 10.2 or as otherwise provided in this Agreement, you hereby unconditionally and irrevocably assign and agree to assign to Zoom on your behalf, and you shall cause your End Users to unconditionally and irrevocably assign and agree to assign to Zoom, all right, title, and interest in and to the Service Generated Data, including all Proprietary Rights relating thereto.

10.3 Permitted Use; Customer Content. Zoom may redistribute, publish, import, access, use, store, transmit, review, disclose, preserve, extract, modify, reproduce, share, use, display, copy, distribute, translate, transcribe, create derivative works, and process Customer Content: (i) in accordance with this Agreement and as required to perform our obligations under this Agreement; (ii) in accordance with our Privacy Statement; (iii) as authorized or instructed by you; (iv) as permitted or required by Law; (v) for trust and safety purposes, including monitoring and enforcing our Acceptable Use Guidelines; or (vi) to protect the rights, property, or security of Zoom, its end users, customers, or the public, including systems and networks.

10.4 Customer License Grant. You agree to grant and hereby grant Zoom a perpetual, worldwide, non-exclusive, royalty-free, sublicensable, and transferable license and all other rights required or necessary to redistribute, publish, import, access, use, store, transmit, review, disclose, preserve, extract, modify, reproduce, share, use, display, copy, distribute, translate, transcribe, create derivative works, and process Customer Content and to perform all acts with respect to the Customer Content: (i) as may be necessary for Zoom to provide the Services to you, including to support the Services; (ii) for the purpose of product and service development, marketing, analytics, quality assurance, machine learning, artificial intelligence, training, testing, improvement of the Services, Software, or Zoom's other products, services, and software, or any combination thereof; and (iii) for any other purpose relating to any use or other act permitted in accordance with Section 10.3. If you have any Proprietary Rights in or to Service Generated Data or Aggregated

Anonymous Data, you hereby grant Zoom a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, sublicensable, and transferable license and all other rights required or necessary to enable Zoom to exercise its rights pertaining to Service Generated Data and Aggregated Anonymous Data, as the case may be, in accordance with this Agreement.” (emphasis added)

C. Zoom’s Revised Terms of Service

27. Zoom’s changes to its Terms of Service drew criticism. StackDiary highlighted Zoom’s change of ToS allowed the company to train models on user data.³⁷

28. After the news of Zoom’s changes to its ToS went viral in the media³⁸, Zoom published a blog post to clarify and update Clause 10.4 of its ToS stating “We’ve updated our terms of service (in section 10) to further confirm that Zoom does not use any of your audio, video, chat, screen-sharing, attachments, or other communications like customer content (such as poll results, whiteboard, and reactions) to train Zoom’s or third-party artificial intelligence models. In addition, we have updated our in-product notices to reflect this.”³⁹

29. In relation to this Original ToS which was in effect from March until August 11, 2023, Zoom’s CEO has stated “The online ToS terms are for customers that buy through our website. This issue does not affect most of our business and enterprise customers that buy through an MSA. We had a process failure internally that we will fix. Let me be crystal clear - for AI, we do NOT use audio, video, screen share, or chat content for training our AI models

³⁷ Stackdiary, *Zoom’s Updated Terms of Service Permit Training on User Content Without Opt-out*, August 12, 2023, <https://stackdiary.com/zoom-terms-now-allow-training-ai-on-user-content-with-no-opt-out/>

³⁸

³⁹ Zoom Blog, *How Zoom’s Terms of service and practices apply to AI features*, August 7, 2023, <https://blog.zoom.us/zooms-term-service-ai/>

without customer explicit consent.”⁴⁰ He also goes on to state, “We are committing to all of our customers that we will not use any of their audio, video, chat, screen sharing, attachments and other communications like poll results, whiteboard and reactions to train our AI models or third-party AI models.”

D. Zoom’s Second Revised Terms of Service⁴¹

30. Zoom revised the ToS, amending Clause 10 of the Original ToS as follows:

“10. DATA USAGE, LICENSES AND RESPONSIBILITIES

10.1 Customer Content. Data, content, communications, messages, files, documents, or other materials that you or your End Users generate or provide in connection with the Services or Software, together with any resulting transcripts, recordings, outputs, visual displays, or other content, is referred to as **Customer Content**.

10.2 Permitted Uses and Customer License Grant. Zoom will only access, process or use Customer Content for the following reasons (the “**Permitted Uses**”): (i) consistent with this Agreement and as required to perform our obligations and provide the Services; (ii) in accordance with our Privacy Statement; (iii) as authorized or instructed by you; (iv) as required by Law; or (v) for legal, safety or security purposes, including enforcing our Acceptable Use Guidelines. You grant Zoom a perpetual, worldwide, non-exclusive, royalty-free, sublicensable, and transferable license and all other rights required or necessary for the Permitted Uses.

Zoom does not use any of your audio, video, chat, screen sharing, attachments or other communications-like Customer Content (such as poll results, whiteboard and reactions) to train Zoom or third-party artificial intelligence models.

10.5 Service Generated Data. Telemetry data, product usage data, diagnostic data, and similar data that Zoom collects or generates in connection with your or your End Users’ use of the Services or Software

⁴⁰ Eric S. Yuan, *LinkedIn Post*, August 10, 2023, https://www.linkedin.com/posts/ericisyuan_given-that-many-friends-have-reached-out-activity-7094824287336861697-CGMy/?utm_source=share&utm_medium=member_ios

⁴¹ Zoom, *Terms of Service*, Effective Date: August 11, 2023, <https://explore.zoom.us/en/terms/>

are referred to as Service Generated Data. Zoom owns all rights, title, and interest in and to **Service Generated Data.**”

31. Zoom’s ToS must be read a long with the Services Description⁴² which constitutes the contract between the Customer and Zoom. In relation to Zoom’s AI-based service–Zoom IQ, the Service Description in relevant part states as follows:

Zoom IQ and Smart Recordings.

1. Definitions.

“**Zoom IQ**” means an add-on service that is available for certain Zoom Services which captures and extracts data and information resulting in visually displayed, accessible, and locatable insights and analytics.

“Zoom IQ Data” means data that is imported, accessed, used, stored, transmitted, originated, or processed based on instructions from the Customer and any resulting derivatives, analytics, outputs, or data sets, including but not limited to Smart Recording Data, resulting from Customer’s use of Zoom IQ.

4. Customer Consent and Instruction. By purchasing or using Zoom IQ, Customer is electing to expand Zoom Services to include Zoom IQ and is consenting to and instructing Zoom to enable Zoom IQ on Customer’s account subject to these Zoom IQ terms. Zoom IQ results are provided for informational purposes only and may contain inaccuracies.

5. License Rights; Intellectual Property Ownership. Notwithstanding anything to the contrary in any other contract between Zoom and Customer, by purchasing or using Zoom IQ, Customer grants Zoom a right to access, process and use Zoom IQ Data to deliver the Services, including, but not limited to, translation and transcription services.

8. Participant Notifications. Customer acknowledges that although Zoom may provide a customizable sample recording notice to Participants, Customer is solely responsible for ensuring compliance with applicable laws including but not limited to, privacy requirements, and where required, sufficient notice to Participants regarding the recording, monitoring,

⁴² Zoom Services Description, Effective Date: August 11, 2023 (emphasis added), <https://explore.zoom.us/en/services-description/>

collection and use of Zoom IQ Data by Customer, Zoom, and others.”
(emphasis added)

32. In relation to Zoom’s AI-based service—Zoom Virtual Agent (ZVA), the Service Description⁴³ in relevant part states as follows:

“T. **Zoom Virtual Agent.** “Zoom Virtual Agent” or “ZVA” is a software-based chat application service that uses artificial intelligence to automate conversations and provide solutions for customer engagement, customer support, technical support and other purposes.

