

1 **CALIFORNIA PRIVACY PROTECTION AGENCY BOARD**

2  
3 TRANSCRIPTION OF RECORDED PUBLIC MEETING

4  
5 **December 8, 2023**

6  
7  
8 Present: JENNIFER URBAN, Chairperson  
9 LYDIA DE LA TORRE, Board Member  
10 VINHCENT LE, Board Member  
11 ALASTAIR MACTAGGART, Board Member  
12 JEFFREY WORTHEE, Board Member  
13 ELIZABETH ALLEN, Moderator  
14 ASHKAN SOLTANI, Executive Director  
15 PHILIP LAIRD, General Counsel  
16 MAUREEN MAHONEY, Deputy Director of Policy and  
17 Legislation  
18 KRISTEN ANDERSON, Attorney  
19 NEELOFER SHAIKH, Attorney  
20 LISA KIM, Senior Policy Counsel and Advisor  
21  
22  
23  
24  
25  
26  
27

28 Transcribed by: FOCUS INTERPRETING

1 CALIFORNIA PRIVACY PROTECTION AGENCY

2 TRANSCRIBED RECORDED PUBLIC MEETING

3 December 8, 2023

4  
5 MS. ELIZABETH ALLEN: Alright, we are stabilizing. Go ahead and  
6 start.

7 MS. JENNIFER URBAN: Thank you very much. Good morning,  
8 everyone. I'm pleased to welcome you all to this meeting of the  
9 California Privacy Protection Agency Board. It's December 8, 2023,  
10 at 9:02 AM. I'm Jennifer Urban. I'm the chairperson of the board.  
11 Thank you very much for joining us today, and happy Hanukkah to  
12 everybody who's celebrating. Before we get started with the  
13 substance of the meeting, I have some logistical announcements.  
14 Today's meeting, of course, is on Zoom so some of them relate to  
15 that. First, I would like to ask everyone to please be sure that  
16 your microphone is muted when you're not speaking. And for  
17 everyone, please note that the meeting is being recorded. Today's  
18 meeting will be run by the Bagley-Keene Open Meeting Act as  
19 required by law. After each agenda item, there will be an  
20 opportunity for questions and discussion by board members. I will  
21 also ask for public comment on each agenda item. Each speaker will  
22 be limited to three minutes per agenda item so please keep that in  
23 mind. If you wish to speak on an item and you're using the Zoom  
24 webinar, please use the 'Raise Your Hand' function. You can check  
25 the bottom of your screen and find that in the reaction feature  
26 down there. If you wish to speak on an item and you have called in  
27 by phone, please press \*9 on your phone to show the moderator that  
28 you are raising your hand. Our moderator will call your name when

1 it is your turn and request that you unmute yourself for comment at  
2 that time. Those using the webinar can use the unmute feature, and  
3 those dialing in by phone can press \*6 to unmute. When your comment  
4 is completed, the moderator will mute you. It's helpful if you  
5 identify yourself, but this is voluntary, and if you're in the  
6 webinar, you can input a pseudonym when you log into the meeting.  
7 The board welcomes public comment on each item on the agenda, and  
8 it is our intent to ask for public comment prior to the board  
9 voting on any agenda item. If for some reason I forget to ask for  
10 public comment on an agenda item and you wish to speak on that  
11 item, please let us know by using the 'Raise Your Hand' functions  
12 and the moderator will recognize you. Relatedly, I would like to  
13 remind everyone of rules of the road under Bagley-Keene. Both board  
14 members and members of the public may discuss agendized items only,  
15 and when speaking on an agenda item, both board members and members  
16 of the public must contain their comments to that agenda item.  
17 There are two additional options under Bagley-Keene. First, the  
18 public can bring up additional topics when we get to the agenda  
19 item for that purpose. That is number eight today. However, board  
20 members can't respond. We can only listen. Second items not on the  
21 agenda can be discussed by either-- it can be suggested, excuse me,  
22 by either board members or members of the public for discussion at  
23 future meetings. That agenda item-- there's also an agenda item  
24 designated for that purpose, and it is number nine today. We will  
25 take breaks as needed. This will include time for lunch and shorter  
26 breaks as needed. Please note that we have a closed session item on  
27 the agenda today. When we get to that item, the board will leave  
28 the Zoom meeting we are all in now to discuss it and will return

1 after it has completed its closed session discussion. During the  
2 time the board is in closed session, this Zoom session will remain  
3 open and members of the public can come and go as you like. My many  
4 thanks to the board members for their service and everyone who's  
5 working to make this meeting possible. I'd like to thank the team  
6 supporting us today: Mr. Philip Laird as meeting counsel, Mr.  
7 Ashkan Soltani's here in his capacity as our executive director,  
8 and multiple members of our Legal Division and Policy and Leg  
9 Divisions will be briefing us today. Today, I would also like to  
10 thank and welcome our moderator, Ms. Elizabeth Allen, and ask Ms.  
11 Allen to now please conduct the roll call.

12 **MS. ALLEN:** Board Member de la Torre?

13 **MS. LYDIA DE LA TORRE:** Present.

14 **MS. ALLEN:** De la Torre present. Board Member Le?

15 **MR. VINHCENT LE:** Present.

16 **MS. ALLEN:** Le present. Board Member Mactaggart?

17 **MR. ALASTAIR MACTAGGART:** Here.

18 **MS. ALLEN:** Mactaggart here. Board Member Worthe?

19 **MR. JEFFERY WORTHEE:** Present.

20 **MS. ALLEN:** Worthe Present. Chair Urban?

21 **MS. URBAN:** Present.

22 **MS. ALLEN:** Urban Present. Madame Chair, you have five present  
23 members and no absences.

24 **MS. URBAN:** Thank you very much, Ms. Allen. The board has  
25 established a quorum. I would like to let everyone know that we  
26 will take a roll call vote on any action items. We often have  
27 complex and lengthy agendas. Today's is particularly complicated  
28 and lengthy so I will be working to help everyone move along and to

1 facilitate conversation as we go. And with that, I'm looking  
2 forward to the discussion and we will move to agenda item number  
3 two. This is an update from the New California Privacy Rights Act  
4 Rules Subcommittee and a staff presentation of draft regulations on  
5 automated decision-making technology, risk assessments, and  
6 cybersecurity audits so we have a range of materials for this  
7 agenda item. I'd ask you to please turn your attention to those now  
8 and counsel Phil Laird will introduce the discussion. Please go  
9 ahead, Mr. Laird.

10 **MR. PHILIP LAIRD:** Thank you, Chair Urban. There's a lot of  
11 ground to cover here on agenda item two, as you see so I will map  
12 out how we plan to approach the topic-- each topic for today. So,  
13 to use our time most efficiently, we do recommend starting with the  
14 cybersecurity audit regulations then moving on to risk assessments,  
15 and then finally to automated decision-making technology  
16 regulations. So, to orient everyone before we get started for  
17 cybersecurity audits, there are a number of materials provided that  
18 Ms. Anderson will be explaining momentarily. However, staff will  
19 focus on the document titled Agenda Item 2A Proposed Rulemaking  
20 Draft - Cybersecurity Audit Regulations (Clean Copy), which we  
21 propose should advance to formal rulemaking. Secondly, then there  
22 will be for risk assessments. The New Rules Subcommittee will be  
23 walking the board through the subcommittee's revised draft. And  
24 then finally, for automated decision-making technology, staff will  
25 be presenting an overview of the proposed framework for the board  
26 and suggest a number of topics for board discussion. As the board  
27 begins to consider these various proposals though, I would like to  
28 recommend upfront as well as for that-- these proposals as well as

1 the ones that we'll be discussing in agenda items three and four,  
2 ultimately proceed to formal rulemaking in a single rulemaking  
3 package. This is going to have the benefit of streamlining  
4 procedural requirements under the APA and will ensure a consistent  
5 approach to interrelated elements. We can, of course, discuss that  
6 further once we've engaged in the discussion, but I wanted to  
7 preview that now as we think about the best ways to advance these  
8 proposals going forward. For now, though, I'm going to pass the  
9 floor to Kristen Anderson, who's one of our senior attorneys in the  
10 Legal Division.

11 **MS. DE LA TORRE:** Before we go into that, I think we have a  
12 question for the chair. There's three pieces to this presentation  
13 as Mr. Laird explained earlier. They're in different stages. The  
14 first one, the cybersecurity proposal. The subcommittee had a draft  
15 that came to the board. We intake the comments from the board, and  
16 then the subcommittee moved it to the agency; it's now with the  
17 agency. So, any areas that might come after this meeting will be  
18 done by the agency. The second piece is the piece about risk  
19 assessments. That is subcommittee draft that is still with the  
20 subcommittee. We edited to address the feedback that we received  
21 from the board in the last meeting. The third piece is actually a  
22 staff draft. It's not a subcommittee draft yet. We advanced it as a  
23 staff draft just to expedite the process as we're all looking  
24 forward to having a final version as Mr. Laird mentioned, that can  
25 move to formal rulemaking. So, the question that I have for the  
26 chair is in terms of comments from the audience, should we take  
27 comments from the audience after each piece? Or is it more  
28 appropriate to leave the comments from the audience to the end? How

1 should we proceed on that?

2 **MS. URBAN:** I think we should proceed, however, is going to be  
3 most efficient for the public and for us. Given that I'm not on the  
4 subcommittee, I don't have a good sense of the relative length of  
5 each discussion so if it's alright with everybody else, I think  
6 I'll play it by ear. And if we start with the cybersecurity  
7 regulations, we will have board discussion. And if it seems like  
8 the right time to ask for public comment, I will do that. If it  
9 seems like maybe we could hold for the next one or until the end, I  
10 will do that.

11 **MS. DE LA TORRE:** Thank you.

12 **MS. KRISTEN ANDERSON:** Okay. Good morning, everyone. So as Phil  
13 mentioned, the first topic that we'll be addressing within agenda  
14 item two is the cybersecurity audit regulations. The associated  
15 meeting materials are the four at the top of today's meeting  
16 materials list prefaced by agenda item 2A. As Phil had mentioned  
17 during the September 8 board meeting, the board agreed to move the  
18 draft cybersecurity audit regulations out of the subcommittee to  
19 enable individual board members to provide feedback directly to  
20 staff. The New Rules Subcommittee posted their final October 2023  
21 revisions to the cybersecurity audit regulations as a meeting  
22 material for today's meeting as well relative to the version that  
23 the board discussed in September. Staff then received feedback  
24 directly from other board members individually and produced the  
25 proposed rulemaking draft, which considers all feedback, but  
26 ultimately stands as staff's final recommendation. Staff has  
27 provided a high-level summary of all of those revisions made  
28 relative to the subcommittee's draft in the description of

1 revisions chart, which is also one of the meeting materials. We're  
2 happy to answer any questions about the most recent draft of these  
3 regulations but, otherwise, I will pass back to Phil for next  
4 steps.

5 **MR. LAIRD:** Thank you, Kristen. So yes, in terms of this  
6 particular set of regulations, staff does recommend that the board  
7 approve the proposed rulemaking draft of cybersecurity audit  
8 regulations and authorize staff to take all steps necessary to  
9 prepare the materials to initiate the formal rulemaking process. We  
10 do also request discretion to make additional changes as necessary  
11 to ensure clarity and compliance with other APA requirements as we  
12 sort of prepare the final rulemaking package. But at this point, we  
13 are happy to take questions about the proposal but are ready to  
14 move forward when the board thinks it's appropriate.

15 **MS. URBAN:** Thank you very much, Mr. Laird and Ms. Anderson. I  
16 just have a couple of clarifying process questions so that I  
17 understand what the board is considering in terms of process. So,  
18 my understanding from what you said would be that I would ask for a  
19 motion that would direct or-- and and give staff authority to  
20 prepare this package for formal rulemaking, which I understand  
21 would involve getting the economic assessment that I understand is  
22 being worked on that we talked about in September. But the  
23 economists would need us to do this so that they can judge the  
24 material that they are assessing as-- so there would be some work  
25 left to do this, and then it would come back to us with some more  
26 information, for example, from the economists to consider before we  
27 send it out for rulemaking. Is that correct?

28 **MR. LAIRD:** That's correct. Those familiar with the APA know



1 that there's actually a lot of document preparation that has to  
2 happen in advance of any formal public comment period. So, we'd be  
3 preparing that, including the economic assessment to, and then  
4 bringing it back to the board one more time for review and approval  
5 before beginning that public comment portion.

6 **MS. URBAN:** Okay. Thank you. I ask because we had a fairly  
7 extended discussion in September about some of the thresholds, and  
8 I think that the board generally would value, and I'm sure staff  
9 would value, having information from the economists and it seems to  
10 me like this is the way to be able to get that information from the  
11 economist that is directed towards language that we would expect.  
12 And then of course, we would get public feedback, so this makes a  
13 lot of sense to me. Ms. de la Torre, you came off mute. Would you  
14 like to ask question or comment?

15 **MS. DE LA TORRE:** I know, I believe Member Le is going to guide  
16 us to a conversation on the threshold. That's the piece that we  
17 were hoping to be part of the discussion today. And even though we  
18 don't have full information on the cost, that will come later. I  
19 believe we asked for a reference in terms of the numbers, the  
20 number of businesses that will be captured, and we have some  
21 information there that we should share with the board and make part  
22 of that conversation.

23 **MS. URBAN:** Thank you. Mr. Le, please go ahead.

24 **MR. LE:** Yeah, no, not much to add. I was just going to ask,  
25 you know, we had, yeah, the discussion about the thresholds, you  
26 know, we had three different tiers, you know, just any information  
27 from staff would be helpful on, you know, well, the 250,000 is the  
28 number and perhaps maybe the direction is, yeah, to release it for

1 formal rulemaking but maybe have some direction for staff to change  
2 those thresholds if that-- depending on the economic analysis.

3 **MR. LAIRD:** Yes, absolutely. So, thank you for the question and  
4 for the thoughts. So, I can share we have been working with our  
5 economist teams to kind of do some preliminary work that we've that  
6 along these questions. And we know there was interest in  
7 understanding sort of number of businesses impacted depending on  
8 these thresholds. Our economist team really is at a very  
9 preliminary stage, still of kind of developing their methodologies  
10 and data sets to make these evaluations. And at this point what we  
11 can share is that the team's preliminary estimates of the number of  
12 businesses can focus on one of two categories but not merged. And  
13 that is they are able to look at the annual gross revenue  
14 thresholds, as well as then the number of businesses that meet the  
15 different personal information processing thresholds. But we  
16 haven't found a way at this point to sort of merge those data sets  
17 and to sort of a reliable number. So again, our economists are  
18 working towards that. So, in other words, we have separate  
19 estimates for the number of firms that meet gross annual revenue  
20 versus the PI processing thresholds. And again, we'll be exploring  
21 ways in the formal development of the economic assessment to better  
22 merge those numbers to get a more accurate count. But what I can  
23 share at this stage is that adding those estimates together  
24 provides, we can provide basically an upper bound that we  
25 anticipate is an overcount. But again, we're at a very preliminary  
26 stage, so please don't hold me to some of these initial kind of  
27 thoughts that I'm sharing. And so, our economics team is conducting  
28 additional research to try to better refine these estimates. But

1 the upper bound of businesses that we find are meeting the revenue  
2 threshold that \$25 million or above threshold. Again, we're looking  
3 in a range of somewhere between 20,000 and 30,000 businesses. But  
4 that's just the monetary threshold. So, keeping that constant but  
5 doubling each of the PI processing thresholds, we see there's  
6 really no change in the amount of firms. So, when we've been  
7 looking at the different PI processing thresholds, there hasn't  
8 really been any significant reduction in the number of firms. But  
9 if we grow the monetary thresholds, so say instead of \$25 million,  
10 if it's at \$50 million and we keep the PI processing thresholds at  
11 the same that we've proposed, then we do decrease the number of  
12 businesses potentially covered by the regulations to around the 10  
13 to 20,000 range. Again, these are very preliminary numbers, and I  
14 should be the first to say I'm not an economist, more a messenger.  
15 But these are the types of data sets and information we're looking  
16 at right now, and we are looking at ways to sort of better refine  
17 what it means to have a requirement of both that minimum monetary  
18 threshold as well as then the amount of PI processing a given firm  
19 does that meets that, that monetary threshold. So, I'm going to  
20 pause there. I will ask, of course, my colleague, Ms. Anderson, if  
21 there's something I missed that, misstated or left out, please do  
22 correct me. But that's sort of the initial information. But to Mr.  
23 Le's point, the plan is certainly to further refine these as we  
24 complete the required economic assessment for the proposal.

25 **MS. URBAN:** Thank you, Mr. Laird. Other comments or questions  
26 from the subcommittee?

27 **MS. DE LA TORRE:** I do have a question. So, when we say, I  
28 think that the upper number that was mentioned, and I understand

1 this preliminary, is 30,000 businesses that could be within the  
2 scope of this new requirement. Are we saying that there is  
3 potentially only 30,000 businesses in, I guess, internationally  
4 that make \$25 million and are subject to CCPA, that's like the top  
5 number of business that we think are subject to CCPA or that may  
6 base on that threshold on the \$25 million? It just sounds a little  
7 low to me, to be honest.

8 **MR. LAIRD:** So good question. Basically, the analysis for sort  
9 of the economic impact is on California only. And so, my  
10 understanding is, I believe, this is California businesses,  
11 although I think it could be expanded to nationally for those who  
12 are doing business in California. But I would need to double check  
13 with our economists. I would invite, of course, our executive  
14 director, Mr. Soltani, to jump in if he has anything more to add.

15 **MS. DE LA TORRE:** Okay, let me repeat back to make sure I  
16 understand. So, what we're saying is that the cost estimate that we  
17 will see will not consider costs that are costs on businesses that  
18 are not California businesses, that what we've seen, that the  
19 Office of Administrative Law requirements or our APA requirements  
20 do not include that cost and therefore will not calculate it.

21 **MR. LAIRD:** The cost require, oh, go ahead.

22 **MR. ASHKAN SOLTANI:** I can jump in, Phil. So, indeed, we're  
23 following what the previous analysis was for the past SRIA, which  
24 included my understanding was businesses located in California or  
25 doing business with headquarters in California. So having physical  
26 presence and doing business in California. And that's what's  
27 required under the OAL requirements. We have looked at and tried to  
28 compare national data, but we've not yet incorporated that into our

1 models just because the requirement in the state is to look at the  
2 impact of our regulations to California, and that's how the  
3 economists have done it in the past, and that's the model we're  
4 considering. But we're flexible. Thank you.

5 **MS. URBAN:** Mr. Worthe?

6 **MR. WORTHEE:** Yeah. I just want to clarify: you said  
7 headquartered in the state. Is it just anybody that has business  
8 has an operation in California that meets the revenue threshold  
9 regardless of whether quote unquote headquarters are, they don't  
10 have to be headquartered in California specifically, do they?

11 **MR. SOLTANI:** So, I think what they looked at was businesses  
12 headquartered in California or with physical businesses in  
13 California. So that's what in the last SRIA. This is the 2020... oh,  
14 sorry, 2019 regulatory impact assessment that was done for DOJ  
15 prior to our existence. And that's how they modeled, that's how  
16 they calculated those numbers, if I remember correctly.

17 **MR. WORTHEE:** Okay.

18 **MR. MACTAGGART:** Can I just jump in for Mr. Worthe's question?  
19 The law covers anybody doing business in California. I guess the  
20 APPA requirement is just to evaluate the businesses that are  
21 located in California, but the scope of the law is obviously on  
22 anybody doing business in California.

23 **MS. URBAN:** Thank you, Mr. Mactaggart.

24 **MS. DE LA TORRE:** Right, that's actually really helpful. I  
25 appreciate the information. That makes sense. The numbers seem a  
26 little low to me at the beginning because I was thinking of  
27 everybody that's subject, but if it's just California, it makes  
28 sense that it would be lower. So, the other piece of the equation

1 here, in addition to know the number, let's say it's 30,000, and I  
2 know that's preliminary, would be to understand the cost of the  
3 requirement, the cost of the audit. And that would be very  
4 difficult to ascertain because it's a new requirement, but I did  
5 try to get a better understanding of what other comparable audits  
6 cost, and I would like to share this with the board. So, in terms  
7 of something that will be comparable, like a soft-type audit, my  
8 understanding is that the lower threshold of cost will be you know,  
9 it depends on which type. There's soak one, soak two, soak three,  
10 but it will likely be at the minimum between 10,000 and \$50,000. If  
11 it's a large business, we're talking about cost, that can be  
12 \$100,000 to \$150,000. And obviously there's a lot of calculations  
13 that need to be done. We do have a provision that will enable  
14 organizations that have gone through cybersecurity audits for other  
15 purposes to kind of use that for compliance with our rule. But I  
16 think that that gives us a-- at least a general idea of what is the  
17 cost of the requirement that we can bring into the threshold. My  
18 inclination in terms of advice to the staff to have a more clear  
19 cut understanding of the cost when we have the final thresholds,  
20 will be to think about setting the threshold into around two  
21 things. Number one, what we have done at the subcommittee level is  
22 the revenue. Right now, we have 25 million. It might be that the  
23 staff recommends something higher in the next version. And the  
24 number two thing that I think should be used or we should consider  
25 using is number of employees. I actually went through several  
26 proposals that have been enacted into law. And the one thing that I  
27 saw in terms of defining what's a small business that was constant  
28 in them is to identify what the number of employees is. I'm looking

1 at Government Code 4467. This is for disability assessments and  
2 Labor and Employment Code 12962. That's California small business  
3 and not-for-profits for COVID basic leaves. There's a number of  
4 other laws that try to carve out small businesses, and they  
5 typically do it on the basis of the number of employees. I think  
6 that will be a clear cap threshold that if we see the legislative  
7 is using for this purpose, we should consider using for the  
8 purposes of setting our carve out with the idea, at least at the  
9 beginning, excluding small and even medium businesses from these  
10 requirement so that we can be mindful of the cost that we're  
11 imposing. So, I would like to kind of gather feedback from the  
12 board in terms of that idea of setting the thresholds on revenue  
13 and employees.

14 **MS. URBAN:** Thank you, Ms. de la Torre. I'll invite Mr.  
15 Mactaggart and Mr. Worthe to speak if they'd like. And I have some  
16 thoughts I could share.

17 **MR. MACTAGGART:** Like my feedback on the package right now?

18 **MS. URBAN:** Oh, I think Ms. de la Torre was asking about the  
19 thresholds and the thought of looking at the number of employees.

20 **MR. MACTAGGART:** Yeah, I'm not a huge fan of the number of  
21 employees. I think that's not necessarily one that kind of  
22 resonates with me. I think kind of keeping the framework, whether  
23 its revenues or processing is more conducive to kind of the general  
24 framework of the law. I wouldn't want to introduce a kind of a new  
25 metric at this point, I don't think.

26 **MS. URBAN:** Thank you, Mr. Mactaggart. Mr. Worthe, I don't mean  
27 to put you on the spot, I just [crosstalk].

28 **MR. WORTHE:** That's fine. I think if you think about it, I

1 guess my thought is, I think I agree with probably the number of  
2 employees would not be necessary to add. And I guess really the  
3 reason why revenue is so important is because we want to think  
4 about what this cost could do to a business, right? So, it's really  
5 about the processing of PI. That, to me, that is what should be the  
6 focus. But I do think we need to get this feedback back from the  
7 economists about better understanding of how many businesses we  
8 covered. And I think it did seem low to me, but I think it's, we'll  
9 see what it's, whatever it is, it is. And then I'd like to really  
10 understand the audit costs. Because I don't know and I assume is  
11 that's something they're going to look at, right? Because this is a  
12 pretty unique type of audit. So, I don't know how you, somebody's  
13 going to comp it out, as was mentioned, it hasn't been done before,  
14 but we really didn't understand what we're proposing. So, I think  
15 the number employee is not as important to me. I want to understand  
16 what we're asking business in California to take on. And I think  
17 that's what we need to really kind of wrap this up.

18 **MS. URBAN:** Thank you, Mr. Worthe. I appreciate the thought. I  
19 tend to agree with Mr. Mactaggart and Mr. Worthe. We do have  
20 companies that are worth a lot, have very high revenues, and most  
21 importantly and from my perspective, handle a lot of personal  
22 information. And proportionally they may have quite few employees.  
23 I would also be loath to give businesses an incentive to have fewer  
24 employees, which who could help maintain security and so forth. So,  
25 I think going on the revenue is a good step for now. I would like  
26 to have attention to the risk basically, which I said in September,  
27 which ties to how many Californians' information are you processing  
28 and so forth. I agree with everyone that we do need to understand



1 what sort of proportionally we would be imposing on businesses. In  
2 my view, the way for us to get that information is twofold. One is  
3 to have the economists prepare the economic analysis to go together  
4 with the initial statement of reasons and so forth so that we could  
5 discuss again for our decision about what to put to rulemaking. And  
6 then most importantly, hearing from Californians and California  
7 businesses in the rulemaking about the practical effects on them.  
8 The economists will give us good information, but we also need, in  
9 my view, information directly from businesses. And the way to get  
10 that is to have comment from businesses in the rulemaking. I think  
11 we should make good choices to start. And I think this is a good  
12 start. I think I said this in September, I couldn't tell you which  
13 of these thresholds is the right one exactly. I really appreciate  
14 all the thought and work the subcommittee and staff put in to  
15 giving us some thresholds to start with. And I think that we need  
16 the economists', and then the public's, input to know for sure.

17 **MS. DE LA TORRE:** Thank you. I appreciate the feedback and  
18 assuming that the staff has enough feedback here, but maybe, I saw  
19 Vinh-- uh, sorry, Member Le coming up. I don't know if he--

20 **MR. WORTHE:** It said a fire alarm was going off.

21 **MR. LAIRD:** Yeah, I believe Mr. Le's got a fire alarm going off  
22 in the background.

23 **MS. URBAN:** Oh. So, shall we pause, take a short break, or  
24 should we proceed? Well, he can't tell us. So--

25 **MS. DE LA TORRE:** I can quickly, let me quickly call him, since  
26 this is as a subcommittee presentation, he might be comfortable  
27 with just me saying--

28 **MS. URBAN:** I agree. I loath to have him not be here for this

1 topic. So, everyone, let's take a five minute break. And we will  
2 reconvene when we have Mr. Le back. Thanks everybody. Thank you,  
3 Ms. Allen. I believe we can start again. I'll see if Mr. Le has  
4 been able to come back. Hi, Mr. Lee.

5 **MR. LE:** Hey there. Sorry about that, fire alarm went off.

6 **MS. URBAN:** Sorry. You had to take the meeting outside, but  
7 hey, at least we're on Zoom, so we can do that. If we've been in  
8 Oakland, we'd all have to troop outside and just wait. Welcome  
9 back, everyone. Give members of the public a minute to turn their  
10 cameras back on, and also make sure we have everyone with us from  
11 staff. Okay. So, where we, well, I'm not actually sure when the  
12 alarm went off Mr. Le but we were talking about the thresholds and  
13 where we were, I believe there was a general sense that we would  
14 like input from the economists. We'd like more information. I  
15 expressed an opinion that I would like to get information directly  
16 from businesses and members of the public, which we would get  
17 through rulemaking. I don't know if you were here for all of that,  
18 or if there's anything you wanted to add before we continue.

19 **MR. LE:** No, I'm supportive of that, yeah, to advance this as  
20 quickly as we can.

21 **MS. URBAN:** Okay. Thank you, Mr. Le. Other comments on the  
22 cybersecurity audit requirements, and I will let give you a preview  
23 that based on the work that the subcommittee has done over two  
24 years, which is incredibly impressive and staff has done and my  
25 understanding of where we are or could be in the process I would  
26 be, I plan to suggest a motion to go ahead and direct staff to take  
27 the package and put it together for formal rulemaking, authorizing  
28 them to make additional changes. They may, for example, get one-way

1 input from the board to improve clarity or otherwise make it  
2 compliant with the Administrative Procedures Act to, of course, put  
3 together the package with the economists' information and so forth.  
4 It would of course, come before us again for full discussion before  
5 we voted it to go to the 45 day public comment, to give the public  
6 time to the opportunity to tell us what they think directly. But  
7 that's sort of where I am on this item at this point. I know that  
8 wasn't a formal motion because I thought, well, I'll take the  
9 subcommittee's lead, but I thought they might want to go ahead and  
10 talk about risk assessments, but that's what I'm thinking. Ms. de  
11 la Torre?

12 **MS. DE LA TORRE:** Right. I believe from the subcommittee  
13 perspective for the cybersecurity rules, that's already been done.  
14 But if we need to vote on it or take comment before we vote for  
15 cybersecurity, that's, you can guide us through that.

16 **MS. URBAN:** Okay. Well, what I suggest is, why don't I just  
17 hold this, and I gave you the substance, but while we continue with  
18 risk assessments, I will put together something that's a more of a  
19 formal motion and maybe we can ask for public comments on  
20 cybersecurity rules and risk assessments together so that everybody  
21 has a good opportunity to comment, and we can be as efficient as  
22 possible.

23 **MS. DE LA TORRE:** Okay, so before we move to the rules on risk  
24 assessments, just want to make sure that other board members don't  
25 have any comment that they want to make on cyber as we will be kind  
26 of moving along to the next package.

27 **MR. MACTAGGART:** My hands up, I don't know if you see it there,  
28 but—

1           **MS. URBAN:** Oh, I'm so sorry Mr. Mactaggart. I did not, you  
2 know why? Because it's on top of the yellow lock.

3           **MR. MACTAGGART:** Oh, yeah.

4           **MS. URBAN:** My sincere apologies. Please go ahead.

5           **MR. MACTAGGART:** No, no problem. I'm like, am I missing  
6 something here? I just had a couple of comments in the  
7 cybersecurity audit, which I think is generally in really good  
8 shape. So just the one and today, a number of my comments, I think  
9 for the regulations are going to be colored by the injunction on  
10 the age appropriate design codes. Some of my thinking from having  
11 watched, read that extensively, and I guess under the scope of the  
12 sky Cybersecurity audit, my sort of one comment in 71-23A, luckily  
13 it says in sort of the fourth line, it says, the cyber-security  
14 audit may assess the following thing. So, we're not saying shall,  
15 so that's good. But the last sentence about the negative impacts,  
16 including impairing their consumer's control over their personal  
17 information as well as economic, physical, psychological,  
18 reputational harm, I think especially in light of that, that  
19 decision having a business have to weigh in on what the  
20 psychological harm to a potential consumer is or is not, that just  
21 felt very much in the land of compelled speech. Kind of like, okay,  
22 who knows what the psychological harm to one, consumer A versus  
23 consumer B.? So, I would suggest striking that last sentence. The  
24 one starting with those negative impacts to consumers include  
25 pairing. And then on that front I have a couple of typo stuff,  
26 which I can send separately. But in the next, this is, I guess  
27 we're down in, it's the same section still, 71, 23, but it's Q  
28 which remains on page. I'm in the red line page 11, and it's, we're

1 talking about what the audit should include. And I just think that  
2 what we're saying in number Q, how the business manages its  
3 response in Q and then the next, the very next Q little sub one for  
4 the purposes of subsection Q security incident means that  
5 occurrence that actually potentially jeopardizes a little way later  
6 down, or that constitutes, I think if you read that, because it's  
7 kind of in the present tense, it would mean I'm a business and I  
8 have to come up with how I'm going to manage every single  
9 cybersecurity incident out there, which I think is kind of a large  
10 task. And if we change that to how the business managed, anything  
11 that happened and how the business evaluated something that  
12 jeopardized or that constituted, I just think asking businesses to  
13 sort of say, here's the universal things that could happen. How are  
14 they supposed to know that? So, I would try to limit to the scope  
15 of that to what actually happened, how they managed cybersecurity,  
16 and since, unless there's some particular reason why that's not the  
17 case. And actually, in that same little sub one, I think there's a  
18 typo that's repeated later. It should be unauthorized activity  
19 resulting in the loss of availability of personal information. But  
20 that's my comments on the cybersecurity audits.

21 **MS. URBAN:** Thank you very much, Mr. Mactaggart. And just as a  
22 reminder, individual changes like this absolutely can go to staff  
23 for incorporation. This doesn't mean that the words have to be  
24 exactly the words before, the words we have now have to be the  
25 words before we, before.

26 **MR. MACTAGGART:** Yeah. I just wasn't too sure about how people  
27 felt about, I mean, some of that, the wordsmithing stuff maybe, but  
28 the other, the one about the scope anyway.

1           **MS. URBAN:** The management?

2           **MR. MACTAGGART:** The one about whether they have to start  
3 weighing in about what the psychological harm to a consumer is, the  
4 physical harm to consumer, reputational harm to consumer. That  
5 feels—

6           **MS. URBAN:** I think it's helpful. It's helpful to hear your  
7 thoughts for sure. And I'm sure staff will take them into account.

8           **MS. DE LA TORRE:** I'm supportive of striking out that sentence.  
9 I think that Mr. Mactaggart made a good case.

