Honorable members of this Subcommittee, My name is Brad Newman. I am an attorney based in Silicon Valley for the last nearly 30 years. I am a partner with the law firm of Baker McKenzie, where I serve as a leader of our Firm's AI practice. For the last several years, I served as the Chair and now the Co-Chair of the AI Subcommittee of the American Bar Association, Business and Commercial Litigation Section. In 2018, I was recognized by the Daily Journal as one of the Top 20 AI attorneys in California. I frequently teach lawyers, judges and clients accredited Legal Education courses in AI and particularly, ethical uses of AI, oversight and governance. I have been an invited speaker on AI at several of the nation's top law and graduate business schools, including MIT Sloan. For many years I have had the privilege to represent the world's leading developers of AI, and to get a behind the scenes look at the technology -- including the incredible promise it presents to improve so many aspects of our lives, and in particular the workforce, as well as the very serious societal downside. I have published extensively on the need for legislative safeguards on the use of AI, including in the employment domain.   I have spoken with many of the world's leading data scientists and AI ethicists, as well as with the EEOC, and believe that I am familiar with all sides of the AI regulatory debate, and the many differing perspectives about how to approach this important topic in the employment domain.

I am not part of any lobbying, special interest or industry group. I am here as a concerned citizen and father. I am anti-regulation, but passionately believe that the AI employment context is one area where the federal government should act - cautiously, prudently and once fully informed -- on a bipartisan basis to enact legislation designed both to promote innovation and protect the health, welfare and safety of society. I want to stress that while I am here today as a private citizen, my views are informed by what I have personally witnessed and experienced since at least 2010. I also want to be clear from the onset that my long held belief is that existing laws do not adequately provide for the potential downside impact of AI, including in the varied and growing employment use cases context. Nor are any existing agencies fully prepared to oversee, regulate and enforce an omnibus AI Bill.

For the benefit of society, I urge this Committee to ultimately conclude, as I have, that we need new omnibus federal legislation. Eventual federal legislation should not regulate AI technology generally, but rather, delineate specific prohibited use cases and guardrails for AI use in the employment context. That is an important distinction. Future legislation must promote and encourage continued AI innovation and protect the workforce, without creating overly-burdensome compliance obligations that will fuel inefficiency and discourage future AI advancements in places like Silicon Valley and other tech hubs around the country where very smart minds are working around the clock to create new and better AI algorithms. The optimal outcome for federal AI legislation would be one that successfully avoids creating the scenario where rules and regulations are so onerous that only the very largest developers and users could afford to comply and thus have a de-facto monopoly over the industry and innovation. Rather, a rational, risk-based approach would ensure that AI developers both large and small have the resources to comply and thus participate in the vast opportunities presented by the AI workforce ecosystem. From my vantage point, industry -- and particularly the developers of this technology, want to do the right thing and are eager to work with a bipartisan group of federal legislators to get this right -- especially in the employment context.

Back on December 31, 2015, I published an article in Tech Crunch entitled "Artificial Intelligence Poses A Greater Risk To IP Than Humans Do." In this initial article which focused predominantly on IP risks arising from AI proliferation, I noted that AI will displace human workers. While I candidly noted that I am no fan of over-regulation, I stressed that AI is one area where there needs to be federal

regulation and I proposed omnibus federal legislation called the Artificial Data Protection Act. In this initial article, I laid out some of the general requirements I thought important for any federal legislation. This includes the requirement that companies of a certain size designate a Chief AI Officer charged with internal corporate oversight and monitoring of AI usage in the workplace. This was one of, if not the earliest proposal to create a C-suite position called the Chief AI Officer designated with overall corporate responsibility and governance of AI. I also proposed the creation of a federal agency staffed with legal and technical experts to address issues arising under the AI Data Protection Act.

It is worth noting that the photo Tech Crunch ran with the 2015 article was a picture of the Terminator - -a science fiction AI war machine.   I knew at the time that my call to arms was premature, and that society at large which did not have my Silicon Valley based vantage point of this technology, was not yet ready to act. But I persisted. In the years that followed, based on what I saw in the AI field and knew was on the horizon, I continued to speak out about the needs for rational and well-designed federal AI regulation.

On May 15, 2018, I published a follow up piece in Tech Crunch entitled: "Society Needs the Artificial Data Protection Act Now." In this article, I included further details about what I thought prudent federal AI legislation should include. Now, in addition to addressing unique IP considerations, I proposed federal AI legislation should address AI's impact on the workforce. My 2018 article begins:

> On December 31, 2015, I published my original call to arms for society's rational regulation of artificial intelligence before it is too late. I explained certain reasons why someone who is against solving problems through regulation would propose precisely that mechanism to help hedge the threats created by AI, and announced my proposed legislation: The Artificial Intelligence Data Protection Act (AIDPA).

