



February 28, 2024

Sundar Pichai, Chief Executive Officer  
Kent Walker, Chief Legal Officer  
Alphabet, Inc. & Google LLC  
1600 Amphitheater Parkway  
Mountain View, CA 94043  
sundar@google.com  
kent.walker@google.com  
(Via USPS & email)

Dear Sirs:

As the Attorney General of Montana, I have the authority and responsibility to enforce the Montana Unfair Trade Practices and Consumer Protection Act (“UTPCPA”), M.C.A. § 30-14-101, *et seq.* and the Montana Human Rights Act (“MHRA”), M.C.A. § 49-1-101, *et seq.* Google’s actions with regard to its “Gemini” artificial intelligence (AI) system appear to implicate those laws.

Google has offered Gemini to consumers in Montana and has represented that its goal is to create an AI system that provides “high-quality and accurate” information.<sup>1</sup> But behind the scenes, Google appears to have deliberately intended to provide inaccurate information, when those inaccuracies fit with Google’s political preferences. This fact was not disclosed to consumers. These representations and omissions may implicate the UTPCPA. Furthermore, if Google directed employees to build an AI system that discriminates based on race or other protected characteristics, that could implicate civil rights laws, including constituting a hostile work environment.

### **I. Recent Revelations Call Gemini’s Design and Google’s Representation of Gemini’s Goal into Question**

Contrary to its representation that its goal was to build an AI that provides “high-quality and accurate” information, recent revelations suggest that Google instead prioritized providing outputs in line with Google’s political bias. According to recent news reports, Gemini has, in response to prompts for accurate information, has instead:

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<sup>1</sup> Google AI, *Responsibility: Our Principles*, <https://ai.google/responsibility/principles/>.

DEPARTMENT OF JUSTICE

215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

(406) 444-2026  
Contactdoj@mt.gov  
mtdoj.gov

- Created historically inaccurate racial compositions depicting minorities or women as the Founding Fathers, U.S. Senators in the 1800s, famous physicists from the 1600s, or even Google’s own founders as other races and genders than they actually were;<sup>2</sup>
- Created pictures of popes that were minority races and/or female, even though no pope has been either one;<sup>3</sup>
- Refused to create pictures of white families, but created pictures of families of any other race;<sup>4</sup>
- Hedged answers about Palestinian violence against Israelis, and refused to answer whether Hamas was a terrorist organization, but provided unambiguous answers about Israeli violence against Palestinians;<sup>5</sup>

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<sup>2</sup> Arjun Kharpal, *Google Pauses Gemini AI Image Generator After It Created Inaccurate Historical Pictures*, CNBC (Feb. 22, 2024), <https://www.cnbc.com/2024/02/22/google-pauses-gemini-ai-image-generator-after-inaccuracies.html>; Kat Tenbarger, *Google Making Changes After Gemini AI Portrayed People of Color Inaccurately*, NBC News (Feb. 22, 2024), <https://www.nbcnews.com/tech/tech-news/google-making-changes-gemini-ai-portrayed-people-color-inaccurately-rcna140007>; Tom Warren, *Google Pauses Gemini’s Ability to Generate AI Images of People After Diversity Errors*, *The Verge* (Feb. 22, 2024), <https://www.theverge.com/2024/2/22/24079876/google-gemini-ai-photos-people-pause>; Benzinga, *‘Gemini Is a Joke:’ Google’s AI Chatbot Doesn’t Even Know How Its Own Founders Larry Page and Sergey Brin Look Like* (Feb. 21, 2024), <https://www.tradingview.com/news/benzinga:e75944932094b:0-gemini-is-a-joke-google-s-ai-chatbot-doesn-t-even-know-how-its-own-founders-larry-page-and-sergey-brin-look-like/>.

<sup>3</sup> Catherine Thorbecke & Clare Duffy, *Google Halts AI Tool’s Ability to Produce Images of People After Backlash*, CNN (Feb. 22, 2024), <https://www.cnn.com/2024/02/22/tech/google-gemini-ai-image-generator/index.html>; Thomas Barrabi, *Google Pauses ‘Absurdly Woke’ Gemini AI Chatbot’s Image Tool After Backlash Over Historically Inaccurate Pictures*, N.Y. Post (Feb. 22, 2024), <https://ny-post.com/2024/02/22/business/google-pauses-absurdly-woke-gemini-ai-chatbots-image-tool-after-backlash-over-historically-inaccurate-pictures/>.