10          **MS. ANDERSON:** If I may, we will certainly take that feedback  
11 back and we appreciate it. The one point that I wanted to raise in  
12 response to board member Mactaggart's feedback in Q sub one, the  
13 concept is about how you generally manage cybersecurity incidents  
14 or security incidents as we're defining them here. So, there is a  
15 sense—

16          **MS. URBAN:** I'm sorry, Ms. Anderson, we've, Mr. Le has, is  
17 maybe, hopefully being able to go back indoors.

18          **MR. LE:** I'm still outside.

19          **MS. URBAN:** Oh, okay. Alright. And you just needed to—

20          **MR. LE:** Yeah, there was just some folks walking around. Yeah,  
21 I just...

22          **MS. URBAN:** Okay.

23          **MR. LE:** Try to move across the street.

24          **MS. URBAN:** Okay. Feel free Mr. Le to just jump in and let us  
25 know if you need us to pause for a moment while you go back inside.

26          **MR. LE:** Will do, will do.

27          **MS. URBAN:** My apologies Ms. Anderson, please go ahead.

28          **MS. ANDERSON:** Not at all. I was just going to say that the

1 concept of incident management is one that's common throughout  
2 businesses and just having a proactive sense of how you will manage  
3 incidents as they come up and how you will escalate them and  
4 contend with them. So that was the intention in having it be  
5 proactive. I just wanted to say that obviously I heard your  
6 feedback, and we appreciate it. And then Phil, I didn't know if you  
7 wanted to address the previous point just about assessing the ADCA  
8 decision that is something that we're conscious of and considering.

9 **MR. LAIRD:** Yeah, absolutely. I think staff can kind of course,  
10 continue reviewing with that in mind. And we'll provide a  
11 recommendation sort of in the final draft that we propose. I  
12 suppose though, I'm starting to see some consensus building around  
13 striking a specific provision, and I think I would appreciate some  
14 direction from the board on whether or not that is the direction  
15 staff should take.

16 **MR. LE:** I take on, due to a psychological harm I don't think  
17 the request is necessarily to, I think if you're assessing that  
18 you're holding information that could cause psychological harm if  
19 lost that, it's something that assess in your protection for that  
20 data. So, I don't necessarily think it's asking them to control for  
21 every single psychological harm, but just whether the risk of this  
22 data being leaked could cause that.

23 **MS. URBAN:** Mr. Worthe.

24 **MR. WORTHE:** Yeah, I'm fine. I was fine with how Mr. Mactaggart  
25 explained it, and I was fine with removing it.

26 **MS. URBAN:** I also, I certainly appreciate Mr. Mactaggart's  
27 thoughts, and I see the challenge, potential challenge there. I do  
28 think the way it's worded, as Mr. Le pointed out, reduces concerns

1 that it's as broad as that, and I would value seeing sort of an  
2 analysis that would come with the package of it. So, I would on  
3 balance, probably leave it in at this point. Mr. Laird, I realize  
4 we have different opinions. So, this may not be of great help to  
5 you, but I would probably go with Mr. Le on this. Mr. Mactaggart,  
6 now I know to look for your hand.

7 **MR. MACTAGGART:** Thanks. The part I'm reading from the ADCA  
8 opinion is where its line 22, 23 on page 13 of 45, and it says the  
9 courts do not proceed by the state's argument because assessing how  
10 a business model might harm facially requires that business to  
11 express this ideas analysis about likely harm. And I think that  
12 they basically just said, we don't want you doing it. So here we  
13 are telling them to express their opinions about harm. And I feel  
14 like cybersecurity audit, everything else is pretty cut and dried  
15 here, but this one, so if you are going to leave it in, I'd love to  
16 see an analysis as to why this would survive when the court just  
17 threw something out that basically said the same thing.

18 **MS. URBAN:** So, I think at a minimum the potential questions  
19 have been raised. Mr. Laird, is that sufficient information for you  
20 to for legal division to build into its analysis? Or do you need  
21 direct...?

22 **MR. LAIRD:** I suppose I just want to clarify. It sounds like  
23 then it is still the staff's discretion based on our assessment of  
24 that provision to include or not. I think I just need some.

25 **MS. URBAN:** Okay. Thanks, Mr. Laird. Ms. de la Torre.

26 **MR. LAIRD:** I just wanted to add to what Mr. Mactaggart  
27 mentioned. There's the piece of the current litigation or past  
28 litigation, but I think also we have to be mindful of the skills



1 that professionals have, and information security professionals are  
2 not necessarily trained to assess psychological harms. And they're  
3 responsible for this kind of assessments. So, there could be a  
4 little, I think there's a lack of alignment in terms of the experts  
5 that will be doing this kind of security audit, their knowledge and  
6 what we're asking for here, in my experience information security  
7 professionals' look for ways to prevent the fire. Not that skill in  
8 identifying, specifically, definitely psychological harms. So that  
9 will be another argument to not include that sentence, but I'm not  
10 sure if that changes the opinion of the other board members.

11 **MS. URBAN:** Thank you, Ms. de la Torre. Well from a process  
12 perspective, Mr. Laird has asked for clear direction if we want  
13 staff to take it out. I think I understood that if the direction is  
14 staff could look into it more and in its discretion decide whether  
15 to take it out or leave it in before it comes back to us, that is  
16 another option that staff could work with. Is that correct, Mr.  
17 Laird?

18 **MR. LAIRD:** Absolutely. We can take that direction. Yes.

19 **MS. URBAN:** Okay. I'm still inclined to go with Mr. Le's view  
20 because I think he has thought about this a lot. I know Ms. de la  
21 Torre has as well though and to allow for more considered review on  
22 the part of staff to Mr. Mactaggart's sort of useful observation.  
23 So that would be my preference would be to give staff the  
24 discretion, understanding that we're going to look at it again. But  
25 if that is not the feeling of the majority of the board, then of  
26 course we can ask them to take it out. So, we do have to do a roll  
27 call vote finally, but I guess I'd like to check in my sort of very  
28 soft straw poll sense is that Mr. Le and I would go with the route

1 that gives staff discretion and ask them to look into it. Mr.  
2 Worthe was there, but I'm not sure where he is now.

3 **MR. WORTHE:** Yeah, that's fine. I'd like to staff to make the  
4 ultimate choice for us.

5 **MS. URBAN:** Okay. Is that sufficiently satisfactory, Ms. de la  
6 Torre and Mr. Mactaggart for us to go ahead and move on?

7 **MR. MACTAGGART:** Sure. I just, before I finally vote, then I  
8 just want to kind of put us all in notice that if there's not a  
9 pretty compelling reason as to why this wouldn't trip over the same  
10 problems that the ADCA tripped over...

11 **MS. URBAN:** There were a lot of ASDs and T.

12 **MS. ALLEN:** Yeah. So, I'd like the eventual analysis to address  
13 how this differs from what the court said in that decision, because  
14 it feels like this is precisely exactly what they said they didn't  
15 want to see. So-

16 **MS. URBAN:** Thank you, Mr. Mactaggart. Mr. Laird, is the way I  
17 formulated it clear enough for our staff?

18 **MR. LAIRD:** Yes, it is. And I would just like to take the  
19 opportunity, I know Mr. Mactaggart has raised the ADCA decision. It  
20 is something staff is aware of and is continuing to evaluate as we  
21 make our recommendations on regulations. So, I just want to assure  
22 that it's certainly in our minds as we prepare proposals for this  
23 board.

24 **MS. URBAN:** Thank you, Mr. Laird. Okay. So, I think that we  
25 have a plan, I can formulate a motion while we talk about risk  
26 assessments. Is that what's next? And are we ready to talk about  
27 those? Okay. Ms. de la Torre and Mr. Le are nodding, to whom shall  
28 I turn it over for risk assessment discussion?

1           **MS. DE LA TORRE:** I'm going to lead that piece for the  
2 subcommittee.

3           **MS. URBAN:** Okay.

4           **MS. DE LA TORRE:** Just for clarity, are we voting now or we  
5 going to...?

6           **MS. URBAN:** No, no. Well, I was just going to put them together  
7 to save time, but yeah, please go ahead.

8           **MS. DE LA TORRE:** Okay, so what we were hoping to do at a  
9 subcommittee level is just to highlight in the draft that we  
10 presented the areas that we think have undergone a bigger change  
11 for discussion, and then obviously be open to other comments that  
12 members might have on areas that are not necessarily areas that  
13 have changed substantially. So, I would like to direct the  
14 attention of the board to page five. And this will be the, I think  
15 this is the clean version. This is 7150(b)(5). It starts with for  
16 board discussion. This relates to the triggers, meaning what are  
17 the kind of activities that will trigger the obligation to conduct  
18 a data privacy assessment. The previous draft had a reference to  
19 the idea that use of personal data for training of automated  
20 decision technology or AI will trigger the assessment. Here what  
21 has been added is sections A, B, C, D, and E, which...

22           **MS. URBAN:** Sorry, I'm sorry to interrupt. I couldn't find the  
23 page. Are we on the clean copy or the red line?

24           **MS. DE LA TORRE:** I have the clean copy. So, if you have the  
25 red line maybe.

26           **MS. URBAN:** So, the clean page, five of the clean copy. I'm  
27 just trying to find my place. I apologize.

28           **MS. DE LA TORRE:** No, no, no. Take your time. Its 7150,

1 whichever copy you are, 7150 and then go to subsection (b) (5).

2 **MS. URBAN:** Thank you. Got it.

3 **MS. DE LA TORRE:** And it starts with for board discussion, is  
4 everybody there now? Yeah? Okay. So, this subsection lists  
5 basically thresholds for the risk assessment. And this particular  
6 threshold, the one on train using data to train automated decision  
7 making technology and AI has been modified what subsections (a)  
8 through (e). And those aim at identifying the kind of ADMT  
9 technology or AI technology that will be in a way high risk enough  
10 to trigger the assessment as opposed to just imposing across the  
11 board to any ADMT or AI technology. The threshold selected are any  
12 of the processing set for in subsection B3. That subsection B3 as a  
13 reminder is listing cellular or sharing, sensitive personal  
14 information, use of ADMT for decisions that produce legal or  
15 similar significant effects, profiling. And there's two categories  
16 of profiling and then behavioral advertising. So, it's a call back  
17 to the other thresholds. Wait. I'm misreading here. Apologies. So,  
18 the cross reference is to B3, which exclude selling and sensitive  
19 personal information is the use of automated decision making  
20 technology for decisions that produce legal or significant or  
21 similarly significant effects. And then the two profiling and the  
22 behavioral advertising. The second kind of AI system or ADMT system  
23 that will trigger the requirement. When the data is used for  
24 training, the algorithm is establishing individual identity on the  
25 basis of biometric information. And the third one is facial speech  
26 or emotion detection. The next one is the generation of deep fakes,  
27 and the final one is the operation of generative models such as  
28 large language models. We review the language at the subcommittee

1 level. We feel that is interoperable with other legal frameworks  
2 that are aiming at regulating AI. And so, we feel comfortable with  
3 putting forward this proposal, but we wanted to call this to the  
4 attention of the board to make sure that they, everybody  
5 understands it's new. It's a limitation but we believe it's  
6 sufficiently brought to address what will be at risk in ADMT and  
7 AI. Should we take comments on? Yeah.

8 **MS. URBAN:** I think so, this is new to address AMDT  
9 specifically. So, I think it's a good time to find out if board  
10 members have specific reactions since we discussed most of this  
11 material in our last meeting, but not this part. Mr. Worthe and  
12 then Mr. Mactaggart.

13 **MR. WORTHE:** Yeah, I just wanted to go back to that comment. I  
14 want to make sure that you all do feel that it's not too specific,  
15 that it's not too detailed. And it's hard to know today what we're  
16 going to be thinking about five and 10 years from now in this  
17 world. Because it's evolving so fast. So, I just wanted to make  
18 sure everybody feels there's a lot of experience on this board with  
19 this whatsoever, really asking the board to confirm that they think  
20 this is broad enough to cover where we think this language needs to  
21 be years out.

22 **MS. DE LA TORRE:** And so, I think that's an excellent question,  
23 and we have struggled with it because there's so many changes  
24 happening in the area and how do you set your thresholds at the  
25 adequate level with something that has been on our mind. The two  
26 comments that I will have back are, one, these are rules, which  
27 means that we can reshape them in one or two years if we feel there  
28 is need for it. I think that's a great advantage that we have

1 versus other legislative processes that may be more uncertain in  
2 terms of whether you can change or not. So that gave us some level  
3 of kind of reassurance. And then the second thing that we did that  
4 I mentioned before is we looked at other frameworks and how they  
5 were thinking about high risk. And we are not one-on-one to other  
6 frameworks in that for example, we don't regulate the public  
7 sector, et cetera, but we look for thresholds that will align or be  
8 compatible. And the last thing, and I think that this is more for  
9 our general counsel, but in terms of a specificity when we are  
10 drafting rules, we are also accounting for the fact that there is a  
11 review process with the administrative office in California. And  
12 so, our language, if it's not a specific enough, could find itself  
13 in a situation where the office of administrative law doesn't  
14 consider that it's clear enough. And then we can have that  
15 challenge. So, we work with the staff to make it concrete enough  
16 that we feel that administrative review could not be problematic.  
17 I'm not sure if that addresses the comment, I think is a very valid  
18 comment. And we have done our best to aim at something that's  
19 helpful right now and flexible towards the future.

20 **MS. URBAN:** Thank you, Ms. de la Torre.

21 **MR. WORTHE:** I think it's a great answer. I appreciate it.  
22 Thank you.

23 **MS. URBAN:** I was indeed going to offer the Office of  
24 Administrative Law item if Ms. de la Torre did not, in California  
25 regulations are required to be, have very high levels of clarity  
26 and specificity, and that does mean they tend to be quite specific.  
27 But we can amend them. Mr. Mactaggart? Can you come off mute  
28 please, Mr. Mactaggart?

1           **MR. MACTAGGART:** Sorry, I thought I pushed it. Are you looking  
2 just for comments on this section, the subparagraph five or when  
3 would be appropriate to give you?

4           **MS. URBAN:** That is the topic under discussion at right now.

5           **MR. MACTAGGART:** Just five. Okay. I'll hold off then I have  
6 comments on the whole thing.

7           **MS. URBAN:** Okay. Thank you, Mr. Mactaggart. And if you can  
8 think of bundling them together into things that we should talk  
9 about here and things that staff can hear from you one way that  
10 would be helpful. I really appreciate the subcommittee's thoughtful  
11 work here. In terms of, as Mr. Worthe alluded to, trying to catch a  
12 very quickly evolving situation with enough flexibility that we are  
13 able to help businesses and consumers with guidance while being  
14 concrete enough to do the same, and also to meet the specificity  
15 requirements under the administrative procedures act in California  
16 and also harmonizing with other regimes to the extent that that  
17 makes sense for California and for the rules that we are instructed  
18 by our law to create. On that, I did have some concern about some  
19 language that I recognize from another regime and how it might play  
20 here. I want to preface this by saying that this would, in this  
21 does not mean that I would not vote to advance this. I would, I  
22 still, I tend to think that a lot of work has gone into all of  
23 these rules and it's time to work for public feedback and input  
24 from the economists and so forth, but legal or similarly  
25 significant effects. That's a term that I recognize from Article 22  
26 of the general data protection regulation. And I realize that  
27 Colorado has also used a similar concept. So, on the face of it, I  
28 think it would seem as though that would carry meaning with it.

1 That would be helpful. I will simply express a concern that I think  
2 staff is well placed to eventually to look at and tell me if I'm  
3 wrong. With clarity for what is perhaps a slightly counterintuitive  
4 reason, which is that it is so similar or identical to words used  
5 in another jurisdiction with a very important law that we are  
6 certainly inspired by but is not our law and is not within our  
7 overall sort of legal and constitutional regime. So, the GDPR has a  
8 different set of defaults from the CCPA, for example. The default  
9 is no processing where that is not our default. Similarly, there's  
10 a contestation right in Article 22, our law has opt-out and  
11 informational access rights. And it looks a little bit different  
12 when you layer on the same words to a different regime. I'm not  
13 entirely sure how it plays, and our law doesn't actually have the  
14 specific limitation in it. The limitation is in the GDPR for  
15 reasons that are best understood by the people who drafted it. But  
16 it is a limitation that goes with a different set of defaults. And  
17 thus, while I certainly don't think this is worth not advancing the  
18 language, it is something that I do have some concerns about and  
19 would like for us to be sure that we understand it before we add in  
20 this limitation that doesn't exist in our law using language that  
21 exists in another law that has a different set of defaults. All of  
22 that said, again, I commend the subcommittee for its work, and  
23 again, we could amend it if it seems that people are confused or  
24 that the defaults, we've ended up with have not been set in the  
25 right place. But I did want to point it out.

26 **MS. DE LA TORRE:** Thank you for that comment. Chair Urban. I  
27 didn't mention that in my list of new things because it's really  
28 not used at the fine term. It seems that it's not being added to



1 the definition section here, but we'll, it's defined, and I'm just  
2 wondering if maybe we should move that conversation to the last  
3 piece, which is the ADMT, because I know that the definition is  
4 there, I just don't see it here in the-

5 **MS. URBAN:** I've seen the definition.

6 **MS. DE LA TORRE:** Right. Yes. So is it fine to mean exactly the  
7 same that we had in the-

8 **MS. URBAN:** Of course.

9 **MS. DE LA TORRE:** The prior language. So, there's no actual  
10 change there in terms of the new rules, but I hear your comment,  
11 right?

12 **MS. URBAN:** The ADMT rules are new to us, though.

13 **MS. DE LA TORRE:** Right. So do we want to have a, do you want  
14 to talk about whether that term should be redefined or--

15 **MS. URBAN:** I think we can hold it until we talk about the ADMT  
16 where it is fine, and I think I've basically said, right, what it  
17 might be. Mr. Le's.

18 **MR. LE:** Yeah. I think the idea there was, it isn't extremely  
19 necessary to label it legal or significant effects. You know, the  
20 Venn diagram of our conception and other jurisdictions conception  
21 of legal significant effect. There's a lot of overlap, but you're  
22 right, it's not 100%. I think it was there. Kind of, it's more  
23 related to the concept of having an easily named. Right? For  
24 understanding. But I think we take your point. And I think we were  
25 aware that the overlap was 100%.

26 **MS. URBAN:** Thank you. Thank you, Mr. Le. Yes. It is one of  
27 those oddities of law that you can attempt to aid understanding and  
28 not. And I don't know that that's how this would work out here. I

1 just noticed it. Mr. Mactaggart, did you want to, actually let me  
2 pause and just say, are there more comments on this new material  
3 before I ask instrument? Okay. Alright. Mr. Mactaggart, do you want  
4 to talk about some of your other comments or Ms. de la Torre, were  
5 you planning to introduce other things first?

6 **MS. DE LA TORRE:** We have two more things that are new, and  
7 then we can open it to everything that might come from the board in  
8 terms of comments.

9 **MS. URBAN:** Okay. Is that Alright?

10 **MS. DE LA TORRE:** If I could go?

11 **MS. URBAN:** Yeah. Go ahead.

12 **MS. DE LA TORRE:** Okay, so the other thing, and I take it that  
13 that piece that is new, there's consensus around keeping it the way  
14 it is. Is that the summary of our conversation?

15 **MS. URBAN:** I am not asking to change it in order to advance  
16 the package to the next point, no. So, you have concerns.

17 **MS. DE LA TORRE:** Okay. So, the next piece that is new and this  
18 is more minor, but for me its page 18 is in section 71, 56, timing  
19 and retention requirements for risk assessments under A three.  
20 Again, it starts with for board discussion. Is the idea of this  
21 whether automated decision making, sorry, whether risk assessments  
22 should be periodically review on what should be the cadence for  
23 that review. Typically, and that's part of the rules, there's a  
24 requirement to obviously review your risk assessment when your  
25 activities change. But this is, in addition to that, is there a  
26 need to review these assessments annually, biannually, every three  
27 years? Whether the activities that the business is engaging have  
28 changed or not. And that language is new. I think that we got some

1 feedback last time. And I want to recall that the consensus was  
2 around three years. It's not necessary to require it. We could just  
3 allow business to update this when their activities change. But we  
4 will welcome any feedback that the board has, if anybody has a  
5 strong opinion on this piece, how often it should come up for  
6 review.

7 **MS. URBAN:** Thank you, Ms. De La Torre. I mean, I think it's  
8 attractive because it helps businesses have a regular process,  
9 whatever the time period is, and it helps consumers know that they  
10 can rely on that regular process via the agency. That said, again I  
11 think it's going to be a little mysterious to us what we're asking  
12 in terms of cost and so forth until we hear more. So, I would be in  
13 favor of including it, and I'm agnostic as to the timeframe. I  
14 think it, things are moving quickly, they're not moving  
15 instantaneously. And so again, I would be happy with kind of any of  
16 these thresholds. Mr. Worthe, were you, did you—

17 **MR. WORTHE:** Yeah. I'm just wondering if in the section right  
18 above it, it's a three year regardless of the business change or  
19 not, why not just tie together so they're doing it all at the same  
20 time.

21 **MS. DE LA TORRE:** Right. That's exactly, I mean, I think that's  
22 intuitively what we were with the subcommittee, because there are  
23 other three year periods, and I will say, my personal opinion is  
24 that you don't want to make this short. It takes a long time to do  
25 a risk assessment. It's not a 10 day process. It's a longer  
26 process. So, I will definitely be speaking against the idea of  
27 doing it every year, I will be open to just not require periodical  
28 assessments. So long as there's a requirement that when activities

1 change, there's an assessment. But if the board will prefer, like  
2 Mrs. Server mentioned to have this time requirement for all  
3 assessments to be reviewed, I will lean on the longer period, like  
4 a three year.

5 **MS. URBAN:** That makes sense to me. I think Mr. Worthe made a  
6 very good point in terms of efficiency. Yeah, of course. We don't  
7 want businesses to feel like they have to rush so that they're not  
8 doing a full job either. I just continue to be aware of my own  
9 limitations and knowing exactly what all of this means from the  
10 perspective of the businesses doing it. And indeed, we'll just have  
11 to wait and see to some degree. We'll have to wait and see what  
12 comes out of the process and we could amend it later. But again, I  
13 would like to just go with something and hear from people with  
14 direct knowledge what it would mean. Mr. Le.

15 **MR. LE:** Yeah. And this is maybe cheating a little bit, but  
16 it's within this section, but 7156C, there's a saying businesses  
17 should conduct the first risk assessment for processing operations  
18 done before the effective be of these regulations. It says 24  
19 months, I think given that these regulations are out. And there's  
20 already going to be some time in between maybe reducing that to 12  
21 months would be the better, better move since businesses have a lot  
22 of advanced notice. But that is just from me. You know, wanted to  
23 get any thoughts while we're in this section.

24 **MS. URBAN:** I see. Yeah. So, integrating the timelines  
25 altogether as Mr. Worthe pointed out, maybe we are asking  
26 businesses to have a set schedule with time to do updates and so  
27 forth. Maybe we need to ask for the initial effort with a slightly  
28 tighter timeframe, given that these have been before the public

1 since September. I think, okay. Mr. Mactaggart, Sorry, Ms. De La  
2 Torre, I didn't mean to-

3 **MS. DE LA TORRE:** Let's allow Mr. Mactaggart to share first.

4 **MR. MACTAGGART:** I'm happy to let the discussion go on the  
5 timing because I don't have very strong feelings about that. So,  
6 I'll come back with sort of some bigger, I mean, some different  
7 comments.

8 **MS. DE LA TORRE:** I am aware of the fact that this and draft  
9 has been out for a while. However, I also want to remind the board  
10 that the way we are proposing to do automated decision making and  
11 this piece risk assessments is very broad compared with what has  
12 been proposed or required by other jurisdictions. And specifically,  
13 there's a piece of it, which is employment, which has not been  
14 required by any other jurisdiction in the US and this is because we  
15 have a different scope of our law. So, I will be mindful of that  
16 when we think about how much time will it require to complete one  
17 of the assessments. And also, it is fraud to start performing an  
18 assessment without the rules being final. Because you could be  
19 including work that doesn't need to be included or excluding work  
20 that needs to be included since there's going to be changes. So, I  
21 will lean on not expediting or requiring a faster time to come into  
22 compliance because I think this is a very big ask for compliance  
23 teams, and I want to make sure that they have the time, the  
24 knowledge, the ability to do it in a way that is of substance and  
25 they're not overwhelmed with 12 months where there's more work than  
26 maybe a compliance team can necessarily easily undertake.

27 **MS. URBAN:** Thank you, Ms. de la Torre. Further comments on  
28 this topic, I would point out that no matter what else happens,

1 there's going to be significant more lead time because we still  
2 have to have all of the preparation of the package. The economic  
3 analysis, which I understand takes months at a minimum, go through  
4 the entire rulemaking process, which we've been through, going  
5 quite quickly. I'm still proud of us for going as quickly as we  
6 could. So, there's going to be a lot of lead time no matter what we  
7 do. So, there was a third item you wanted us to focus on  
8 specifically Ms. de la Torre?

9 **MS. DE LA TORRE:** Yes. Yes. And I think that we have the  
10 feedback for 71, 58 A2, which will be, say at three years just for  
11 clarity. I believe the feedback that we received on that one, the  
12 critical update. The last one thing that we wanted to point out as  
13 new is at the end of the rules and is section 71, 58, this is about  
14 submission of the risk assessments to the agency. The mandate on  
15 the agency in terms of submission from the law is that there has to  
16 be some form of submission, but there is no clear or there is no  
17 requirement that the submission be every year, every two years,  
18 know when the impact assessment change. So, there is a lot of  
19 flexibility in terms of how this provision can be set. The staff  
20 drafted something that's, I think two pages and a half. So, it is  
21 very detailed and we can allow them to answer any questions that  
22 the board might have. And I also have a personal opinion on it, but  
23 I want to hold that back to hear the feedback from other board  
24 members on this formal obligation to submit annually that the staff  
25 has drafted. So, should we allow the staff to present or do we want  
26 to go to comments from the other board members?

27 **MS. URBAN:** Well, I think that you have been much more closely  
28 involved in the conversation than I have. It makes sense to me to

1 find out if legal division folks who worked on this one comment and  
2 then go to board members.

3 **MR. LAIRD:** Sure. Happy to. I might ask Ms. Neelofer Shaikh to  
4 join us if she's available.

5 **MS. URBAN:** Ms. Shaikh, welcome.

6 **MS. NEELOFER SHAIKH:** Hi. Yes. I'm happy to walk through the  
7 submission requirements that are currently in section 7158. And so,  
8 you'll see that there are different pieces that are addressed in  
9 7158. So, the first 7158(a) just goes to the cadence of submission,  
10 which would be an annual submission period. There currently is a 24  
11 month period as a placeholder for the first submission in line with  
12 board member Le's feedback. We could reduce that to 12 months. And  
13 so that's something for the board to consider. Part B is actually  
14 what must be submitted to the agency with each annual submission.  
15 The B1 addresses a certification of compliance that would be  
16 submitted with the risk assessments. It provides a bit more detail,  
17 but in short, it just explains that a business would have to  
18 actually certify compliance with the risk assessment requirements  
19 as part of its submission. (b) (2) goes into what actually would be  
20 submitted, which would be the risk assessment in abridge form. And  
21 B2 outlines what is an abridge form of a risk assessment that would  
22 have to be submitted. B3 gives businesses the option to also  
23 include a hyperlink to a public webpage that includes it's on  
24 abridge risk assessment. 7158(c) outlines the method of submission,  
25 which would be via a risk assessment submission web page and  
26 7158(d) outlines that the risk assessments must also be provided to  
27 the agency upon request. So that's generally at a high level how  
28 7158 works, which is outlining the timing of when things must be

1 submitted, what actually must be submitted. C is how it will be  
2 submitted, and D makes clear that the agency can also request these  
3 risk assessments upon request. I'm of course happy to answer any  
4 questions about these specific provisions.

5 **MS. URBAN:** Ms. Shaikh, questions or further comments from  
6 board members. Okay. Ms. de la Torre, you mentioned that you have  
7 comments yourself.

8 **MS. DE LA TORRE:** So, the last section, the risk assessment  
9 shall be provided to the agency. I do believe that we should amend  
10 that to mention that it should be provided either to the agency or  
11 to the AG if the AG was to request it. And other than that, my  
12 point of view is that we should encourage the staff to simplify  
13 anything that is formal paperwork as opposed to substance work on  
14 identifying risk and setting measures of control. So, thinking  
15 about whether the submissions could be biannual instead of annual  
16 or whether there is a way to create a more summarized version that  
17 will suffice for the submission will be things that I will value.  
18 There is a costing time to do anything. And to me, the value of the  
19 risk assessment is not in the submission, but it's in the fact that  
20 is thoughtfully performed and it's available to the agency at any  
21 time is if we request, that will be the full version. So, this to  
22 me is more of a formal requirement that has to be part of the  
23 regulations because it's required under the law that there has to  
24 be some submission. But I will appreciate if staff could revise  
25 this thinking about how they can make it easier for organizations  
26 to comply. And be mindful of the time that it can take to just  
27 summarize documents and present them on regular basis when we know  
28 that the agency has access to the full report at any time.



1           **MS. URBAN:** Thank you, Ms. de la Torre. Mr. Laird or Ms.  
2 Shaikh, did you want to comment? Is Ms. de la Torre invited?

3           **MS. SHAIKH:** Yes. So, on the timing, I do think that is  
4 something that it would be helpful to get board direction on. So,  
5 staff has recommended an annual submission. Board member de la  
6 Torre. Based on your feedback, you are also asking for  
7 consideration of a different timing cadence. And so, if other board  
8 members do have feedback on this specifically that would be helpful  
9 for staff to consider.

10          **MR. LE:** Yeah, this, I think, I mean, I like the idea of  
11 annual, but at the same time, if nothing is changing, right,  
12 they're not updating their risk assessments, then perhaps whenever  
13 it's updated could be helpful. And then it, maybe the assumption is  
14 there's no changes in between, but that's very early thinking. I'm  
15 okay with the language as is. But yeah, that's the other option I  
16 could think of.

17          **MS. URBAN:** Thank you, Mr. Le. Mr. Mactaggart?

18          **MR. MACTAGGART:** Yeah, I'd support what Mr. Le just said you  
19 know, annual, but if nothing's changed, no requirement.

20          **MS. URBAN:** Thank you, Mr. Mactaggart. Other thoughts? Ms.  
21 Shaikh, I appreciate.. Oh, sorry, Mr. Worthe, go ahead.

22          **MR. WORTHE:** No, I was just to say I'm fine with that too.

23          **MS. URBAN:** Ms. Shaikh, is that sufficient for you?

24          **MS. SHAIKH:** That is helpful. I appreciate the feedback on  
25 that. And then we will also take board member de la Torre's note  
26 just generally about how to further streamline these regulations.  
27 And so, in whatever ultimate motion happens on the risk assessment,  
28 if staff could have discretion to just streamline the regulations

1 for readability, for clarity, and to simplify as possible, that's  
2 just something I'm going to throw out there as potentially helpful  
3 as well.

4 **MS. URBAN:** Okay, thank you. Yeah, I think that should be  
5 pretty much standard for anything that we send on. At this point, I  
6 appreciate everybody's thoughtful analysis of the meaning of these  
7 as with others for compliant businesses. I still have in mind the  
8 other timeline, which is actually getting the regulations in a form  
9 that we get public feedback in getting them done. So, all of these  
10 timelines are somewhat speculative until we given the length of  
11 time for rulemaking. So, I'm happy to go with the 12 months for the  
12 first submission. I'm happy to go with other board members'  
13 thoughts about the ongoing submissions and I think Ms. de la Torre,  
14 hopefully we've discussed the questions you had on this one. Mr.  
15 Le.

16 **MR. LE:** I think perhaps maybe it would be helpful to get Mr.  
17 Mactaggart and Mr. Worthe's opinion on the first submission, just  
18 so we can get clear direction for staff. It'd be 24 months for the  
19 first submission or 12 months knowing that probably these  
20 regulations won't be effective until quarter two, quarter three of  
21 next year. That's all speculated. Yeah.

22 **MS. URBAN:** Mr. Mactaggart or Mr. Worthe, do you have a  
23 thought?

24 **MR. WORTHE:** Yeah, I just think, I appreciate that they're not  
25 going to be out for a while, but when you start with something new  
26 like this, I think it's just going to be a lot of heavy lifting for  
27 folks to get it into their normal routine. And so, I was fine with  
28 the 24 months. If you think the 12 months is really important, I

1 could agree with that. I just think 24 would be helpful to the  
2 businesses starting something new.

3 **MS. URBAN:** Thank you, Mr. Worthe. Mr. Mactaggart?

4 **MR. MACTAGGART:** Yeah, I agree with Mr. Worthe. I think it's,  
5 the first time it's going to be a lot of work, so I'd go for  
6 longer.

7 **MS. URBAN:** Okay. Alright.

8 **MS. DE LA TORRE:** I agree with that point of view as well.

