Presentation to the Board of the California Privacy Protection Agency

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What you learned about yesterday

The California Privacy Rights Act gives consumers rights with regards to their data in relation to algorithms and automated decisions systems.

- Consumers' right to correct
- Consumers' right to delete
- Consumers' right to know
- Consumers' right to limit the use and disclosure of sensitive personal information
- Consumers' right to opt-out of selling or sharing of information
- Mechanism of responsibility and accountability

The CPRA gives you, the CPPA Board, the power to make rules about how to implement and enforce this.[1]

1 The California Privacy Rights Act of 2020, Proposition 24 in the November 2020 General Election https://thecpra.org/ with specific focus on amendments to SEC. 21. Section 1798.185.a.15 and Section 1798.185.a.16 of the Civil Code.

California is going in the right direction

1	AL H.B. 216 Failed - Adjourned	Alabama	16	MN H.B. 1492 Pending - Carryover	Minnesota	31	OH H.B. 376 Pending	Ohio
2	AK H.B. 159 Pending - Carryover	Alaska	17	MN S.B. 1408 Pending - Carryover	Minnesota	32	OK H.B. 1602 Pending - Carryover	Oklahoma
3	AK S.B. 116 Pending - Carryover	Alaska	18	MS S.B. 2612 Failed	Mississippi	33	PA H.B. 1126 Pending	Pennsylvania
4	AZ H.B. 2865 Failed - Adjourned	Arizona	19	NJ A.B. 3255 Pending	New Jersey	34	TX H.B. 3741 Failed - Adjourned	Texas
5	CO S.B. 190 Enacted	Colorado	20	NJ A.B. 3283 Pending	New Jersey	35	UT S.B. 200 Failed	Utah
6	CT S.B. 893 Failed - Adjourned	Connecticut	21	NJ S.B. 269 Pending	New Jersey	36	VA H.B. 473 Failed - Adjourned	Virginia
7	FL H.B. 969 Failed	Florida	22	NY A.B. 680 Pending	New York	37	VA H.B. 2307 Enacted	Virginia
8	FL S.B. 1734 Failed	Florida	23	NY A.B. 3586 Pending	New York	38	VA S.B. 1392 Enacted	Virginia
9	IL H.B. 3910 Pending	Illinois	24	NY A.B. 3709 Pending	New York	39	WA H.B. 1433 Pending - Carryover	Washington
10	KY H.B. 408 Failed - Adjourned	Kentucky	25	NY A.B. 6042 Pending	New York	40	WA S.B. 5062 Pending - Carryover	Washington
11	ME S.B. 535 Failed - Adjourned	Maine	26	NY S.B. 567 Pending	New York	41	WV H.B. 3159 Failed - Adjourned	West Virginia
12	MD S.B. 930 Failed - Adjourned	Maryland	27	NY S.B. 4021 Pending	New York			
13	MA H.B. 142 Pending	Massachusetts	28	NY S.B. 6701 Pending	New York			
14	MA S.B. 46 Pending	Massachusetts	29	NC S.B. 569 Pending	North Carolina			
15	MN H.B. 36 Pending - Carryover	Minnesota	30	ND H.B. 1330 Failed	North Dakota			

The legislation listed above is legislation that was categorized as "Comprehensive" on National Conference of State Legislatures' list of 2021 Consumer Data Privacy Legislation. You can learn more about Our Data Bodies at https://www.odbproject.org/ and about the Consentful Tech framework at https://consentfultech.io.

Your role in enacting California Privacy Rights Act

Tech is not neutral.

Your rulemaking will not be neutral. Choose to intentionally design your rules to
redressed historical and current structural racism and push technologies to do the
same.

- How we define meaningful information?
- How deep do rights and responsibilities go?
- How do we use automated decision systems for equity and justice?

How we define meaningful information?

Defining "meaningful information"

Tech is not neutral.

By default, the information we give consumers tends to reinforce toxic individualistic explanations about who is deserving and who is undeserving. They fail at showing structural issues.

- Model used to make decisions must be explained, not just specific data points.[2,3] If the model is too complicated to be explained to the people it affects, maybe it shouldn't be used.
- Information that is shared must show the impact of the model at a community level, not just an individual determination.

2 Mike Ananny & Kate Crawford, "Seeing without knowing: Limitations of the transparency ideal and its application to algorithmic accountability." (2016)
3 Ada Lovelace with AI Now and the Open Government Partnership, "Algorithmic accountability for the public sector." (March 24, 2021)

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Citizen Browser

Facebook Got Rid of Racial Ad Categories. Or Did It?

Our Citizen Browser project found an array of proxies through which advertisers can target Black Facebook users, among other demographics
By Jon Keegan
July 9, 2021 08:00 ET

Image Source: Dan Carino

How deep do rights
and responsibilities go?

Determining the depth of rights and responsibilities

Tech is not neutral.