1. Third-Party Integrations and Offerings. ZVA may interoperate, integrate, or be used in connection with third party offerings (“Third-Party Offerings”). However, Customer acknowledges that Zoom is not liable for, and Zoom hereby disclaims any liability for, any act or omission of any provider of Third-Party Offerings or the operation of any Third-Party Offerings, including but not limited to the access to, modification or deletion of, data, regardless of whether Zoom or ZVA endorses, approves, or supports any such Third-Party Offerings. Zoom does not guarantee the interoperation, integration, or support of any Third-Party Offerings, and Zoom may, at any time, in its sole discretion modify the ZVA service, which may result in the failed interoperation, integration or support of Third-Party Offerings.

2. License Rights. Notwithstanding anything to the contrary in the Agreement or any other agreement between Zoom and Customer, with respect to Customer Content used in conjunction with ZVA, in addition to those right granted in the Agreement, Customer grants Zoom and its Affiliates a perpetual worldwide right to utilize Customer Content for performing, developing, and improving ZVA and related products and services.” *(emphasis added)*

33. Zoom’s Privacy Statement⁴⁴ states that “Zoom does not use any of your audio, video, chat, screen sharing, attachments or other communications-like Customer Content (such

⁴³ *Id*

⁴⁴ Zoom Privacy Statement, Last Updated: August 11, 2023, <https://explore.zoom.us/en/privacy/>

as poll results, whiteboard and reactions) to train Zoom’s or third-party artificial intelligence models.”⁴⁵

E. Machine learning systems mimic and manipulate human behavior

34. Many experts in the AI field have warned of the dangers of deploying machine learning (ML) systems that can mimic and manipulate human behavior.

35. Louis Rosenberg has highlighted three aspects of the risks of mimicry and manipulation:

(a) **The AI manipulation problem:** This “involves real-time engagement between a user and an AI system by which the AI can: (1) impart targeted influence on the user; (2) sense the user’s reaction to that influence; and (3) adjust its tactics to maximize the persuasive impact... The new danger is that conversational AI has finally advanced to a level where automated systems can be directed to draw users into what seems like casual dialogue but is actually intended to skillfully pursue targeted influence goals.”⁴⁶

(b) **Personalized manipulation:** “These platforms will store data about your interactions during each conversational engagement, tracking over time which types of arguments and approaches are most effective on you personally. For example, the system will learn if you are more easily swayed by factual data or emotional appeals... In other words, these systems not only will adapt to your real-time emotions, they will get better and better at “playing you” over time, ... And because conversational AI

⁴⁵ *Id.*, “How Do We Use Personal Data?”

⁴⁶ Louis Rosenberg, *The Creepiness of Conversational AI has been put on full display*, BigThink, February 16, 2023, <https://bigthink.com/the-present/danger-conversational-ai/>

will be both individualized and easily deployed at scale, these person-by-person methods can be used to influence broad populations.”⁴⁷

(c) **Conversational Agents:** “It is very likely that AI systems will be trained on sales tactics, psychology, and other forms of persuasion. In addition, recent research shows that AI technologies can be strategic. In 2022, DeepMind used a system called DeepNash to demonstrate for the first time that an AI could [learn to bluff human players](#) in games of strategy, sacrificing game pieces for the sake of a long-term win. From that perspective, a typical consumer could be extremely vulnerable when faced with an AI-powered [conversational agent](#) designed for strategic persuasion.”⁴⁸

36. Joseph Weizenbaum cautioned on employing machine learning models in conversational interactions as early as 1976⁴⁹ commenting “I would argue that, however intelligent machines may be made to be, there are some acts of thought that ought to be attempted only by humans.”⁵⁰

37. Researchers have found that sophisticated conversational agents produce increasingly negative psychophysiological reactions, termed as the “uncanny valley effect.”⁵¹ Using an anthropomorphism scale which measured the extent to which the chatbot seems humanlike, the “results show that participants were experiencing lesser uncanny effects and less

⁴⁷ *Id*

⁴⁸ *Id*

⁴⁹ Joseph Weizenbaum, *Computer Power and Human Reason: From Judgment to Calculation*, MIT, W.H.Freeman and Company, 1976

⁵⁰ *Id*, pg. 13

⁵¹ Leon Ciechanowski, Aleksandra Przegalinska, Mikolaj Magnuski, Peter Gloor, *In the shades of the uncanny valley: An experimental study of human–chatbot interaction*, *Future Generation Computer Systems*, Volume 92, 2019, Pages 539-548,ISSN 0167-739X, <https://doi.org/10.1016/j.future.2018.01.055>.

negative affect in cooperation with a simpler text chatbot than with the more complex, animated avatar chatbot.”⁵²

38. In a widely reported incident, the GPT-4 tricked a human into thinking it was blind in order to cheat the online CAPTCHA test that determines if users *are* human.⁵³

39. There are rising concerns about companies using generative AI in chatbots to trick consumers into sharing personal data, which may be repurposed to serve targeted advertising or to manipulate consumers into purchasing products or services. This is especially relevant in the case of vulnerable groups such as children or lonely people, who may be more likely to share sensitive information about themselves in conversation with the generative AI.⁵⁴

40. Commenting on the need for safety in AI systems—particularly deployment or integration of large language models or conversational AI systems into mainstream applications, Professor Gary Marcus and Canadian Parliament Member Michelle Rempel Garner have explained, “New pharmaceuticals, for example, begin with small clinical trials and move to larger trials with greater numbers of people, but only once sufficient evidence has been produced for government regulators to believe they are safe. Publicly funded research that impacts humans is already required to be vetted through some type of research ethics board. Given that the new

⁵² *Id*

⁵³ Ben Cost, *ChatGPT update tricks human into helping it bypass CAPTCHA security test*, New York Post, March 17, 2023, <https://nypost.com/2023/03/17/the-manipulative-way-chatgpt-gamed-the-captcha-test/>; See also, CAIDP, *FTC Complaint, in the matter of Open AI, Inc.* (March 30, 2023), <https://www.caidp.org/cases/openai/>

⁵⁴ Norwegian Consumer Council, *Ghost in the machine – Addressing the consumer harms of generative AI* (June 2023), <https://storage02.forbrukerradet.no/media/2023/06/generative-ai-rapport-2023.pdf>

breed of AI systems have demonstrated the ability to manipulate humans, tech companies could be subjected to similar oversight.”⁵⁵

41. The Privacy Data Sheet for Zoom Virtual Agent⁵⁶ states that “Virtual Agent uses a combination of natural language processing and machine learning techniques to communicate with users in plain language they expect to use in everyday conversations.” It further states that the techniques are “Intent Domain” and “Knowledge Base”.

42. The Privacy Data Sheet defines “Knowledge Base Content”⁵⁷ as “refers to the collection of information provided by Customers that Virtual Agent can reference and use to respond to an End Consumer during an engagement. Knowledge Base Content also includes tags, categories, and sub-categories assigned by an account administrator to classify Knowledge Base information.”

43. The Privacy Data Sheet defines “Intents and Intent Domains”⁵⁸ as “refers to the End Consumer's goal when they type in their question or comment. Using Intents helps Customers understand the End Consumer's goal at scale. An Intent Domain is a collection of related Intents. Customers can create and store Intents and associate them with chatbot flows in Zoom Virtual Agent.”