9 **MS. URBAN:** Okay. And I continue to express my lack of  
10 expertise on the people who are in the building doing the thing.  
11 So, I don't feel strongly about this. I very much appreciate Mr.  
12 Le's observation about the other timelines. So, Ms. Shaikh, I think  
13 that we are in sort of a general consensus that we go ahead and  
14 leave it at 24 months.

15 **MS. SHAIKH:** That works. Thank you.

16 **MS. URBAN:** Okay. Alright.

17 **MS. DE LA TORRE:** At this point we want to open it for feedback  
18 from the board, across the board for all of the..

19 **MS. URBAN:** And Mactaggart I know had some thoughts on  
20 different parts of the risk assessments. So, Mr. Mactaggart, I'll  
21 invite you now to offer those and just remembering that some things  
22 can go through staff if it's not something that you are concerned  
23 about talking about in public. And of course, if you are, please  
24 bring them up. Please go ahead.

25 **MR. MACTAGGART:** Yeah, I think, so I have some more granular  
26 comments, but I guess one thing, kind of stepping back, what I'd  
27 love to find out having now seen these changes, which are pretty  
28 extensive and realizing this is, it always was going to be a lot of

1 work. I'm just wondering, I would love to see from staff and  
2 assessment of, and Chair Urban, you were talking about GDPR and  
3 there's some parts what I've, and I'm not an expert in GDR, but  
4 when I've looked at it, there's some parts I think we do better.  
5 I'd like our do not sell mechanism better, but I'd be really  
6 interested to know how is their privacy impact assessment, how are  
7 their risk assessments working? And we do kind of nod at it, talk  
8 about allowing other jurisdictions if you satisfy them, do you  
9 satisfy us? But they've had a regime that's been in place for five  
10 years. It covers all businesses, big and small, and it has a  
11 requirement for these risk assessments. And I'd love to know how  
12 it's working because there I'd lay, so if it is working okay and  
13 there's not some massive problem with it, could we have a situation  
14 where we say, yeah, and if you supply, if you meet the GDPR test,  
15 you can submit it here. And I don't have any sort of pride of has  
16 to be invented in California if it's functioning there, because I  
17 do think that's the largest trading block in the world. We're the  
18 fourth largest economy in the world, and if the standard is working  
19 there, part of me says you know, that might be something to  
20 consider. So, I'd love to just know and I don't have to note right  
21 now, but if as part of this, if we could get a sort of an  
22 assessment of this is a possible avenue or not to consider, because  
23 it certainly would make it easier on businesses if you just have  
24 kind of one global standard, you have to adhere to. So that's kind  
25 of my biggest kind of picture, that's thing. And then...

26 **MS. URBAN:** Mr. Mactaggart, I think Mr. Le might have an  
27 observation on that big picture point, is that right?

28 **MR. LE:** Yeah, just quickly, I think if you're doing a DPIA in

1 the EU, you're already very close to finishing your California one,  
2 I think California rules go further where necessary. And beyond  
3 that, I think that there's been a lot of debates on the  
4 effectiveness of DPIAs. But one thing that these rules do better is  
5 there's more public disclosure, at least in the abridged version on  
6 what businesses are actually doing in these risk assessments. I  
7 think that's been one of the flaws of the GDPR model is we don't  
8 get a lot of DPIA results, but yeah, I'll stop there. And I know  
9 staff has done a lot of analysis on this and we've talked about  
10 that a lot. So, I'll stop there and I think Mr. Soltani has point  
11 to make as well.

12 **MS. URBAN:** Thank you, Mr. Le and I assume that that would go  
13 into the initial statement of reasons or some explanation in the  
14 reasoning for the provisions. Mr. Soltani and then Ms. de la Torre.

15 **MR. SOLTANI:** Thank you chairman. And Mr. Mactaggart, thank you  
16 for the comment. Absolutely I think your instincts are right in the  
17 sense that there's been, as you know, five years of experience with  
18 under GDPR and staff have consulted and reviewed both kind of  
19 Colorado's approach and GDPR approach and incorporated that.  
20 There's portions of the language that's say, if you comply with  
21 these other jurisdictions, here's some similarities. And I imagine  
22 the compliance folks will build crosswalks to our heart's content.  
23 One of the benefits of our participation in the GPA, the Global  
24 Privacy Assembly is I've been able to meet, and staff has been able  
25 to meet with a number of regulators across Europe and Asia. And we  
26 have talked at length as to how they kind of what they see in their  
27 DPIAs, how effective they are, what works and what doesn't. And  
28 that has informed quite a lot of our reasoning. You know, as I

1 said, it's been five years since they've been doing that. I think  
2 there is also opportunity to improve on that, to make that more  
3 significant. So, I won't share who, but one regulator we spoke to  
4 receives numerous DPIAs and I think they're scheduled to release an  
5 assessment of kind of a holistic summary of what their experience  
6 has been, which colored some of our insights. And they essentially  
7 say most DPIAs, they review rarely give them the results they need.  
8 They almost always have to go back for more information. And that's  
9 what, in fact, informed how we structured our DPIAs. So just know  
10 that we've had a lot of that conversation with our counterparts,  
11 and we've incorporated some of that feedback into our approach.

12 **MS. URBAN:** Thank you, Mr. Soltani. And I am always happy if  
13 section 1798.199.40(i) is mentioned. As you know, I'm a big fan of  
14 that provision. Ms. de la Torre.

15 **MS. DE LA TORRE:** Thank you. So, I have done data protection  
16 potentially assessments. I have reviewed data protection  
17 assessments. The feedback that we thought we originally got from  
18 the board, and I don't think there has been a change on this, was  
19 to not look so much at Europe as to look at other states and be  
20 mindful of the power of our rules in terms of helping set a  
21 national standard. And that's where my attention has been rather  
22 than the European experience. I do have to say that two things.  
23 These documents are long. They can be 80 pages. They can be 40  
24 pages. They are not five pages. If you have a data protection  
25 impact assessment that's five pages, you probably didn't pass the  
26 bar in any jurisdiction that I'm familiar with. So, it's a  
27 significant undertaking. And second thing that I wanted to mention  
28 is that for California, one of the things that we have to be very

1 aware of is the difference in the scope of what we regulate,  
2 particularly business to business communications and employee data  
3 is something that is not regulated by other states. And it's  
4 something that nobody has done for GDPR, because GDPR never require  
5 employee data when the employees based in California to be subject  
6 to requirements. So, there is going to be a significant push, and I  
7 think some of the members mentioned this, there's going to be a  
8 significant push that will have to happen for compliance with our  
9 rules, just because of the scope of what CCPA covers versus other  
10 jurisdictions. And it is good to have details, but it's also good  
11 to find flexibility when we are providing guidelines for the data  
12 protection impact assessments. So, I do see the point that Mr.  
13 Mactaggart mentioned, and I think director Soltani also mentioned,  
14 which is after reviewing a data protection impact assessment, the  
15 agency has the ability to go and ask more questions. And I do not  
16 anticipate that that will not be the case in most situations  
17 because these processes are complex. So, industry specific  
18 processes might not be, even when you're trying to draft this data  
19 protection impact assessment, to be clear, might not be initially,  
20 initially clear to our staff because they might not be that  
21 familiar with what the specific industry is engaging in. So, to me,  
22 that's a call to find flexibility because the information can be  
23 available anyway to the agency through questions after reviewing a  
24 data protection impact assessment. So that to me is a call for  
25 allowing for flexibility in the preparation of the formal document  
26 because there's no limitation in the information that can be  
27 received by the agency after they review the document.

28 **MS. URBAN:** Thank you, Ms. de la Torre. That is helpful. I want

1 to do a quick time check. We've been talking for about an hour and  
2 45 minutes, and we do have 10 items on the agenda. This is in no  
3 way intended to limit full conversation particularly of course on  
4 this agenda item. But I do want to be sure that we are cognizant of  
5 the fact that the ADMT regulations are coming before Mr. Worthe,  
6 Mr. Mactaggart and myself for the first time. And again, that the  
7 sort of stakes, if you think of it that way, do not include us not  
8 having substantive feedback on these rules again. Alright. Mr.  
9 Mactaggart?

10 **MR. MACTAGGART:** Great, thank you. So anyway, I think I heard  
11 all that feedback on GDPR. I still think it would be useful, and  
12 I've asked staff to consider having a section here which says, if  
13 you've comply with GDPR, here are the things you need to do for  
14 California. And I just think that I hate having to, I think I'm a  
15 big 80/20 fan, and I think that the easier this is to implement,  
16 the more widespread the adoption will be and the better for  
17 consumers. And so, I think if business has and this is probably  
18 mostly just the big businesses that have business in Europe, but  
19 that's a lot of them, if they've already used to doing it one way,  
20 and if it's not some big fatal flaw, I would urge us to look at,  
21 and to Mr. Le's point, maybe it's okay, you have to have more  
22 transparency here. And here's the sort of list of things. So, if  
23 you've already complied with GDPR, go to section this one. And so  
24 anyway, that's one thing. Then specifically within the actual  
25 document, I do have some comments. One is this notion of profiling  
26 consumer when they're in a publicly accessible place. The GDPR  
27 construct is the systematic monitoring of publicly accessible areas  
28 on a large scale. What we're saying is slightly different. We're



1 saying it's based on where you are, so if I'm walking in a street  
2 and I'm on Yelp looking for a Chinese restaurant, that's what this  
3 is now. Or if I'm Google, if I'm on Google Maps or Apple Maps,  
4 that's now profiling me or if I'm getting an Uber. So, I think that  
5 I prefer the GDPR construct because this is just, if you happen to  
6 be in a public place and you're using a software, you're now into  
7 this world. So, I think it's more all of our concerns, more around  
8 surveillance. On a large scale, you're walking along, you don't  
9 even know you're getting surveilled. So that's one concept. I have.  
10 One comment I have there. In terms of the risk assessment  
11 requirements, so this is now section 7152, I just want us all to  
12 think about what we're going to be getting. So, like, for example,  
13 1A says the business has to say why they're using the automated  
14 decision making as opposed to manual processing. And yet our  
15 decision of automated decision or our definition of automated  
16 decision making is so broad. It's basically software, like any  
17 time, it helps you make a decision. So, now we're going to be  
18 saying to every business, essentially, why are you using your  
19 software? And for little businesses that are, not little, but are  
20 not software businesses that develop the software themselves, it's  
21 like, why did you buy this accounting software and not another one?  
22 And so that struck me as we're going to ask these questions, and  
23 the overarching aim of this section is to improve privacy and  
24 security. And I don't think that does. And then we're getting  
25 pretty granular about in a risk assessment in, this is now same  
26 7152(5)(g). And we're saying, if they're using the automated  
27 decision making to determine compensation for its employees, we're  
28 ask them how it uses the compensation, how it uses the output to

1 determine the actual compensation. And I don't know, this feels  
2 like we're getting past what the actual function here is. We're  
3 number seven--

4 **MS. URBAN:** Mr. Mactaggart, I'm sorry, could you clarify that a  
5 little bit? So, remember, for OAL, we have to be very specific. I  
6 kind of lost, I'm sorry, I just lost it. Lost what you were saying  
7 there.

8 **MR. MACTAGGART:** No, I think for a lot of the elements of the  
9 processing, for example, in number seven, we're asking them to tell  
10 us how much money they make from the sale or sharing of consumer's  
11 personal information. And this is in the risk assessment. That's  
12 what they're saying: that they are using the-- if the benefit to  
13 the business is that they make money. And I guess I'm, it feels  
14 like we are, and getting into what I was talking about earlier,  
15 where we're really asking a business to get into areas that are  
16 kind of far afield from the risk assessment of what's the risk of  
17 processing the information feels different than how are you using,  
18 what's the output when you're using this software to determine  
19 compensation for an employee. And if you go to section eight, the  
20 Negative Impacts to Consumers Privacy Association, all of that  
21 feels, again, going back to the age appropriate design code. I look  
22 at all that stuff, the constitutional harms, the political  
23 participation, the religious activity free assertion, I'm like,  
24 wow, this is requiring businesses to start weighing in on the  
25 discrimination harms and the disparate impact of upon protected  
26 classes. I don't think that's where we should be going with this.  
27 And so, I just thought it was... I thought there could be some  
28 cutting back here in terms of the section 7152, the risk assessment

1 requirements.

2 **MS. URBAN:** Section?

3 **MR. MACTAGGART:** 7152.

4 **MS. URBAN:** 7152. Thanks, Mr. Mactaggart. If it's alright, I'd  
5 like to pause you again because I think Mr. Le and Ms. Shaikh may  
6 be able to clarify our respond.

7 **MR. LE:** Yeah. Ms. Shaikh, why don't you go first?

8 **MS. SHAIKH:** Absolutely. I think there's just two points that I  
9 wanted to make with respect to section 7152. So, for example, in  
10 the example about estimated profit, it is because one of the things  
11 that must occur in a risk assessment as required by the statute is  
12 an assessment of whether or not the benefits outweigh the risks.  
13 And so, if an expected benefit is monetarily profiting off of a  
14 consumer's personal information, what that estimated profit would  
15 be, we believe would impact the assessment of whether or not the  
16 benefits outweigh the risks with respect to the actual negative  
17 impacts identified. Of course, we're happy to, of course, take  
18 board feedback on how to streamline these regulations. Those are  
19 generally, we did look to what other states such as Colorado, have  
20 identified as risks for consideration. And in the interests of  
21 interoperability, we've tried to use a similar framework. But  
22 again, I do think this would be particularly when we receive  
23 individual board member feedback to further refine the regulations,  
24 it is something that we're happy to take back.

25 **MS. URBAN:** Thank you, Ms. Shaikh. It's helpful.

26 **MR. LE:** Yeah. I was just going to say that's exactly the point  
27 around the risk benefit analysis. You know, if you don't know the  
28 benefit, then how can you estimate whether the risks of your

1 processing outweigh those benefits? And I think the idea here is  
2 that companies, when they have so much data on you, right? There's  
3 a huge information and power asymmetry that occurs. And that can  
4 create risks of discrimination and other types of harms due to the  
5 ownership of that data. So, the idea here is, so that you have a  
6 lot of power as a business and its upper limits around 29,000,  
7 30,000, making sure that now that you have all this power, you're  
8 using it responsibly. So that is really the goal around here on a  
9 lot of these regulations as the subcommittee drafted them.

10 **MS. URBAN:** Thank you, Mr. Le. I mean, I really do take Mr.  
11 Mactaggart's point here, but I want to underscore... well, I don't  
12 know, I don't have the power to underscore, but I will repeat with  
13 a affirm what Mr. Le said about requiring an actual assessment of  
14 benefit. This has been a problem with cost benefit analysis for  
15 decades in terms of being able to actually understand what the  
16 trade-offs are on the part of the public. So, I think that I really  
17 appreciate the subcommittee taking that into account, as well as  
18 taking into account other jurisdictions as Mr. Le laid out so  
19 clearly a few minutes ago. I very much appreciate all that work,  
20 and I think that listening to the conversation helps me see a lot  
21 about some of the choices here. Ms. de la Torre. I'm sorry, Ms. de  
22 la Torre, could you come off mute?

23 **MS. DE LA TORRE:** Thank you. I appreciate the discussion and  
24 the thoughts shared. I wanted to highlight a few things. Number  
25 one, this section, this section on risk assessments doesn't have a  
26 threshold. Meaning if you're a small organization, medium  
27 organization, you're going to be required to perform these risk  
28 assessments as if you were a large organization, because we have

1 set up without threshold. So, when we look at these requirements,  
2 we have to think about how they apply not only to larger  
3 organizations that might have compliance teams that are able to do  
4 these assessments, but also smaller organizations that might not  
5 even have a general counsel and that will be required to perform  
6 these kind of assessments. So, I take Mr. Mactaggart comments to  
7 also be inclusive of that concern. In terms of the streamlining  
8 requirements, I think that there could be an opportunity to take a  
9 look at them. I do have to point out that I mentioned with the  
10 cybersecurity piece that it is typically the case that  
11 cybersecurity experts are not necessarily trained to identify the  
12 kind of risks that are in this list of negative impacts. That's not  
13 quite the case for privacy compliance professionals, I think that  
14 we are aware and trained to identify negative impact in a way  
15 that's more flexible, not necessarily so technical. The last thing  
16 that I wanted to mention, and this might be part of the  
17 conversation that we have to have lecture when the staff presents  
18 their draft on the ADMT rights, is that the point that Mr.  
19 Mactaggart mentioned on the definitions, how we define ADMT, it's  
20 very relevant here because the definition is very broad. So, any  
21 use of technology to make decisions, basically the way the  
22 definition stands right now would trigger an assessment of the  
23 risks and also potentially opt out rights. But I'm not sure if  
24 that's something that we should have a conversation about here, or  
25 maybe we should wait for the staff to present the right section  
26 that they drafted.

27 **MS. URBAN:** Okay. Alright. Thank you, Ms. de la Torre. Ms.  
28 Shaikh or Mr. Laird, do you have thoughts about the order of the

1 conversation?

2 **MR. LAIRD:** None from me. I think that would be fine to have  
3 that conversation for the ADMT stage.

4 **MS. URBAN:** Okay. Thanks very much. That makes sense to me as  
5 well. Alright. Mr. Mactaggart.

6 **MR. MACTAGGART:** Thanks. Actually, Mr. Le, that was well said  
7 about the benefits, so thank you. I think probably my, if I come  
8 down to it, I'm very worried about number eight in 7152. Again, and  
9 I take your point Ms. de la Torre, that maybe the privacy  
10 professionals are more versed in figuring this out, but I look at  
11 the, again, what we're asking the businesses to weigh in on, and  
12 that feels large, sort of mountainous in terms of what all the  
13 potential harms are. And then that kind of also spills over into  
14 the next section 7153, the additional requirements for businesses  
15 using automated decision making. Because again, now they're going  
16 to have to tell you their definition of equality and equity and  
17 discrimination harms. They're going to have to say did we evaluate  
18 other versions of the automated decision making technology? And  
19 we're talking about a business that bought software, so now it's  
20 going to have to come tell you why they didn't buy another piece of  
21 software. Because essentially this is the definition of software.  
22 And so that's a, I'm not sure that advances the privacy  
23 conversation the way we may want to. And did we test, I'm a  
24 business, I'm buying an accounting software that might recommend  
25 remind me when to pay my bills or something like that. But it's  
26 making, it's helping me make a decision. Now, I have to say whether  
27 I evaluated it for validity, reliability, fairness, I think we're,  
28 I guess I think we're, it's easy to add things on later when we

1 have a mistake if we'd like, okay, this is really, we need to add  
2 things on later. But I would start with less. I'm a big less is  
3 more fan to begin with. So, I think we'll obviously see this again,  
4 but I am concerned about how much we're asking businesses to do  
5 here that are not, I think, intuitive initially for a level.

6 **MS. URBAN:** Thanks, Mr. Mactaggart. I wonder if this also is  
7 something that we could bundle with the ADMT discussion since I  
8 think there's significant overlap.

9 **MS. DE LA TORRE:** I think the question is, because there's two  
10 ways to think about solving. One is to better define ADMT to avoid  
11 the situations that Mr. Mactaggart was mentioning. Like software  
12 that might not be really making any decision is just used as an aid  
13 in making a decision. So that's one thing. And the other  
14 possibility will be to keep the definition broad, but perhaps  
15 reconsider the specificity in terms of the requirements for the  
16 assessment. So, I wanted to ask Mr. Mactaggart, either of those  
17 avenues will solve there and the concerns that he raised or if he  
18 had a very specific preference for revisiting the list of  
19 requirements as opposed to revisiting the scope of the definition.

20 **MR. MACTAGGART:** I think it's-- I'd have to see it how it  
21 worked. I think that the definitions of ADM and profiling are so  
22 vast, so broad that they basically cover kind of all technology,  
23 all the use of technology, and then to evaluate why you're doing  
24 that as opposed to doing manual thing. Well, of course you are,  
25 because that's world we live in. So, whether we limit the  
26 requirements for people who are going to do the risk requirements  
27 or we limit the definitions. I'm some somewhat indifferent to and I  
28 think this is why was underlying my comment about GDPR, just, I was

1 like, wow, this is a tremendous amount of work to do, and if  
2 there's already a system that's working well. Does it make sense?  
3 And I hear about Colorado, but you know, the EU is whatever, 500  
4 million people, that's a pretty big area to try to, maybe to align  
5 with if it's working. So anyway thanks.

6 **MS. URBAN:** Thanks, Mr. Mactaggart.

7 **MS. DE LA TORRE:** I would like to—

8 **MS. URBAN:** Mr. Le and Ms. Shaikh, both have their hands up, so  
9 if it's possible, I'd like to give them the opportunity to speak.

10 **MR. LE:** Yeah, so I think the validity, reliability and  
11 fairness portions, that's part of the AI risk management framework.  
12 This is going, this is a small, tiny subset of what the National  
13 Institute of Science and Technology has said that everyone  
14 deploying automated decision systems, AI systems should be doing.  
15 So, in my perspective, if you're having a decision, you're having a  
16 system that is controlling your access to healthcare employment,  
17 its incumbent on the businesses who are making more than \$25  
18 million or processing certain amounts of data and making these  
19 decisions. So, there's several layers of thresholds that limit the  
20 application of these rules. You need to know whether or not your  
21 system is reliable, valid, or fair. And we're not saying you have  
22 to have any one definition of reliability, validity or fairness,  
23 but it's incumbent on you if you're making these critical decisions  
24 that you know if your system works or not. There is a case just now  
25 where a Medicaid algorithm allegedly denied people healthcare,  
26 health, their claims 90% of the time erroneously. So, I think  
27 businesses need to know this. They need to be able to actually  
28 assess this before they release their products to make potentially



1 life threatening life, very important decisions. So, I think  
2 there's a real strong, once you have this much data on someone and  
3 you're using it to make critical decisions about them, it is part,  
4 it should be part of any risk assessment that you've done this,  
5 whether or not the idea about evaluating other types of systems,  
6 that is part of the disparate impact analysis, is there a less  
7 discriminatory alternative to the system that you've used? So, this  
8 gets at that, I hear your point. This may be administratively  
9 burdensome. So there, I'm willing to consider staff proposals and  
10 other proposals about how do we get there. But I think at a minimum  
11 if businesses in California are making these critical decisions,  
12 they have to assess whether their systems work.

13 **MS. URBAN:** Thank you, Mr. Le. I will say that we are balancing  
14 a number of different issues here in terms of where the burdens lie  
15 and the timing. I take Mr. Mactaggart's point that much of the  
16 time, we can amend the regulations. These systems are being built  
17 and deployed right now, as Mr. Le said, they are using massive  
18 amounts of personal information, sometimes very sensitive personal  
19 information. And three years from now they are going to be  
20 affected. How they work and how dangerous they are is going to be  
21 affected by how they're built. Those of us in the privacy and data  
22 protection world have a saying that it is always much easier to  
23 bake privacy in than to bolt it on afterwards. And thus, I think  
24 given the subcommittees, again, two years of work on this and very  
25 thoughtful approach to it, in this instance, and it's not the case  
26 for every instance, in this instance, I think that the better path  
27 is to start with a protective model. And businesses can tell us,  
28 and they absolutely should, if it's not working, if the cost

1 benefit analysis is too much, if it's just not something they can  
2 comply with. But right now, these things are happening. Right now,  
3 these systems are being built and if we like do something that  
4 doesn't take into account the issues that we know exist, in theory,  
5 I suppose we could tack them on later, but it's just going to be  
6 more cost on businesses. And in the meantime, we have consumers  
7 who've had, for example, their Medicaid claims denied for no reason  
8 sort of extrapolated. I don't think we can know exactly how this is  
9 going to play out or exactly what the risk is. But I think we  
10 absolutely need to keep in mind the way that technologies are built  
11 and deployed using personal information based on what we know from  
12 the past. This is in no way to say that I want to burden businesses  
13 unduly at all. I definitely do not. I just want to be sure that  
14 we're giving businesses the tools to build things in the best  
15 possible way. And that the businesses we are targeting are those  
16 who meet the thresholds under the statute, which of course they  
17 are. And those are businesses that either have relatively high  
18 revenues or use our data a lot and it's a large part of their  
19 business model. So, there is a risk there to the people of  
20 California. So, if we're going to err on one side right here, I  
21 would be in favor of err on the side that would allow us to pull  
22 back if we don't need to, within reason, of course. But anyway, I'm  
23 sorry, Ms. Shaikh, I was listening hard, and I apologize, I  
24 completely forgot your hand was up and it's over the block again.

25 **MS. SHAIKH:** No, no, thank you, Chair Urban, the only thing I  
26 was going to add to what board member Le had said just as he had  
27 mentioned, it's not any use of ADMT that would trigger these  
28 requirements. It would be, one, you would have to meet the

1 definition of business under the statute. Two, you would be using  
2 automated decision-making technology, and three, you would be using  
3 automated decision-making technology in one of the ways that is  
4 listed in the thresholds under 7150. And so, it would not be all  
5 uses. And the second thing that I wanted to just quickly raise is  
6 that the regulations do acknowledge that there may be instances  
7 where a business, for instance, is not the entity that actually  
8 developed the model. So, for instance, if you receive the model  
9 from a service provider, our regulations do require that a service  
10 provider assist you in completing the risk assessment so that you  
11 are not left in the dark. Similarly, under section 7154(b), the  
12 entity that is training the model that you are using also must  
13 assist you in completing the risk assessment. The idea here is that  
14 the businesses who are using the models in one of the ways  
15 triggered under 7150(b), if they don't have access to all  
16 information about the model, including how it was evaluated for  
17 fairness, that this information does need to be provided for the,  
18 to them so that they can themselves complete their own risk  
19 assessment requirements. And so, they would not be left in the dark  
20 trying to comply with something that they don't have sufficient  
21 information to comply with.

22 **MS. URBAN:** Thank you, Ms. Shaikh. Mr. Mactaggart?

23 **MR. MACTAGGART:** Yeah. Just to Mr. Le and Ms. Shaikh point, I  
24 get that, except that's not what it says in the sense that if it  
25 were just about the Medicare and stuff, that would be a different,  
26 it was just the legal effects, the decisions producing legal  
27 effects that would be one thing. But actually, when you look at the  
28 definition of ADM, which is to any, using computation as a whole or

1 part of a system to make or execute a decision, which is pretty  
2 much any software. And the fact that this 7150 is for profiling a  
3 consumer when they're out in the street, it means basically any  
4 consumer who's using any kind of app in the street is now falling  
5 into this category. So that's a very different thing to me than  
6 you're being denied insurance or a loan or healthcare. So, I don't  
7 agree that Ms. Shaikh is..

8 **MR. LE:** At that point, systematic is something that I would  
9 potentially like to add to that definition. Right. But at least on  
10 the point of legal or similarly significant effects I guess, what  
11 are your thoughts on, I think the regulations definitely make sense  
12 when it comes to the..

13 **MR. MACTAGGART:** Yeah, I think that's why we, and that's why I  
14 sort of like that construct of these big decisions that are  
15 important in terms of your health, your financial stuff, feel  
16 different. And also, I like the profiling for behavioral  
17 advertising. Because that's clear. That's also, we're trying to  
18 track you but the ones that are sort of just, I'm looking for a  
19 restaurant or I'm trying to find a car, they don't feel the same  
20 threshold.

21 **MS. URBAN:** Ms. de la Torre and then Ms. Shaikh.

22 **MS. DE LA TORRE:** Thank you. So, in the definition of decisions  
23 that produce legal or similarly significant effects concerning a  
24 consumer, which Chair Urban brought that before, I just wanted to  
25 read it out loud. So, it means a decision that results in access  
26 to, or the provision or denial of financial or lending services,  
27 housing insurance, education, enrollment or opportunity, criminal  
28 justice, employment or independent contracting opportunities or

1 compensation, healthcare services or essential goods and services.  
2 And I'm generally supportive of the definition. I have two  
3 questions on the definition is, so we say financial or lending  
4 services, housing, insurance, education, enrollment or opportunity.  
5 And what's opportunity? Opportunity is not a clear line for me. So,  
6 if you don't accept somebody into an educational program, are you  
7 denying them an opportunity? Potentially, I think there is a  
8 possibility to make that a little bit more clear, because I don't  
9 anticipate that that's what we will consider legal or significantly  
10 similar. And then the other one that I wanted to highlight is  
11 employment, not only employment, but also independent contracting  
12 opportunities. So, if I'm a business and I am receiving proposals  
13 from several businesses, I'm going to make a decision as to which  
14 one I will choose. Is that within the definition of decision that  
15 produces legal or similarly significant attacks because we regulate  
16 business to business data? Those are the kind of things that I  
17 think we could be a little bit more thoughtful around in our  
18 definition to make sure that we really cover what we mean, which is  
19 really significant decisions about individuals, not necessarily  
20 about deciding on which contractor you might hire. But I generally,  
21 like I mentioned, support the other pieces of the definition. I  
22 also wanted to take an opportunity to read out loud the definition  
23 of automated decision making technology, which I think it underlies  
24 a lot of the concerns that Member Mactaggart share. And we send  
25 automated decision technology means any system, software or  
26 process, including one derived from machine learning statistics or  
27 data processing, or artificial intelligence that process personal  
28 information and or uses computation as a whole or part of a system

1 to make or execute decisions or facilitate human decision making.  
2 So, I think that's the point that Mr. Mactaggart is raising on the  
3 broad definition. And we can look at it from the definition or we  
4 can look at it from the requirements. I'm very supportive of the  
5 comments of Mr. Le in terms of, and chairman Urban in terms of  
6 these systems that are making important decisions and how they need  
7 to be regulated. And I think that has been a lot of the attention  
8 from the subcommittee, and I'm very supportive of it, but at the  
9 same time, I'm wary of saying that some use, any use of technology  
10 should trigger the kind of investment in doing data protection  
11 impact assessment. Or we will talk about rights on the other end.  
12 Because I don't think that that's where the concern of the people  
13 is. I don't think that people are concerned about the use of  
14 technology. I think they are concerned about systems that make  
15 decisions without transparency or without human intervention. And  
16 like I said, we can think about it from the perspective of whether  
17 we tailor the definitions or we set other thresholds around some of  
18 the requirements that we attach to those definitions.

19 **MS. URBAN:** Thanks, Ms. de la Torre. Ms. Shaikh. Sorry, I'll  
20 ask you, just a moment of patience because I think we have  
21 inevitably entered the discussion of ADMT, and I'm just trying to  
22 think about the most efficient way to do this. Ms. Shaikh, maybe if  
23 you'll respond, and then I'll ask Mr. Mactaggart if he has comments  
24 on risk assessments that aren't related to ADMT and if he's willing  
25 to have the conversation about the thresholds for ADMT and sort of  
26 how they all fit together when we talk about the ADMT regulations.  
27 But I'll let him think about that. Ms. Shaikh, while you go ahead.

28 **MS. SHAIKH:** Absolutely. Thank you, Chair Urban. With respect

1 to the comments made by board member Mactaggart and board member  
2 and de la Torre, just wanted to clarify three things quickly. So  
3 first with the profiling in publicly accessible places, board  
4 member Mactaggart, I think this could just be an area of  
5 wordsmithing. The examples that we provided are really intended to  
6 give guidance on the types of technologies we're most concerned  
7 about being used in public. Things like facial recognition,  
8 technology being used in public, license plate recognition, things  
9 like that. So, it's not actually intended to capture, you happen to  
10 be using an app while you're in a public place, but again, I think  
11 that's something where we can wordsmith this to make that point  
12 clearer. And so, I'm hoping that allays some of the concerns you  
13 have about the breadth of that specific threshold. Board member de  
14 la Torre on the use of the word opportunity. That's generally to  
15 get to the idea again of the decision to promote someone, to hire  
16 someone, to fire someone. Those we saw as opportunities. But again,  
17 this is something that I think some wordsmithing could help  
18 alleviate your concerns about. Just making it more precise, making  
19 things clearer. On the definition of automated decision making  
20 technology, we did review a variety of materials and putting forth  
21 this definition, we reviewed academic literature, other proposals  
22 by legislators, by civil society. In terms of refining this  
23 definition. It is something that we think would really benefit from  
24 the public comment process. We have reviewed as many secondary  
25 sources as possible on this, but the businesses who are actually  
26 using these technologies, we would absolutely benefit from what  
27 they actually would recommend on tightening up the definition. So,  
28 my recommendation would be to keep the definition as is with, of

1 course, any additional feedback by the board at this time, but that  
2 we move forward with that definition largely intact for public  
3 comment and actually refine it once we get more technical expertise  
4 received via public comment.

5 **MS. URBAN:** Thank you, Ms. Shaikh. It's very helpful. Mr.  
6 Mactaggart, what are your thoughts on continuing this conversation  
7 when we're talking about ADMT and maybe getting your thoughts on  
8 anything else in the risk assessments?