Consumers' rights and businesses' responsibilities must go as deep as possible – shallow solutions are technical fixes. They fail at solving deep, societal problems.

- Digital amnesty should be achievable all the way through the supply chain.
- Audits and assessments are not enough.[5,6,7] Deleting algorithmic systems might be necessary.[8]
- The goal of "fixing" or "debiasing" data or tech systems focuses on validating the product and not serving the people who are impacted.[4]

4 Julia Powles, "The Seductive Diversion of 'Solving' Bias in Artificial Intelligence." (December 7, 2018)
5 Mona Sloane, "The Algorithmic Auditing Trap." (March 17, 2021)
6 Todd Feathers, "Why It's So Hard to Regulate Algorithms." (January 4, 2022)
7 Ada Lovelace with AI Now and the Open Government Partnership, "Algorithmic accountability for the public sector." (March 24, 2021)
8 Kate Kaye, "The FTC's new enforcement weapon spells death for algorithms." (March 14, 2022)

California State Auditor

August 2016

VOICE of SAN DIEGO

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Los Angeles Times

LOG IN

The LAPD branded them as gang associates. But they fought back and got removed from CalGang database

PUBLIC SAFETY

Few People Have Successfully Removed Themselves From State Gang Database

by Kelly Davis   December 9, 2019

The CalGang Criminal Intelligence System

As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights

Report 2015-130

L.A.'s Gang-Tracking Database Offers Lessons to Others

Malfeasance in Los Angeles ignited a debate over the effectiveness and fairness of tracking people suspected of gang activity. As Georgia finds its footing with a new system, there are pitfalls to be avoided.

March 09, 2020 • Alan Judd, The Atlanta Journal-Constitution

Larry Sanders was stopped last year by police in South L.A. A few weeks later, he received a letter from the LAPD saying he would be included in CalGang. Sanders appealed and was removed. (Christina House / Los Angeles Times)

BY LEILA MILLER | STAFF WRITER

FEB. 13, 2020 5 AM PT

URBAN PEACE INSTITUTE

ANALYSIS OF THE ATTORNEY GENERAL'S ANNUAL REPORT ON CALGANG FOR 2018

How do we use automated decision systems for equity and justice?

Using automated decision systems for equity and justice

Tech is not neutral.

ADSs and decisions where / when to use them are made by humans and reflect our society. Default design leans to the status quo, which is structural racism.

- The purpose must be to address and redress historic structural racism.[9, 10]
- Consider who benefits and who is harmed in the design and deployment process, and who benefits and who is harmed by the product.[11]
- Race-aware algorithms can and do exist without triggering disparate impact and affirmative action legal logics.[12]

9 Jenny L. Davis, Apryl Williams, Michael W. Yang, "Algorithmic reparations." (October 4, 2021)
10 Automating.nyc (May 2019)
11 Sasha Constanza-Chock, "Design Justice: Community-Led Practices to Build the Worlds We Need." (March 2020)
12 Pauline Kim, "Race-Aware Algorithms: Fairness, Nondiscrimination and Affirmative Action." (January 26, 2022)
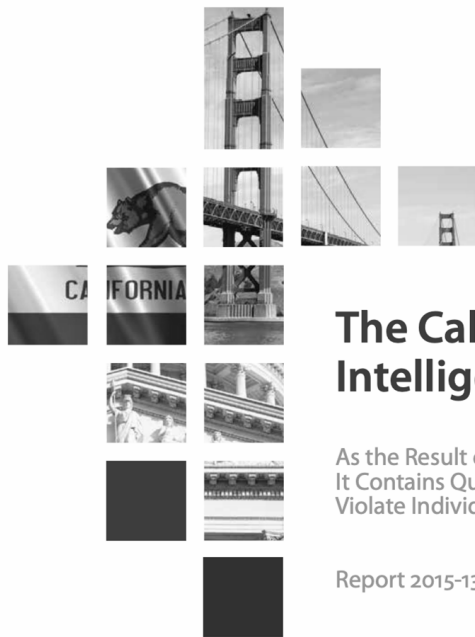
California State Auderior

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The CalGang Criminal Intelligence System

As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights

Report 2015-130

Using Tech, California Counties Have Cleared 140,000 Marijuana-Related Convictions

And Code for America's Clear My Record is going national.

CINNAMON JANZER   MARCH 5, 2021

In this Tuesday, Nov. 28, 2017 photo, cultivator Carla Selvin rallies outside San Francisco City Hall to tout the benefits of marijuana and urge supervisors to pass pot-friendly regulations in San Francisco. California voters opted to legalize marijuana in the state in 2016, but even today, many people have outstanding marijuana-related convictions, denying them the ability to find housing or get a job. (AP Photo/Janie Har)

Does this address and
redress historical racism?

Who benefits?
Who is harmed?

Thank you.