44. The Knowledge Base and Intent Domains which power the functioning of AI/ML systems that Zoom has integrated into its products are clearly within the category of high-risk

⁵⁵ Gary Marcus and Michelle Rempel Garner, *Is it time to hit the pause button on AI? The Road to AI We Can Trust*, February 26, 2023, <https://garymarcus.substack.com/p/is-it-time-to-hit-the-pause-button>; See also, CAIDP, *FTC Complaint, in the matter of Open AI, Inc.* (March 30, 2023), <https://www.caidp.org/cases/openai/>

⁵⁶ Zoom Virtual Agent, *Privacy Data Sheet*, <https://explore.zoom.us/media/zoom-virtual-agent-privacy-data-sheet.pdf>

⁵⁷ *Id.*

⁵⁸ *Id.*

generative AI systems that carry the risk of mimicry, manipulation, and deception, as cautioned by researchers and experts described above. End Consumers interacting with Zoom’s Virtual Agent will be deceived into thinking they are interacting with a human. Zoom Virtual Agent is available only to enterprise customers which include schools, healthcare facilities, financial institutions and other cases where sensitive information is exchanged and persons are generally reliant on human interaction.

F. Machine learning systems are vulnerable to privacy breaches

45. Zoom has integrated large language models of OpenAI and Anthropic. Such large language models are known to be vulnerable to conversational AI leaks,⁵⁹ security breaches⁶⁰ and other privacy risks. By default, ChatGPT saves a user’s chat history and uses the conversations to train its models further, and while the platform allows users to disable this manually, it is unclear if this option retroactively applies to older chats.⁶¹ Moreover, there is no clarity as to data deletion policies of such models.⁶²

⁵⁹ Vilius Petkauskas, *Lessons learned from ChatGPT’s Samsung Leak*, Cybernews (May 9, 2023), <https://cybernews.com/security/chatgpt-samsung-leak-explained-lessons/>; See also, *CAIDP, FTC Complaint OpenAI (Supplement)*, paras. 82-92.

⁶⁰ Stefanie Schappert, *ChatGPT leaks user credit card details*, Cybernews (June 2, 2023), <https://cybernews.com/news/payment-info-leaked-openai-chatgpt-outrage/>; See also, Abraham Jewett, *ChatGPT allegedly suffers outage, data breach*, Top Class Actions, (Apr. 4, 2023), <https://topclassactions.com/lawsuit-settlements/privacy/data-breach/chatgpt-allegedly-suffers-outrage-data-breach/>; Sue Poremba, *ChatGPT Confirms Data Breach, Raising Security Concerns*, Security Intelligence (May 2, 2023), <https://securityintelligence.com/articles/chatgpt-confirms-data-breach/>

⁶¹ Siladitya Ray, *Samsung bans ChatGPT Among Employees After Sensitive Code Leak*, Forbes (May 2, 2023), <https://www.forbes.com/sites/siladityaray/2023/05/02/samsung-bans-chatgpt-and-other-chatbots-for-employees-after-sensitive-code-leak/>

⁶² Benj Edwards, *ChatGPT now disabling chat history, declining training, and exporting data*, Ars Technica, (April 25, 2023), <https://arstechnica.com/information-technology/2023/04/chatgpt-users-can-now-opt-out-of-chat-history-and-model-training/>

46. The workings of large language models do not only train on text data but on data “from other modalities (e.g., images, audio recordings, videos, etc.) to enable more diverse capabilities, provide a stronger learning signal, and increase learning speed.”⁶³ Zoom integrates its own proprietary models as well as models from OpenAI and Anthropic⁶⁴. Researchers have cautioned that “public availability of language data should not be mistaken for data intended to be made public. Text may be shared by humans specifically to violate someone else's privacy (e.g., doxing), and even public social media posts are not always intended for an audience broader than one's acquaintances. Even if this is not the case, applications of LMs could make data usable or searchable in new, unintended ways, or make it harder for the data to be modified or erased.”⁶⁵

47. Zoom is deploying generative AI models across a range of business and individual customers who rely on Zoom’s communication services for a host of private sensitive communication like healthcare, education, privileged communication with lawyers. Security Researchers have demonstrated large language models to be opaque and reveal personally identifiable information⁶⁶. According to researchers at the USENIX Security Symposium,

⁶³ Stanford University, Human Centered Artificial Intelligence, *How Large Language Models Will Transform Science, Society, and AI*, February 5, 2021, <https://hai.stanford.edu/news/how-large-language-models-will-transform-science-society-and-ai>

⁶⁴ Zoom, *New Generative AI-powered Zoom IQ features are now available to Zoom users via free trials*, News, June 5, 2023, <https://news.zoom.us/zoom-iq-meeting-summary-chat-compose-free-trial/>

⁶⁵ Hannah Brown, Katherine Lee, Fatemehsadat Mireshghallah, Reza Shokri, and Florian Tramèr, *What Does it Mean for a Language Model to Preserve Privacy?*, 2022 ACM Conference on Fairness, Accountability, and Transparency (FAccT '22), June 21–24, 2022, Seoul, Republic of Korea. ACM, New York, NY, USA, <https://doi.org/10.1145/3531146.3534642>

⁶⁶ Nicholas Carlini, Google, Florian Tramèr, Stanford University, Eric Wallace, UC Berkeley, Matthew Jagielski, Northeastern University, Ariel Herbert-Voss, OpenAI and Harvard University, Katherine Lee and Adam Roberts, Google, Tom Brown, OpenAI, Dawn Song, UC

“machine learning models are notorious for exposing information about their (potentially private) training data—both in general and in the specific case of language models”.⁶⁷

48. Zoom represents that it uses a federated machine learning model in collaboration with OpenAI and Anthropic. Researchers have shown that “LLM’s training data can inadvertently be converted into generated content, which may contain sensitive personal information such as medical records and bank account numbers. Reports indicate that the large language model ChatGPT may generate sensitive information in other users’ dialogs, posing significant privacy concerns.”⁶⁸ With regard to federated models researchers have also commented that, “the critical challenges encompass aspects such as security threats and defense, privacy and privacy enhancement, efficiency, and handling non-independent identically distribution (Non-IID) data” and “Although researchers have made efforts to design various methods to mitigate its impact, to date, no study has effectively solved this issue.”⁶⁹

49. AI applications can also mimic human-like behavior. “They are trained using vast amounts of data and algorithms to "learn" and replicate patterns of human-like behaviour.”⁷⁰ Even when, User data is not collected through downstream integrated systems, the deployment of generative AI systems for mental-health counseling, one-on-one educational services, legal counseling, and sensitive political communications is particularly alarming.

Berkeley, Úlfar Erlingsson, Apple, Alina Oprea, Northeastern University, Colin Raffel, Google, *Extracting Training Data from Large Language Models*, USENIX Security Symposium, August 11, 2021, <https://www.usenix.org/system/files/sec21-carlini-extracting.pdf>

⁶⁷ *Id*

⁶⁸ Chaochao Chen, Xiaohua Feng, Jun Zhou, Jianwei Yin, Xiaolin Zheng, *Federated Large Language Model: A Position Paper*, pg. 7, <https://arxiv.org/pdf/2307.08925.pdf>

⁶⁹ *Id*, pg. 6 and 8.

⁷⁰ BBC News, *Zoom denies training AI on calls without consent*, August 9, 2023, <https://www.bbc.com/news/technology-66430429>

50. Louis Rosenberg, Chief Scientist, Responsible Metaverse Alliance has stated that “Over the last 18 months, significant advancements have been made towards the deployment of realistic immersive worlds populated by AI-driven virtual agents that can engage target users in natural conversation. While this will unleash many positive applications that benefit society, there is significant potential for abuse. Most significant is the potential to persuade, coerce, or manipulate target users by imparting real-time interactive influence.”⁷¹ Such manipulation is particularly risky in cases where AI systems are interacting with vulnerable groups like children, senior adults or patients.