9 **MR. MACTAGGART:** Sure. I'm happy to, just to continue this in  
10 ADMT code. I think there was a lot of overlap. And I will say thank  
11 you to Ms. de la Torre who said what, I was kind of feeling much  
12 more eloquently than I did. I am concerned about the breadth of the  
13 definitions. And it's funny, I had underlined just that section of  
14 the legal decisions that it's the employment, the independent  
15 contracting. Because at that point, it's every time Uber assigns  
16 you the drive and not you the drive. And why did they assign that  
17 person? And that's independent contracting opportunities. Is that  
18 really what we want to be for the legal effects? You know? So,  
19 there's got to be, I think, some threshold or some kind of  
20 thoughtfulness about why Door Dash chose this driver and not that  
21 one to deliver your food to you. And I think that's not what we  
22 want. And I think what Ms. de la Torre said was exactly right.  
23 We're concerned about these unknowable systems that say you're  
24 going to get a healthcare and you're not. And the rest of the stuff  
25 I can take up with staff, but that was my main concern, is that  
26 plus the whole ADCA component in item eight, the negative impacts  
27 that one.

28 **MS. URBAN:** Okay. Thank you, Mr. Mactaggart. Other comments on



1 risk assessments especially, and then I will do a process summary  
2 check in with everybody. I'd like to go to public comment. I think  
3 we may need a break. So, if people want to think about that trying  
4 to juggle a variety of different things to be sure we have a full  
5 conversation and get, manage to go through the agenda. Anything  
6 else on risk assessments? Okay. So, taking into account the whole  
7 conversation and where I understand these draft, maybe sub packages  
8 given Mr. Laird's note at the beginning about putting things  
9 together as staff needs to, sorry, the different, excuse me, the  
10 slightly different points at which these packages are and all the  
11 subcommittees work that's gone into them. I am going to suggest  
12 first that we have a motion to direct staff to advance the proposed  
13 cybersecurity relations, regulations, excuse me, to formal  
14 rulemaking through commencement of the 45 day comment period,  
15 authorizing staff to make additional changes to and Ms. Shaikh, I  
16 don't remember all the words you used, but to improve clarity,  
17 ensure compliance with the Administrative Procedures Act.

18 **MS. SHAIKH:** And the streamlining for readability. Because I  
19 believe that is one of the comments we received.

20 **MS. URBAN:** Okay. Streamlining for readability, recognizing  
21 everyone that this is to direct and authorize staff to continue the  
22 work. We'll see it again before it comes back. And then with  
23 regard, or sorry, it will come back before it comes down for public  
24 comment. Excuse me. My apologies. And then with regards to the risk  
25 assessments, which we have considered in our last meeting and the  
26 subcommittee and staff have done further work on, and we've heard  
27 some pretty thoughtful comments from Mr. Mactaggart and others.  
28 There, I would request a motion to direct staff to receive feedback

1 on the draft from individual board members as we have done with the  
2 cybersecurity requirements. And to propose a revised draft in a  
3 future meeting before we advance to formal rulemaking. And Mr.  
4 Laird, does that comport with what would work in order to help  
5 staff obtain the necessary economic assessments and so forth? I  
6 want to be sure I'm not splitting things up too much such that we  
7 are not getting the assessments, but also that we are making sure  
8 the staff has all the feedback that it needs, and the board is able  
9 to give that feedback.

10 **MR. LAIRD:** I appreciate that. In this instance, I think we  
11 could accommodate sort of emotion of that nature and be able to  
12 turn around a new draft before completing the rest of the  
13 documentation for preparation of notice.

14 **MS. URBAN:** And would that be and that would, I'm sorry to, I  
15 just want to be, I know we all have questions about the effect on  
16 businesses and the economics, and this would give you the ability  
17 to help work with the economists to give us recommendations with  
18 that sort of background expertise built in.

19 **MR. LAIRD:** Yes. Although I think, maybe I should just clarify.  
20 I think the understanding would be that staff would have the  
21 opportunity getting feedback from individual board members and  
22 otherwise cleaning up the proposal to bring that proposal back to  
23 the board. I anticipate in the next one to two meetings for final  
24 kind of, not sign off, but to then complete the rulemaking, I  
25 guess. I mean, the sooner we can kind of get clarity on the  
26 parameters of the regulation, we can certainly start the economic  
27 assessment. And I think as long as there aren't significant  
28 changes, at the next time the board sees the language, then we

1 could begin at least that effort.

2 **MS. URBAN:** Okay. I guess I'm trying to see if there is a way  
3 that we don't have to discuss the parameters again without having  
4 the full economic assessment. And my understanding from the  
5 conversation is that we, for the risk assessments we talked about  
6 thresholds in terms of how long businesses have to comply before  
7 they go into the... for the first risk assessment and then the  
8 cadence for other risk assessments. And then there were as well  
9 some pieces of substantive feedback from Mr. Mactaggart that are  
10 connected intimately with the ADMT regulations. And I know he  
11 mentioned he has some other sort of one-way comments, so I guess  
12 I'm asking if there's a...

13 **MR. LAIRD:** I think I'm following now.

14 **MS. URBAN:** Yeah. Okay.

15 **MR. LAIRD:** Yeah, I think I'm following now. Yes, absolutely. I  
16 think you could delegate sort of exactly that level of  
17 responsibility to staff. We could proceed with development of the  
18 economic assessment and then return to the board sort of with the  
19 rest of the package having taken into account any trailing  
20 individual feedback from board members.

21 **MS. URBAN:** Okay. Wonderful. Thank you, Mr. Laird. Ms. de la  
22 Torre.

23 **MS. DE LA TORRE:** I'm fully supportive of the proposed plan for  
24 cybersecurity, but I would like to hold back on board on what is  
25 the destination for the risk assessments until we finish the  
26 conversation, because they're very, very interconnected with the  
27 ADMT rights. And I want to know where we are at the end of the  
28 conversation before deciding whether it makes more sense for them

1 to go back to subcommittee or to be released to the agency.

2 **MS. URBAN:** Thanks, Ms. de la Torre. Yes. And we certainly  
3 wouldn't vote until we'd heard from the public. Your comment does  
4 raise for me a question which is that I wonder if, so I have given  
5 you the outline of what I see as the motions I'm going to request  
6 right now. I was thinking at the top of the conversation that we  
7 would then ask for public comment in order to sort of keep things  
8 relatively clean. But given that the risk assessments and the ADMT,  
9 topics have been have, are connected and I should have thought of  
10 that because of course they are in the language. We could just wait  
11 for public comment until we have the ADMT discussion as well. Or I  
12 could ask for public comment on the cybersecurity regulations  
13 specifically. I would probably prefer to ask for public comment  
14 when we finish the ADMT discussion as well. And so, I'm going to go  
15 ahead and say that that's what we'll do unless anybody stops me  
16 because of course I could have missed something. Alright. And then  
17 I'm going to propose that we take at least a short break maybe 10  
18 minutes. Okay. So, let's take a break and reconvene here at the,  
19 just me even it out. Let's make it 11:35 on my clock. Thank you  
20 everybody for a really robust discussion. And I will look forward  
21 to seeing you again in 10 and 12 minutes. Thank you.

22 **MR. LAIRD:** Take whenever the...

23 **MS. URBAN:** Wonderful, thank you very much. Then we will just  
24 wait a couple minutes for Ms. de la Torre and Mr. Mactaggart. Mr.  
25 Le, am I reading the materials correctly that there's a slide  
26 presentation that staff will be presenting?

27 **MR. LE:** Yeah, the ADMT.

28 **MS. URBAN:** Okay. Well, perhaps while we wait for Ms. de la

1 Torre, staff could be invited to go ahead and pull that up and  
2 prepare.

3 **MR. LAIRD:** Sure. I'd ask Liz to go ahead and..

4 **MS. URBAN:** Okay.

5 **MR. LAIRD:** Put the presentation up. Thank you. I don't want to  
6 speak for Ms. de la Torre, but no, as you know, the subcommittee is  
7 pretty familiar with the content that is to be presented. Perhaps  
8 we could start in the interest of time.

9 **MS. URBAN:** Of course. I think that makes sense. And if you  
10 could speak for the subcommittee, then let's go for it. I believe I  
11 will hand it over to Mr. Laird.

12 **MR. LAIRD:** Sure. And I'm just actually going to pass it  
13 directly again to our excellent staff Ms. Kristen Anderson and  
14 Neelofer Shaikh.

15 **MS. ANDERSON:** Thank you, Phil. Alright. Well, Neelofer and I  
16 are part of the agency's team working on the draft automated  
17 decision making technology regulations just as an FYI. We will  
18 sometimes use ADMT as shorthand just so that we're not saying  
19 automated decision making technology literally every time. As you  
20 all have seen, the draft ADMT regulations are posted to the  
21 agency's website as a meeting material, but we thought that it  
22 would be helpful both for the board and the public to provide this  
23 walkthrough of the proposed framework that undergirds those  
24 regulations. So, this morning I'll be providing the higher level  
25 overview of the proposed framework to regulate the opt-out and  
26 access rights with respect to businesses use of automated decision  
27 making technology. Neelofer will then provide more detail on some  
28 of the key components of the framework. And then finally, I'll

1 return to certain topics to facilitate board discussion, and we'll  
2 be happy to respond to questions from the board following this  
3 presentation. Next slide, please, Liz. And we'll actually go to  
4 slide three. Thank you. We'll begin with a reminder of the CCPA's  
5 delegation of authority to the agency. The CCPA directs the agency  
6 to issue regulations per governing access and opt out rights for  
7 consumers with respect to business' use of automated decision-  
8 making technology, including profiling. It also articulates certain  
9 requirements for businesses' responses to consumers' access  
10 requests. As noted at the bottom of this slide, other jurisdictions  
11 have their own frameworks that govern the use of automated decision  
12 making technology or profiling such as EUS, GDPR and other state  
13 consumer privacy laws, such as the Colorado Privacy Act. We  
14 consider these other privacy laws and regulatory approaches in  
15 drafting the proposed framework and regulations. We do seek to  
16 harmonize to the extent that doing so is consistent with and  
17 furthers the intent and purposes of the CCPA, but the CCPA has its  
18 own scope and structure which differ from those laws. For example,  
19 CCPA's delegation governing access and opt-out rights is not  
20 limited to solely automated processing or to profiling only, and  
21 furtherance of decisions that produce legal or similarly  
22 significant effects. In addition, the CCPA's requirements apply to  
23 the personal information of employees, independent contractors, and  
24 job applicants. The proposed framework and draft regulations,  
25 therefore, are based upon the CCPA scope, structure, purpose, and  
26 intent. Next slide please. This slide provides the proposed  
27 definition of automated decision making technology, which includes  
28 profiling, the slide also excerpts the profiling definition from

1 the statute. To be clear, the draft regulations do not regulate all  
2 uses of ADMT. While the definition is broad, a business's  
3 obligations depend upon whether the business's use of ADMT meets  
4 one of the thresholds outlined in the proposed framework and the  
5 draft regulations, which we'll turn to shortly. Next slide please.  
6 There are three main components of the proposed ADMT framework;  
7 free use notice requirements, opt-out right requirements and access  
8 right requirements. To be clear, where a business's use of ADMT  
9 meets the thresholds that we'll be going over on the next slide, it  
10 must comply with each of these requirements to illustrate how they  
11 can work together. It may be helpful to think about them from a  
12 consumer's perspective. First, before a business can use its ADMT  
13 with respect to a consumer, it must provide that consumer with a  
14 pre-use notice, that notice gives the consumer information about  
15 the business's proposed use of the ADMT and the consumer's rights,  
16 so that the consumer can decide whether to opt out or to proceed,  
17 and whether to access more information about the business's use of  
18 ADMT. Second, once the consumer has received the previous notice,  
19 they can choose to opt out of the business's proposed use of the  
20 ADMT or to proceed with it. If the consumer proceeded with the  
21 business's use of ADMT, the consumer can then make an access  
22 request for information about the business's use of ADMT with  
23 respect to the consumer. When the business receives a consumer's  
24 request for access, it must then provide certain information to  
25 help the consumer understand the decision that was made about them  
26 and how the business made the decision. Next slide, please. The  
27 previous notice opt out and access right requirements apply when a  
28 businesses using automated decision making technology in one of the

1 ways it's outlined on this slide. The first threshold focuses on  
2 the type of decision making that can have the most significant  
3 impacts on consumers' lives, such as deciding whether to provide or  
4 deny employment opportunities. The second and third thresholds  
5 address contexts in which consumers are particularly vulnerable to  
6 the use of profiling and maybe less able to avoid it, such as in  
7 their workplace at school, or in publicly accessible places. The  
8 fourth threshold is one that the new rule subcommittees  
9 recommended, including this threshold, would enable consumers to  
10 opt out of profiling for behavioral advertising. To be clear, this  
11 opt-out would not be limited to cross context behavioral  
12 advertising, which is defined by the statute. In addition,  
13 consumers known to be under 16 years of age opt-in consent would be  
14 required for behavioral advertising. The fifth and sixth thresholds  
15 were previewed for the warrant in July. They focus on profiling  
16 consumers known to be under 16 and on training uses of ADMT. Note  
17 that if the board is interested in pursuing these two thresholds,  
18 staff would need to refine the language of these thresholds and  
19 framework accordingly. For example, to ensure consistency with the  
20 risk assessment framework and the requirements within proposed  
21 section 7030 and 7031. Next slide please.

22 **MS. SHAIKH:** Turning now to the components of the proposed  
23 framework, starting with the pre-use notice requirements, before a  
24 business can use ADMT with respect to consumer, it would need to  
25 provide a pre-use notice to the consumer so that the consumer can  
26 decide whether to opt out or proceed and whether to access more  
27 information about the business's use of ADMT. To be clear, there is  
28 no exception to providing a pre-use notice. If the business met one



1 of the thresholds discussed on the prior slide, it would need to  
2 provide a pre-use notice to the consumer. In drafting these  
3 requirements, we considered what information about the business's  
4 proposed use of ADMT would be most meaningful to a consumer at that  
5 stage when exercising their CCPA rights. Accordingly, the  
6 information would include the purpose for which the business  
7 proposes to use the automated decision making technology, a  
8 description of the consumer's right to opt out, and how they can  
9 exercise that right, a description of the consumer's right to  
10 access, as well as how they can exercise that right. And then the  
11 business must also provide a simple and easy to use method for  
12 consumers to obtain additional information about its use of  
13 automated decision-making technology. This additional information  
14 would include explanations of the logic of the ADMT, including key  
15 parameters that affect the intended output, what the intended  
16 output of the ADMT actually would be, such as a score that it may  
17 generate, how the business would use that output, including the  
18 role of human involvement and whether the ADMT has been evaluated  
19 for validity, reliability, and fairness, and the outcome of that  
20 evaluation. Next slide, please. Generally, if a business receives  
21 an opt-out request before it uses automated decision making  
22 technology with respect to a consumer, it is not permitted to  
23 process that consumer's personal information using that ADMT.  
24 However, if a consumer does not initially opt out but decides to do  
25 so later, this slide explains that a business is required to cease  
26 processing that consumer's personal information using that ADMT,  
27 and to notify relevant service providers, contractors, or other  
28 persons of the opt-out, and to instruct them to comply. Next slide

1 please. The proposed framework also outlines certain instances  
2 where a business would not be required to provide consumers with  
3 the ability to opt out, with respect to these exceptions the  
4 language in this slide is an abridged form of what is in the draft  
5 regulatory text in section 7030(m). There's three things we'd like  
6 to highlight about these exceptions. First, these exceptions  
7 address instances where a business's use of ADMT is necessary to  
8 maintain the security of consumer's personal information for fraud  
9 prevention, for safety, or to provide a requested good or service.  
10 If the business has complied with section 7002's requirements. And  
11 assuming it is conducted a risk assessment and uses the personal  
12 information only for the purposes outlined on this slide, the  
13 business is not required to provide consumers with the ability to  
14 opt out. Now, with respect to the last exception on the side,  
15 specifically when the use of ADMT is necessary to provide a  
16 requested good or service, please note that to rely on this  
17 exception, a business, to rely on this exception, first, the  
18 consumer must have specifically requested that good or service. And  
19 second, a business must demonstrate that it has no reasonable  
20 alternative method of processing other than the use of ADMT. The  
21 draft regulations outline how a business can demonstrate this and  
22 provides examples. Second, the reference to section 7002 here is to  
23 remind businesses that any use of personal information, including a  
24 use subject to an opt-out exception, must still comply with section  
25 7002s requirements. Lastly, for profiling for behavioral  
26 advertising, none of these exceptions would apply. A business would  
27 be required to provide consumers with the ability to opt out  
28 without exception. Next slide please. Turning to the access right

1 requirements, if a consumer chooses to proceed with the business's  
2 use of automated decision-making technology, the business must  
3 provide consumers with access to information about how the business  
4 used that technology with respect to the consumer. In drafting  
5 these requirements, we consider what information would be most  
6 meaningful to a consumer in understanding how a business used ADMT  
7 with respect to them. That information includes the following, the  
8 purpose for which the business used ADMT with respect to the  
9 consumer, the output with respect to the consumer. So, for example,  
10 if an ADMT generates scores for consumer, a business must notify  
11 the consumer of their specific score. Next, how a business actually  
12 used that output to make a decision with respect to the consumer,  
13 including what decision was actually made. What other factors  
14 besides the output impacted that decision? The role of human  
15 involvement and whether the business's use of automated decision-  
16 making technology has been evaluated for validity, reliability, and  
17 fairness, and the outcome of that evaluation. The business must  
18 also explain how the ADMT worked with respect to the consumer, for  
19 instance, how its logic and key parameters affected the output and  
20 how they apply to the consumer. The business must also provide the  
21 range of possible outputs so that consumers can understand how they  
22 stack up relative to others. And lastly, the business must explain  
23 to a consumer how they can exercise their rights under the CCPA,  
24 such as the right to correct, as well as how the consumer can  
25 submit a complaint about the use of automated decision making  
26 technology to the business or to the agency or California Attorney  
27 General. Next slide, please. This slide addresses exceptions to  
28 what information businesses must provide in their responses to

1 consumer's access requests. To be clear, there is no exception to  
2 providing a response to a consumer's access request if the business  
3 meets the thresholds discussed on slide six. This slide merely  
4 highlights that where a business is using automated decision making  
5 technology only for the purposes outlined on this slide. And as set  
6 forth in section 70-30 M1 through three, the business would not be  
7 required to provide information that would compromise its  
8 processing for these purposes. Next slide please.

9 **MS. ANDERSON:** There are two topics in particular that we've  
10 identified for board discussion, which we'll turn to now. Next  
11 slide please. The first topic is when pre-use notice, opt out and  
12 access rate requirements should apply. This slide, which mirrors  
13 slide six, outlines the thresholds for these requirements. We  
14 flagged the latter three thresholds as options for board  
15 discussion, including in the draft regulatory text. Staff's  
16 recommendation is to retain all of these thresholds in the proposed  
17 framework at this stage, as we would appreciate the opportunity to  
18 receive public feedback on them. Next slide, please. The second  
19 topic is the exceptions to the opt outright. This slide, which  
20 mirrors slide nine, sets forth the exceptions to the opt outright.  
21 Again, staff's recommendation is to retain these exceptions at this  
22 stage, as we would appreciate receiving public comment on them as  
23 well. That concludes our overview of the proposed ADMT framework.  
24 And I'll now turn it back over to our general counsel, Phil Laird  
25 for next steps.

26 **MR. LAIRD:** Hi, and thanks again to the team. Yes, at this  
27 point, essentially we would like to turn discussion back to the  
28 board, and I know we've already sort of started to toe into the

1 waters here on some of this framework and these definitions. But  
2 certainly feel free to start with the two topics identified. But  
3 obviously anything within the draft proposal that the board would  
4 wish to discuss, we are open to receive comments and also answer  
5 any questions if we could be helpful.

6 **MS. URBAN:** Thank you Mr. Laird, Mr. Worthe, please go ahead.

7 **MR. WORTHE:** Sorry for the background noise. Thank you for the  
8 presentation. That was very helpful. I had a couple questions. If  
9 somebody opted out, is the business allowed to deny them access to  
10 their service? That's one question. The second was, as it relates  
11 to the under 16 additional option, I think it, you asked the  
12 question of us, I think all three of the additional options and  
13 those exceptions are fine to add in. I want to get to number four  
14 on the exceptions, but on additional options, is there any age at  
15 which the, some parental approval is required for a decision being  
16 made? You mentioned under 16 they have to... if they know they're  
17 under 16 that they can choose to opt in or out. Correct. And if so,  
18 at what age would a parent have to be involved in that decision?  
19 That's the way I understood what you just said. And the final point  
20 on exception four, just, I think you're just going to have to  
21 figure out the wording on this. Because it could be wide enough  
22 that you could drive a lot of things through it. So, I'd want to  
23 spend time and I think that's part of the purpose of what you just  
24 described, is we're going to get this out and get some feedback and  
25 spend some more time with it. But those are my comments.

26 **MS. URBAN:** Mr. Worthe, could I ask a quick clarifying question  
27 on your first question, when you say, can the business deny access  
28 to their good or services—

1           **MR. WORTHE:** To the consumer. Yeah.

2           **MS. URBAN:** New offering, the offering, the opt-out, et cetera.

3           **MR. WORTHE:** Correct.

4           **MS. URBAN:** Yeah. So, you want this, so go find another  
5 business.

6           **MR. WORTHE:** Yeah, if you don't want us to be able to sell your  
7 info, then you can't be a customer of ours.

8           **MS. URBAN:** Okay. Thank you. That's what I thought you meant.  
9 Just want to be sure. Ms. Anderson, Ms. Shaikh.

10          **MS. SHAIKH:** I'm happy to address your first two questions and  
11 then I'll turn it over to Ms. Anderson for the last question. So,  
12 on the access to the service, the CCPA does prohibit discrimination  
13 when a consumer is exercising their CCPA rights. And so that should  
14 hopefully prevent a business. So, for instance, if an employee  
15 wants to opt out of profiling, they shouldn't be discriminated  
16 against for opting out of profiling. And then on the last  
17 exception, the requested good or service exception, that is  
18 intended to address situations where a business could really not  
19 provide a good or service requested by the consumer without the use  
20 of ADMT. And that exception is meant to prevent the general use of  
21 ticket or leave it offers essentially that last exception is meant  
22 to address situations where a business really has no alternative  
23 except the use of ADMT. Otherwise, when a consumer opts out, they  
24 should be able to receive the service that they requested without  
25 being penalized. On the under 16 and when parental approval would  
26 be required. That is something that our current regulations already  
27 addressed. Generally, it's under 13, you need parental approval.  
28 And we would generally align with that framework if opt-in consent

1 was included in this framework as well. So, it's generally under  
2 13, you need parental approval. 13 to 16 is when you would have the  
3 minor provide the consent.

4 **MR. WORTHE:** Great, thank you.

5 **MS. URBAN:** And board member Worthe, I was going to take your  
6 question about the exception, and I just wanted to clarify. Is your  
7 concern is about the last exception where there's a requested good  
8 or service in the businesses trying to avail itself of the  
9 exception that it has no reasonable alternative method?

10 **MR. WORTHE:** Yeah, I mean, listen, I just, when I read them the  
11 first time, the first year is super clear, right? And the fourth is  
12 just has, I just want to spend time with it and hear, get feedback  
13 on it to understand if it's, we're not going to create an opening  
14 that we're not intending to have. That's all. I don't think there's  
15 anything to do about it right now.

16 **MS. URBAN:** Sure. So, if it's helpful, I can walk through some  
17 of the way that we constructed this. So, with this particular  
18 exception we drafted it to account for circumstances in which a  
19 business literally cannot provide the requested product or service  
20 without the use of ADMT. And we did take several steps, drafting  
21 the exception to try to avoid potential abuses, including by making  
22 it a rebuttable presumption that a business does have a reasonable  
23 alternative method of processing if either the business or anyone  
24 in its industry or a similar industry is using or ever has used an  
25 alternative method to provide even a similar good or service. So,  
26 it starts with a rebuttable presumption, effectively, if you or  
27 anybody else like you has done it without ADMT. And then in order  
28 to rebut the presumption, the business would have to demonstrate

1 one of the following three things, the futility of developing or  
2 using an alternative method of processing. Two, that the  
3 alternative method would not be as valid, reliable, and fair. Or  
4 three, that developing an alternative method would impose extreme  
5 hardship upon the business. And there's much more detail about each  
6 of those, including with some examples within the draft regulatory  
7 text. But those were three ways in which we were hoping to cabin  
8 abuses that might otherwise arise from businesses saying that they  
9 just cannot provide a good or service without the use of ADMT. And  
10 then finally, there's a requirement that the business that's  
11 relying upon such an exception document, how they meet those  
12 requirements and be able to provide it to the agency within five  
13 business days of the agency's request. We're of course, open to  
14 feedback on tightening those exceptions, and we think that we could  
15 get great public feedback on those points as well.

16 **MR. WORTHE:** Yeah, I think that would be fine. I did notice the  
17 five business days, that comes up pretty quick on you. If you're  
18 operating a business and you're looking one direction and you get a  
19 letter in the mail that maybe someone's out two days later, they  
20 get to it. So, I would just ask people to think about that  
21 timeframe. Because I don't know that going to 10 business days is  
22 going to really make a big difference to us. But that's just my  
23 thought on that.

24 **MS. URBAN:** Thank you, Mr. Worthe. Other comments, questions  
25 from the board. Mr. Mactaggart, thank you very much. And then, Ms.  
26 de la Torre.

27 **MR. MACTAGGART:** Okay. So, I have a couple of overarching  
28 comments. One is, so going back to the section we were just talking



1 about, I'm a big fan of yes, including the behavioral advertising,  
2 including the under 16 in the training. So, let's get feedback on  
3 that. So, I think that's, I would include those, the two and three.  
4 So, three, I have the same comment I had with the risk assessment.  
5 I think we need to tighten up that profiling language. Because  
6 right now it's just basically you're using apps out in the wild.  
7 So, I'd go with the European systematic monitoring kind of concept.  
8 And then two I have-- you know this is about the jobs and about  
9 employees. And I, many times when we were in the election to get  
10 this passed, I would say the same thing, that we all have an  
11 interest in knowing if the delivery driver is blowing through red  
12 lights or stop signs, including the delivery driver. So, there  
13 shouldn't be monitoring of employees that the employees are not  
14 aware of. But I'm very, I don't know where we're getting this, for  
15 me anyway, I'm very uncomfortable with the notion that all of a  
16 sudden we're going to say in, everybody does business in California  
17 that your employees can opt out of essentially your HR and work  
18 process. So, think about just truck drivers, right? There's  
19 software that monitors whether they've slept enough or they're  
20 driving too fast, or did the pilots land the plane in the right  
21 part of the runway or are the delivery drivers showing up on time?  
22 Are they running too fast? Are the call center people being rude  
23 and saying terrible things and are bank tellers stealing or  
24 bartenders stealing money? I mean, there are all sorts of processes  
25 that we've developed in the workplace to make sure that we serve  
26 customers fairly. That you can think about a world I've always  
27 believed that one day we're going to extend this, the reach of this  
28 law to government agencies and to nonprofits. This would allow, if

1 you ever did extend it to cops, the cops could say, hey, I'm not  
2 going to get, don't put that camera on me. I don't have to be  
3 monitored anymore. And that ADM stuff that's going to go through  
4 all my millions of hours of cop video, no, we don't have to do that  
5 now because we can opt out. And so, I'm very, I think that I  
6 actually would strike this. I don't agree that employees should be  
7 able to opt out of the business' software, whatever the workplace  
8 is, but they should absolutely know that it's going on so that if  
9 you're on the work computer and you think it's, you're not being  
10 monitored. No, actually, it's your work computer. We're monitoring  
11 you. And I think there's a lot of history about if it's a work  
12 device, it's the businesses. If it's your personal device, and they  
13 should not, I'm super committed to the fact that if they're outside  
14 of work or on their own phone, of course the business should not be  
15 monitoring them. And that's, I got to find that offensive. But  
16 equally, I think we're going to break a lot of stuff if we all of a  
17 sudden say to every employee who works for a company that does  
18 business in California, you no longer have to be subject to all the  
19 processes that are part of your job. I just think it's a huge step  
20 to take. And so, I'm not a fan of number two.

21 **MS. URBAN:** Can I respond to that before you move on Mr.  
22 Mactaggart? I think this is a really important point. I think it is  
23 complicated and that leads me to desire public input on it. Mr.  
24 Mactaggart mentioned, for example, truck drivers, Professor Karen  
25 Levy has a paper or a series of papers that rely on her research  
26 with long haul truck drivers and the intense surveillance that they  
27 undergo. And it's not clear that that in surveillance is well  
28 matched with things like safety and so forth. But it is very

1 difficult for the drivers. I see that as a bit of an analogy to our  
2 limited capacity to know exactly how these things will play out  
3 towards the outcomes that we desire and that our statute requires  
4 of us. I don't think that trucking companies are trying to make  
5 life miserable or undignified or in fact unsafe for truck drivers  
6 with the surveillance, but the result of some of the techniques  
7 that she studied was not as positive as you might think. And so, I  
8 think that it's complicated. I also think that when I read this  
9 language I certainly saw some of the questions you're raising Mr.  
10 Mactaggart. I also saw it a little bit through the lens of the  
11 pandemic and the fact that home and work became very porous for a  
12 lot of people in a way that has not necessarily changed. Again, I  
13 think it's complicated. I think the line drawing is complicated.  
14 And I think the subcommittee had, the staff have done a really good  
15 job sort of within an initial pass. And I would really like the  
16 opportunity to have more in-depth feedback, conversations with  
17 staff ultimately with an eye towards hearing from the public and  
18 from experts. Absolutely. So that's, I think these are really  
19 valuable questions. I would not be ready to make a decision without  
20 more input that we would get through other channels. And I  
21 apologize, I think maybe Ms. Shaikh had, did you have something  
22 sort of technical to respond with and then Ms. de la Torre?

23 **MS. SHAIKH:** Yes. I just wanted to raise that this is a  
24 threshold, one to chair Urban's point. This is an area where staff  
25 identified particular vulnerabilities of employees. It is much  
26 harder to leave your workplace if you're being subject to intensive  
27 profiling than to just leave a website. And so, this was meant to  
28 address that specific vulnerability in the workplace. One thing

1 that I also wanted to flag is that this is, this would interact,  
2 and we foresee that this would interact with some of the exceptions  
3 built into the framework. And so, for instance, if you are  
4 profiling your employees as part of cybersecurity to make sure that  
5 they are respecting access controls and not trying to circumvent  
6 them, so long as you are complying with section 7002 and have  
7 conducted a risk assessment and are only using that information for  
8 the purposes of the exception, you would not be required to provide  
9 an opt-out. However, there are instances where profiling of  
10 employees is not simply for security. It's not simply for fraud  
11 prevention. And those are the instances that we are trying to get  
12 to. So, for instance, as part of a workplace wellness program, if  
13 you are tracking your employee's movements, they should have the  
14 ability to opt out that would not meet one of the exceptions listed  
15 in the four under section 7030(m). And those are the instances  
16 again, where if you're an employee, you're particularly vulnerable  
17 and you should have the ability to say, I would not like to be  
18 subject to profiling and not be discriminated against for  
19 exercising that right to opt out.

20 **MS. URBAN:** Thank you, Ms. Shaikh. Ms. de la Torre.

21 **MS. DE LA TORRE:** Thank you. I wanted to stay on this topic of  
22 employees, independent contractors to applicants and students. I  
23 actually have her presentation from Professor Levy that Mr. Vin  
24 referred to and I this is years ago, right? Like, I don't know  
25 what's going on right now, but this area of intrusive surveillance,  
26 it's concerning and it's concerning as it relates to employees. And  
27 I think that there's broad support within the board to create octal  
28 rights around intrusive surveillance. I want to also be mindful of

1 this scope because we define ADMT to mean basically technology and  
2 many, if not all of the decisions that employers make on their  
3 employees will use some type of profiling. And I don't see  
4 necessarily getting involved in decisions on promotions, decisions  
5 on hiring and firing that do not involve intrusive surveillance as  
6 part of the scope of the agency. I know that there are other state  
7 agencies that are working to ensure that those are fair and there  
8 is no discrimination. And I applaud those efforts. I just want to  
9 make sure that our agency sits in the lane where I think we belong,  
10 which is more that intrusive surveillance space. So, I will  
11 appreciate if staff walked us around how this really works for  
12 employees, also independent contractors. I think independent  
13 contractors takes it even one step farther. Mr. Mactaggart make  
14 reference to some of the businesses that use extensively  
15 independent contractors. To what degree should those independent  
16 contractors have an opt-out drive from the use of technology  
17 basically? And students is another one that I was thinking about  
18 because obviously I teach, and so the example that came to mind for  
19 me in terms of use of technology. I take role. Every day at the  
20 beginning of the class, I see who is there and who's not. I can do  
21 it on a paper, or I can do it on Canvas, which is the system that  
22 my university uses. It's just more efficient to use technology to  
23 do that. And it will impact my decision on the grade in terms of  
24 who is presented. And obviously I know the US system is not within  
25 the scope of what we regulate, but my point, the point that I'm  
26 trying to make is that often technology is used simply because it's  
27 sufficient. And if it's sufficient and it's transparent and it's  
28 fair, I don't know that there needs to be an out right around that.