> Since 2015, we have witnessed AI's rapidly evolving national and international growth and adoption that will soon impact every phase of mankind's life, from birth to death, sex to religion, politics to war, education to emotion, jobs to unemployment.

> Three of many recent developments confirm why now is the time for the AIDPA: (1) a McKinsey study from late 2017 determined that up to 800 million workers worldwide may lose their jobs to AI by 2030, half of contemporary work functions could be automated by 2055 and other recent studies suggest as many as 47 percent of U.S. jobs could be threatened by automation or AI over the next few decades….

> Now – and not later — society must address AI's legal, economic and social implications with regard to IP and employment. Current legislation does not adequately account for the new challenges, threats and needs presented by the impact of AI.

> This article addresses the AIDPA's twin focuses (AI's threats to intellectual property rights and the labor force) and presents a proposed framework to address them. The AIDPA is intended to provide industry with a voice in regulating AI while promoting its safe, secure and ethical use. The United States must lead the way in regulating AI, and leaders in industry, technology and ethics should join together to finalize and enact the AIDPA — the first and most important legislation of its kind.

I believed that then and I believe that now.   The week my 2018 article was published, I received a call from Congressman Nolan (D) of Minnesota's office. I was informed they read the article and agreed with it. They asked if I wanted to assist their office in turning the proposal into a draft discussion bill. I spent the latter part of 2018 working with their office and House Legislative Counsel to prepare a draft of the AI Data Protection Act.   The intent was to complete the draft by the end of 2018 so that Congressman Nolan, who was not running for re-election, could read it into the record and it could be assigned a Bill number. However, as so often happens, events on the ground overtook us. The federal government shut down at the end of 2018, and Congressman Nolan returned to his home without having the opportunity to formally enter the Discussion Draft into the record.

The Discussion Draft of the AI Data Protection Act has several key features that I think are important for this Subcommittee to be aware of, pieces of which have now been included in subsequent legislative proposals floating around both Chambers of Congress.

1. Section 101 of the AI Data Protection Act provides for:

(a) the establishment of an Article II federal AI Board and

(b) its makeup, authority and powers that include 5 Senate confirmed Board members who must at all times include members from each of these fields: industry, labor, data science and law.

2. Section 102 establishes certain statutory Unlawful Uses of AI that includes a prohibition on:

(1) Sole reliance on artificial intelligence-

(A) by an employer to make a decision regarding the employment of an individual, including an Adverse Employment Action

3.   Section 201 establishes the requirement that covered entities appoint a Chief AI Officer with certain roles and responsibilities.

4. Section 202 creates a federal Worker Realignment Program to "aid covered individuals [displaced by AI] by training such individuals for alternative careers and by helping such individuals find employment opportunities; and

5. Section 204 requires 60 day advance notice to workers who will be displaced by AI.

Any future AI workplace legislation enacted by Congress ought to have, at minimum, these components. It will go a long way to building trust between management and the workforce when it comes to AI employment tools, and minimize the current challenges faced by those who seek to utilize AI in responsible fashion to improve the employment relationship for both management and workers.

I want to conclude by contrasting a proposed omnibus federal legislative approach to AI in the employment context with the existing status quo, which is a patchwork of vexing state and local regulation. In my opinion, carefully regulating the fair and lawful use of AI in the employment context is as important as regulating the fairness of the securities markets (for which we have the SEC), our food and drug safety (for which we have the FDA), management-labor relations (for which we have the NLRB), employment discrimination (for which we have EEOC), and so forth.

No existing law, in my opinion, adequately protects the workforce from the potential and serious risks of AI employment tools while ensuring the we promote innovation and have individuals with the right skill set presiding over these technical issues. Instead, the developers and users of this AI tecnhology face an increasing patchwork of state and local legislation, which creates onerous -- and at times vague -- compliance obligations depending on jurisdiction. Whether its employee biometrics like Illinois, employee personal information and the new Executive Order in California, employment bias in NY City, or many other areas that AI impacts in the employment domain, there is confusion and inconsistency. Regulations like those enacted by NYC come with incredibly complex and unclear regulations that will likely prove too expensive for many segments of the user community to comply with, thus incentivizing them to abandon the benefits of AI tools in this use case. That is not a desirable outcome, and one the federal government should seek to avoid.   Both companies that develop and deploy AI technology as well as the workforce deserve a rational solution that delivers clarity and consistency on a national level. The guardrails should be plainly spelled out in bipartisan federal legislation.

I want to again thank this Subcommittee for inviting someone like me -- a complete outsider to Washington DC -- and listening to my viewpoints on these important issues. I am encouraged to see this Subcommittee approaching this topic by hearing from a range of perspectives.