



# **Automated Decisionmaking Technology**

**OVERVIEW OF PROPOSED FRAMEWORK &  
KEY TOPICS FOR BOARD DISCUSSION**

**December 8, 2023**

# **Automated Decisionmaking Technology**

## **OVERVIEW OF PROPOSED FRAMEWORK**

# Delegation of Authority

The Agency is directed to issue regulations:

- governing access and opt-out rights with respect to businesses' use of automated decisionmaking technology, including profiling, and
- requiring businesses' response to access requests to include meaningful information about the logic involved in those decisionmaking processes, as well as a description of the likely outcome of the process with respect to the consumer.

See Civil Code section 1798.185, subsection (a)(16). Other jurisdictions have their own frameworks that govern the use of automated decisionmaking technology and/or profiling. See, e.g., General Data Protection Regulation, Article 22; Colorado Privacy Act Rules, 4 CCR 904-3, Rule 9.

# Proposed Definition of Automated Decisionmaking Technology

**“Automated Decisionmaking Technology” (“ADMT”)** means any system, software, or process — including one derived from machine-learning, statistics, other data-processing or artificial intelligence — that processes personal information and uses computation as whole or part of a system to make or execute a decision or facilitate human decisionmaking. ADMT includes profiling.

**“Profiling”** means any form of automated processing of personal information to evaluate certain personal aspects relating to a natural person and in particular to analyze or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

# Proposed Framework: Three Components

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1. Section 7017: Pre-use Notice Requirements
2. Section 7030: Opt-out Right Requirements
3. Section 7031: Access Right Requirements



# Thresholds for Pre-use Notice, Opt-out, and Access Requirements

These requirements shall apply to the following uses of ADMT:

1. For a decision that produces legal or similarly significant effects concerning a consumer (e.g., decisions to provide or deny employment opportunities).
2. Profiling a consumer who is acting in their capacity as an employee, independent contractor, job applicant, or student.
3. Profiling a consumer while they are in a publicly accessible place.

## ***Additional Options for Board Discussion:***

4. Profiling a consumer for behavioral advertising (with opt-in for consumers under 16).
5. Profiling a consumer that the business has actual knowledge is under the age of 16.
6. Processing the personal information of consumers to train ADMT.

# Section 7017: Complying with Pre-use Notice Requirements

A business shall provide information to the consumer about how it intends to use the ADMT, so that the consumer can decide whether to opt-out or proceed, and whether to exercise their access right.

**Purpose**

**Ability to Opt-out**

**Ability to Access Information**

**Additional Information** (provided via layered notice or hyperlink):

- Logic of the ADMT, including key parameters that affect the intended output
- Intended output of the ADMT
- How businesses plans to use the output to make a decision, including the role of any human involvement
- Whether the use of ADMT has been evaluated for validity, reliability, and fairness, and the outcome of any such evaluation.

# Section 7030: Complying with Opt-out Requirements

Upon receipt of an opt-out request, the business shall:

- Cease processing the consumer's personal information using that ADMT. This includes neither using nor retaining personal information previously processed by that ADMT; and
- Notify all of the business's service providers, contractors, or other persons to whom the business has disclosed or made personal information available to process the consumer's personal information using that ADMT, that the consumer has made a request to opt-out, and instruct them to comply with the consumer's request to opt-out of the business' use of that ADMT within the same time frame.



# Section 7030: Exceptions to Opt-Out Right\*

A business is not required to provide consumers the ability to opt-out if the business's use of ADMT complies with section 7002, and its use is necessary to achieve, and is solely for, the following purposes:

1. **SECURITY:** To prevent, detect, and investigate security incidents;
2. **FRAUD PREVENTION:** To resist malicious, deceptive, fraudulent, or illegal actions;
3. **SAFETY:** To protect the life and physical safety of consumers; or
4. **REQUESTED GOOD OR SERVICE:** To provide the good or perform the service specifically requested by the consumer, **and:**
  - a) The business has no reasonable alternative method of processing. The business must demonstrate: (1) the futility of developing or using an alternative method of processing; (2) an alternative method of processing would result in a good or service that is not as valid, reliable, and fair; or (3) the development of an alternative method of processing would impose extreme hardship upon the business.

*\*No exceptions apply to profiling for behavioral advertising. Businesses must provide the ability to opt-out for this use.*

# Section 7031: Complying with Access Requirements

Upon receipt of an access request, the business shall verify the consumer's identity and provide the following:

Business's purpose for using the ADMT

Output of the ADMT with respect to the consumer

Decision made (e.g., how output was used, other factors in the decision, human involvement), and whether the use of ADMT was evaluated for validity, reliability, and fairness

How the ADMT worked, including its logic, the key parameters that affected the output, and how these parameters were applied to the consumer

Range of possible outputs

How a consumer can exercise their other CCPA rights and submit a complaint about the use of ADMT

# Section 7031: Exceptions to Access Right

A business is not required to provide consumers with information in response to an access request that would compromise its processing for the following purposes:

1. **SECURITY:** To prevent, detect, and investigate security incidents;
2. **FRAUD PREVENTION:** To resist malicious, deceptive, fraudulent, or illegal actions;  
or
3. **SAFETY:** To protect the life and physical safety of consumers.

# **Automated Decisionmaking Technology**

**KEY TOPICS FOR BOARD DISCUSSION**

# Topic #1

## Thresholds for Pre-use Notice, Opt-out, and Access Requirements

These requirements shall apply to the following uses of ADMT:

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2. Profiling a consumer who is acting in their capacity as an employee, independent contractor, job applicant, or student.
3. Profiling a consumer while they are in a publicly accessible place.

### ***Additional Options for Board Discussion:***

4. Profiling a consumer for behavioral advertising (with opt-in for consumers under 16).
5. Profiling a consumer that the business has actual knowledge is under the age of 16.
6. Processing the personal information of consumers to train ADMT.

## Topic #2

### Section 7030: Exceptions to Opt-Out Right\*

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1. **SECURITY:** To prevent, detect, and investigate security incidents;
2. **FRAUD PREVENTION:** To resist malicious, deceptive, fraudulent, or illegal actions;
3. **SAFETY:** To protect the life and physical safety of consumers; or
4. **REQUESTED GOOD OR SERVICE:** To provide the good or perform the service specifically requested by the consumer, **and:**
  - a) The business has no reasonable alternative method of processing. The business must demonstrate: (1) the futility of developing or using an alternative method of processing; (2) an alternative method of processing would result in a good or service that is not as valid, reliable, and fair; or (3) the development of an alternative method of processing would impose extreme hardship upon the business.

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