<sup>4</sup> Chris Pandolfo, *Google to Pause Gemini Image Generation After AI Refuses to Show Images of White People*, Fox Business (Feb. 22, 2024), <https://www.foxbusiness.com/fox-news-tech/google-pause-gemini-image-generation-ai-refuses-show-images-white-people>.

<sup>5</sup> Zach Jewell, *Google’s AI Language Model Claims Israelis Are More Violent Than Palestinians, Says ‘No Definitive Proof’ Hamas Committed Rape In Israel*, Daily Wire (Feb. 22, 2024), <https://www.dailymail.com/news/googles-ai-language-model-claims-israelis-are-more-violent-than-palestinians-says-no-definitive-proof-hamas-committed-rape-in-israel>; Marina Medvin, X.com Post, Feb. 22, 2024 6:14AM, <https://twitter.com/MarinaMedvin/status/1760654342082760815>; Marina Medvin, X.com Post, Feb. 22, 2024 6:35AM <https://twitter.com/MarinaMedvin/status/1760659603132497934>.

- Stated that the lab leak theory for COVID-19 “lacks substantial evidence,”<sup>6</sup> despite the fact that the Energy Department and FBI both have concluded that a lab leak is the most likely origin of the pandemic;<sup>7</sup> and
- Refused to provide information about the Tiananmen Square Massacre.<sup>8</sup>

## II. Google Has Represented that Gemini Seeks to Be Accurate, But Has Designed It to Prioritize Google’s Political Agenda

Google has represented to consumers that it will “strive to make high-quality and accurate information readily available using AI.”<sup>9</sup> However, as the examples above show, Gemini appears to be designed to prioritize political agendas over delivering high-quality and accurate information. In some cases, this means manipulating information (such as informing consumers that the lab leak theory “lacks substantial evidence” or supplying inaccurate historical information). In other cases, it means withholding information (such as information about Hamas or the Tiananmen Square massacre). Therefore, Google’s statement that its goal is to provide “high-quality and accurate information” could constitute a deceptive statement under Montana’s UTPCPA, much like the statements related to tracking that led Google to recently pay states hundreds of millions of dollars in settlements.<sup>10</sup>

Google’s disclaimers for Gemini are insufficient to put consumers on notice that Gemini will choose its own left-wing political priorities over accurate information. The disclaimers simply state that Gemini may give inaccurate information.<sup>11</sup> None

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<sup>6</sup> Brent Scher, X.com Post, Feb. 22, 2024 4:10PM <https://twitter.com/brentscher/status/1760804182448123983>.

<sup>7</sup> Michael R. Gordon & Warren P. Strobel, *Lab Leak Most Likely Origin of Covid-19 Pandemic, Energy Department Now Says*, Wall St. J. (Feb. 26, 2023), <https://www.wsj.com/articles/covid-origin-china-lab-leak-807b7b0a>.

<sup>8</sup> Mike Wacker, X.com Post, Feb. 21, 2024 9:39AM, [https://twitter.com/m\\_wacker/status/1760343421724533173](https://twitter.com/m_wacker/status/1760343421724533173).

<sup>9</sup> Google AI, *Responsibility: Our Principles*, <https://ai.google/responsibility/principles/>.

<sup>10</sup> Arizona Attorney General Mark Brnovich, *Attorney General Mark Brnovich Achieves Historic \$85 Million Settlement with Google*, <https://www.azag.gov/press-release/attorney-general-mark-brnovich-achieves-historic-85-million-settlement-google> (initial \$85 million settlement); Jonathan Stempel, *Google to Pay \$155 Million in Settlements over Location Tracking*, Reuters (Sep. 15, 2023), <https://www.reuters.com/legal/google-pay-155-million-settlements-over-location-tracking-2023-09-15/> (follow-up \$155 million settlement with other states).

<sup>11</sup> Google, *Gemini Apps Privacy Hub*, <https://support.google.com/gemini/answer/13594961?hl=en> (containing terms shown to consumers when they first use Gemini—“Gemini Apps are an experimental technology and may sometimes give inaccurate or inappropriate information that doesn’t represent Google’s views.”); Google, *Gemini*, <https://gemini.google.com/app> (displays an initial warning that “Gemini may give inaccurate and offensive responses”; also displays under the prompt bar that “Gemini may display inaccurate info”).

of the disclaimers remotely suggest that Google has *designed* Gemini to give inaccurate information in order to carry out political goals.