1 Like Mr. Mactaggart a little wary of going into that space. So, if  
2 we could maybe get some specific examples on how the staff is at  
3 this point thinking about employees, independent contractors, job  
4 applicants and students, and not the intrusive surveillance, but  
5 just technology in general. What happens when technology is used to  
6 profile and let's remember, profile is defined to me evaluating any  
7 aspects concerning the natural person's performance at work? So,  
8 technology is going to be used to evaluate performance at work.  
9 Right. I will appreciate that. Input and feedback. Have you thought  
10 through a specific examples where this will be triggered when  
11 there's no intrusive surveillance?

12 **MS. URBAN:** Thank you, Ms. de la Torre. Ms. Shaikh.

13 **MS. SHAIKH:** Absolutely. So, I think it's helpful that this is  
14 not about just any use of an employee's personal information. You  
15 would specifically have to be profiling them, which has a specific  
16 definition under the statute and that we would leverage under the  
17 regulations. One thing that I'd like to flag in terms, I don't know  
18 if there necessarily should be a distinction between employees and  
19 independent contractors and job applicants. The statute doesn't  
20 make a distinction across these three categories in providing these  
21 individuals with privacy protections. And particularly because in a  
22 gig economy, a lot of individuals are functioning as independent  
23 contractors. They should still receive similar privacy protections,  
24 particularly if they're being subject to profiling. And then on  
25 examples, I think one example that could be helpful to, again,  
26 explain why job applicants independent contractors, these  
27 individuals should be part of this framework. So, for instance, if  
28 you are applying for a job and you receive a job interview, if as

1 part of the job interview, the hire wants to use some sort of  
2 emotion recognition technology to analyze your personality as part  
3 of the job interview process, you should be able to opt out of that  
4 type of intrusive profiling without losing that job opportunity,  
5 without being discriminated against for exercising your opt-out  
6 right. That's an example none of the exceptions would apply. That  
7 is the type of profiling that we've seen of job applicants that we  
8 think does warrant privacy protection.

9 **MS. DE LA TORRE:** But I think that your sample goes exactly to  
10 what I already said, like intrusive profiling and I support that.  
11 Is there any example that doesn't involve intrusive profiling that  
12 you could relate to employees, independent contractors or  
13 applicants or students, or they should have a right to opt out?  
14 That's kind of the example that I'm looking for.

15 **MS. SHAIKH:** I think it would be helpful to understand what you  
16 mean by intrusive profiling. We've given a lot of examples in the  
17 draft regulatory framework of the types of profiling that would be  
18 subject to the requirements. So, for instance, keystroke trackers,  
19 productivity or retention monitors, video or audio recording, live  
20 streaming, facial or speech recognition, automated emotion  
21 assessment, location trackers, speed trackers, web browsing, mobile  
22 application, and social media monitoring tools. And so, we think  
23 there are a lot of examples already provided in the draft framework  
24 to guide businesses on the types of profiling technologies we are  
25 thinking through. But if there are things that you think are  
26 missing or that are not appropriately addressed, we're happy to  
27 take that feedback.

28 **MS. DE LA TORRE:** Right. But profiling is defined to mean any

1 prediction concerning an actual person's performance at work,  
2 right? Like any prediction related to performance at work that is  
3 intermediate through technology will become part of this framework,  
4 right? With the caveat that there might be an exception. And I  
5 think that one of the considerations for us is whether we tailor  
6 the right to our concern, which I absolutely agree on the intrusive  
7 profiling examples that have been shared. And we don't have  
8 intrusive profiling define in the law as you know, but we could  
9 define it and then tailor a ride around something that's more  
10 concrete. It sounds to me like you don't have any particular  
11 example of a situation that will not be intrusive to share.

12 **MS. URBAN:** Can I just ask Ms. de la Torre to clarify your  
13 question. This is really helpful. Thank you. It's very helpful.  
14 Would it be helpful to have examples that are sort of tailored to  
15 these different roles that people play? I can certainly imagine  
16 intrusive profiling that is specific to a student, a student who is  
17 on a campus, for example. We know that some schools are now trying  
18 to keep track of students in order to have early interventions to  
19 be sure that they don't fall behind or fall out before they  
20 graduate. And I expect that people have positive associations with  
21 that. But also perhaps, negative associations with that. So that  
22 would be one example of something that is in a general umbrella  
23 sense, could be seen as intrusive profiling. It's quite specific to  
24 a certain social context and people may have different views on  
25 whether it should fall within this framework or not. And so, I  
26 would first be interested to see if that is the sort of thing  
27 you're thinking about. And then secondly if that were something  
28 where, and I always fear I'm going to mess up with OAL, but if we



1 were to have examples or something like that, that would help, I  
2 would find it valuable again to sort of get public feedback on  
3 things that people can sort of hold on to, if that makes sense in  
4 terms of their own social context.

5 **MS. DE LA TORRE:** Right. That was really, really helpful. So,  
6 the way I'm thinking about this is because this is a staff draft  
7 that is coming back to subcommittee, is how do we as a subcommittee  
8 improve on the initial draft? And one of the things that I was  
9 thinking, I mean, and this is strategic, right? How do you get to  
10 where you want to go in terms of offering the right, and there's  
11 the possibility that I think the staff has taken, which is they  
12 find a very broad ride with a rather broad exception, or there's  
13 the possibility of tailor the right to the concern and they have a  
14 match narrower exception. And I see advantages and disadvantages to  
15 both. And that's why I've been thinking in terms of what, if you  
16 were to tailor the right more to the concern, and all of the  
17 examples that I could come up with will fall in this category of  
18 something that is not just the profiling that we are concerned  
19 about. It's just a specific kind of profiling. We're not  
20 necessarily concerned about the use of technology to do a 360  
21 review of an employee. That's not something that we necessarily, I  
22 mean, that logistically more efficient. And I don't think it's  
23 concerning. And one of the factors here to me as well is how do we  
24 communicate out to the public? I think that one of the successes of  
25 CCPA was to create a ride around opt-out of sale. The reason being  
26 is that cell has an intuitive meaning for people. And so, if it's a  
27 right that's based on opt-out and its name around something that's  
28 intuitive, I think it will increase the chances that people

1 actually will exercise that right. So, tailoring right to opt out  
2 in the space of automated decision making to something that's more  
3 precise, like intrusive automated decision making, sorry, intrusive  
4 profiling or specific automated decision making I think also will  
5 help communicate to consumers the importance of exercising that  
6 right. So, I don't, I'm hoping that that helps you understand where  
7 I'm mentally, right? Like, do we tailor the right to the actual  
8 concern? To me, profiling, that's some form of intrusiveness in the  
9 profiling and in automated decision making is lack of transparency,  
10 number one. And number two, lack of human intervention is something  
11 that still people care a lot about. And then maybe the exception in  
12 the backend can be narrower in the subcommittee version because we  
13 have tailored the right more clearly. So that's where my mind is,  
14 and I literally couldn't come up with an example of profiling that  
15 will not be intrusive, that I would be necessarily concerned about,  
16 or I think the public will not be concerned about. So maybe staff  
17 has that kind of, they have dedicated more time to it. So perhaps  
18 they had some examples that I was missing.

19 **MS. URBAN:** Thanks so much de la Torre. I just wanted to check  
20 a little bit on process, just so I understand. My understanding of  
21 the draft is that the subcommittee has done a lot of work on it and  
22 has had a lot of input. I just want to be sure that I'm  
23 understanding that correctly because it does indicate something  
24 about maybe where we want to go next with the draft.

25 **MS. DE LA TORRE:** Right. So, this is a staff draft. I think  
26 there was a little bit of a miscommunication when it went out. It  
27 should have come out with a staff draft at the beginning and be  
28 labeled that way. When we realized that it was not labeled, it was

1 little too late to relabel because of the processes that going to  
2 getting anything on our website that I understand now takes two  
3 weeks. So, we expedited it because we wanted to make sure to help  
4 accelerate the process. But we have not had a full opportunity to  
5 review it as the subcommittee. And my expectation is that it will  
6 come back to subcommittee so that in the next board meeting we'll  
7 present that subcommittee version of this job.

8 **MS. URBAN:** Thanks Ms. de la Torre, Mr. Le, I just, sorry, Mr.  
9 Mactaggart, I know you're there. I just want to give Mr. Le a  
10 chance.

11 **MR. LE:** Yeah. So, I think the idea was the subcommittee would  
12 see it one more time, but considering how much input the rest of  
13 the board has maybe, yeah, I'm just worried about timelines. So, I  
14 know I would be supportive of maybe just letting the subcommittee  
15 hold onto it for like two more weeks and then releasing it to staff  
16 or yeah, just so we can get the final subcommittee version out. But  
17 happy to do whatever the full board decides if we want to get it  
18 out today for individual feedback or just let us hold it onto it  
19 for a little bit longer. But yeah, I mean, I've seen there's a lot  
20 of input, so maybe staff would be best address the individual board  
21 members' input.

22 **MS. URBAN:** Thank you, Mr. Le. I mean, I'm certainly hankering  
23 to have input, substantive input, even more than we could probably  
24 have in a conversation in a public conversation. I really, I know  
25 I've said this a couple times, and I wish I could come up with  
26 better words rather than just repeat, repeat it. But I really  
27 commend the subcommittee for this thoughtful, detailed work that  
28 absolutely it's obvious that it draws upon expertise in the

1 subcommittee and has been under development since the September of  
2 2021. And I do think that the others on the board also are very  
3 invested in this and would like to provide feedback. So, I would  
4 prefer a shorter timeline to getting there, particularly after the  
5 really thoughtful and robust discussion we've been having today,  
6 listening to other board members as well. So anyway, I thank you  
7 both for the notes on what is happening and where it's going. And  
8 I'll ask Mr. Laird, did you have a comment on that? And I'm so  
9 sorry, Mr. Mactaggart, then you're next.

10 **MR. LAIRD:** Yeah, apologies. I just wanted to make one  
11 clarification. And that is, I would have to disagree that there  
12 wasn't an opportunity for the subcommittee to provide feedback. We  
13 actually had multiple rounds of discussions with the subcommittee  
14 on this draft. So, I just wanted to make that clear that we've been  
15 very engaged on this from a staff perspective.

16 **MS. URBAN:** Thanks, Mr. Laird. Alright, Mr. Mactaggart.

17 **MR. MACTAGGART:** Yeah. I think with respect to this employee  
18 thing if you can, if you look at the definition of profiling in  
19 ADM, this literally would cover a badge that badged you into work  
20 that said, I was here. So, when you're going to look at someone's  
21 attendance and you can say, were they there or not? I mean, this is  
22 the most basic kind of employee HR stuff this covers. And so, I  
23 think, to Ms. de la Torre's point, which I think is a good  
24 framework, I'll give you two examples that we used that I think  
25 most people, that's kind of intrusive. So, if a business knows,  
26 it's going to maybe be having some layoffs and starts to say, okay,  
27 which of our employees might be having medical problems? They're  
28 going to going to be expensive, so we can get them off of our

1 insurance. We'll lay these people off. That feels unrelated to work  
2 and super intrusive, right? Or let's say there's a unionization  
3 drive, and the business is like, let's make sure that we track down  
4 the employees that we think are going around to different, other  
5 employees houses after work to do like a card check situation.  
6 Let's fire those guys. Again, super intrusive. But my point with  
7 most of this stuff at work is this is just work. You know, if I'm  
8 in a big call center and there's software saying, oh, you're taking  
9 two calls an hour, and this guy's taking 27 calls an hour, and the  
10 average is 27, I don't, why should we all of a sudden start saying,  
11 okay, people get to opt out of this, this is not what, we're a  
12 privacy agency. And we're not, I don't think an HR agency coming  
13 around to say that all the processes that business has developed  
14 and maybe there's a paper out there saying that the truck drivers  
15 are surveilled too much. But at the same time, I'm pretty happy  
16 that the truck driver, some alarm goes off if he or she's driving  
17 too many hours or as a consumer drives on the roads. And I think  
18 that that safety aspect goes forever. And I don't think that the  
19 exceptions in (m) (3) or (m) do it. So, I feel like I'd love to get  
20 some more feedback from staff if they could come back and maybe  
21 think about it from a, one way to think about it, is this in a  
22 reasonable expectation of an employee that they would be monitored  
23 this way? Sort of, we have reasonable expectation somewhere else.  
24 You know, it's reasonable to me to think that I'm on a work  
25 computer that the work's going to be monitoring my computer, you  
26 know? And so, versus totally unreasonable, unexpected, unknown. So  
27 that might be one way of looking at it. But I think we we're  
28 opening a huge can of worms if we leave this language as it is.

1           **MS. URBAN:** Thank you. Mr. Mactaggart, sorry. Because I found  
2 that the truck driving research interesting, the surveillance was  
3 in no small part to get them to go faster and to like restless. But  
4 I was wondering, Mr. Mactaggart, about your thoughts on the legal  
5 or similarly significant effects as a threshold for this, you know,  
6 I'm thinking of your call center employee who's not answering calls  
7 and, I said I mentioned my sort of general concerns with that  
8 approach. But are you thinking that a threshold that would try to  
9 capture the things that essentially to be very, very... not detailed,  
10 but the things we care about and the things we don't care about,  
11 separate those out a little bit more? Is that sort of what you're  
12 thinking?

13           **MR. MACTAGGART:** Yeah, I mean, I like the, with the caveat that  
14 Mr. de la Torre made about the employment or independent  
15 contracting within the decisions to produce legal consequences, I  
16 think, because I do think we have a huge problem with the gig  
17 economy on that one. But in general, I think that's a good  
18 threshold. And I don't mind the notion of, I actually find it  
19 offensive if you're going to try and find out who's pregnant. So,  
20 you can fire them in before the lay, before they get pregnant,  
21 because of the childcare costs, or they're going to take it a  
22 leave. That's the kind of stuff. And I do think that would be  
23 covered by some form of like, reasonable expectation. So, I like  
24 the threshold of the legal or similarly significant effects if it's  
25 a little bit amended. I like that. If its massive surveillance in a  
26 public area, I like, I'm a big, huge fan of the behavioral  
27 advertising. It's just this one at work, I think is, has got me  
28 really pausing because I think we are going down a road that has

1 severe consequences.

2       **MS. URBAN:** Thank you, Mr. Mactaggart. My ears are open for  
3 further comments. My eyes are also on the clock. And my thoughts  
4 around the understanding that people might be hungry, but I wanted  
5 to check in to see where the board thinks the conversation might  
6 be. I'm still in favor of an approach where we take this good work,  
7 we do something like the risk assessments, board members like Mr.  
8 Mactaggart, who has a lot of sort of detailed thinking could offer  
9 this one way to staff. And they staff could come back to the board  
10 with more detail, hopefully being able to get, again, like more  
11 outside information on a relatively soon from economists and  
12 stakeholders. So that's sort of where I still am. I'm also happy,  
13 because I know we haven't talked about all the aspects of the ADMT  
14 draft. So, there may be more to talk about. Ms. de la Torre and  
15 then Mr. Mactaggart.

16       **MS. DE LA TORRE:** Let's Mr. Mactaggart go first. And my  
17 question was on the logistics, and you answered it.

18       **MS. URBAN:** Go ahead, please.

19       **MR. MACTAGGART:** Yeah, well chairman, I have sort of two more  
20 kind of areas I was going to talk about, but if you'd like to, it's  
21 up to you. I wasn't too sure whether you want to take a break or  
22 not, but I can just kind of mention what they are, if you'd like.

23       **MS. URBAN:** I'm good, but I am aware that everybody has  
24 biology, so Mr. Worthe was nodding. And staff are we okay to  
25 continue the conversation? Okay, great. Please go ahead. Okay.

26       **MR. MACTAGGART:** Okay, then my next section is in M the  
27 exceptions and it's, I think, appropriate to say you don't have to  
28 allow the consumer the right to opt out if it's to provide a good

1 or service that they're specifically requesting, but then the whole  
2 rubric below that in order to take advantage of that. So, Mr.  
3 Worthe's asking for a car, I'm getting him the car there. I need to  
4 use my ADMT to get him the car. He wants to opt out of it. And I'm  
5 like, I can't opt out. I can't get you the car if you opt out of  
6 the service. But now to do that, I have to demonstrate all these  
7 things that there's no other reasonable alternative. And I  
8 struggled to figure out what that's doing for us for privacy. They  
9 have a system. Amazon gets you your package and it assigns the  
10 driver somehow, and it's all ADM. And at some point, your package  
11 shows up in the middle of the night, or it shows up the next  
12 morning, and it's up to them, and I want to opt out of that. They  
13 then have to go through this whole thing saying that no one else,  
14 there's no other service that can work. There's no reasonable  
15 alternative. They have to show you why there's no reasonable  
16 alternative. Now think if you're a small business, you're buying,  
17 again, a software that does whatever, it turns on your utilities or  
18 saves utilities. You install this, someone says they want your 10,  
19 wants to opt out or something that you have to demonstrate that  
20 there's been no other system out there. You just bought a package  
21 of software. So, this whole set of kind of qualifiers for the  
22 exception of providing the good or service specifically requested  
23 by the consumer, it didn't make any sense to me. And it's a ton of  
24 work to demonstrate why the business which has, because there's  
25 this presumption here that automated decision making is terrible.  
26 Like when you look at this, there's this presumption if you read  
27 this, that it's a bad thing and I think it's a bad, it's a tool or  
28 a weapon, right? It's a bad thing depending on how it's used, not



1 necessarily a bad thing. And this, I've found the whole four A  
2 through E on page 10 and 11, just to be very focused on sort of a  
3 business having to justify why it wasn't letting the consumer opt  
4 out. And much of this is going to be like, hey, it doesn't work.  
5 Our thing just doesn't work if you want to opt out of this. And so,  
6 I think this is problematic. And I'll stop there. I have one more  
7 thing after this, but I'll stop there for now.

8 **MS. URBAN:** Okay. And thanks Mr. Mactaggart. So, there's the  
9 substantive problematic ness of the example, which is really  
10 helpful. And then there's the question of process around that. And  
11 so, I'm wondering if the sort of list of affirmative requirements  
12 weren't there for some, I don't know, set of examples or some sort  
13 of defined things that would be more, that would be less  
14 problematic from your point of view. I'm just trying to think. I  
15 hear what you're, I'm trying to think in like how the framework  
16 might be set up. And Mr. Worthe pointed out that another option or  
17 another outcome would be a big hole that we didn't intend in the  
18 regulations as well.

19 **MR. MACTAGGART:** I guess for me, if I'm asking for the good, I  
20 want the thing delivered to my house, I want the car to come to my  
21 street corner. I want the food to be delivered, I want to get the  
22 recommendation for the restaurant, that feels very different.  
23 Again, that goes back to the, even in 121 and in the actual  
24 statute, with respect to the process, you can say, don't process my  
25 sensitive personal information, but you can't say it if it's  
26 necessary to deliver the good that you're requesting. And we back  
27 in the statute, we just tie it to the reasonable expectations of a  
28 consumer. And I don't know why we wouldn't do that here. And to

1 demonstrate that there's, it's futile to use an alternative method  
2 of processing, just think about what we're asking a business to do.  
3 And I don't know how that gets us any closer to privacy. It's a lot  
4 of work for the business, but I don't think it advances the cause  
5 of privacy. What you want to make sure is they're not using an  
6 excuse to say, oh, well, we really need to surveil you 24/7 in  
7 order to tell you what news you want to see. Well, that's not  
8 right. So, you want to make sure that this exception is in fact  
9 necessary to provide you the good or service. But we could, that  
10 you just say it has to be necessary and you have to be able to show  
11 that it's necessary if we ask you.

12 **MS. URBAN:** So that is the framework, the process of the  
13 framework as to sort of what you have to do as a default  
14 affirmatively. That was what I was hoping to understand. I think I  
15 understand the thought now Mr. Mactaggart. Ms. Shaikh, did you have  
16 a response just to that, Ms. de la Torre is in the queue?

17 **MS. SHAIKH:** Absolutely. And this is actually quite simple. My  
18 feedback is that this is the exact line that staff has been trying  
19 to navigate, which is how to prevent abuse of this exception and  
20 ensure that surveillance and profiling is not simply happening just  
21 because it can. But that it is in fact necessary to provide the  
22 requested good or service. And so, this is one where we would  
23 particularly appreciate having feedback like this from board,  
24 individual board members to understand how we can find that right  
25 line. You know, the subcommittee has gotten the chance to give us  
26 feedback on the factors that are currently in the proposed  
27 framework, but again, given board members, board member  
28 Mactaggart's feedback, I think it would be helpful to also get

1 individual feedback from board members as well.

2 **MS. URBAN:** Thank you.

3 **MS. ANDERSON:** I'll second that.

4 **MS. URBAN:** Ms. de la Torre, oh, sorry, Ms. Anderson, I believe  
5 you said I'll second that for the record.

6 **MS. ANDERSON:** Exactly.

7 **MS. URBAN:** Ms. de la Torre.

8 **MS. DE LA TORRE:** So, a couple of things here. Number one this  
9 carve out is to provide the good or perform the services  
10 specifically requested by the consumer, which to me, reads as not  
11 applicable in the context that we mentioned before of employees,  
12 independent contractors, job applicants, and students, because they  
13 don't request services. So, it doesn't completely address, to me,  
14 in my view, it doesn't really address the concerns around that  
15 broad opt out right in those contexts. And again, I just want to  
16 highlight, I do support a right for employees contractures, the  
17 applicants to opt out of intrusive surveillance or intrusive  
18 profiling. And then the second thing is that it fundamentally, with  
19 it fundamentally does this approach. And that's why I want to  
20 rethink it with it fundamentally does, is it reverses the burden of  
21 the proof. If you are using technology under this framework, which  
22 the definition of AMDT is using technology to make a decision, and  
23 it's not that the technology is the only decision maker, but you  
24 aiding your decision or to profile, you actually have to prove that  
25 that's not detrimental. And I think that in most cases, the use of  
26 technology is just efficient. It's not detrimental, it's efficient.  
27 And so, to me, there's a distinctive advantage of crafting the  
28 rights, tailoring the rights around our specific concerns is

1 there's an advantage in terms of communicating out to the public so  
2 that they understand what we really are talking about, and they  
3 take the steps that they need to take to opt out, because this is  
4 still an opt-out framework. And then there is an advantage in terms  
5 of lowering the cost of compliance because you as an organization,  
6 you're going to have to go through these analysis to make sure that  
7 you don't run afoul of the rules. And that has a cost. And I was  
8 talking with Mr. Le on these, and I'm not sure, I'm the only one  
9 here that's an immigrant, so I'm not sure that I represent the  
10 perspective of Californians as well as others, including the staff  
11 that might be raised here. But to me, this is the piece of the  
12 rules that is a little you know, based on your conceptualization of  
13 what individuals should have as rights, granting rights on  
14 individuals is not going to necessarily resolve for the fairness of  
15 the system. To me, the risk assessment is a better tool to resolve  
16 for the fairness of the system. Granting, granting rights on  
17 individuals is about whether we think this particular person should  
18 have a right or not. And it does, it can have a benefit for  
19 society. I do support people having a right to opt out of intrusive  
20 surveillance. I do support people having a right to human  
21 intervention. I think these things are really, really important and  
22 should be clearly called out in our framework. To me in a way  
23 that's more easily accessible than the initial draft that staff has  
24 provided. But at the same time, I don't know that I support the  
25 idea of just opting out of technology because it does have a cost,  
26 and I don't see the benefit. I don't see the privacy benefit to it.  
27 So, to me in a way you could compare these to another part of US  
28 culture, and I'm a citizen now, so I should consider myself

1 included, but it is one that is difficult for me to kind of wrap my  
2 mind around either though. I have been here for 20 years, just the  
3 right to wear arms. This country has this attachment to the idea  
4 that individuals have to have a right to wear arms that as society  
5 we cannot break through, even though we know that as a society,  
6 there is a cost for everybody. So maybe there's more support in  
7 California for strong individual rights that have a cost for  
8 society than that I will have as somebody who grew up in, I think a  
9 region where public interest is something that is still very much  
10 considered and not so much individual rights. So, to put my ideas  
11 in a nutshell is I will prefer to draft opt out rights around  
12 concerns that are clear and have a smaller exception on the back  
13 end. I think it gives us more control on what we are granting the  
14 rise as opposed to this system where actually the businesses have  
15 the control after they read the exception even though I know the  
16 staff has done a lot of thinking around how to make sure that this  
17 is not a humongous carve out that organizations can use to deny  
18 rights. But we will have more control if we actually define it in  
19 the front end. And also, I think it will be a better experience for  
20 consumers, because you want to be able to communicate this out. One  
21 of the missing opportunities to me in this framework is that we  
22 don't name the rights. All of our rights in CCPA have a name that  
23 we choose, and then we ask businesses to use, right? Like, I have a  
24 right to opt out of a sale, that has a meaning. I would love this  
25 to be set up, or I think there will be a benefit in setting this up  
26 as I have a right to opt out of legal or similar significant  
27 decisions that are, sorry, it's after 12 and we're all hungry and  
28 I'm not, that... am I struggle to just find the correct words?

1           **MS. URBAN:** Yeah, Ms. de la Torre, if you are hungry,  
2 everybody's hungry. Is this what you're thinking? That one, another  
3 approach would be to narrow the rights, but also narrow the  
4 exemption.

5           **MS. DE LA TORRE:** Exactly.

6           **MS. URBAN:** And name all the rights.

7           **MS. DE LA TORRE:** Exactly. Right. And so, if we name the right,  
8 if we say this is your right to opt out of intrusive profiling, and  
9 we call it intrusive profiling, then industry will have to say,  
10 hey, you have a right to opt out something that's named intrusive  
11 profiling, that has an intuitive meaning to the consumer  
12 immediately. If we do not set the name of the right, there's, first  
13 of all different organizations are going to use different names,  
14 which is going to be confusing to the consumer. But second, I think  
15 we are missing that opportunity to kind of push for compliance  
16 because the label has a meaning and organizations will choose to  
17 stop activities so that they don't have to use a label that they  
18 don't find beneficial for their brand. So that's the other major  
19 improvement that I would like to bring back as part of a  
20 subcommittee draft of these ADMT rules.

21           **MS. URBAN:** Thank you. Ms. Shaikh?

22           **MS. SHAIKH:** Yes, thank you for the feedback board member de la  
23 Torre. One thing that I would like to flag is that when we use  
24 words like intrusive or even the word surveillance, neither of  
25 those terms are defined by the statute. And I do think those are  
26 quite hard terms to define as and meet the APA clarity standard.  
27 And so that's just something for the board to keep in mind, which  
28 is defining a word like intrusive is actually going to be quite

1 difficult. And it's going to involve the same type of line drawing  
2 that we have with the thresholds and the exceptions. And so, I just  
3 wanted to flag that we can't use words like that without also  
4 defining them. And so, we might end up in a very similar place,  
5 which is again, what's in, what's out and how to scope it. But you  
6 know, we're happy to, of course, to take that feedback. And if the  
7 board feels very strongly about going in that direction, we would  
8 need a clear direction of how to define these types of terms from  
9 the full board.

10 **MS. URBAN:** Thanks so much Ms. Shaikh. So, I really value what  
11 Ms. de la Torre just said, and this sort of the thinking about the  
12 framework I find really helpful. I remain of the view that in terms  
13 of process, this is complex, it's nuanced. There are a lot of  
14 trade-offs. There's a lot of really good, thoughtful, detailed deep  
15 work and the drafts that we have, and I think that we've aired  
16 those drafts well here. So, I would like to suggest a motion,  
17 again, that is similar to the risk assessments. And then Mr.  
18 Mactaggart could have discussions with staff. I could, Mr. Worthe  
19 could, Ms. de la Torre, could, Mr. Le could, and then staff would  
20 bring back to us with explanation sort of where collectively we are  
21 at that point. So that's what I would like to do, Mr. Mactaggart  
22 before we break for lunch. And I'm also wondering how people are  
23 feeling about taking public comment before lunch. I'm sure  
24 everybody's hungry, including the public but I'd like to give  
25 people a chance to respond. Because we've been thinking about this  
26 for several hours now. Mr. Mactaggart.

27 **MR. MACTAGGART:** Yeah, thanks. I'm fine with that approach of  
28 defining things. I do think you're, somewhat, you're going to have

1 to define, and I keep on saying I would tie it to reasonable  
2 expectations. But I do want to also in public, just before we sort  
3 of, because it feels like you're about to make a motion here before  
4 we close off, I also do want in public bring up, so the third area  
5 that I wanted to have the staff really take a look at is this  
6 notion of if the business has made a decision that results in the  
7 denial of goods or services. And so, this is in 70, this is in  
8 7031. And D talks about what happens if the business makes a  
9 decision that results in denial. And it's with respect to B1, what  
10 worries me a little bit is we going to create a world? Because then  
11 now the business has to get back to you. It has to tell you why it  
12 made, what the decision. And I want to make sure we're not causing  
13 businesses to hold onto a lot of information in order to get back  
14 to you in case you ask, it felt like we were, this could end up  
15 being something that was bad for privacy. You applied for a job,  
16 you threw your resume into the, whatever, the online service, you  
17 didn't hear back. But now, I don't know how that works. Every time  
18 they have 10,000 resumes, they pick for whatever, do they have to  
19 send back 9,999? You didn't get the job here. And those people get  
20 to now ask why. And so, I just want to be, I don't have a good  
21 answer right now because obviously people's jobs, we want to make  
22 sure that businesses isn't discriminating terribly against one  
23 particular protected class, but it also felt like this would create  
24 a ton of opportunity for business or requirement. Now businesses  
25 have to hold onto stuff they wouldn't normally hold onto. So, I'm a  
26 little nervous about that one.

27 **MS. URBAN:** Thank you, Mr. Mactaggart. I think that's a great  
28 question. And something for, I think there's a lot of nuance here.



1 Obviously as members of the board, we have a lot of thoughts and  
2 feedback. And thus, I remain where I have been on the process.  
3 Everybody stop me before I call for public comment, while I say,  
4 again, the motions that we're going to put on the table just so  
5 everybody's aware, one is to direct staff to advance the proposed  
6 cybersecurity regulations to formal rulemaking and authorized staff  
7 to make any of the necessary changes. Ms. Shaikh pointed out  
8 improved readability, clarity, et cetera. The second would be to  
9 have staff take back the information that they got today on the  
10 draft risk assessment proposed regulations and receive feedback on  
11 the draft risk assessment regulations from board members taking  
12 care to incorporate changes from the board during this meeting. And  
13 then the third one would be a very similar motion related to the  
14 automated decision making regulations, which would be to a motion  
15 to direct staff to take into account today's conversation in this  
16 public meeting and receive feedback on the draft from individual  
17 board members proposing a revised draft at a future meeting. And I  
18 know Mr. Le had a second idea, which was like a time period before  
19 it goes in and to staff sense. I wanted to acknowledge that as  
20 well.

21 **MR. LE:** Yeah, I think its fine. I mean, I get the, I quite  
22 enjoyed working with Mr. de la Torre and staff has been great in  
23 the subcommittee process, but seeing how much feedback you all  
24 have, I don't know if it's best for the subcommittee to be the one  
25 that's translating all of that into the next draft. So, I think its  
26 fine for the motion as you've described it.

27 **MS. URBAN:** Okay. Thank you Mr. Le. With that I would love to  
28 hear, we would all love to hear, I'm sure from members of the

1 public is, are there public comments on this agenda item? If so,  
2 I'd like to remind you to use the raise your hand function, if you  
3 are participating via the Zoom webinar and to press star nine,  
4 please correct me, Ms. Allen, if I got that wrong, if you have  
5 called in in order for Ms. Allen, our moderator to call on you. And  
6 a final reminder that you are limited to three minutes. Thanks very  
7 much.

8 **MS. ALLEN:** Okay, great. Yes, this is for agenda item 1, 2A, 2B  
9 and 2C, cybersecurity regulations, risk assessment regulations, and  
10 automated decision making technology regulations. If you would like  
11 to make a comment, raise your hand, of course, if you're on the  
12 phone by pressing star nine. And I will call on you. We're going to  
13 take-- we have several hands raised. So, we will take these public  
14 comments in turn, and we will start with Edwin Lombard. So, I'm  
15 going to unmute you at this time, and you'll have three minutes to  
16 make your comment. Okay. Edwin, you have been unmuted. Please go  
17 ahead.

18 **MR. EDWIN LOMBARD:** Can you hear me now? Okay. My name is Edwin  
19 Lombard. I came today to listen and see for myself if the agency is  
20 applying lessons learned from developing the last round of  
21 regulations. Unfortunately, I'm here, I'm hearing more of the same.  
22 We are requesting that the agency publish the timeline after this  
23 meeting. So small businesses know what to expect and how quickly  
24 the agency intends to move. As a representative of small business  
25 owners who rely on technology, including automated decision-making  
26 technology to remain competitive and better serve our communities,  
27 we feel compelled to make this board aware of the importance of  
28 ensuring small businesses are not adversely impacted by these new

1 regulations. Governor Newsom and the legislature have been thorough  
2 and thoughtful around guidance for AI and ADMT. While this agency  
3 charges forward without the transparency process or robust  
4 engagement with small businesses that will be impacted by these  
5 regulations, the agency has a longstanding pattern of ignoring the  
6 concerns of small businesses. I strongly encourage collaboration  
7 through ongoing dialogue between the agency and businesses of all  
8 sizes to develop effective rules that work for everyone. Thank you.