51. Zoom itself recognizes the inherent flaws in AI-based systems. The Zoom IQ product page states “Zoom IQ utilizes developing AI technology and Zoom IQ features may provide incorrect, inaccurate, misleading, or offensive responses.”⁷²

G. Zoom’s ML systems elevate risk to children and patients

52. Zoom IQ and Zoom Virtual Agent are being deployed across various sectors including healthcare and education. This raises serious concerns as to how sensitive data, such as voice, and/or likeness - of students, or collaborators or health-data - may be used by Zoom.

53. Zoom collects personal information of children that is subject to protection under federal law.⁷³ For educational services, Zoom collects “Name, profile picture, contact information, and any other information a school or educational organization allows students to add to their profile or to add when registering for meetings, recordings or webinars hosted on the

⁷¹ Louis Rosenberg, *The Metaverse and Conversational AI as a Threat Vector for Targeted Influence*, IEEE 13th Annual Computing and Communication Workshop and Conference (CCWC), March 2023, <http://dx.doi.org/10.1109/CCWC57344.2023.10099167>

⁷² Zoom Support, *How Zoom IQ Trial Features Handle Your Data*, Limitations of Zoom IQ, August 11, 2023, <https://support.zoom.us/hc/en-us/articles/16269138857229>

⁷³ US Children’s Online Privacy Protection Act (COPPA)

school or organization’s account.”⁷⁴ “If the school or educational organization chooses to record meetings or webinars to Zoom Cloud, Zoom will store these recordings on behalf of the school or organization. The recordings may contain a student’s voice and image, messages, Q&A, or other content (such as a presentation or whiteboard) shared by a student during a meeting or webinar. Zoom employees do not access this content unless the school or educational service directs us to do so, or as required for legal, security, or safety reasons.”⁷⁵ Zoom uses personal data collected from students to for providing educational services as well as “product research and development”.⁷⁶ Zoom represents it is compliant with the US Children’s Online Privacy Protection Act (COPPA).⁷⁷

54. Zoom client is integrated with various third-party apps available through Zoom marketplace.⁷⁸ Zoom offers specialized services for education.⁷⁹ According to Zoom’s FERPA Guide⁸⁰ “Video recordings/ streams, chat logs, transcripts, and other information collected or maintained by a School Subscriber while using Zoom’s services may be considered education records under certain circumstances.” According to Zoom’s own assertions “For the purposes of FERPA, Zoom is considered a “school official” and may receive PII through its contractual agreements with School Subscribers because Zoom is performing a service that furthers a “legitimate educational interest” (i.e., the provision of educational services in a remote setting).”

55. Zoom has access to PII of children and under its current terms of service consent of administrators or hosts is sufficient to process data of individual users. Students or parents

⁷⁴ Zoom, *Children’s Educational Privacy Statement*, Last Updated September 2021, <https://explore.zoom.us/en/schools-privacy-statement/>

⁷⁵ *Id.*, “Meeting, Webinar, and Messaging Content”.

⁷⁶ *Id.*, “How do we Use Student Personal Data”

⁷⁷ Zoom, *Privacy for Students*, <https://explore.zoom.us/docs/en-us/parent-student-guide.html>

⁷⁸ Zoom, *App Marketplace*, <https://marketplace.zoom.us>

⁷⁹ Zoom Education, <https://explore.zoom.us/en/industry/education/>

⁸⁰ Zoom, *FERPA Guide*, pg.2, <https://explore.zoom.us/docs/doc/FERPA%20Guide.pdf>

themselves may not have control over individual child data or be able to opt-out as the school or institution would be the subscriber and host of the services where AI services like ZVA is enabled.

56. Zoom states that 61% of patients in the U.S. plan to access healthcare in person and virtually moving forward.⁸¹ Zoom collects personal medical information that is subject to protection under federal law. For healthcare, Zoom provides a variety of communications services for covered entities under Health Insurance Portability and Accountability Act (and supplemental legislation) (HIPAA). Patient data which can range from identity information to diagnosis and treatment is processed via Zoom.

57. Zoom is widely used for telehealth services enabling health-care providers and patients to exchange sensitive information, conduct virtual exams over the platform. Zoom's trust and safety assurances only cover unauthorized access by third-parties but does not address Zoom's own use and appropriation of such data as proprietary.⁸² Where health-sector entities use Zoom IQ or ZVA under enterprise solutions licenses, Zoom could use sensitive data to train AI/ML models.

58. Zoom states that it uses a "federated AI model" incorporating machine learning and/or large language models of OpenAI and Anthropic. However, ChatGPT exposes users to risk of loss of data and privacy violations through "Conversational AI leaks."⁸³ The incidents of data breaches arising from the use of ChatGPT are the result of the product design of the machine learning model for GPT-4. Given the integration of such systems with Zoom's products, PII and

⁸¹ Zoom for Healthcare, https://explore.zoom.us/media/zoom-for-healthcare_data-sheet.pdf

⁸² Zoom, *HIPAA Compliance Datasheet*, <https://explore.zoom.us/docs/doc/Zoom-hipaa.pdf>

⁸³ Vilius Petkauskas, Lessons learned from ChatGPT's Samsung Leak, Cybernews (May 9, 2023), <https://cybernews.com/security/chatgpt-samsung-leak-explained-lessons/>; See also, CAIDP, FTC Complaint, in the matter of Open AI, Inc. (March 30, 2023), <https://www.caidp.org/cases/openai/>

sensitive health information is being placed at the risk of privacy and data breaches. The FTC has opened investigations into OpenAI and their products considering the privacy risks and data collection practices.⁸⁴

H. Zoom shifts its data protection obligations to customers

59. Zoom's⁸⁵ AI services – Zoom IQ Meeting Summary and Zoom IQ Team Chat Compose -- provide automated meeting summaries and AI-powered chat composition. Zoom account owners and administrators control whether to enable these AI features for their accounts.⁸⁶ Individual users however cannot opt-out of the data sharing where the host or administrator of a meeting has enabled it or consented to it. The only option for an individual user is to leave the meeting where such features are enabled. Zoom's CEO has also acknowledged this lack of consent option for meeting participants in a reply to his LinkedIn post.⁸⁷

60. Zoom purported to address the privacy deficient design of its product by shifting the entire burden to the Customer in its ToS and Service Description. According to the Service Description for Zoom IQ, it is the “sole responsibility” of the Customer to provide “sufficient notice” to participants in any communication where Zoom IQ is being used including notice

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⁸⁵ Zoom Website, <https://news.zoom.us/zoom-iq-meeting-summary-chat-compose-free-trial/>

⁸⁶ Zoom Blog, *How Zoom's Terms of service and practices apply to AI features*, August 7, 2023, <https://blog.zoom.us/zooms-term-service-ai/>

⁸⁷ Eric S. Yuan,

<https://www.linkedin.com/feed/update/urn:li:activity:7094824287336861697?commentUrn=urn%3Ali%3Acomment%3A%28activity%3A7094824287336861697%2C7095052290394345473%29&replyUrn=urn%3Ali%3Acomment%3A%28activity%3A7094824287336861697%2C7095183397286801410%29As>

“regarding the recording, monitoring, collection and use of Zoom IQ Data by Customer, Zoom, and others.”⁸⁸

61. There is no individual consent mechanism in Zoom IQ for individual users to agree to their data being collected, recorded, processed, or use for purposes which would include training of AI/ML models. Therefore, the product is designed in a manner that leaves no room for consent of individual users in the collection and use of their data.