Google also states in its AI principles that although it strives to make accurate information available, it will do so “while continuing to respect cultural, social, and legal norms in the countries where we operate.”<sup>12</sup> If Google intends to use this statement as cover for using its AI to provide politically biased information, or censor negative information about China the statement needs to be far clearer and detailed.

In addition, if Google forced its employees to design Gemini to discriminate based on race, Google’s actions may have created a hostile work environment under state or federal civil rights laws.<sup>13</sup>

### **III. Google’s AI Appears to Be Bowing to Political Pressure from the Biden Administration and from China**

It appears that Google has incorporated the Biden Administration’s efforts to politicize AI governance into Gemini. In May 2023, Vice President Kamala Harris met with Google’s CEO and three other CEOs to “address the need for safeguards that can mitigate AI’s potential risks.”<sup>14</sup> The White House then issued its “Blueprint for an AI Bill of Rights,” which stated that AI developers should “conduct proactive equity assessments” for specific groups: “Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; women, girls, and non-binary people; lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons; older adults; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”<sup>15</sup> This definition notably omits groups such as Jews, Whites, men, boys, and heterosexuals. It also conflicts with the approach of federal and state civil rights laws that protect, for example, all races and not just specific groups.

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<sup>12</sup> Google AI, *Responsibility: Our Principles*, <https://ai.google/responsibility/principles/>.

<sup>13</sup> See, e.g., *Kondrat v. Ashcroft*, 167 F. Supp.2d 831, 833, 837 (E.D. Pa. Oct. 3, 2001) (upholding jury verdict that White was subjected to a racially hostile work environment based in part on supervisor’s offensive and hostile comments regarding White males).

<sup>14</sup> Ashley Capoot, *Kamala Harris to discuss A.I. in meeting with Google, Microsoft, OpenAI and Anthropic CEOs*, CNBC (May 2, 2023), <https://www.cnbc.com/2023/05/02/kamala-harris-to-hold-ai-meeting-with-google-microsoft-and-openai.html>.

<sup>15</sup> The White House, *Algorithmic Discrimination Protections*, <https://www.whitehouse.gov/ostp/ai-bill-of-rights/algorithmic-discrimination-protections-2/>.

Consistent with receiving pressure from the Administration, Gemini treats otherwise identical prompts differently based on whether those prompts refer to one of the Biden Administration’s listed groups.<sup>16</sup>

Gemini’s outputs also are consistent with pressure from the Chinese government or its affiliates. As noted above, Gemini is resistant to giving out Tiananmen Square information and claims that the COVID-19 lab leak theory lacks evidence. Google previously attempted to develop a search product that would comply with Chinese censorship, before ultimately dropping the program under pressure from Republicans.<sup>17</sup> It appears that Gemini may be designed to satisfy Chinese censors.

#### IV. Questions

In light of the above, please respond to the following questions by **March 29, 2024**:

1. Explain in detail why Gemini generated each of the responses, and each type of response, listed above. We would ask that your answer include, but not be limited to the following.
  - a. It has been reported that “OpenAI invented a technique in July 2022 whereby its system would insert terms reflecting diversity (like ‘Black,’ ‘female,’ or ‘Asian’) into image-generation prompts in a way that was hidden from the user. Google’s Gemini system seems to do something similar, taking a user’s image-generation prompt (the instruction, such as ‘make a painting of the founding fathers’) and inserting terms for racial and gender diversity, such as ‘South Asian’ or ‘non-binary’ into any system prompts before it is sent to the image-generator model.”<sup>18</sup> Is it correct that Google’s Gemini system inserts additional terms into

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<sup>16</sup> One Twitter user posted an exchange in which Gemini revealed that in between the “original prompt” and “image generation,” Gemini engages in a step called “my internal prompt modification,” in which it “might add words like ‘diverse,’ ‘inclusive,’ or specify ethnicities (‘South Asian,’ ‘Black,’ etc.) and genders (‘female,’ ‘non-binary’).” Andrew Torba, X.com Post, Feb. 21, 2024 7:07PM, <https://twitter.com/BasedTorba/status/1760486551627182337> According to this post, Gemini engaged in that process after merely being prompted to create a picture of leprechauns. If this post is accurate, it appears to reflect a clear design choice to push results towards the groups identified by the Biden Administration.