9 **MS. URBAN:** Thank you, Mr. Lombard. Ms. Allen?

10 **MS. ALLEN:** Yes. Thank you. Okay. We are going to ask Alex  
11 Torres. I am going to unmute you at this time. You'll have three  
12 minutes to make your comment. Are you there, Alex?

13 **MR. ALEX TORRES:** Yes. Can you hear me?

14 **MS. ALLEN:** Yes. Great. Go ahead.

15 **MR. TORRES:** Excellent. Thank you. Members of the board, Alex  
16 Torres here with Brownstein High at Farber Shrek on behalf of the  
17 Bay Area Council, we represent 320 of the nine County Bay area's  
18 largest employers. You know, picking up on some points that Mr.  
19 Lombard expressed. I am encouraged by the conversation here today,  
20 chair Urban Mr. Mactaggart expressing some concerns around some of  
21 the scope of this. I think that's kind of where some of our  
22 concerns come in. We want to make sure that we encourage adoption,  
23 but also make sure it's realistic with feedback from these  
24 businesses. I was encouraged Chair Urban by your notes, to hear  
25 from the business community, and I think we really welcome the  
26 opportunity to engage in this in a meaningful way. So, look forward  
27 to the conversations to come. I mentioned one of our primary  
28 concerns center around the scope of the draft risk assessment

1 regulations. We feel the scope is far beyond that of other state  
2 privacy laws and beyond the bounds of the under California privacy  
3 law as well.

4 **MS. URBAN:** Mr. Torres, did you drop out or, I think Mr.  
5 Torres's comment may still have been going on.

6 **MS. ALLEN:** Yes. Mr. Torres, we cannot hear you. Let me try to,  
7 oh, there you're.

8 **MR. TORRES:** The definitions of AI and automated decision  
9 making are so overly broad that they could effectively encompass  
10 all automated technology as written, even simple algorithms, I  
11 think believe that was something that was discussed. In addition,  
12 the detailed requirements in the section are not appropriate to a  
13 privacy law and go far beyond the mandate of the CPRA. The CPPA  
14 differs from other state privacy laws in ways that we believe will  
15 be counterproductive to California consumers. Lastly, the  
16 regulations prescribe an inappropriate role of the businesses board  
17 of directors and requiring the submission of the risk assessment to  
18 the board of directors for approval or requiring its certification  
19 of the risk assessment. We believe this requirement should be  
20 eliminated. This regulation if retained, should preferably require  
21 presentation to an employee with responsibility in this area.  
22 Certainly, the level of involvement should be as determined by the  
23 business. The business can assess whether the full board or an  
24 appropriate committee of the board is warranted, just to call out a  
25 couple specific concerns, but again, encouraged by the conversation  
26 and the call to engage with economists, engage with industry to  
27 figure out the specifics of what's workable and look forward to the  
28 conversations to come. Thank you so much.

1           **MS. URBAN:** Thank you Mr. Torres. Ms. Allen?

2           **MS. ALLEN:** Yes. We are going to go to Grace Getty. Grace, I'm  
3 going to unmute you at this time.

4           **MS. GRACE GETTY:** Fantastic. Thank you so much.

5           **MS. ALLEN:** There you go. You have three minutes, you may  
6 begin.

7           **MS. GETTY:** Wonderful. I'm Grace Getty. I'm with Consumer  
8 Reports where I work on artificial intelligence policy in the  
9 consumer interest. I want to thank the board for their work on  
10 these draft rules. My comments will focus on the automated decision  
11 making technology draft rules. I'm going to start off with a couple  
12 of things we really liked and then mention a few areas we'd like to  
13 see strengthened. So first, the definition of automated technology,  
14 automated decision making technology. We appreciate that this is a  
15 broad definition and is not confined to technologies that make  
16 quote, solely automated decisions about individuals. These tools  
17 can be risky even if human reviewers are empowered to intervene.  
18 Second, we appreciate that these rules require businesses to wait  
19 at least a year after a consumer opts out before putting the  
20 question to them again. Rights aren't useful in practice if  
21 businesses can wear consumers down with frequent requests. And  
22 third, we appreciate that the board move to protect consumer  
23 privacy in public spaces. We have questions about how to make these  
24 rights usable for consumers and practice, but we think setting up a  
25 process for opting out of profiling technology in publicly  
26 accessible spaces is super important. Onto some things we'd like to  
27 see tweaked or strengthened, we'd urge the board to consider  
28 clarifying the explanation a consumer can get if they're denied a

1 good or service. We'd flag the CFPBs recent clarifications around  
2 what counts as a specific and accurate explanation when someone is  
3 denied credit under the equal Credit Opportunity Act including when  
4 complex or AI tools are used. We'd also urge the board to consider  
5 clarifying that if a business can't produce a sufficiently specific  
6 or accurate explanation for why an ADMT denied someone a service,  
7 that tool cannot be used. We think consumers should be subject to  
8 unexplainable decisions. And then lastly, there's an addition we'd  
9 like to see to the pre-use notice. We think there should be a  
10 prominent, succinct and plain language explanation for what the  
11 process looks like if someone does opt out of an ADMT, including  
12 how the good or service will be provided without the ADMT. You  
13 know, anyone facing the decision of whether or not to opt out of a  
14 resume screening tool or an exam proctoring software will probably  
15 want to know what happens if they do. That's it for me. Thank you  
16 so much to the board for these rules. We know they take a lot of  
17 work.

18 **MS. URBAN:** Thank you, Grace Getty. Ms. Allen.

19 **MS. ALLEN:** Great. We are going to turn to Vanessa Chavez.  
20 Vanessa Chavez, I'm going to unmute you and you'll have three  
21 minutes to complete your comment. Vanessa, are you here?

22 **MS. VANESSA CHAVEZ:** Thank you, chair Urban and members.  
23 Vanessa Chavez with the California Association of Realtors. We're  
24 continuing to review the initial draft and as the language  
25 continues to evolve, we may have input or concerns regarding any  
26 housing related aspects of the proposed regulation. We think the  
27 agency for its work on this and other matters, and we look forward  
28 to being a constructive participant in this process. Thank you.

1           **MS. URBAN:** Thank you Vanessa Chavez. Ms. Allen, do we have  
2 further public comment?

3           **MS. ALLEN:** Yes, we do. Peter Laro Munoz, I'm going to unmute  
4 you. We'll have three minutes to start to give your public comment.  
5 You may proceed when you're ready.

6           **MR. PETER LARO MUNOZ:** Thank you. Good afternoon. I'm speaking  
7 on behalf of the Silicon Valley Leadership Group, a business  
8 association representing more than 300 innovation economy  
9 companies. We echo the comment shared by previous speaker Alex  
10 Torres, representing the Bay Area Council. My comments address  
11 additional industry concerns, disclosure, risk assessments, and  
12 other submissions to the agency would result in the disclosure of  
13 confidential and proprietary information. The regulations do not  
14 include any protections from public disclosure, nor do they note  
15 that all applicable legal privileges are retained a protection that  
16 is available under other state privacy laws. These requirements  
17 should be eliminated, or the proper protections added to the  
18 regulations to protect them from state FOIA requests and other  
19 disclosures and for privileges to be retained. Regarding automated  
20 decision making consumer opt out for data used to train AI models  
21 is contemplated by the regulations. However, by allowing consumers  
22 to opt out of having their data used for training, the models we  
23 produce or will be produced, will actually become worse as a  
24 result, hurting consumers by reducing the potential for innovation  
25 built on more complete data and increasing the risk of bias.  
26 Further, removing this opt-out would not affect the privacy of any  
27 consumer because the data would be used generically in the AI  
28 modeling, which relies on trends in patterns and data overall, not

1 on a particular individual's data. Regarding cybersecurity audits,  
2 the draft regulations create extensive requirements for conducting  
3 cybersecurity audits that would conflict with generally accepted  
4 standards. The proposed requirements will create a burdensome and  
5 different cyber regime in California that is inconsistent with the  
6 White House's National Cybersecurity strategy. Further, some of the  
7 proposed requirements go beyond the scope of the statutory  
8 authority and are not within the agency's jurisdiction. For  
9 example, the definition of cybersecurity incident requires  
10 disclosure of an event that only potentially jeopardizes a  
11 business' system. This is an overly burdensome and vague  
12 requirement that will be confusing to comply with and difficult to  
13 enforce. Further the definitions inclusion of businesses'  
14 information system.

15 **MS. ALLEN:** Peter Laro, you have 15 seconds left, just so you  
16 know.

17 **MR. MUNOZ:** Thank you so much. Expands the regulations outside  
18 the statutes authority that is limited to systems that process  
19 personal information. The federal government is making significant  
20 strides to harmonize cybersecurity requirements. California should  
21 look to generally accepted frameworks like the NIST Cybersecurity  
22 Framework as a foundation regulation. Thank you.

23 **MS. URBAN:** Thank you very much, Peter Laro Munoz. Ms. Allen?

24 **MS. ALLEN:** Yes. We'll have Suzanne Bernstein at this time. I'm  
25 going to unmute you. You'll have three minutes. You can begin now.

26 **MS. SUZANNE BERNSTEIN:** Hello, my name is Suzanne Bernstein,  
27 and I'm a fellow with the Electronic Privacy Information Center,  
28 also known as EPIC. We're an independent research and advocacy



1 center focused on protecting privacy in the digital age. Throughout  
2 the rulemaking process, EPIC has submitted several comments and  
3 provided testimony. EPIC commends the CPPA's work to protect the  
4 privacy of Californians, and we are encouraged to see the agency's  
5 work to limit harms from ADMT technology. Today I'll address three  
6 points, the ADMT notice and opt-out requirements, behavioral  
7 advertising, and general clarity. First, epic commends the draft  
8 regulations proposed notice requirements to provide consumers with  
9 much needed information about the use of ADMT technology in plain  
10 language, we support the opt-out requirements that would provide  
11 consumers with the ability to opt out of many uses of ADMT,  
12 including high impact decisions, profiling of employees and  
13 students, profiling in public places and profiling for the purposes  
14 of behavioral advertising. Without this kind of regulatory action,  
15 consumers are continually subjected to these ADMT systems that make  
16 decisions that may affect their livelihood often without their  
17 knowledge. Second, epic supports a default prohibition on profiling  
18 minors for behavioral advertising. Minors are uniquely vulnerable  
19 to the harms associated with the behavioral advertising system and  
20 the default to protect minors from this harmful profiling. We  
21 support the opt-out requirement for behavioral advertising for all  
22 consumers. We also encourage the agency to ensure the availability  
23 of a user-friendly universal opt-out mechanism so that consumers  
24 would not need to exercise the behavioral advertising opt-out for  
25 each business. This would be tedious and fatiguing and would  
26 ultimately undermine consumer's efforts to be removed from  
27 behavioral advertising systems writ large. We strongly support the  
28 agency's continued discussion about providing consumers with a full

1 opt-out for all behavioral advertising, and we are happy to provide  
2 further materials related to this topic. Finally, we appreciate the  
3 clear disclosure requirements provided in this round of draft  
4 regulations, including the obligation for a business to disclose  
5 the purpose for which it will use any ADMT. For too long,  
6 businesses have used generic purpose language, like quote,  
7 improving our services and quote as carte blanche for ADMT use. In  
8 conclusion, EPIC supports the work of the agency to regulate  
9 harmful ADMT uses to protect the privacy of Californians. Thank you  
10 for the opportunity to share our comments.

11 **MS. URBAN:** Thank you, Suzanne Bernstein. Ms. Allen.

12 **MS. ALLEN:** Yes. Next up we have Matt Schwartz. Matt, I'm going  
13 to unmute you and you'll have three minutes. You may begin now.

14 **MR. MATT SCHWARTZ:** Good afternoon. My name is Matt Schwartz,  
15 Policy Analyst at Consumer Reports, and I'll be discussing the  
16 draft rule and risk assessments. Thank you to the board for the  
17 opportunity to comment and for all the hard work on these draft  
18 rules. Consumer reports applause the agency for drafting what would  
19 likely represent the strongest risk assessment requirements  
20 tethered to a comprehensive privacy law in the country. We  
21 appreciate that the current draft rules apply broadly to businesses  
22 undertaking a variety of risky processing activities, and that  
23 there will require businesses to commence the thorough accounting  
24 of their data collection and processing activities. Moreover, we  
25 appreciate that the current rules will require businesses to share  
26 their findings in a manner that will be both useful to consumers  
27 who seek to understand more about the business's practices, as well  
28 as regulators who want to take a closer look under the hood. We do

1 have some suggestions for how the rules could be strengthened to  
2 further the consumer interest. First, we believe that businesses  
3 should be required to share in their risk assessment when their  
4 processing sensitive personal information for the purposes of  
5 making inferences about consumers. Under the law and existing  
6 regulations, certain protections around sensitive data, including  
7 the requirement for businesses to allow consumers to limit the use  
8 of their sensitive information, only apply to the extent to which  
9 businesses are using that information to infer characteristics  
10 about consumers, consumers deserve to know when businesses are  
11 processing their data in this manner and such a disclosure will  
12 help regulators and businesses grapple with the enhanced stakes  
13 that come along with making inferences from sensitive data.  
14 Additionally, in our view, the current regulations allow businesses  
15 to provide less than optimal clarity on this point. So, we believe  
16 that business' assertion of their use of inferences should be  
17 provided in an abridged version of the risk assessment. Second, we  
18 believe that every business covered by these requirements should  
19 review and update their risk assessment annually rather than every  
20 three years. As is one of the options currently under  
21 consideration, we recognize that the rules otherwise state that  
22 businesses must update their risk assessments whenever there's a  
23 material change to processing activities. We believe that requiring  
24 an annual review will likely inspire better risk assessment hygiene  
25 and give consumers a higher degree of confidence that current  
26 business practices have been accounted for in the risk assessment.  
27 Finally, we believe that the agency should require businesses to  
28 publish a publicly available version of the risk assessment.

1 Currently, the draft rules seem to only contemplate an optional  
2 publishing of an unabridged risk assessment, whereas we'd argue  
3 that at a minimum businesses should be required to share in  
4 abridged version of the risk assessment that's updated with the  
5 same level of regularity as the unabridged version.

6 **MS. ALLEN:** You have 15 seconds left, 15 seconds remaining.

7 **MR. SCHWARTZ:** And of course, if businesses want to provide an  
8 abridged version, they may do that as well. So, thank you for the  
9 time and happy to answer any follow up questions.

10 **MS. URBAN:** Thank you, Matt Schwartz.

11 **MS. ALLEN:** Alright. Next up we have Johan Serato. Johan, I'm  
12 going to unmute you and you'll have three minutes. You may begin  
13 now.

14 **MR. JOHAN SERATO:** Thanks very much. I'm Johan Kim Serato,  
15 partner in the San Francisco office at Baker Hostetler. I  
16 appreciated the discussion regarding harmonization, and I had a  
17 question for clarification. I thought we heard during the  
18 discussion on risk assessment requirements that GDPR does not  
19 govern and specifically does not require a DPIA for employee data.  
20 This comment was made quite briefly, and I would like to make sure  
21 that this comment was heard accurately and considered by the board.  
22 We understand that GDPR does govern employee data and a DPIA  
23 requirement and GDPR should include the collection and processing  
24 of employee data. So, I would like a clarification of future  
25 meetings, whether the board has considered that a risk assessment  
26 under GDPR would cover employee data. Thanks very much.

27 **MS. URBAN:** Thank you very much, Johan Kim Serato.

28 **MS. ALLEN:** Alright. Next up, we have Rocio Beza. Rocio, I'm

1 going to unmute you. You have three minutes. You may begin now.

2 **MS. ROCIO BEZA:** Hello. My name's Rocio Beza. I am a mom, a  
3 consultant, a business owner. I was born California about 30  
4 something years ago. I'm also a privacy advocate. I feel that my  
5 background provides me perspective that allows me to see the  
6 implications of the proposed rules here. So, I first want to  
7 emphasize that everyone that is in this call I feel that this is a  
8 very historical time. I commend each and every one of you for the  
9 hours and hours of work that I know goes into putting this forth  
10 and seeing this come to fruition. So, I want to congratulate you,  
11 and I think that this is something that the country is looking at  
12 in the terms of an example. So, I just want you to honor the  
13 incredible work that everyone here is doing. I also want to share  
14 for the purposes of making these rules and regulations more  
15 effective as it relates to protecting the privacy of consumer  
16 personal information that I think the agency and the board is doing  
17 an excellent job as it relates to being thoughtful with the  
18 requirements and outreach to industry to the public. And  
19 specifically when it comes to some of the requirements around the  
20 cybersecurity audit. I just want to emphasize that as a consultant  
21 that has worked with consumer lenders as an auditor that has been  
22 involved in assessing online lenders compliance to data privacy  
23 laws and regulations, and as a consultant that has helped with  
24 readiness, helping online lenders bridge the gaps but also being a  
25 mom to two little kids, they're going to be interacting with this  
26 technology. It's important that for the cybersecurity audit items.

27 **MS. ALLEN:** Yeah. 15 seconds remaining. 15 seconds.

28 **MS. BEZA:** Thank you. We be mindful that the cybersecurity

1 industry is still young, and industry is looking at the group for  
2 some standardization here. And I also want to recommend  
3 prescriptive requirements for the risk assessment because—

4 **MS. ALLEN:** That's time. That's three minutes.

5 **MS. BEZA:** Thank you.

6 **MS. URBAN:** Thank you. Thank you, Rocio Beza.

7 **MS. ALLEN:** Okay. Next up we have Ronak Dilami. I'm going to  
8 allow you. I'm unmute you and allow you to talk. You will have  
9 three minutes, go ahead and we can—

10 **MR. RONAK DILAMI:** Thank you. Thank you Chair Urban and  
11 members. Ronak Dilami with Cal Chamber representing over 14,000  
12 members, the vast majority of which are smaller businesses. We're  
13 continuing to evaluate the drafts put forth for discussion today  
14 but appreciate the chance to provide some initial comments that we  
15 hope would be considered prior to moving into formal rulemaking. On  
16 the whole, we are concerned that the draft rules create extensive  
17 requirements for conducting cyber audits and risk assessments that  
18 are frequently over burdensome, insufficiently risk-based or  
19 otherwise out of sync with and exceeding other state privacy laws,  
20 potentially conflicting with generally accepted standards. We are  
21 especially concerned that these regulations, including the ADMT  
22 regs, at times go beyond the bounds of the CCPA itself and the  
23 directive set by that law, and in fact, veer into rewriting the law  
24 such as what the brand new opt out for behavioral advertising and  
25 for processing the PI of consumers to train ADMT. Excuse me. We  
26 strongly urge the agency to avoid getting ahead of the legislature  
27 and governor as well as the voters in such a manner, particularly  
28 in relation to AI. With respect to the cybersecurity audits

1 regulations, we are concerned that they place companies into a  
2 perpetual audit diverting critical resources away from actually  
3 ensuring security. We note that the CCPA calls for regulations for  
4 businesses whose processing of consumers PI presents significant  
5 risk to consumer's privacy or security. The statute sets forth that  
6 significant risk requires consideration of the size and complexity  
7 of the business and the nature and scope of processing activities.  
8 We feel that the triggers in this draft fall short of that  
9 directive. Next, the requirements for approval and oversight of  
10 audits by company's board of directors create responsibilities that  
11 are out of sync with accepted norms for board action and  
12 involvement for publicly traded companies. We see a similar issue  
13 in the risk assessment regulations. I believe they should be  
14 eliminated. Turning to the risk assessment, ADMT regs as drafted  
15 these rules create extensive compliance obligations across a broad  
16 array of processing activities, going far beyond the contours of  
17 what's commonly understood to be privacy regulation. We caution  
18 that some of the risk assessment requirements such as the  
19 requirement to disclose to the agency can actually violate  
20 confidentiality agreements and require companies to divulge  
21 confidential and proprietary information, potentially including  
22 trade secrets. If disclosures to be required, proper protections  
23 are needed to ensure that this information is protected from Public  
24 Records Act requests and to ensure applicable legal privileges are  
25 retained. Next, we find it alarming that the ADMT regulations are  
26 being used to create new overbroad opt-out and data deletion  
27 requirements. The CCPA notably defined opt-out choices and balance  
28 consumer rights with the operational needs of companies and these

1 regulations upset that critical balance. And finally, the use of  
2 ADMT and the employment context raises unique considerations. The  
3 inclusion of profiling in the ADMT definition, even when the  
4 technologies are not making significant employment decisions and  
5 requiring employers to allow...

6 **MS. ALLEN:** Fifteen seconds left, 15 seconds.

7 **MR. DILAMI:** To opt out of the use of the technology, even when  
8 the use is job related and consistent with business necessity would  
9 unduly burden employers. And with that, we thank you for your time.

10 **MS. URBAN:** Thank you, Ronak Dilami. Ms. Allen, how many more  
11 people do we have on the queue?

12 **MS. ALLEN:** We have two.

13 **MS. URBAN:** Okay. Thank you. Please go ahead.

14 **MS. ALLEN:** Okay. Stacy Higginbotham, I'm going to unmute you  
15 and allow you to talk. You'll have three minutes. Go ahead when  
16 you're ready.

17 **MS. STACY HIGGINBOTHAM:** Awesome. Thank you. So, hi, I'm Stacy  
18 Higginbotham. I'm a policy fellow focused on cybersecurity at  
19 Consumer Reports, and I'm going to be commenting on the draft of  
20 the cybersecurity audit regulations. So, these sorts of compliance  
21 criteria measured by an audit are already best practices across  
22 industries. And while they can come at a cost, they also benefit  
23 businesses by helping them establish policies and procedures to  
24 prevent and retroactively deal with hacks. In its latest breach  
25 report, IBM estimates that the global average cost of a data breach  
26 this year was \$4.45 million. So, this is not a huge cost to a  
27 business and does provide benefits. So, when we talk about the  
28 regulations, our questions are in section 7001 in the definitions,



1 there's a definition for multi-factor authentication, and the law  
2 requires at least two authentication types. I just want to make  
3 sure that that is future proof for things like pass keys, which are  
4 coming right now and usually only require one type of  
5 authentication, like a biometric or a token. So, in section  
6 7122(i), there was some text about the board and executive team  
7 having to review and understand the audit. We are in favor of that  
8 because cybersecurity needs to be part of a business culture and  
9 all of its processes. And this can only happen if leadership is  
10 onboard and takes responsibility. And finally, in section  
11 7123(m) (i) related to training, we wanted to offer suggestion for  
12 improving cybersecurity overall. And that would be to tie the type  
13 of employee and contractor training to the level of privilege the  
14 employee has within the IT or physical systems. Those with greater  
15 privileges, even if they are contractors, should get more intensive  
16 security training. This also applies to executives who might have  
17 more access. Anyhow, thank you for doing this. These are really  
18 great rules, and we appreciate you all.

19 **MS. URBAN:** Thank you, Stacy Higginbotham.

20 **MS. ALLEN:** Alright. Last we have Eileen. Eileen, I'm going to  
21 unmute you. There you go. And go ahead. You have three minutes. You  
22 may begin when you're ready.

23 **MS. EILEEN KIERNAN:** Thank you very much. My name is Eileen  
24 Kiernan, and I come before you today, not just as an individual,  
25 but a representative of the countless consumers who value their  
26 right to privacy and the protection of personal data. In the  
27 discourse surrounding the proposed CCPA regulations, I feel  
28 compelled to express the urgent need to uphold the core principles

1 of the legislation and safeguard the interests of consumers. The  
2 CCPA was a milestone in recognizing the importance of granting  
3 consumers control over their personal data. It was a pivotal step  
4 towards empowering individuals in an increasingly digital age where  
5 data has become a currency of its own. As we discussed potential  
6 amendments and regulations. It is paramount to remember the  
7 original intent of the legislation to strengthen consumer control  
8 and enhance privacy. I understand the concerns raised by businesses  
9 and employers here, but I feel compelled to emphasize that it is  
10 crucial to maintain a balanced perspective. While businesses have  
11 had time to adapt, consumers have been waiting for the promise of  
12 enhanced data protection to be fully realized. Any compromise or  
13 delay in implementing stringent regulations would be a disservice  
14 to the very essence of the CCPA. We need our policymakers to stand  
15 firm against lobbying pressure, especially from the largest  
16 technology and internet corporations with near monopoly power over  
17 user data. These behemoth companies, in particular, can easily  
18 afford to disregard regulations and have counted on agencies being  
19 too overwhelmed to investigate violations. Strict privacy rules  
20 under the CCPA forced them to respect consumer consent around data  
21 collection and sales. We must resist the temptation to cater to  
22 corporate interests at the expense of consumer rights. The proposed  
23 regulations signify progress, a step towards rectifying the power  
24 imbalance between corporations and individuals. We cannot afford to  
25 backtrack on this journey, especially in the face of powerful  
26 lobbying. The technology and internet giants with their immense  
27 influence and access to vast amounts of user data should not be  
28 exempt from stringent regulations. These regulations are our shield

1 against potential abuse of our personal information. They force  
2 these entities to respect our consent and ensure our data is  
3 handled responsibly. I implore the board to stand firm against  
4 industry pressures seeking to dilute the regulations. Now more than  
5 ever, as technology advances, we need robust safeguards in place.  
6 Our rights as consumers should not be compromised for the  
7 convenience of a few powerful entities. Let us not forget the  
8 purpose of the CCPA. To give California consumers meaningful  
9 control over their personal data, I implore you to prioritize the  
10 protection of consumer rights and privacy over the interests of  
11 those who may seek to exploit or disregard the regulations. And I  
12 urge you in the strongest terms not to weaken any draft regulations  
13 that represent real progress towards giving consumers meaningful  
14 control over our personal data, which is the intention and spirit  
15 of the CCPA legislation. Thank you for your time and commitment to  
16 upholding the principles of consumer protection embedded in the  
17 CCPA.

18 **MS. URBAN:** Thank you Eileen. Ms. Allen?

19 **MS. ALLEN:** Yes. We have one person left. This is Tyler  
20 Gerlach. Tyler, I'm going to unmute you and allow you to talk. Go  
21 ahead. You have three minutes when you're ready.

22 **MR. TYLER GERLACH:** Hello, can you hear me okay? Okay. Hi, my  
23 name is Tyler Gerlach and I'm the public policy associate at the  
24 California Asian Pacific Chamber of Commerce. Representing the  
25 interest of the over 746,000 Asian-American and Pacific Islander  
26 owned small businesses in the state, our members understand the  
27 importance of these technologies. Automated decision making  
28 technologies deeply embedded in the day-to-day operations and

1 businesses across California contributing significantly to their  
2 efficiency and success. But rush regulations would put California  
3 small businesses at a disadvantage. As ADMT continues to evolve,  
4 the agency must actively engage, educate, and collaborate with  
5 small and diverse business owners throughout the decision-making  
6 process to understand their perspectives regarding the implications  
7 of these regulations. The agency cannot prioritize the race to be  
8 the first agency to draft ADMT regulations over being thoughtful  
9 and including the perspectives of the small business community that  
10 keep the state running. The governor's office and legislature  
11 should continue to lead on this issue. Governor Newsom's recent AI  
12 executive order outlines a clear process and the agency's action  
13 should be consistent with that. We hope that the rulemaking  
14 timeline is clear and aligned with the realities of the small  
15 business community in California. Thank you.

16 **MS. URBAN:** Thank you, Tyler Gerlach.

17 **MS. ALLEN:** Okay. If there are any other members of the public  
18 would like to speak at this time, please go ahead and raise your  
19 hand or you start nine on your phone key. I do see several more  
20 hands. Okay. We are going to go to Nicole Smith. I am going to  
21 allow you to talk and unmute you. You should have three minutes.  
22 Please begin when you're ready.

23 **MS. NICOLE SMITH:** Great. Thank you so much. Thank you for  
24 everyone's work with this. I'm a privacy attorney in Silicon  
25 Valley. I work for a cybersecurity company, and I've been in charge  
26 of doing audits on vendors. So, any company that we bring in and  
27 share data with for about a dozen years now. And I think it's very  
28 critical that the Agency includes this in rulemaking regarding some

1 of the points that were raised earlier, pursuant to GDPR  
2 requirements, many of the medium and large size companies in the  
3 Valley have been doing this for five plus years. And we currently  
4 have a lot of learnings from that. My question for the board, and  
5 you can address this in any way that you'd like, is in order to  
6 submit some of the learnings, is there a deadline where it would be  
7 most useful for you to hear some of the things that we've learned  
8 about, and also areas as I believe one of the board members raised  
9 for improvement on these learnings. For instance, the ICO in the UK  
10 provided great templates, but we've learned as a tech company that  
11 there are loopholes where vendors could try and fool their  
12 customers, such as the entities doing business with them into  
13 sharing more data than they have adequate security for from. So, we  
14 have put in more of a trust but verify approach, and I'm more than  
15 happy to share these learnings with the board. Would love to hear,  
16 especially given the holidays, what is the ideal deadline for these  
17 in order to be helpful for the board members? Alright. Thank you so  
18 much.

19 **MS. URBAN:** Thank you, Nicole Smith.

20 **MS. ALLEN:** Okay, next you have Craig Erickson. Craig, I'm  
21 going to allow you to talk and unmute you. You will have three  
22 minutes. You may begin when you're ready.

23 **MR. CRAIG ERICKSON:** Okay. Thank you. I'm Craig Erickson, a  
24 California Consumer, and I'll be commenting on the draft  
25 regulations on ADMT specifically section 7030, subsection (o) and  
26 7031, subsection (d), item four, which basically requires  
27 businesses to provide a link for consumers to file complaints  
28 against the business with enforcement agencies. And I think that

1 this is more likely to be abused than it would actually provide  
2 actual benefits to consumers and businesses and enforcement  
3 agencies. In particular, I'm concerned that businesses may track  
4 and possibly discriminate against website users who click on the  
5 link that competitors authorized agent services hackers or  
6 hacktivists will exploit the link for their own purposes. That  
7 enforcement agencies can be deluged with complaints like  
8 effectively denying service to other consumers who use these  
9 websites or obfuscating legitimate swarm complaints that contain  
10 evidence by flooding the complaint system with anonymous or  
11 unsubstantiated complaints. And that consumers will expect  
12 enforcement action but won't receive notification of the  
13 enforcement action, which could contribute to apathy or mistrust  
14 that the law is being fairly enforced. So therefore, I implore the  
15 board to explain its rationale for this particular requirement and  
16 why the board thinks the benefits to the public would outweigh any  
17 potential cost to businesses and consumers. Thank you.

18 **MS. URBAN:** Thank you, Craig Erickson. Ms. Allen?

19 **MS. ALLEN:** If there, we have no hands raised at this time,  
20 however, if there is any member of the public who'd like to speak,  
21 please go ahead and raise your hand using the raise hand feature on  
22 Zoom or star nine on your phone. Again, this is for agenda item  
23 two, which is to A to B to C, cybersecurity risk assessments and  
24 automated decision making technology regulations. Madam Chair, I'm  
25 not seeing anyone else. Thanks.

26 **MS. URBAN:** Great. Thank you, Ms. Allen. And thank you to all  
27 the members of the public who have taken the time to comment today.  
28 It's much appreciated and lots of valuable and helpful information

1 from the public comments period. As I mentioned earlier, I'm going  
2 to propose-request, I suppose-- three motions. I will start with  
3 the first, which is on the cybersecurity audit draft regulations. I  
4 would like to request a motion to direct staff to advance the  
5 proposed cybersecurity regulations to formal rulemaking up through  
6 commencement of the 45-day public comment period and to authorize  
7 staff to make additional changes where necessary to improve the  
8 text clarity, improve readability, or otherwise ensure compliance  
9 with the Administrative Procedures Act. May I have that motion?

10 **MS. DE LA TORRE:** I move.

11 **MS. URBAN:** Thank you, Ms. de la Torre. May I have a second?

12 **MR. LE:** I'll second.

13 **MS. URBAN:** Thank you, Mr. Le. I have a motion and a second.

14 Ms. Allen, could you please call the roll call vote?

15 **MS. ALLEN:** I can. This is a motion for cybersecurity  
16 regulations under 2A as stated by the chair. Board member de la  
17 Torre?

18 **MS. DE LA TORRE:** Aye.

19 **MS. ALLEN:** Board member Le?

20 **MR. LE:** Aye.

21 **MS. ALLEN:** Board member Mactaggart?