62. Zoom represents that “Data from users' interactions with the Zoom IQ features may be accessed, processed, and used by Zoom to provide and maintain the services, personalize, and make recommendations, troubleshoot issues, and provide support. Zoom does not use any audio, video, chat, screen sharing, attachments, or other communications-like content (such as poll results, whiteboard, and reactions) to train Zoom’s or third-party AI models. If the feature uses third-party AI models, your data may be temporarily retained by those third parties for Trust and Safety purposes or to comply with legal obligations.”⁸⁹ While Zoom represents that they do not use customer data specifically audio, video, and screen data to train AI models, yet Zoom’s ToS retains rights to use such data either as service generated data or under a broad grant of license from customers.

63. Zoom represents to users that “Zoom takes your privacy extremely seriously and only collects the data from individuals using the Zoom platform required to provide the service and ensure it is delivered effectively.”⁹⁰

⁸⁸ Zoom Services Description, Effective Date: August 11, 2023, Clause O, Para.8 (Participant Notifications), <https://explore.zoom.us/en/services-description/>

⁸⁹ Zoom Support, *How Zoom IQ free trial features handle your data*, August 11, 2023, <https://support.zoom.us/hc/en-us/articles/16269138857229>

⁹⁰ Privacy at Zoom, <https://explore.zoom.us/en/trust/privacy/>

64. Zoom’s ToS is inconsistent with its Service Description as well as its representations on its product pages and blog posts. These inconsistent assertions and representations violate users’ rights in private data and robs them of meaningful, clear information about how their data is collected and used and what are their rights in their own data.

65. Zoom’s actions in introducing products which use customer data to train AI/ML models and thereafter presenting their ToS which obfuscates the true product design and business practices are unfair to consumers.

V. Expert Oppose the Changes to The Terms of Service

66. Speaking on the recent changes to Zoom’s ToS lawmakers and privacy experts have expressed strong opposition.

67. Rep. Jan Schakowsky (D-Ill.), a top lawmaker in data privacy, called it “yet another example of a tech company taking away an individual’s right to their own data.”⁹¹ Rep. Schakowsky also said, “Zoom has a poor track record of protecting consumers’ data and living up to its promises — as their consent order and 2021 settlement prove.”⁹²

68. Carissa Veliz, Associate Professor, University of Oxford said that Zoom’s change of terms is problematic for the following reasons: “(a) one-time, perpetual and irrevocable grant of license to customer or user data is an extreme provision with no opt-out provision. (b) Generative AI has been known to be able to spew out personal data that it has been trained on. Meeting administrators can opt-out of sharing meeting summaries data with Zoom. Attendees

⁹¹ Washington Post, *Zoom’s privacy tweaks stoke fears that its calls will be used to train AI*, August 8, 2023, <https://www.washingtonpost.com/politics/2023/08/08/zooms-privacy-tweaks-stoke-fears-that-its-calls-will-be-used-train-ai/>

⁹² *Id.*

have only two options: the way of administrators or the highway. (c) the changed terms are unfair; once you depend on a service, it's not easy to do without it, so you're likely to stay, even if you are unhappy.”⁹³

69. Janet Haven, the executive director of Data & Society, a nonprofit research institute, and a member of the National AI Advisory Committee, said concerns over the emerging technology go beyond Zoom's terms of service and represent long-standing concerns over data privacy.⁹⁴

70. Bogdana Rakova, a senior Trustworthy AI fellow at the Mozilla Foundation, a nonprofit group that publishes research projects about AI, said there should be more transparency and public discourse about how AI is being integrated in companies' products and services. Rakova said people do not pay attention to terms of service and are not always notified when they are changed. Zoom's terms of service were changed in March and became effective July 27. “These are documents that are intentionally written in a way that no sane human will spend their time looking at them,” Rakova said. “It's not clear when people are notified about changes, and this makes it very complex for consumers and puts the burden on consumers to single-handedly navigate this.”⁹⁵

71. Katharine Trendacosta, director of policy and advocacy at the Electronic Frontier Foundation has said that “Although this in theory offers all participants the ability to control how

⁹³ Carissa Veliz, *Post on X*, August 8, 2023, 5:38 pm,

<https://twitter.com/CarissaVeliz/status/1689028325421846529>

⁹⁴ CBS News, *Zoom addresses privacy concerns raised by AI data collection language in terms of service*, August 7, 2023, <https://www.nbcnews.com/tech/innovation/zoom-ai-privacy-tos-terms-of-service-data-rcna98665>

⁹⁵ *Id*

their data is used, it may not be possible for someone to opt out of a meeting or forgo Zoom altogether if they disagree.”⁹⁶

72. Open Rights Group policy manager Abby Burke has stated that “While Zoom states that customers will be asked for consent to use their data to train AI models, Zoom’s privacy policy is opaque and it is not clear that this is the case.”⁹⁷

73. Aaron Sankin at The Markup reported that “The user agreement stated that Zoom users gave the company “a perpetual, worldwide, non-exclusive, royalty-free, sublicensable, and transferable license” to use “customer content” for a list of purposes, including “machine learning, artificial intelligence, training, [and] testing.” This section did not state that users first had to give explicit consent for the company to do so.”⁹⁸ Jesse Woo, a data engineer at The Markup has commented that “under the language of the original terms of service, Zoom could have used whatever user data it wanted for training AI without asking for consent and faced essentially no legal risk in the process.”

74. Venture Beat⁹⁹ reviewed Zoom’s generative AI features and commented that Zoom’s “blog post does not state that the service is turned on by default with a small check box. When a call begins, other people in the call get notified that ‘Meeting Summary has been enabled.’ The popup says, ‘The account owner may allow Zoom to access and use your inputs

⁹⁶ AP Factcheck

⁹⁷ BBC News, *Zoom denies training AI on calls without consent*, August 9, 2023, <https://www.bbc.com/news/technology-66430429>

⁹⁸ Aaron Sankin, *This is What Happens When People Start Actually Reading Privacy Policies*, The Markup, August 12, 2023, <https://themarkup.org/hello-world/2023/08/12/this-is-what-happens-when-people-start-actually-reading-privacy-policies>

⁹⁹ Sharon Goldman, *Freedom of choice? How recent Zoom AI policy changes betrayed consumer trust*, VentureBeat, August 7, 2023, <https://venturebeat.com/ai/freedom-of-choice-how-recent-zoom-ai-policy-changes-betrayed-consumer-trust/> [Hereinafter, *VentureBeat*]

and AI-generated content for the purpose of providing the feature and for Zoom IQ product improvement, including model training.’ Participants can either click ‘Leave Meeting,’ or ‘Got it.’ That means if users don’t leave the call, they automatically agree to allow Zoom to collect data to build and improve its AI — but do users really have the choice to leave a work meeting or a remote classroom?’¹⁰⁰

75. Katie Gardner, a partner at international law firm Gunderson Dettmer has said that, “the reality is that today’s use of the web makes it impossible for most people to understand how companies are using their data, even if they are given a place to exercise the choices they are presented with. Yet with video and audio, especially in scenarios with children, there may be even more consumer discomfort around the use of personal data.”¹⁰¹

76. Following Zoom’s amendment to its ToS in August 2023, Bogdana Rakova, senior fellow at Mozilla foundation, has stated “You are expected to ‘consent’ to terms you don’t know changed...Merely continuing to use the product can mean that you’ve given consent.” In the case of Zoom, for example, if the changes were more apparent, Bogdana says Zoom’s users may have taken issue with the lack of assurances around the company entering AI development.”¹⁰²

VI. Legal Analysis

A. Summary of Relevant Facts

77. Zoom introduced AI based systems – Zoom IQ for Sales and Zoom Virtual Agent and collected personal data of users for training those models violating users’ rights in their

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Mozilla Foundation, *Want to Opt-Out of Zoom’s AI Training? Well...*, August 15, 2023, <https://foundation.mozilla.org/en/blog/zoom-ai-opt-out/>

private data and without obtaining specific consent. This is evident from the representations on Zoom’s website, its Annual Report¹⁰³ and Shareholder Letters.¹⁰⁴

78. Zoom’s Second Revised ToS, effective from August 11, 2023 continue the deception and unfair practice because of the qualifications and inconsistencies in the ToS and Service Description:

(a) The distinction between Customer Content and Service Generated Data is disingenuous and vague at best. Service Generated data can include telemetry, product diagnostic and “similar data.” This catch-all phrase of “similar data” can include a wide variety of data collected from video recordings or overlays including location data, motion tracking and other biometric information. Furthermore, telemetry data from video recordings can also capture motions which enables Zoom to collect this data for the purpose of training AI/ML models.

