unlimited output from all of them.[6] As alleged in the complaint, the "Testimonial & Review" feature, which Rytr has stopped offering,[7] generated draft consumer reviews based on a user's inputs. Subscribers would provide descriptive keywords, phrases, or titles, as well as choose the output's " as

As a threshold matter, I am skeptical there is a

Rytr offered unlimited outputs *across a suite of over 40 products*. Given generative AI's manifold applications, there may be significant benefit to consumers and competition when a company bundles its offerings and their features so that users do not bump up against word restrictions or character counts.[23] The complaint today does not account for or attempt to weigh such benefits. Instead, it baldly alleges there are "no legitimate benefits" from Rytr's service.[24] That is mistaken based on the facts pled, and a misapplication of our unfairness authority.

Such observations about countervailing benefits lead to my concern with the scope of today's order. Even if the Commission adequately pled a law violation here, the Commission's order goes too far in its ban on Rytr's providing *any* review or testimonial service. The complaint alleges that Rytr's service was potentially misused by users to create misleading reviews—not that the neutral service itself is a source of harm. Banning products that have useful features but have the potential to be misused is not consistent with the Commission's unfairness authority. Nor is it consistent with a legal environment that promotes innovation. AI is a developing industry. It has vast potential. We should take care not to squelch it by suggesting that merely providing *draft* content that *could* be used unlawfully is wrong.

Finally, I also share Commissioner Ferguson's views regarding the complaint's "means and instrumentalities" claim.[25] I write separately to emphasize my concerns for imposing primary liability under a means and instrumentalities claim, where there is no allegation that *Rytr itself* made misrepresentations. The "critical element" for primary liability "is the existence of a representation, either by statement or omission, *made by the defendant . . . .*"[26] The complaint does not allege facts showing that the draft outputs were misrepresentations, much less that such draft outputs were *Rytr's* misrepresentations.[27] Indeed, as the complaint alleges, a review can also be
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tool as inherently unfair or deceptive will have deleterious consequences for AI products generally.