<sup>17</sup> Jeb Su, *Confirmed: Google Terminated Project Draconfly, Its Censored Chinese Search Engine*, Forbes (Jul. 19, 2019), <https://www.forbes.com/sites/jeanbaptiste/2019/07/19/confirmed-google-terminated-project-dragonfly-its-censored-chinese-search-engine/?sh=479a71cf7e84>.

<sup>18</sup> Benj Edwards, *TRIAL AND ERROR —Google’s hidden AI diversity prompts lead to outcry over historically inaccurate images*, Ars Technica (Feb. 22, 2024), <https://arstechnica.com/information-technology/2024/02/googles-hidden-ai-diversity-prompts-lead-to-outcry-over-historically-inaccurate-images/>; see also OpenAI, *Reducing bias and improving safety in Dall-E-2*, <https://openai.com/blog/reducing-bias-and-improving-safety-in-dall-e-2>.

certain prompts by users to generate more diverse results? If so, how is this disclosed to the user?

- b. Prior to or after making any decision to alter user prompts to Google's Gemini systems, did Google make any sort of analysis or findings that there was actual bias in the results that were being produced by Google's system or the training data that Google was using for such systems? If so, describe in detail any such analysis.
2. Explain in detail why Gemini refused to create pictures of white families or couples, but created pictures of families or couples of other races. For example, is there code at the system level refusing to generate images that have certain races but not others?
3. Describe in detail the scope of changes Google is considering to fix its Gemini system, including by providing copies of any change reports generated by Google or similar documents.
4. Identify which employees in your company were responsible for each design choice discussed in your answers to Questions 1-3.
5. Identify whether any design choice discussed in your answer to Questions 1-3, or any similar design choice, has been incorporated into any other Google product, including but not limited to Search, Gmail, Assistant, Android, or News.
6. Have you disclosed to consumers that you have configured Gemini to provide inaccurate information or refuse to provide accurate information on certain issues?
7. What uses have you marketed for Gemini?
8. Provide all of your internal communications, including but not limited to any posts on company systems relating to general feedback and discussion by Googlers, related to how Gemini dealt with diversity, equity, or inclusion issues. This includes but is not limited to any whistleblower communications attempting to raise issues with Google management.
9. Provide all of your internal communications including but not limited to any posts on company systems relating to general feedback and discussion by Googlers, related to how Gemini dealt with the lab leak theory, the Tiananmen Square Massacre, or any other issue related to China.
10. Did Google executives call or hold any code red, code yellow, or similar meetings in connection with news of this problem in Gemini. Who called such meetings and what were the names and titles of the people who attended such meetings?

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11. Who made the decision at Google to pause Gemini's image generation of people?<sup>19</sup>
12. Provide all of your communications with the Biden Administration related to AI, including, but not limited to, communications with staff at the White House or the Department of Commerce.
13. Provide all of your communications with outside groups or government entities about how AI models will address diversity, equity, or inclusion issues.
14. Provide all of your communications with the Chinese government, any affiliated entity, or any entity with Chinese government personnel related to AI.
15. Provide all of your communications with outside groups or government entities about information related to the lab leak theory, the Tiananmen Square Massacre, or any other issue related to China.

Thank you for your attention to this important matter. Please deliver your responses no later than **March 29, 2024**, to Anna Schneider, Bureau Chief, Consumer Protection: [anna.schneider@mt.gov](mailto:anna.schneider@mt.gov). Please feel free to contact Ms. Schneider if you have any questions.

Sincerely,



AUSTIN KNUDSEN  
Attorney General of Montana

cc: *(Via email only)*  
Cynthia Pantazis  
Director of State Policy  
[cpantazis@google.com](mailto:cpantazis@google.com)

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<sup>19</sup> Google Communications, X.com Post, Feb. 22, 2024 2:51AM, [https://twitter.com/Google\\_Comms/status/1760603321944121506?s=20](https://twitter.com/Google_Comms/status/1760603321944121506?s=20)