(b) The definitions of Customer Content are subject to the carve outs and exclusions in the Service Description. According to Zoom’s Service Description of Zoom IQ, Zoom retains ownership in Zoom IQ Data which includes data that “is imported, accessed, used, stored, transmitted, originated, or processed based on instructions from the Customer and any resulting derivatives, analytics, outputs, or data sets, including but not limited to Smart Recording Data.” This clearly grants Zoom rights in video and audio recordings of Users which Zoom is free to use for its own purposes including training AI/ML models.

¹⁰³ Zoom 2023 Annual Report

¹⁰⁴ Zoom 2023 Shareholder Letter

(c) According to the Service Description of Zoom IQ, Users grant Zoom an irrevocable license in Zoom IQ Data to “deliver the services”. Zoom’s definition of Services in the context of Zoom IQ is non-exclusive and includes translation and transcription services. Furthermore, the qualifying language in this grant of license—“Notwithstanding anything to the contrary in any other contract between Zoom and Customer” renders redundant Zoom’s assurance to customers in Clause 10.2 of its ToS “not use any of your audio, video, chat, screen sharing, attachments or other communications-like Customer Content (such as poll results, whiteboard and reactions) to train Zoom or third-party artificial intelligence models.”

(d) The Service Description of Zoom Virtual Agent (ZVA) clearly states that it is an artificial intelligence-based tool. The Service Description of ZVA also includes a broad license grant of user data— “with respect to Customer Content used in conjunction with ZVA, in addition to those rights granted in the Agreement, Customer grants Zoom and its Affiliates a perpetual worldwide right to utilize Customer Content for performing, developing, and improving ZVA and related products and services.”

(e) The qualifying language in the grant of license by Users to Zoom—“Notwithstanding anything to the contrary in the Agreement or any other agreement between Zoom and Customer”, renders redundant Zoom’s assurance to customers in Clause 10.2 of its ToS “not use any of your audio, video, chat, screen sharing, attachments or other communications-like Customer Content (such as poll results, whiteboard and reactions) to train Zoom or third-party artificial intelligence models.”

(d) Zoom’s representations in the ToS assuring users that it would not use Customer Content to train AI or ML models are deceptive and illusory. The terms are inconsistent with the express terms set out in the Services Description pertaining to Zoom IQ and Zoom Virtual Agent.

(e) Zoom’s representation that the amendment to the ToS to purportedly assuage widespread concern about collecting and using customer data to train AI/ML models was a misrepresentation and deception perpetrated on consumers. Zoom’s Service Description retains the similar language and clauses entitling them to classify user data as Zoom’s data and appropriate such data under broad license terms.

B. Zoom’s business practices are unfair

79. Zoom is engaging in unfair and deceptive acts and practices.¹⁰⁵ A trade practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁰⁶ The FTC has identified two primary factors that support a finding of unfairness: whether the practice injures consumers and whether it violates established public policy.¹⁰⁷

80. “The injury must be one which consumers could not reasonably have avoided.”¹⁰⁸ This factor enables the FTC to act in situations where seller behavior “unreasonably creates or

¹⁰⁵ See, 15 U.S.C. § 45.

¹⁰⁶ 15 U.S.C. § 45(n); see also *FTC v. Seismic Entm’t Prods., Inc.*, Civ. No.1:04-CV-00377 (Nov. 21, 2006) (finding that unauthorized changes to users’ computers that affected the functionality of the computers as a result of Seismic’s anti-spyware software constituted a “substantial injury without countervailing benefits.”).

¹⁰⁷ Fed. Trade Comm’n, FTC Policy Statement on Unfairness (1980), <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm> [hereinafter FTC Unfairness Policy].

¹⁰⁸ *Id*

takes advantage of an obstacle to the free exercise of consumer decision making,” while leaving consumer choice to govern the market in most instances.¹⁰⁹

81. The FTC will also look at “whether the conduct violates public policy as it has been established by statute, common law, industry practice, or otherwise.”¹¹⁰

82. Zoom’s practices are unfair because the design and deployment of generative AI-based products, specifically from January to August 2023, fails to respect the privacy of Users, particularly given that generative AI systems are known to carry privacy and security risks. Customers relied on the representations and assurances set out in Zoom’s ToS at the time of sign-up that they would have control over access, collection, and use of their personal data. The subsequent change of its ToS to enable collection of personal data of users for the purpose of AI/ML systems is unfair as Zoom failed to give customers a mechanism of opting-out of such practices and at the very minimum did not give consumers notice of its practices.

83. Zoom makes express representations¹¹¹ that it will not use customer data to train AI/Models yet it defines data belonging to Zoom IQ or obtained through ZVA in a manner that would effectively allow it to assert proprietary rights over customer input, biometric and derivative data.¹¹² Individual customers are not in a position to freely exercise their choice to opt-out of AI-based services given that Zoom has afforded such rights only to specific categories of Users, i.e. hosts or administrators.

¹⁰⁹ *Id*

¹¹⁰ *Id*

¹¹¹ Zoom Blog, *How Zoom’s terms of service and practices apply to AI features*, August 7, 2023, <https://blog.zoom.us/zooms-term-service-ai/>

¹¹² Zoom Services Description, Effective Date: August 11, 2023, <https://explore.zoom.us/en/services-description/>

84. Zoom retains personal data for as long as required.¹¹³ Users consenting to Zoom’s collection of personal data are doing so in reliance of a system where they can exercise their rights to deletion which are assured by Zoom in its Privacy Statement.¹¹⁴ There is no transparency of data retention or deletion procedures in products that integrate generative AI systems and the deployment of such systems violate users right to erasure or deletion rights assured under Zoom’s Privacy Statement.

