



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Andrew N. Ferguson

**Concurring Statement of Commissioner Andrew N. Ferguson
In the Matter of IntelliVision Technologies Corp.
Matter Number 2323023**

December 3, 2024

Today, the Commission approves a complaint and settlement against IntelliVision, a developer of facial recognition software.¹ Count I charges IntelliVision with misrepresenting the efficacy of its software. IntelliVision claimed that its software had one of the highest accuracy rates in the world, but in reality it was not even among the top hundred best performing algorithms tested by the National Institute of Standards and Technology.² Count I further accuses IntelliVision of claiming that its software was trained on “millions” of faces, when the software was in fact trained on only 100,000 faces.³ Count III accuses IntelliVision of claiming that its software could not be fooled by photo or video images even though it had insufficient evidence to support that categorical claim.⁴ I support these counts without reservation.

I write briefly to explain why I also support Count II, which accuses IntelliVision of misrepresenting that its software performs with “zero gender or racial bias” when in fact its software exhibits substantially different false-negative and false-positive rates across sex and racial lines.⁵ Treating IntelliVision as having committed a deceptive act or practice in these circumstances could lead one to believe that the Commission is taking the position that to be “unbiased,” a software system must produce equal false-negative and false-positive rates across race and sex groups.

I do not read the complaint that way, and I today do not vote to fix the meaning of “bias.” Statistical disparity in false-positive and false-negative rates

to consumers. IntelliVision