22 **MR. MACTAGGART:** Aye. But just because this has happened to me  
23 before on boards, I do want to mention to everybody that one in  
24 7123(a), that last sentence, I'm not happy about. So, I don't want  
25 to have people come back and say, "You approve this." Because  
26 that's happened to me before so I'm approving it for now on the--  
27 but I do want to raise that it's still an issue for me. Thanks.

28 **MS. ALLEN:** Mactaggart aye. Worthe?

1           **MR. WORTHE:** Aye.

2           **MS. ALLEN:** Worthe aye. Chair Urban?

3           **MS. URBAN:** Aye. And yes, Mr. Mactaggart, I think everybody's  
4 on notice when it comes back to us again, you may say the same  
5 thing if it-- okay. Thank you. Thank you, all members of the board.  
6 I now request a motion to direct staff to incorporate changes and  
7 incorporate the discussion from today by the board, and to  
8 additionally receive feedback from board members on the draft risk  
9 assessment regulations, and to propose a revised draft at a  
10 following meeting for advancement to formal rulemaking. May I--

11           **MS. DE LA TORRE:** Can I ask a question before we move on that.  
12 Logistically, how will that work then? In January, we will see a  
13 new draft from staff that includes those. And how will they  
14 interact with us? Do we have information on that?

15           **MS. URBAN:** So, in terms of the last part, the interaction will  
16 be like other things that we have moved to staff. So, for example,  
17 the cybersecurity regulations and previous initiatives where  
18 individual board members can talk to staff in one-way,  
19 conversations in terms of when the board may see it again. I can't  
20 predict that exactly. And I don't know if Mr. Laird wants to say  
21 for sure or if he wants to provide some information about that.

22           **MR. LAIRD:** About when it would return to the board?

23           **MS. URBAN:** Yeah.

24           **MR. LAIRD:** So, I think we could frame the draft so that it  
25 could come back to the board immediately prior to the 45-day public  
26 comment period but after we've completed all supporting paperwork,  
27 including development of the economic analysis and all, that would  
28 be staff's recommendation, but we are happy to take direction.



1           **MS. URBAN:** And I think Ms. de la Torre was asking if that  
2 would necessarily be January's scheduled meeting.

3           **MS. DE LA TORRE:** Right. So, there is feedback that has to be  
4 incorporated from this meeting. So that will be a new draft. And I  
5 was assuming like that will happen and we will be shown a draft  
6 that incorporates the feedback from this meeting, and then we will  
7 be able to comment on that, that's what will make sense to me. So  
8 maybe January we'll see the draft that incorporates this meeting,  
9 and then after that we can comment on it.

10           **MS. URBAN:** I think, well my motion that I requested direct  
11 staff to gather information from board members and to incorporate  
12 changes or discussion today, I thought of it as incorporating,  
13 finding out the information that we asked for. So, I wouldn't want  
14 to insist that it be January. If to, some degree it also depends on  
15 us being able to offer our thoughts to the board, to the staff. So,  
16 I would like to give them some timing flexibility there, but I  
17 think, yeah.

18           **MS. DE LA TORRE:** And my question is not as much to the timing  
19 as to the next draft that we see in a board meeting. Is that a  
20 draft that we're going to be asked to vote on to move to formal  
21 rulemaking? There's no in-between draft, is that the plan?

22           **MS. URBAN:** That is the plan, which of course we don't have to  
23 do. We could say we're not. This is ready.

24           **MS. DE LA TORRE:** So, the option is whether don't see a draft  
25 again until the date that we are asked to put, to move it in to  
26 formal rulemaking, at which point it will just go to formal  
27 rulemaking.

28           **MS. URBAN:** Not necessarily, but this would give staff the

1 ability to pull together the ISOR, the economic analysis, do all  
2 that research. So, we would have it in front of us the next time we  
3 discuss it.

4 **MS. DE LA TORRE:** Right. But--

5 **MS. URBAN:** We don't have--

6 **MS. DE LA TORRE:** I mean, it's just that there was a lot of  
7 feedback, particularly to the last piece. And I want to be sure  
8 that we have an effective way to incorporate that in a way that's  
9 thoughtful as opposed to, I don't want to be in a position where we  
10 come back in March with a draft to go into formal and then there's  
11 a request to delay that process basically because we haven't seen  
12 how our feedback was or was not incorporated in the draft.

13 **MS. URBAN:** Mr. Mactaggart?

14 **MR. MACTAGGART:** Yeah, I would just say I'd love to have a  
15 chance before all the economic analysis has been done and it's sort  
16 of like, either submit it now and so if you raise up a concern, you  
17 end up derailing a whole process here. So, I don't know, maybe we  
18 can do that individually and we can have individual meetings along  
19 the way with the staff to get comfortable enough so that at least  
20 they know, okay, board member X is not happy with this or know it's  
21 probably not going to support or something. I don't know. But I do  
22 think sometimes you get these things, and they get presented in the  
23 package and you know, at that point the consequence of being  
24 squeaky wheels even is huge.

25 **MS. DE LA TORRE:** Right. But what I want to bring to Mrs. Urban  
26 attention is just by clicking implications on that. Because if we  
27 are in different places, we should have that conversation at a  
28 board meeting and not individually potentially for clicking. So in

1 my experience, it has always been that it has to come and be  
2 published a new draft before we have that conversation. I might run  
3 on that, Mrs. Urban.

4 **MS. URBAN:** I don't. So, once it is in the public rulemaking  
5 process, it follows the process prior to that, we can do whatever  
6 we would like. I would like to give staff discretion to be able to  
7 come to us and tell us we have everything here. We have the initial  
8 statement of reasons with all the background, we've talked to all  
9 the board members and things are ironed out. And then the board  
10 could agree or disagree, or for staff to come back and say, we've  
11 had a lot of feedback from board members. We've taken into account  
12 more information. We want to have you discuss it before we ask for  
13 the formal rulemaking. I mean the request like this is just so  
14 there is an option. We don't have to send it to formal rulemaking.

15 **MS. DE LA TORRE:** Yeah. Could we perhaps the motion not  
16 requiring that the draft come backs in January but, if possible,  
17 incentivizing?

18 **MS. URBAN:** Yeah, it does not.

19 **MS. DE LA TORRE:** Okay.

20 **MS. URBAN:** Require, but I can, I'll restate it and I will, let  
21 me add--

22 **MS. DE LA TORRE:** Stating a preference towards it. If it's  
23 feasible. I think it just will be easier to have the conversation,  
24 the five of us, as opposed to individually with the staff.

25 **MS. URBAN:** Okay. Let me restate the motion to try to be  
26 certain that it's clear that it isn't necessarily going to be  
27 formal rulemaking and ask Mr. Laird if it is an appropriate motion.  
28 May I have a motion to direct staff to incorporate any changes

1 agreed by the board during today's discussion, consider the board's  
2 discussion overall, and, additionally, receive feedback on the  
3 draft risk assessment regulations from board members after this  
4 meeting and propose a revised draft at a following meeting for  
5 possible advancement to formal rulemaking? I added "possible"--

6 **MS. DE LA TORRE:** I move.

7 **MS. URBAN:** Thank you Ms. de la Torre. Do I have a second?

8 **MS. DE LA TORRE:** Second.

9 **MS. URBAN:** Thank you, Mr. Worthe. Mr. Laird, are we good?

10 Okay. Thank you.

11 **MR. LAIRD:** Yes.

12 **MS. URBAN:** Okay. Ms. Allen, could you please conduct the vote?

13 **MS. ALLEN:** Yes. The motion is for-- two-- for risk assessments  
14 as stated by Chair Urban. Board member de la Torre?

15 **MS. DE LA TORRE:** Aye.

16 **MS. ALLEN:** De la Torre aye. Board member Le?

17 **MR. LE:** Aye.

18 **MS. ALLEN:** Le aye. Board member Mactaggart?

19 **MR. MACTAGGART:** Aye.

20 **MS. ALLEN:** Mactaggart aye. Board member Worthe?

21 **MR. WORTHE:** Aye.

22 **MS. ALLEN:** Worthe aye. Chair Urban.

23 **MS. URBAN:** Aye.

24 **MS. ALLEN:** Urban aye. Madam Chair, you have five ayes and no  
25 noes.

26 **MS. URBAN:** Thank you very much, Ms. Allen. And I realized I  
27 neglected to say with regards to the cybersecurity regulations  
28 motion, the motion carried with a vote of 5-0. And with regards to

1 the draft risk assessment regulations, the motion carries with a  
2 vote of 5-0. Lastly, I would request a motion to direct staff to  
3 incorporate any changes agreed to by the board during today's  
4 discussion and consider the board's discussion overall in today's  
5 meeting and to additionally receive feedback on the draft automated  
6 decision-making regulations from board members after this meeting,  
7 and to propose a revised draft at a following meeting, again for  
8 possible advancement to rulemaking. And I will, that's the end of  
9 the motion. I'll editorialize here to say like, I don't think any  
10 of us expect that it will be there again. It's just a matter of  
11 options.

12 **MS. DE LA TORRE:** I will move.

13 **MS. URBAN:** Thank you Ms. de la Torre. You may have a second?

14 **MR. LE:** I'll second.

15 **MS. URBAN:** Thank you, Mr. Le. Ms. Allen, would you please  
16 conduct the roll call vote?

17 **MS. ALLEN:** Yes, the motion is regarding 2B, the automated  
18 decision-making regulations as stated by the chair. Board member de  
19 la Torre?

20 **MS. DE LA TORRE:** Aye

21 **MS. ALLEN:** De la Torre aye. Board member Le?

22 **MR. LE:** Aye.

23 **MS. ALLEN:** Le aye. Board member Mactaggart?

24 **MR. MACTAGGART:** Aye.

25 **MS. ALLEN:** Mactaggart aye. Board member Worthe?

26 **MR. WORTHE:** Aye.

27 **MS. ALLEN:** Aye. And Chair Urban?

28 **MS. URBAN:** Aye.

1           **MS. ALLEN:** Urban aye. Madam Chair, you have five ayes and no  
2 noes.

3           **MS. URBAN:** Thank you Ms. Allen and thank you to the board. The  
4 motion carries with the vote of 5-0. I know we are all in need of  
5 lunch. I would just like to thank again this subcommittee and the  
6 staff and the board for such a thoughtful, robust discussion and  
7 the public for all of their helpful input during public comment. I  
8 look forward to the continued discussion of these important draft  
9 regulations. With that I am going to announce lunch. In order to do  
10 that, I'm going to take out of order on our agenda today. Agenda  
11 item number 10, which is a closed session and I hope board members  
12 are okay, kind of eating lunch in the closed session. The closed  
13 session pursuant to Government Code section 11126(e) (1) and 2(a),  
14 the board will now meet in the closed session to confer and receive  
15 advice from legal counsel regarding two matters. One is California  
16 Chamber of Commerce v. California Privacy Protection Agency, et al.  
17 The other is California Privacy Protection Agency et al v. the  
18 Superior Court of the State of California for the County of  
19 Sacramento and California Chamber of Commerce. The board will  
20 additionally meet and close session to discuss the executive  
21 director's annual review under authority of Government Code section  
22 11126(a) (1). And I would just like to say that of course, we can't  
23 predict exactly how long the board will retire to close session. We  
24 won't come back before 2:15pm, so folks who are in the public  
25 meeting can know that they are fine leaving until 2:15pm. After  
26 that, we will return when we are done. And I will ask, and this is,  
27 excuse me, this public session will remain open I think with a sign  
28 to let everyone know that we're still away. And for the board

1 members, I would like to please invite you to leave this session  
2 and join the closed session zoom link for us to begin our  
3 discussion, and we can talk about timing and lunch in that session.  
4 Thank you all very much. And this meeting of the California Privacy  
5 Protection Agency Board is going into closed session. Thank you.

6

7 **(Part 2)**

8

9 **MS. ALLEN:** Okay, you may proceed.

10 **MS. URBAN:** Thank you very much, Ms. Allen. Thanks everyone.  
11 The California Privacy Protection Agency Board now returns from our  
12 closed session meeting back to open session. We're going to take  
13 items out of order, given that we do have a lot of business, and I  
14 was able to work with staff just before coming back to help order  
15 things. So, we will start this after lunch session, with agenda  
16 item number six. Agenda item number six is discussion and possible  
17 action to adopt a proposed regulation to establish the California  
18 Privacy Protection Agency's data broker registration fee. And that  
19 will be presented by Mr. Laird. Mr. Laird, please go ahead.

20 **MR. LAIRD:** Thank you and good afternoon to the board. I know  
21 it's been a long haul already. So, this is pretty straightforward.  
22 This is really, I would say, more of a procedural change than  
23 substantive. As the board may be aware, and I know Ms. Mahoney will  
24 be covering in her remarks later when she gives a legislative  
25 update. This October, the governor signed into effect SB 362, also  
26 known as the Delete Act, which does a number of things. But a  
27 component of the act is to move the existing data broker registry  
28 that has been hosted by the Department of Justice to-date, over to

1 our agency, beginning January 1st. With that registry exists a  
2 requirement to pay a registration fee, and DOJ has historically set  
3 that fee at \$400, but that is set in regulation. As the memo  
4 attached with these materials explains, staff is recommending that  
5 we essentially just move the existing regulation into the CPPA's  
6 chapter and title of the California Code of Regulations to make it  
7 clear that the fee is now within our ambit, and part of our  
8 Agency's requirements. But beyond that, nothing else is changing.  
9 The fee amount is remaining the same. Although as Ms. Mahoney will  
10 cover in her remarks, SB 362 does then establish new elements  
11 required of data brokers beginning in 2026. So just previewing,  
12 there may be a need in the future to adjust that fee, but for the  
13 time being we are recommending that we keep it at the same level  
14 DOJ has. Finally, I'll just note, you'll notice I'm asking you to  
15 adopt this amendment to the regulations sort of without a formal  
16 comment period or anything of that nature. That's because the  
17 agency's ability to set the fees for the registry is exempt from  
18 the Administrative Procedures Act. And so essentially, all we need  
19 from the board today is adoption of the proposed changes, and that  
20 will then be filed with the Office of Administrative Law as a file  
21 in print, meaning essentially once the authority vests on January  
22 1st, they will file it with the Secretary of State, and the change  
23 will go into effect automatically. So happy to take any questions,  
24 but again, I would emphasize that this really is more a procedural  
25 step than any sort of significant or substantive step for the  
26 agency.

27 **MS. URBAN:** Thank you very much, Mr. Laird. Any comments or  
28 questions from board members? All right. Seeing none, I will be



1 asking for a motion to adopt the proposed regulation to establish  
2 the California Privacy Protection Agency's data broker registration  
3 fee. Is there public comment on this item, Ms. Allen?

4 **MS. ALLEN:** This is for agenda item number six, since we're  
5 slightly out of order. And this is the action to propose to adopt  
6 data broker registration fee. If you would like to make a comment  
7 at this time, please raise your hand using the raise hand feature  
8 in Zoom, or by pressing star nine if you are on your phone. Again,  
9 this is for agenda item number six. Now chair, I'm seeing no hands.

10 **MS. URBAN:** Thank you very much, Ms. Allen. In that case, may I  
11 have a motion to adopt the proposed regulation to establish the  
12 California Privacy Protection Agency's data broker registration  
13 fee?

14 **MR. WORTHE:** So moved.

15 **MS. URBAN:** Thank you, Mr. Worthe. May I have a second?

16 **MR. LE:** I'll second.

17 **MS. URBAN:** Thank you, Mr. Le. The motion has been moved and  
18 seconded. Ms. Allen, can you please conduct the roll call vote?

19 **MS. ALLEN:** Yes. The motion is to adopt the data broker fee in  
20 agenda number six as stated by the chair. Board member de La Torre?

21 **MS. DE LA TORRE:** Aye.

22 **MS. ALLEN:** De la Torre aye. Board member Le?

23 **MR. LE:** Aye.

24 **MS. ALLEN:** Le aye. Board member Mactaggart?

25 **MR. MACTAGGART:** Aye.

26 **MS. ALLEN:** Mactaggart aye. Board member Worthe?

27 **MR. WORTHE:** Aye.

28 **MS. ALLEN:** Board member Worthe aye. And Chair Urban?

1           **MS. URBAN:** Aye.

2           **MS. ALLEN:** Chair Urban aye. Madam Chair, you have five ayes  
3 and no noes.

4           **MS. URBAN:** Thank you very much. The motion carries with a vote  
5 of 5-0, thank you, and is therefore adopted. Thank you very much,  
6 Mr. Laird. If you need nothing more from us on this item, I will  
7 move to the next. All right. We will now move to agenda item number  
8 three, which is regulations and proposals and priorities, including  
9 proposed updates to existing regulations. Our presenter will be  
10 Lisa Kim, senior policy counsel and advisor with the CPPA. This is  
11 part of our regularized calendar for this meeting is biannual  
12 regulations, proposals, and priorities. Although I suppose we have  
13 a number of items that meet that fall into that category today. It  
14 follows from its sister biannual item, which was discussed during  
15 our May 2023 meeting in which we discussed priorities and directed  
16 and delegated to staff to work on a number of topics. I want to  
17 thank Ms. Kim and her team for all the careful work on these and  
18 for taking the steps requested by the board in May. If you could  
19 turn your attention to the materials for this agenda item, I'll  
20 turn things over to Ms. Kim. Thank you.

21           **MS. LISA KIM:** Thank you, Chairperson Urban. So, as we are  
22 talking about item three, proposed updates to existing regulations  
23 for circulated two documents. The first is proposed revisions to  
24 the CCPA regulations, and within them you will see the proposals  
25 that we have made blue underline indicating any additions to the  
26 text. And red strike through any deletions to the text.  
27 Accompanying that proposed text language, we have a chart  
28 explaining the modifications and it sets forth all the map

1 modifications that we are making, except for non-substantive  
2 changes like typos, numbering, and lettering changes and  
3 corrections to section numbers, etcetera. There are two items that  
4 are marked and highlighted in gray, and they are marked with an  
5 asterisk. Those are items that we had identified for discussion  
6 today, but not all may require discussion, but we wanted to  
7 highlight these to make sure that the board was aware of them. The  
8 first gray item, or the first asterisk item is in section 7001. And  
9 this is the expanded definition of sensitive personal information,  
10 which I will use in short term to say SPI. So, what we did there is  
11 we added a new category to the statutory definition of sensitive  
12 personal information. Specifically, we added the personal  
13 information of consumers less than 16 years of age. The rest of the  
14 definition is a reiteration of Civil Code section 1798.140(a)(e),  
15 which is the definition of sensitive personal information in the  
16 statute. And it's included here for readability and ease of  
17 reference. This proposed change is made under authority in Civil  
18 Code section 1798.185(a)(1) that is to add, update, and harmonize  
19 the definition of sensitive personal information with a definition  
20 of sensitive data that is being used by other jurisdictions,  
21 specifically Connecticut, Delaware, Indiana, Iowa, Montana, Oregon,  
22 Tennessee, Texas, and Virginia. These other jurisdictions include  
23 within their definition of sensitive data language, such as  
24 personal data of a known child, personal data collected from a  
25 known child or a child's personal data. If the board supports this  
26 modification to SPI to add minor's information, staff will adjust  
27 draft regulations on risk assessment, cybersecurity, and ADMT  
28 accordingly to the extent that it affects those drafts. Now, the

1 second item that we have highlighted in gray is section 7005, and  
2 this is for the consumer price index adjustments. We added this  
3 regulation to address the increases to monetary thresholds for  
4 various items in the CCPA based on the consumer price index. As the  
5 board knows, the law already requires increases to the penalty and  
6 fine amounts, the board per diem and the monetary threshold for  
7 meeting the definition of business to reflect increases in the CPI.  
8 It's noted in Civil Code section 1798.185(a)(5). The only question  
9 for the board is which inflation index the agency will use to  
10 calculate those increases. Since the CCPA does not specify which  
11 CPI to use, this regulation is necessary to identify which one will  
12 be used. The CPI that we selected is recommended by the Department  
13 of Finance, and it's also used by the Agency for changes to its  
14 annual budget. This change in the regulation will basically allow  
15 us to do a Section 100 change to update numbers every other year,  
16 and to remind the board that a Section 100 change is something that  
17 can happen more administratively and not require a full rulemaking  
18 package. And finally, I wanted to note a few topics that we are  
19 continuing to monitor and may suggest.

20 **MS. URBAN:** Actually, sorry, Ms. Kim. Are those the gray  
21 topics?

22 **MS. KIM:** Those two are the gray topics.

23 **MS. URBAN:** Okay. If it's all right, I'd like to check with the  
24 board to see if they have comments on those, and then we can go  
25 into the other topics that you've highlighted. Are there comments  
26 or questions on sensitive personal information or the consumer  
27 price index? Mr. Mactaggart?

28 **MR. MACTAGGART:** Yeah, thank you. I'm a supporter of the

1 sensitive personal information. However, I'm very leery of  
2 including the words, you know, the personal consumer information of  
3 consumers less than 16 years of age. Our construct throughout the  
4 entire statute has both been with the actual knowledge that the  
5 consumer is less than 16 years of age. And if we suddenly put this  
6 in, it's going to be the first and only place that we have an age  
7 gate, and we're going, like, now we're going back into the whole  
8 ADC world of how do you know the kid's 16 or not, and yada-yada.  
9 And it's opens a whole can of worms. So, I would, I really would  
10 like us to put actual knowledge cause that's the standard we have  
11 in the statute.

12 **MS. URBAN:** Thank you. Mr. Mactaggart. Other thoughts on  
13 sensitive personal information? Yes, Ms. ,de la Torre?

14 **MS. DE LA TORRE:** I'm sorry. I just wanted to support that  
15 change. It makes sense.

16 **MS. URBAN:** Thank you, Ms. de la Torre. Ms. Kim, do you have,  
17 does the staff have a view on that, that you wanna talk about or  
18 prefer to--

19 **MS. KIM:** No. We'll take that into consideration, yes.

20 **MS. URBAN:** Okay. Alright. Thank you. Makes some sense to me.  
21 Thoughts on the consumer price index? I trust staff's judgment on  
22 this. I think it's a good idea to go with what the Department of  
23 Finance would like and just in general as a process perspective. So  
24 that seems fine. Alright. I apologize for interrupting you, Ms.  
25 Kim. I just wanted to be sure that we were able not, well, for me,  
26 it's 2:45, and I didn't want to lose track, so please.

27 **MS. KIM:** Not a problem at all. Yes. I just wanted to note a  
28 few additional topics that we are continuing to monitor and may

1 suggest additional regulations on in the future. The first is the  
2 opt-out preference signal. We are monitoring developments in the  
3 opt-out preference signals, such as Colorado's efforts of selecting  
4 compatible signals, as well as potential efforts by the W3C for  
5 standardization. Accordingly, we may propose updates to our  
6 regulations to provide more specificity for the opt-out preference  
7 signal in the future. Second, we have also been watching  
8 developments in the EU regarding companies charging consumers for  
9 more privacy preserving versions of their services. We believe that  
10 our law and regulations regarding financial incentives already  
11 addresses these kinds of situations, but we are monitoring to see  
12 if there's anything we want to recommend to enhance those  
13 protections. And finally, we may provide additional recommendations  
14 in the future as we continue to observe our laws application  
15 through our enforcement efforts. So, I just wanted to make those  
16 notes of these additional topics for the future. That's it.

17 **MS. URBAN:** Thank you, Ms. Kim. All right. Comments, questions  
18 on the draft from the board? Yes. Ms. de la Torre, and then Mr.  
19 Mactaggart.

20 **MS. KIM:** I believe you're muted. Ms. de La Torre.

21 **MS. DE LA TORRE:** Sorry. So, it is about the whole draft. The  
22 main feedback from me is that we continue to not address the need  
23 to have flexibility when it comes to data used for research  
24 purposes. There's no language to address these, I brought this up  
25 when we were in the process of approving the current rules. I  
26 understand it's difficult, but I think it's also important, and I  
27 would like to see that language included in the next draft that  
28 will be presented to us hopefully soon.

1           **MS. URBAN:** Thank you, Ms. de la Torre. Mr. Mactaggart.

2           **MR. MACTAGGART:** Thanks. And I would actually support that too.  
3 I it's a valid point. Sure. Urban, I don't want to take so much  
4 time, but I do think it's actually, I got a couple points I  
5 wouldn't mind bringing up because, and I think that I wouldn't mind  
6 if I could just go through them. So, Ms. Kim is very familiar with  
7 these in section 7003 the change to (d) which is the link being  
8 included on the platform page, the privacy link, I think the  
9 statute says before, so I love the fact, I like the change from May  
10 to shall, but I would love to have a concept in there of before the  
11 download so you know what you're putting on your phone. I'm just  
12 going to go quickly through these if that's okay, but I don't think  
13 they're necessarily just all wordsmithing. On the red line, page  
14 13, this is 7004, I'd love, I've noticed something that happens.  
15 You go on a website, the pop-up comes up, and if you're just like,  
16 I don't want to deal with all the, you know, you click on a link on  
17 the page, you go to another page, it takes you and the pop-up  
18 disappears. And I'd love there to be wording saying, if that  
19 happens, it's not that you default it to saying, yes, I accepted  
20 your pop-up. You know, because sometimes they want you to do that  
21 kind of, it makes you go away for them. So, Ms. Kim, I just figured  
22 if you could just kind of put that in your future hopper. The  
23 insertion on page 14, which is again, that's 7044(c) acceptance of  
24 the broad terms of use. Actually, I forget that one. I won't talk  
25 about that. Sorry. In Privacy Policy 7011, I just wanted to point  
26 out that the statute says that websites homepage are every page  
27 that collects information. And so, I hadn't noticed this before,  
28 but that architecture, I think, would require the privacy policy to

1 have a conspicuous link on every single page. And I'm not sure  
2 that's what we want, but I definitely want to do not sell and do  
3 not share on every single page that collects information, but maybe  
4 not the privacy policy. I hadn't noticed that before, so I  
5 apologize. Chair Urban, if we approve this, is there no ability  
6 from, should I have all my changes, all my suggestions now before  
7 we--

8 **MS. URBAN:** So, I think that well, and Ms. Kim, maybe tell us  
9 what it is you need from us.

10 **MR. MACTAGGART:** You know, I'm about halfway through it. Maybe  
11 I'll just say it might be just easier for me to say them then--

12 **MS. URBAN:** Yeah, well, if the question is, will be opportunity  
13 to talk to staff and or to talk about it again, when they bring it  
14 forward, I think that's probably a question more than one of us  
15 have. So, is that correct, Ms. Kim?

16 **MS. KIM:** I'm going to defer this question to Phil to answer or  
17 Mr. Laird.

18 **MR. LAIRD:** Yes. I sort of like the other work streams we  
19 anticipate, especially if we are combining this with our other  
20 rulemaking efforts or initiatives at the moment into a single  
21 package, this will in fact come back to the board before the  
22 comment period.

23 **MS. URBAN:** Okay? Alright.

24 **MR. MACTAGGART:** Okay, then let me just not have all my little  
25 wordsmith-y things. The one point that I do, I would like to bring  
26 to the board's attention though, is so Mr. Soltani will remember  
27 right after this law passed in 2018. In 2019, there was a big  
28 effort to, we thought weaken it by weakening the definition of



1 security and integrity, which we were able to defeat in the  
2 legislature stop in 2019. But what's happened now in the  
3 regulations, and this is not a change, but I do want to highlight  
4 it again. So, if you go to page 49 of the red line, which is 7027,  
5 the request to limit use and disclosure of sensitive personal  
6 information, 7027 M2, unlike the statute, it includes two extra  
7 words. So, you're able to disclose not listen to the consumer about  
8 disclosing sensitive personal information if you're preventing  
9 detecting and investigating security incidents. And we took out the  
10 prevent and investigate because we were concerned that, hey, a  
11 business could just say, I need to, I'm sorry, I'm going to process  
12 your sensitive personal information. We're going to keep your  
13 information because I need to at some point prevent a problem or I  
14 might need to investigate it. So, I don't quite know why we  
15 included that. It also comes up a little later on 7050 for the  
16 service providers and contractors, 7050(a)(4). Again, we've  
17 inserted to prevent the, the two words prevent and investigate,  
18 which makes that loophole a lot wider than it was intended to be.  
19 So, I would just love it if you staff could kind of look at that  
20 and given that the statute is pretty prescriptive and given there  
21 was a lot of legislative history around us trying to fight to keep  
22 it, you know, tight, I don't love the fact that the regulations  
23 have now I think it was AB 1419 or something like that in 2019 to  
24 try to make it bigger. So, I will leave it with that. And then Ms.  
25 Kim, maybe you and I could give you some other comments later on.

26 **MS. URBAN:** Thank you.

27 **MR. MACTAGGART:** Changes a lot.

28 **MS. URBAN:** Thank you. On that last point just because I was

1 scrolling because I could, to catch up the prevent and investigate,  
2 those are not changes that staff is proposing. Now these are issues  
3 that you see in the regulations as they were past March, correct?

4 **MR. MACTAGGART:** That's correct. They were inserted. This is  
5 not this change. They were inserted. I've sort of been wondering if  
6 we could actually get a revision to that given that they're not  
7 supported in the statute. This is wider than the statute.

8 **MS. URBAN:** Okay. Thank you. Ms. de La Tore.

9 **MS. DE LA TORRE:** Just quickly I have some questions, but I was  
10 thinking I would just send them to Ms. Kim since this is coming  
11 back and that will be for an opportunity to maybe identify answers  
12 for them. Is that part of the process that we can see moving  
13 forward? Like when this comes back, if I have proposed the  
14 questions, then maybe we can have an opportunity to get those  
15 answers just seems more efficient.

16 **MS. URBAN:** Sure, absolutely. I think, you know, Mr. Mactaggart  
17 was focusing on the things he would like the board to also have in  
18 our minds. So, if there's anything that you would like the board to  
19 have in our minds, now would probably be a good time just because  
20 it would be a more efficient way for us to continue forward.

21 **MS. DE LA TORRE:** No, it's more questions. We didn't see this  
22 draft until I think, like 10 days ago and I just think that that  
23 might take more time that we have in this meeting. So more  
24 efficient for me will be just to submit the questions and then wait  
25 for the responders in the next meeting.

26 **MS. URBAN:** Okay. Alright. Other comments and questions on the  
27 rest of the draft? Alright. Then given the conversation that we've  
28 had around process, I believe that the approach we're looking at

1 would be something like the cybersecurity regulations, where we can  
2 still give one-way feedback. Staff would go ahead and be developing  
3 the package and then would come back to us when ready, taking into  
4 account what we've said today and one way feedback. If that's the  
5 case, then I will ask for a motion to direct staff to propose  
6 update regulations to formal rulemaking up through commencement of  
7 the 45-day public comment period considering the conversation today  
8 and to otherwise authorize staff to make additional changes where  
9 necessary to improve the text clarity or improve readability or  
10 otherwise ensure compliance with the Administrative Procedure Act  
11 and also to accept comment from individual board members in one-way  
12 communications. I want check with Mr. Laird to make sure I got that  
13 right.

14 **MR. LAIRD:** Yes, that's correct.

15 **MS. DE LA TORRE:** Thank you, Ms. de La Torre. I have a motion.  
16 Do I have a second?

17 **MR. LE:** I'll second.

18 **MS. URBAN:** Thank you, Mr. Le. So, the motion is on the table  
19 with a motion and a second. I'd like to ask if there's any public  
20 comments on this agenda item.

21 **MS. ALLEN:** Okay, great. We are on agenda item number three,  
22 Regulations Proposals and Priorities. If you have a public comment,  
23 please raise your hand using the Zoom 'Raise Hand' feature or star  
24 nine if you are on your phone. And this is for agenda item number  
25 three. And we do have one public comment at the moment. So,  
26 Elizabeth Magana, I am going to allow you to talk. I've unmuted  
27 you. You have three minutes. You may begin when you're ready.

28 **MS. ELIZABETH MAGAÑA:** Firstly, thank you to the board and the

1 staff for your work. My name is Liz Magaña, and I'm commenting  
2 today on behalf of Privacy4Cars. I plan on providing staff with the  
3 red line of our proposed modifications, which I'll read into the  
4 record now. Our recommendations are the result of filing thousands  
5 of DSRs for consumers seeking greater privacy in their vehicles. We  
6 propose one, adding three more examples of dark patterns under  
7 section 7004. For example, businesses shall not ask consumers to  
8 fill a web form multiple times when a single form with multiple sub  
9 requests is possible, nor limit the number of sub requests they can  
10 file per day. For example, a business that requires a consumer to  
11 submit one web form for a request to access shall not require the  
12 consumer to wait 24 hours before submitting another web form for a  
13 request to delete. Secondly, businesses that require the consumer  
14 to call a toll-free telephone number to submit a request shall  
15 ensure their customer support has the knowledge to accurately  
16 address privacy related inquiries. Thirdly, businesses that receive  
17 a request from an authorized agent on behalf of a consumer shall  
18 not contact the consumer to instruct them to resubmit in their  
19 individual capacity. Our second proposal is adding language under  
20 section 7011(f). Firstly, instructions on how the business will  
21 compensate the consumer for the cost of a notarized affidavit to  
22 verify their identity. Secondly, instructions on how an authorized  
23 agent can simultaneously make a request and submit documentation  
24 proving their authority to submit such a request under the CCPA on  
25 the consumer's behalf. Our third proposal is adding language under  
26 section 7020(f). Provide the consumer with information on how to  
27 submit the request or remedy and deficiencies with the request only  
28 if subsection one is impractical. For example, the business may ask

1 the consumer to submit a web form in order to create a ticket and  
2 initiate the request, whereas the consumer before had emailed.  
3 Lastly, our proposal is adding language under section 7060(c).  
4 Match the identifying information provided by the consumer to the  
5 personal information of the consumer already maintained by the  
6 business or use the third party identity verification service that  
7 complies with the section before requesting additional information.  
8 Lastly, I'd like to quickly announce that Privacy4Cars has  
9 developed a new opt-out mechanism known as opt-out code that made  
10 Colorado's shortlist. For more information, please visit  
11 [optoutcode.com](http://optoutcode.com). Thank you so much for this opportunity to make this  
12 comment.