85. Zoom’s use of emotion recognition technology is also unfair because the technology itself is flawed and being integrated in a widespread commercial context where the risk of harm or discriminatory impacts on Users is high. Zoom has made numerous representations (quoted above) as to how it would use sentiment analysis to accelerate revenue. The draft text of the EU AI Act bans the use of emotion recognition technologies.¹¹⁵

86. Zoom’s ToS as it defines “service generated data” and use of biometric recognition technology in Zoom IQ and Zoom Virtual Agent violates FTC’s Policy Statement on Biometric Information.¹¹⁶

¹¹³ Zoom Privacy Statement, Last Updated: August 11, 2023, <https://explore.zoom.us/en/privacy/>. Retention: “We retain personal data for as long as required to engage in the uses described in this Privacy Statement, unless a longer retention period is required by applicable law.”,

¹¹⁴ *Id.*

¹¹⁵ European Parliament, *Artificial Intelligence Act*, June 14, 2023, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236_EN.html; *See also*, MIT Technology Review, *Five Big Takeaways from Europe’s AI Act*, June 19, 2023, <https://www.technologyreview.com/2023/06/19/1075063/five-big-takeaways-from-europes-ai-act/>

¹¹⁶ FTC, Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act, pg. 7, 8, 9 https://www.ftc.gov/system/files/ftc_gov/pdf/p225402biometricpolicystatement.pdf [Hereinafter FTC Biometric Policy]

C. Zoom’s business practices are deceptive

87. According to FTC’s Policy Statement, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.¹¹⁷ The relevant inquiry for this factor is not whether the act or practice actually misled the consumer, but rather whether it is likely to mislead.¹¹⁸

88. Zoom’s policies recognize that privacy is an important consideration for Users, touting privacy as a core feature of its products and services. Zoom’s practices are deceptive because Zoom offered AI-based tools and services which trained AI/ML models with user data in violation of users’ rights in their data. Zoom altered its ToS giving it broad and unqualified access and proprietary rights to use customer data to train AI/ML models. When Zoom’s predatory ToS was highlighted in the media, Zoom amended the ToS to mitigate injury to its reputation. However, the second revised ToS¹¹⁹ does nothing to cure the deception because the Service Descriptions of Zoom’s products still retain the questioned provisions on training of AI/ML models. Zoom is still liable for the misleading interpretation due to the inconsistencies in its representations.

89. The Commission has stated that “Qualifying disclosures must be legible and understandable.¹²⁰ Even assuming Zoom’s undertaking, in Clause 10¹²¹ of the ToS, to not train AI/ML models is absolute, yet the qualifying disclosures in the ToS pertaining to “service

¹¹⁷ Fed. Trade Comm’n, FTC Policy Statement on Deception (1983), <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [hereinafter FTC Deception Policy].

¹¹⁸ *Id*

¹¹⁹ Zoom ToS, effective August 11, 2023, <https://explore.zoom.us/en/terms/>

¹²⁰ FTC Deception Policy

¹²¹ Zoom, *Terms of Service*, Effective Date: August 11, 2023, <https://explore.zoom.us/en/terms/>

generated data” and the qualifications in its Service Descriptions are not legible or understandable to a reasonable individual customer.

90. The Commission has stated that the deception must be concerning a practice or representation that is material to the consumer and likely to affect consumer choice. Zoom’s practice in deploying products and tools based on generative AI are material and assuring users that it takes their privacy “extremely seriously” are material to a user’s reliance in using Zoom’s products and services. The widespread criticisms and comments by lawmakers and experts set forth above indicate that Zoom’s representations on using customer data for training AI/ML models or otherwise using customer data in AI-based systems is material. Moreover, the Commission considers express claims as presumptively material¹²² and therefore Zoom’s express claim through its blog post as to its AI practices and privacy protections are material.

91. The act or practice must be considered from the perspective of a reasonable consumer.¹²³ “The test is whether the consumer’s interpretation or reaction is reasonable.”¹²⁴ The FTC will look at the totality of the act or practice and ask questions such as “how clear is the representation? How conspicuous is any qualifying information? How important is the omitted information? Do other sources for the omitted information exist? How familiar is the public with the product or service?”¹²⁵ In its settlement with BetterHelp, the FTC highlighted that service providers must “ditch deceptive designs” which included putting privacy disclosures behind hard-to-find and hard-to-read links.¹²⁶

¹²² FTC Deception Policy

¹²³ *Id*

¹²⁴ *Id*

¹²⁵ *Id*

¹²⁶ FTC Blog, *FTC says online counseling service BetterHelp pushed people into handing over health information – and broke its privacy promises*, March 3, 2023, <https://www.ftc.gov/business-guidance/blog/2023/03/ftc-says-online-counseling-service-betterhelp-pushed-people-handing-over-health-information-broke>

92. Zoom’s representations across all its legal and business communications are inconsistent and does not reasonably communicate the true nature of its product functionality and data practices to consumers. The Privacy Data Sheets and Privacy Statements are buried in a Compliance Page¹²⁷ on Zoom’s Website and are not readily accessible from the Zoom interface.

93. Zoom has shifted the burden of obtaining individual consent for collection of personal data in AI-based systems to the administrators or hosts. The consent mechanism is at point-of-engagement in the product at which time it is difficult for individual users to withdraw from, for example, a workplace meeting. Experts at the Mozilla Foundation have commented that “If your workplace uses Zoom and you’re worried about AI, urge your boss or IT department to ensure these features are turned off.”¹²⁸

94. The FTC has previously sanctioned Edmodo because “Edmodo illegally passed the COPPA compliance buck to teachers and schools. For example, when teachers opened an account, if they clicked on the Terms of Service link, if they scrolled down, and if they happened to find a paragraph buried on the bottom of the second page – all big ifs”.¹²⁹ Zoom Virtual Agent is being offered for “education”¹³⁰ clients as well and passes the burden of obtaining consent to use children’s data to train AI models to school authorities without adequate notice to parents or children on these practices.

¹²⁷ Zoom, *Compliance*, <https://explore.zoom.us/en/trust/legal-compliance/>

¹²⁸ Mozilla Foundation, *Want to opt-out of Zoom’s AI Training? Well ...*, August 15, 2023, <https://foundation.mozilla.org/en/blog/zoom-ai-opt-out/>

¹²⁹ Lesley Fair, *Oh no, you don’t, Edmodo: FTC sues ed tech company for violating school kids’ privacy*, FTC Business Blog, May 22, 2023, <https://www.ftc.gov/business-guidance/blog/2023/05/oh-no-you-dont-edmodo-ftc-sues-ed-tech-company-violating-school-kids-privacy>

¹³⁰ Zoom Virtual Agent Support, *Coaching Intent Queries*, March 28, 2023, <https://support.zoom.us/hc/en-us/articles/13841626310925-Coaching-intent-queries>

95. Finally, the representation, omission, or practice must be material.¹³¹ Essentially, the information must be important to consumers. The relevant question is whether consumers would have chosen another product if the deception had not occurred.¹³²

96. The FTC has previously barred companies from circumventing user consent and privacy protections in software. The FTC has cautioned “The FTC’s complaints against BetterHelp, Practice Fusion, and PaymentsMD make clear that you may be deceiving consumers not only by what you say, but also by what you fail to say.”¹³³

97. Regarding health information, specifically, the FTC has stated “Reserving the right to make big changes to your privacy policy isn’t real consent.”¹³⁴ Zoom surreptitiously made the change to terms of service that overrode user consent and even understanding of the purpose for which Zoom would collect and process User data. It was only when the change was detected and reported that Zoom amended its terms of service and announced that audio and video data would not be used for training machine learning/artificial intelligence models.

98. The FTC has also enjoined companies from maintaining inadequate privacy policies.¹³⁵ Zoom’s amendment and its current ToS is inadequate due to obfuscation and no meaningful distinction between what it terms “user data” and “service generated data” and the rights it asserts by couching training of AI models as “service delivery” or “service improvement.”

¹³¹ FTC Deception Policy

¹³² *Id*

¹³³ Elisa Jillson, *Protecting the privacy of health information: A baker’s dozen takeaways from FTC Cases*, Business Blog, July 25, 2023, <https://www.ftc.gov/business-guidance/blog/2023/07/protecting-privacy-health-information-bakers-dozen-takeaways-ftc-cases>

¹³⁴ *Id*

¹³⁵ FTC, *2020 Privacy and Data Security Update*, pg. 3, https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-2020-privacy-data-security-update/20210524_privacy_and_data_security_annual_update.pdf

99. Even if there may be legitimate service improvement purposes for Zoom to collect real-time transcription of Zoom calls there is no clarity for how long such data would be stored given that Zoom classifies such data as “service generated data”. The FTC in its guidance has stated that “Secretly collecting audio or visual data – or any sensitive data – to feed an algorithm could also give rise to an FTC action.”¹³⁶ In the Commission’s 2021 Guidance,¹³⁷ the FTC cautioned companies to the tell the truth about how they use data (describing recent enforcement actions against Facebook and Everalbum for misleading consumers).

100. Zoom’s ToS, Service Descriptions and product representations are contrary to its obligations under the Consent Order with the FTC.

101. Zoom’s ToS is contrary to the FTC’s guidance on AI products.¹³⁸ In a recently published business guidance, the FTC has stated “Unilaterally changing those terms or undermining reasonable ownership expectations can get you in trouble, too.”¹³⁹

102. Zoom’s practices are also contrary to established policy as set out in recent FTC settlements¹⁴⁰ with Ring and Amazon related to transparency and accuracy of notices to users

¹³⁶ Andrew Smith, Director, FTC Bureau of Consumer Protection, Using Artificial Intelligence and Algorithms, April 8, 2020, <https://www.ftc.gov/business-guidance/blog/2020/04/using-artificial-intelligence-and-algorithms>

¹³⁷ FTC, Aiming for truth, fairness, and equity in your company’s use of AI (April 2021) (emphasis below in the original), <https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>

¹³⁸ FTC, *Aiming for truth, fairness, and equity in your company’s use of AI* (April 2021) (emphasis below in the original), <https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>

¹³⁹ FTC Business Blog, *Can’t lose what you never had: Claims about digital ownership and creation in the age of generative AI*, August 16, 2023, https://www.ftc.gov/business-guidance/blog/2023/08/cant-lose-what-you-never-had-claims-about-digital-ownership-creation-age-generative-ai?utm_source=govdelivery

¹⁴⁰ FTC Press Release, *FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users’ Cameras*, May 31, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users>

about the use of their data for training models. In those settlements the FTC required both Ring and Amazon to delete proprietary models.¹⁴¹

D. The 2020 Zoom Consent Order

103. On November 9, 2020, Zoom entered a settlement with the Federal Trade Commission (“Zoom Consent Order”)¹⁴² that prohibits privacy and security misrepresentations including about how Zoom collects, uses, maintains, or discloses personal information.¹⁴³

104. The Zoom Consent Order defines “Covered Information” as:

“information from or about an individual, including: (a) a first and last name; (b) physical address; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security Number; (f) a driver’s license or other government-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) recorded or livestream video or audio content, chat transcripts, documents, or any other multimedia content shared by Users during a Meeting; (j) a persistent identifier, such as a customer number held in a “cookie”, a static internet protocol (IP) address, a mobile device ID, or a processor serial number; or (k) any information combined with any of (a) through (j) above.”

105. The Zoom Consent Order sets out the “Prohibited Misrepresentations” as follows:

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any product or service, must not misrepresent in any manner, expressly or by implication:

¹⁴¹ VentureBeat, <https://venturebeat.com/ai/freedom-of-choice-how-recent-zoom-ai-policy-changes-betrayed-consumer-trust/>

¹⁴² FTC, *In the Matter of Zoom Video Communications, Inc.*, Agreement Containing Consent Order, File No. 192 3167, <https://www.ftc.gov/system/files/documents/cases/1923167zoomacco2.pdf>

¹⁴³ FTC, *FTC Gives Final Approval to Settlement with Zoom Over Allegations the Company Misled Consumers about Its Data Security Practices*, Press Release, February 1, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-gives-final-approval-settlement-zoom-over-allegations-company-misled-consumers-about-its-data>

- A. Respondent’s collection, maintenance, use, deletion, or disclosure of any Covered Information;
- B. The security features, or any feature that impacts a Third-Party Security Feature, included in any Meeting Service, or the material changes included in any updates thereof;
- C. The extent to which Respondent protects any Covered Information from unauthorized access;
- D. The extent to which a User can control the privacy or security of any Covered Information collected and maintained by the Respondent, and the steps the User must take to implement such controls;
- E. The categories of third parties to which Respondent makes Covered Information accessible; or
- F. The extent to which Respondent otherwise maintains the privacy, security, confidentiality, or integrity of covered information.”

106. The Zoom Consent Order also mandates Zoom to maintain an “Information Security Program” which, among others, requires at a minimum that:

E. Design, implement, maintain, and document safeguards that control for the internal and external risks Respondent identifies to the security, confidentiality, and integrity of Covered Information identified in response to sub-provision II.D. Each safeguard must be based on the volume and sensitivity of Covered Information that is at risk, and the likelihood that the risk could be realized and result in the (1) unauthorized collection, maintenance, use, or disclosure of, or provision of access to, Covered Information; or the (2) misuse, loss, theft, alteration, destruction, or thooer compromise of such information. Such safeguards must also include:

...

5. Data deletion policies, procedures, and any applicable technical measures, including validating that all copies of Covered Information identified for deletion are deleted within thirty-one (31) days.”¹⁴⁴

107. Zoom has failed to fulfill its obligation under the 2020 Consent Order.

VII. The FTC Must Prevent Ongoing Injury to Consumers

108. Zoom’s terms of service jeopardize consumer privacy, autonomy, and safety.

¹⁴⁴ Zoom Consent Order, pg. 4, 5, 6.

109. Zoom’s representation of how it uses customer data, its settings for opting-in or consenting to the use of data for AI/ML training, its privacy settings and associated policies are misleading, deceptive, and unfair.

110. Absent injunctive relief by the Commission, Zoom is likely to continue its unfair and deceptive business practices and harm the public interest.

111. Absent injunctive relief by the Commission, the privacy safeguards, autonomy, and informed consent for consumers engaging in online conferencing and communication will be diminished.

112. Absent injunctive relief by the Commission, Zoom’s integration of generative AI services without necessary privacy protective measures and, at the very least, clear and meaningful notice to users about the deployment of AI-systems, interaction with AI agents, and use of personal data for such systems, will establish a precedent of predatory data practices in the industry.¹⁴⁵

VIII. Prayer for Investigation and Relief

113. CAIDP requests that the Commission investigate Zoom, enjoin its unfair and deceptive business practices, and require Zoom to make appropriate changes to its privacy policies, privacy settings on Zoom Client and all related products of the Zoom suite. CAIDP specifically requests the Commission to:

- A. Compel Zoom to delete models and algorithms developed or trained using text, audio, video, biometric, meta data provided by users or generated by user activity;

¹⁴⁵ Rolling Stone, *Zoom is using you to train AI. So will everyone else*, August 9, 2023, <https://www.rollingstone.com/culture/culture-news/zoom-ai-personal-data-1234802844/>

- B. Compel Zoom to refrain from using data provided by users or generated by user activity through Zoom IQ, Zoom Virtual Agent or other AI/ML systems;
- C. Compel Zoom to require explicit, opt-in consent, at the time collection occurs, for any future use of data provided by users or generated by user activity for the purpose of training Zoom IQ, Zoom Virtual Agent and similar other AI/ML systems;
- D. Compel Zoom to ensure that participants in a Zoom service will not be denied access to the service for their decision to withhold consent for the use of their data or data they generate for ML training;
- E. Compel Zoom to amend its Terms of Service and Service Descriptions to comply with these requirements;
- F. Compel Zoom to make its practices relating to deployment and integration of AI systems simple, clear, and comprehensible;
- G. Impose civil penalties and injunctive relief for violation of the 2020 Consent Order.
- H. Provide such other relief as the Commission provides.

Respectfully submitted,

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