13 **MS. URBAN:** Thank you, Elizabeth Magaña. Ms. Allen, is there  
14 further?

15 **MS. ALLEN:** Alright if there are any other members of the  
16 public who would like to make a public comment on agenda item  
17 number three, regulation proposals and priorities, please raise  
18 your hand using the Zoom 'Raise Hand' feature or pressing star nine  
19 on your phone. Chair Urban, I see no other hands this time.

20 **MS. URBAN:** Thank you very much, Ms. Allen. In that case, we  
21 have a motion on the table and a second and I would like to ask Ms.  
22 Allen to please conduct the roll call vote.

23 **MS. ALLEN:** Yes. The motion is on agenda item number three,  
24 Regulations Proposals and Priorities as previously stated by the  
25 chair. Board member de La Torre?

26 **MS. DE LA TORRE:** Aye.

27 **MS. ALLEN:** De La Torre aye. Board member Le?

28 **MR. LE:** Aye.

1           **MS. ALLEN:** Le aye. Board member Mactaggart?

2           **MR. MACTAGGART:** Aye.

3           **MS. ALLEN:** Mactaggart aye. Board member Worthe?

4           **MR. WORTHE:** Aye.

5           **MS. ALLEN:** Worthe aye. Chair Urban?

6           **MS. URBAN:** Aye.

7           **MS. ALLEN:** Urban aye. Madam Chair, you have five ayes and no  
8 noes.

9           **MS. URBAN:** Thank you very much. The motion carries with a vote  
10 of 5-0. Ms. Kim, thank you very much and thanks to everybody in  
11 Legal Division who I know we're working on this, and we look  
12 forward to the next time that we see this. So, thank you very much.  
13 With that, we will move to agenda item number four. Agenda item  
14 number four covers discussion and possible action regarding  
15 proposed insurance regulations pursuant to Civil Code  
16 1798.185(a) (21). Ms. Kim will be presenting this issue as well. The  
17 item reflects work overseen by the Rulemaking Process Subcommittee,  
18 which was originally Ms. de La Tore and Mr. Thompson. Well, Mr.  
19 Thompson was on the board and now Ms. de La Tore and myself. At  
20 Civil Code section 1798.185(a) (21), the CPPA directs us to review  
21 an existing insurance code provisions and regulations relating to  
22 consumer privacy other than those relating to rates and pricing to  
23 determine whether any provisions of the insurance code provide  
24 greater protection than the provisions of the CCPA. And then after  
25 the review to adopt a regulation that applies only the more  
26 protective provisions of this title, the CCPA to the insurance  
27 companies. So, I thank Mr. Thompson and Ms. de la Torre and staff  
28 before I came aboard for their work on this and staff for all the

1 work on this topic. And I will turn it over to Ms. Kim.

2 **MS. KIM:** Thank you, Chairperson Urban. So, I'm back on item  
3 number four. To ground our discussion today, I want to provide the  
4 board with some background before engaging in the actual draft text  
5 of the re proposed regulations. So first, I'll speak to the  
6 agency's mandate to adopt regulations in this space. Second, I'll  
7 provide some background regarding California laws that apply to the  
8 insurance industry. Third, I'll explain the differences in scope  
9 between California insurance law and the CCPA. And then finally,  
10 I'll walk the board through the language of the proposed  
11 regulations and what they are intending to accomplish. As part of  
12 that discussion, I'll also cover some recent developments in the  
13 adoption of a new model law that would apply to insurance companies  
14 and how that would impact our recommended course of action. I do  
15 think this background will help the board understand the legal  
16 landscape that we are dealing with, and we'll also inform the  
17 board's discussion on this agenda item. So, starting with the first  
18 aspect, which is the agency's mandate to adopt regulations in this  
19 space. Can we have the next slide? As Chairperson Urban mentioned,  
20 Civil Code section 1798.1855(a) (21) directs the Agency to review  
21 existing insurance code provisions and regulations to determine  
22 whether the CCPA provides greater protection to consumers' privacy  
23 than existing insurance law. And upon completing its review, the  
24 Agency is directed to adopt regulations that apply the more privacy  
25 protective provisions of the CCPA to insurance companies. As a way  
26 of background, when we talk about the California Insurance Code and  
27 regulations, we are basically referring to two things. First, it's  
28 the statute, which is commonly referred to as the Insurance

1 Information and Privacy Protection Act, the IIPPA, and it's found  
2 at Insurance Code section 791 et seq. Also, we are referring to  
3 regulations that implement the IIPPA and the Graham-Leach-Bliley  
4 Act, which is the federal law that applies to financial  
5 institutions, including insurance companies. So those regulations  
6 are commonly referred to the PNPI regulations, which stands for  
7 privacy of non-public personal information. As you know, the CCPA  
8 does not apply to personal information that is collected, process  
9 sold or disclosed subject to the GLBA. And because the PNPI  
10 regulations implement the GLBA conduct subject to the PNPI  
11 regulations may fall outside of the scope of the CCPA. So, this is  
12 important to keep in mind as we go through the overlapping scope of  
13 the IIPPA and the CCPA. So, with this background, I'd like to walk  
14 the board through a few slides that explain the differences in  
15 scope between the insurance code and the CCPA. Understanding these  
16 differences in scope is essential to understanding which law is  
17 more privacy protective than the other. Next slide. So, this slide  
18 covers which consumers are covered under the two different laws. As  
19 you can see from the Venn diagram, the CCPA as a whole is more  
20 privacy protective because it covers more consumers than the IIPPA.  
21 The CCPA gives rights to all California residents, while the IIPPA  
22 applies only to those California residents that are involved in  
23 insurance transactions. So, however, there are some consumers that  
24 would be covered by the IIPPA, but not the CCPA and specifically  
25 that's non-California residents involved in property and casualty  
26 insurance transactions. The next slide. The next slide covers which  
27 businesses are covered. Now, not surprisingly, we see that the CCPA  
28 covers more businesses than the IIPPA. The CCPA applies to all



1 entities that meet the definition of business. While the IIPPA  
2 applies to insurance institutions, agents, and insurance support  
3 organizations that collect and maintain information about insurance  
4 transactions. Given that many of these insurance related companies  
5 collect a significant amount of personal information, we presume  
6 that many of them would fall within the CCPA definition of IIPPA.  
7 However, we recognize that smaller companies, particularly ones  
8 that just provide insurance support services, may fall outside of  
9 the CCPA's threshold requirements for a business. Next slide. Now  
10 finally, we're looking at this last slide that demonstrates how the  
11 CCPA covers more personal information than the IIPPA. As you know,  
12 CPA's definition of personal information is very broad. It covers  
13 all information that is reasonably capable of being associated with  
14 or linked to a particular consumer or household. In contrast, the  
15 IIPPA applies to individually identifiable information gathered in  
16 connection with insurance transaction from which judgements can be  
17 made. And the rest of the statute goes on to say, judgments can be  
18 made about an individual's character, habit, advocations, finances,  
19 occupation, general reputation, credit, health, and any other  
20 personal characteristics. However, there's a significant amount of  
21 personal information that the IIPPA covers that the CCPA may not  
22 cover. As mentioned earlier, insurance companies are subject to the  
23 GLPA and also thus the PNPI regulations. They're also subject to  
24 the Fair Credit Reporting Act. So, some information processed in  
25 accordance with those laws may be outside the scope of the CCPA,  
26 and thus that is why the Venn diagram sort of demonstrates that  
27 there is a portion that falls outside of the CCPA jurisdiction. So,  
28 one last thing before getting into the text of the regulations. I

1 wanted to update you that we understand that the National  
2 Association of Insurance Commissioners, which goes by NAIC, is  
3 currently working to adopt a new model law that would significantly  
4 expand the privacy protections insurance companies are required to  
5 give consumers. In case you didn't know, model laws by the NAIC are  
6 often passed in their entirety by state legislatures. In fact,  
7 California's current insurance code is based on a previous NAIC  
8 model law. We understand that the NAIC is pretty far along in the  
9 process and the California Department of Insurance is actively  
10 involved in the drafting of this new model law. And we anticipate  
11 the NAIC potentially adopting this new model law in the second half  
12 of next year, and that the new model law could then be subsequently  
13 adopted by the California legislature soon after that. So given  
14 that the model law may significantly change any specific analysis  
15 of privacy provisions in the CCPA and the IIPPA, as well as the  
16 fact that the model law may be adopted before we finish our  
17 rulemaking process, we have focused our draft regulations on  
18 clarifying that the CCPA applies where the IIPPA's jurisdiction  
19 ends. So, the first regulation, and if you'd like to take a look at  
20 the draft text that was provided to the board, the first regulation  
21 defines an insurance company to make clear who the regulation  
22 applies to. The second regulation makes clear that when the  
23 insurance company also meets the definition of business, they shall  
24 comply with the CCPA with regard to any information that is not  
25 subject to the IIPPA. So, we plan to work with the California  
26 Department of Insurance to add examples that further demonstrate  
27 how the CCPA would apply to situations where the insurance code  
28 would not apply. One benefit of these regulations that we've

1 suggested or proposed is that they would be future proof to apply  
2 even if the model law is adopted, to the extent that there are  
3 specific provisions in the model law that would be less protective  
4 than the CCPA, we can revisit them at a later time. And that is our  
5 recommendation as staff. I'm happy to take any questions that the  
6 board may have.

7 **MS. URBAN:** Thank you, Ms. Kim. Questions or comments from the  
8 board? Yes, Mr. Worthe?

9 **MR. WORTHE:** Mine is just more general. Are there under any  
10 other industries that we need to look at in this regard? Or is it  
11 just the insurance industry that has this conflicting policy?

12 **MS. KIM:** I can answer that. According to the statute of what  
13 we are supposed to look at the insurance industry has specifically  
14 called us for us to do this analysis.

15 **MS. URBAN:** There are carve-outs in 1798.145 that touch on  
16 certain financial and health laws like HIPPA. So, but this is the  
17 only one that requires us to do this particular regulation. Other  
18 questions or comments from board members? All right. Oh, sorry, Mr.  
19 Mactaggart. Ms. de la Torre, you came off mute?

20 **MS. DE LA TORRE:** Oh, I was just going move the moment you--

21 **MS. URBAN:** Oh, okay. Alright then the motion I would ask to  
22 put on the table is may I have a motion to direct staff to advance  
23 these proposed insurance regulations to formal rulemaking up  
24 through commencement of the 45-day public comment period, and to  
25 otherwise authorize staff to make additional changes, where  
26 necessary, to improve the text clarity, to incorporate feedback  
27 from the California Department of Insurance-- I guess if they have  
28 more, sorry, let me start over. Commenting on my own draft here.

1 May I have a motion to direct staff to advance these proposed  
2 insurance regulations to formal rulemaking up through commencement  
3 of the 45-day public comment period, and to otherwise authorize  
4 staff to make additional changes where necessary to incorporate  
5 feedback provided by the California Department of Insurance to  
6 improve the text's clarity and/or the text's readability, and to  
7 otherwise ensure compliance with the Administrative Procedures Act.

8 **MS. DE LA TORRE:** I move.

9 **MS. URBAN:** Thank you, Ms. de La Torre. May I have a second?

10 **MR. LE:** I'll second.

11 **MS. URBAN:** Thank you, Mr. Le. I have a motion and a second,  
12 and at this point, I would like to ask if there's public comments  
13 on this item?

14 **MS. ALLEN:** Sure. Okay. We are on agenda item number four,  
15 Discussion of Possible Action Regarding Proposed Insurance  
16 Regulations. If you have a public comment, please raise your hand  
17 using the 'Raise Hand' feature of Zoom or pressing star nine. If  
18 you are joining us via phone. Again, this is for agenda item number  
19 four, possible action regarding proposed insurance regulations.  
20 Okay. We have Dietrich. I am going to allow you to talk. You are  
21 now unmuted. You have three minutes. Begin when you're ready.  
22 Dietrich, are you there? I'm trying to mute you and unmute you  
23 again, see if it works. All right. Can you hear me? Dietrich? You  
24 have three minutes. Okay. Dietrich, we can't hear you, but if you  
25 would like to join us maybe via phone, we have the phone number  
26 listed on the public website under the agenda, and you can join us  
27 that way. And then hit star nine if you're having trouble  
28 connecting here. I'm going mute you for now and go to the second

1 commenter, but please rejoin if you would like to comment. Okay.  
2 Let's move on. Elizabeth Magaña, I'm going to unmute you and allow  
3 you to talk. You'll have three minutes. You may begin when you're  
4 ready.

5 **MS. MAGAÑA:** Hello again. This is Liz Magaña. I'm making this  
6 comment on behalf of Privac4Cars. We just wanted to flag for the  
7 board's attention what we believe to be a major data security  
8 concern in the automotive industry, insurance industry. When a  
9 consumer has a total loss accident and the insurance company  
10 settles the claim, the carrier ends up owning the vehicle and a  
11 treasure trove of personal data is towed away. This includes phone  
12 records, text messages, geolocation, and much more. Unfortunately,  
13 the majority of insurers fail to follow the National Institute of  
14 Standards and Technology 00-888, which is also referred to as the  
15 guidelines for media sanitization, the Environmental and Protection  
16 Agencies Responsible recycling standard for electronics recyclers,  
17 nor the National Association of Insurance Commissioners Standards  
18 for Safeguarding customer information, which has been adopted in  
19 California under California Code Regulations Title section 2689.15.  
20 This particular section requires insurance companies to design  
21 their information security program to (a) ensure the security and  
22 confidentiality of customer information (b) protect against any  
23 anticipated threats or hazards to the security or integrity of such  
24 information and (c) protect against unauthorized access to or use  
25 of such information that could result in substantial harm or  
26 inconvenience to any customer. Leaving unencrypted personal  
27 information of consumers in vehicles does not seem consistent with  
28 the above requirement. Additionally, California law also requires

1 an insurance company to notify any California resident whose  
2 unencrypted personal information was acquired or reasonably  
3 believed to have been acquired by an unauthorized person. We are  
4 unaware of any insurance company that discloses to its customers  
5 whose cars are now stored in a total loss yard that their  
6 unencrypted personal information may be accessed by unauthorized  
7 users. We respectfully ask that the CPPA Board and staff keep these  
8 concerns in mind. Thank you so much for your time.

9 **MS. URBAN:** Thank you, Liz Magaña. Ms. Allen, is there further  
10 public comment?

11 **MS. ALLEN:** If you would like to comment on this agenda item,  
12 agenda item number four regarding proposed insurance regulations,  
13 please raise your hand using the 'Raise Hand' feature in Zoom or  
14 pressing star nine on your telephone. Chair Urban, I see no other  
15 hands.

16 **MS. URBAN:** Thank you very much Ms. Allen. I'm attentive to the  
17 fact that Dietrich from DOI, which I assume is Department of  
18 Insurance, wasn't able to speak so that we could hear. So, before  
19 we vote on the motion, I just wanted to emphasize that incorporated  
20 in the motion is requesting or directing and empowering staff to  
21 take feedback from the Department of Insurance. And this isn't in  
22 the motion, but I would just ask staff to report back to us any  
23 relevant feedback they think is appropriate when they bring it  
24 back. With that, with the motion on the table, Ms. Allen, would you  
25 please conduct the roll call vote?

26 **MS. ALLEN:** Yes. The motion is for agenda item number four,  
27 Discussion of Possible Action Regarding Proposed Insurance  
28 Regulations as previously stated by the chair. Board member de la

1 Torre?

2 **MS. DE LA TORRE:** Aye.

3 **MS. ALLEN:** De la Torre aye. Board member Le?

4 **MR. LE:** Aye.

5 **MS. ALLEN:** Le aye. Board member Mactaggart?

6 **MR. MACTAGGART:** Aye.

7 **MS. ALLEN:** Mactaggart aye. Board member Worthe?

8 **MR. WORTHE:** Aye.

9 **MS. ALLEN:** Worthe aye. Chair Urban?

10 **MS. URBAN:** Aye.

11 **MS. ALLEN:** Urban aye. Madam Chair, you have five ayes and no  
12 noes.

13 **MS. URBAN:** Thank you very much. The motion carries with a vote  
14 of 5-0. Because we have taken things out of order, I need to, if  
15 with your indulgence, remind myself of what we've covered thus far  
16 on the agenda. I believe we have covered all of the regulation  
17 related items, and thus, I just wanted to briefly return to the  
18 point that Mr. Laird made at the top of the meeting, which is that  
19 staff would like to be able to roll regulations together as  
20 appropriate in order to most efficiently receive economic input and  
21 so forth. I think everything's sort of eligible for that we've  
22 talked about today, with the exception of the data broker  
23 registration fee, which we went ahead and approved, and I think  
24 staff is aware of our expectations with regard to, for example, the  
25 automated decision making technologies. But I wanted to mention  
26 that to see if anyone wanted to discuss it further before we move  
27 to our next item. Okay, thanks very much to everyone. Our next item  
28 is the legislative update. I'm just trying to find the name of it.

1 I apologize, Ms. Mahoney. Hopefully you can. Number seven. Oh,  
2 number seven. Number five.

3 **MR. LAIRD:** Item five. Yes.

4 **MS. URBAN:** Okay. I thought it would-- yes. Okay. Start over.  
5 Apologies to everybody. Our next item or I will next call agenda  
6 item number five, which is legislation update and agency proposals  
7 for legislation from Maureen Mahoney, our Deputy Director of Policy  
8 and Legislation. This is item number five, is an item from our  
9 regularized calendar, expected annually at the end of each year. It  
10 is the legislation update that Ms. Mahoney has for us in  
11 presentation of any Agency proposals for legislation that Ms.  
12 Mahoney, our Deputy Director of Policy and Legislation and staff  
13 recommend to us. Ms. Mahoney, I'm sorry for the slightly stilted  
14 and tripping introduction of you, but please go ahead.

15 **MS. MAUREEN MAHONEY:** Thank you, Chairperson Urban, board  
16 members for this item. I'll do four things. First, I'll provide an  
17 update on federal legislation, particularly children's privacy  
18 legislation. Next, I'll provide a more detailed overview of two  
19 California bills from earlier this year. First, SB 362, the Delete  
20 Act. I'll go over the agency's work towards implementation for that  
21 one. And then provide an overview of SB 544, which amended the  
22 Bagley-Keene Open Meeting Act. Both of those bills go into effect  
23 January 1, 2024, and will affect the Agency. And then finally we'll  
24 look to next year with a bill proposal with respect to op  
25 preference signals for your consideration. And then also I'm a  
26 little bit under the weather so appreciate your patience with me.  
27 So first, turning to federal legislation, ADPPA, the federal  
28 comprehensive privacy bill introduced in the house last year that



1 the Agency opposed at that time and its current form over concerns  
2 about the bill's potential impact on California's privacy  
3 protections that has not been reintroduced in Congress. Our  
4 understanding is that it's possible it could be refiled soon, but  
5 it's political prospects are unclear at the moment. And we'll keep  
6 a close eye on reintroduction. It appears more likely that kids'  
7 privacy could move in the short term in the Senate. As you know,  
8 the Senate Commerce Committee advanced the Children and Teens  
9 Online Privacy Protection Act, known as COPA 2.0 and the Kids'  
10 Online Safety Act, known as KOSA this summer out of that committee  
11 on a bipartisan basis. And now the Senate is preparing both bills  
12 for a potential advancement out of that chamber. The bills are  
13 still under negotiation. We may see new drafts. Language is in Flux  
14 and the path through the house for these bills is still not yet  
15 clear, given that chamber has been emphasizing, focusing on a more  
16 comprehensive privacy bill, not just kids. COPA 2.0 in short  
17 updates and expands the existing federal kids' privacy law.  
18 Expanding COPA's opt-in requirement for kids 13 to 16 has deletion  
19 in correction rights, data, minimization of purpose limitation  
20 prohibition on certain behavioral advertising and just the  
21 threshold. The bill does not currently propose to amend COPA's  
22 existing preemption language with respect to kids' online  
23 information. If the scope of COPA is expanded, including the teens,  
24 it could implicate more consumers and could impact more CCPA rights  
25 and responsibilities. For KOSA, this bill directs covered platforms  
26 to assess and mitigate harms to minors defined us under 17 online  
27 requires cover platforms to provide consumer friendly tools for  
28 managing the online experience of minors, including those that

1 limit the ability of other individuals to communicate with a minor  
2 and prevent other users from viewing the minors personal data. With  
3 respect to preemption, KOSA's current language is largely silent on  
4 preemption, so how it would affect the agency would be a fact  
5 specific determination. And so, staff doesn't recommend taking a  
6 formal position. On these bills at this time, given that events are  
7 continuing to unfold. But we'll leave that to the board's  
8 discretion. And lastly, with respect to federal legislation,  
9 specifically the bill HR 1165, a federal partisan bill to update  
10 the fair Wily acts that advance of the House Financial Services  
11 Committee earlier this year that I mentioned at an earlier meeting.  
12 And that would seek to add sweeping preemption language to the  
13 financial privacy law. We're monitoring the house as of this date.  
14 We have not heard anything about potential floor movement of that  
15 bill. One last item. As you may be aware, there has been a lot of  
16 discussion and interest in AI regulation, which may overlap with  
17 some of the work the agency discussed today. There are no specific  
18 developments at this time, but we will continually track. So next,  
19 I'll move to California legislation first SB 362. But by way of  
20 background for the first time the summer, the agency took positions  
21 on several California bills that directly affect the work of the  
22 agency and its operations. I really appreciate the work of the  
23 board with respect to this legislation. Just to wrap up upon the  
24 vote of the board, the agency took a formal position in support of  
25 four privacy bills, three of which SB 362 AB 947, with respect to  
26 immigration and citizenship status and AB 1194. With respect to  
27 reproductive privacy were signed into law. I've been asked to  
28 provide an update on the agency's implementation of SB 362. The two

1 main provisions of this measure are that it transfers the data  
2 broker registry from the Department of Justice to the agency  
3 effective January 1, 2024, and task the agency with establishing an  
4 accessible deletion mechanism by January 1, 2026, that allows the  
5 consumer to delete their personal information held by all  
6 registered data brokers in a single step. So, in terms of  
7 implementation, obviously you know, the biggest thing that we're  
8 dealing with is a transfer of the data broker registry over to the  
9 agency by January 1. So, the Agency first has to set a fee through  
10 regulation for data broker registration, which we already did. And  
11 the agency also has to provide a means for data brokers to register  
12 with us. So, to provide the required information, pay the fee, and  
13 data brokers would need to register with agency by January 31st,  
14 2024. So due to necessary procurement and implementation timelines,  
15 for things like backend payment processing, the agency will pursue  
16 a simplified implementation of the data broker registry, similar to  
17 how the Department of Justice operated the registry in their first  
18 year. This will allow manual registration by data brokers and paper  
19 check processing during the 31-day registration window spanning  
20 January 1 to January 31, 2024. And we'll then create a page on our  
21 website where the registration information provided by data brokers  
22 will be accessible to the public pursuant to law. We're working to  
23 bring on staff in the near future to assist with the data broker  
24 registry. We're also assessing fiscal year 2024 through 25 resource  
25 needs for planning and implementation of the accessible deletion  
26 mechanism. And we'll continue to work with the Department of  
27 Finance and the California Department of Technology on the  
28 development of that mechanism. And then lastly, I'll point out that

1 the legal team is taking the lead on implementation, you know,  
2 particularly Mr. Laird. So, if there are additional questions, I  
3 may need his help as well.

4 **MS. URBAN:** Thank you, Ms. Mahoney. Is that the updates?

5 **MS. MAHONEY:** Then I want to go over SB 544.

6 **MS. URBAN:** What is that? Sorry?

7 **MS. MAHONEY:** That's the Bagley-Keene Open Meeting Act.

8 **MS. URBAN:** Okay. Thank you. The numbers just swirl in my head.  
9 I apologize. Go ahead. So just-- and tell me if this will make  
10 sense to you. I thought maybe we would pause for questions or  
11 comments on the updates and then talk about the proposal. Okay. Go  
12 ahead. Thank you.

13 **MS. MAHONEY:** Okay, so I'll go through this last update. So, SB  
14 544 amended the Bagley-Keene Open Meeting Act, and that dealt with  
15 the issue of the board's remote participation in meetings. The  
16 agency took a support of amended position on the bill seeking  
17 amendments to allow for fully remote online meetings. Those  
18 amendments were not taken, in fact more restrictive amendments were  
19 taken. So, I'd like to provide an overview of the bill as a passed,  
20 which is fairly complicated. And I have a slide deck to help  
21 present these amendments. Liz, would you mind sharing? So just as a  
22 preliminary note, some of you may be wondering why we're meeting  
23 exclusively online after having hybrid meetings. For the last two  
24 meetings this summer provision was added to a budget bill, SB 143,  
25 that extended the Pandemic Era online meeting rules to the end of  
26 this calendar year. Unfortunately, that means this will be our last  
27 online only board meeting for the foreseeable future, January 1,  
28 2024, through January 1, 2026, new guidance will be in effect the

1 bill sunsets in 2026 with the idea that stakeholders will see how  
2 this new guidance works and the new amendments give the Agency and  
3 board members several choices with respect to meetings. There are  
4 four main options that I'll go through. Next slide please. Option  
5 one. This is kind of the old school way the board can hold fully  
6 in-person meetings without remote public participation. All  
7 participating board members must participate in person and then the  
8 public would attend in person. Staff and guests can still  
9 participate remotely if necessary without triggering additional  
10 teleconferencing requirements. And of course, all of the notice and  
11 transparency requirements under Bagley Keen that we have to comply  
12 with are still in effect. Well, this is an option for us. As you  
13 know, we've received many compelling comments from Californians  
14 about the benefits of providing remote public participation. For  
15 example, next slide, please. Option two. This is kind of the way  
16 we've typically handled things so far when we've had in-person  
17 meetings. So, the board can hold in-person meetings with remote  
18 public participation without triggering additional requirements.  
19 So, all participating board members would participate in person.  
20 Staff, guests and the public can appear by telephone or  
21 teleconference. Of course, the existing notice and transparency  
22 requirements still apply. And then where we start triggering  
23 additional teleconferencing requirements is if board members  
24 participate remotely from their homes. So, I'll describe that in  
25 the next slide. So, option three starts to get a little bit more  
26 complicated. So, the board can hold hybrid meetings with a quorum  
27 of at least three board members participating in person with a  
28 remote option for up to two board members and the public. If the

1 agency takes this approach, there are some additional requirements.  
2 So, board members participating remotely have to keep their cameras  
3 on during the open portion of a meeting, and they have to be  
4 visible on camera unless it's technologically impractical, such as  
5 due to lack of reliable internet connectivity. And even then, the  
6 member must announce the reason for their non-appearance when they  
7 turn off their camera. Board members participating remotely also  
8 must disclose whether there are any individuals 18 and over in the  
9 room at the remote location and the general nature of their  
10 relationship. Remote options for the public must be equivalent to  
11 the way in which the board members are participating. For example,  
12 if board members participating by video conference, the public has  
13 to be able to participate that way as well. All votes have to be by  
14 roll call. And then if the remote public access goes down and it  
15 can't be restored, then we have to end the meeting and provide  
16 notice of that to the public. And then the last option, getting  
17 more complicated and feel free, the board can also hold hybrid  
18 meetings with one or more board members participating in person. Up  
19 to two board members can participate remotely. Additional members  
20 can count towards the in-person forum while participating remotely  
21 under certain circumstances. And the public has to be able to  
22 participate remotely as well. So, getting into the ways in which a  
23 member participating from a remote location can contribute to the  
24 in-person quorum. That's the case if the member has a need related  
25 to a physical or mental disability that's not otherwise reasonably  
26 accommodated, pursuant to the Federal Americans with Disability Act  
27 of 1990, and the board member notifies the board at the earliest  
28 opportunity possible, including at the start of the meeting of

1 their need to participate remotely, and they have to provide a  
2 general description of the circumstances relating to their need to  
3 participate remotely. Then the board has to take action to approve  
4 it and request that general description of the circumstances for  
5 each meeting in which the member seeks to participate remotely. But  
6 the board can't require the member to provide a description that  
7 exceeds 20 words or disclose any medical diagnosis or disability or  
8 disclose personal medical information that's already exempt under  
9 existing losses, such as the confidentiality of Medical Information  
10 Act. And then all the other requirements of option three still  
11 apply. Members participating remotely have to be on camera. That's  
12 not to be our roll call. If the internet is down, we have to  
13 adjourn if we can't get it back up. And that concludes my updates.

14 **MS. URBAN:** Thank you very much, Ms. Mahoney. So, before we go  
15 to the proposal, I wanted to see if board members had thoughts or  
16 questions on the updates. And I wanted to thank Ms. Mahoney for  
17 putting together this very helpful update for us in a very active  
18 space, very active legislative space. So, thank you so much for  
19 tracking all of this and updating us so thoroughly. Comments or  
20 questions from board members? I will spare everyone my continued  
21 and known thoughts about SB 544. And you can refer to my op-ed if  
22 you would like to hear my sort of general thoughts on accessibility  
23 and including and inclusive board meetings. So, I will. Everyone's  
24 heard those before. Thank you again Ms. Mahoney. So, with that,  
25 shall we turn to the memorandum that you provided for us today? And  
26 a little bit of background on the staff's, what I understand to be  
27 staff's proposed legislative proposal from the agency.

28 **MS. MAHONEY:** Yeah, so turning to the bill proposal, so

1 consistent with the process adopted last year for taking positions  
2 on bills and adopting legislative proposals. Staff have put  
3 together a proposal for your consideration to require browsers to  
4 include a feature that allows consumers to use opt-out preference  
5 signals. So, if the board approve staff's recommendation, staff  
6 would propose the idea to lawmakers to consider taking up the bill  
7 in 2024, work with them to develop legislation and sponsor and  
8 support such legislation. And then to give a bit of a sense of  
9 timing to currently the California legislatures in recess, it'll  
10 resume in early January. The policy bill introduction deadline is  
11 February 16th. Bills introduced this year have to advance out of  
12 the first house by May 24. Need to clear the legislature by August  
13 31st, and the governor has till the end of September to make  
14 determination. And if adopted bills typically go into effect  
15 January 1 of the following year. So, Agency staff have informally  
16 gotten feedback on the proposal with key legislative staff, which  
17 was positive. We've also consulted with agency's legal staff be  
18 before putting this proposal before the board. So briefly under the  
19 CCPA, businesses are required, as you know, to honor a browser.  
20 Privacy signals as napped out of sale. It makes it much easier for  
21 consumers to exercise their rights. But to exercise this right,  
22 consumers either have to use a browser that supports the op-top  
23 preferred signal, or take extra steps to find and download and set  
24 up a browser plugin created by third party developers and only a  
25 few browsers [inaudible] Firefox Duct Go and Brave currently offer  
26 native support for these signals. And they make up a very, you  
27 know, small percentage of the market share. Google Chrome. But  
28 Microsoft Edge, Apple, Safari they make up for the vast majority of



1 the market share are decline to offer these signals. So, to make it  
2 easier for consumers exercise rights, we recommend that the board  
3 support this legislative proposal to require browser vendors and  
4 other platforms or devices as defined by regulation to include a  
5 feature that allows users to exercise their California privacy  
6 rights through opt-out preference signals as defined by regulation  
7 and direct staff to find an author, work with them to develop  
8 legislation based on the proposal and sponsor and support such  
9 legislation.

10 **MS. URBAN:** Thank you, Ms. Mahoney. Comments and questions from  
11 the board. Ms. de La Torre, could you come off mute please, Ms. de  
12 La Torre?

13 **MS. DE LA TORRE:** As it was mentioned, we did vote on  
14 supporting some particular bills last year. At that time, I asked  
15 that we develop our policy around what we support, and we don't  
16 support. The only statement that we have right now is what directly  
17 affects the work of the, we are effectively picking some privacy,  
18 right? Privacy bills that we support and some that we don't. And I  
19 think that's fair. But I would like to re-state my request to have  
20 a statement that's more concrete so that we not perceive as  
21 arbitrary in terms of what we support, and we don't support. I was  
22 hoping that will come today. If it is not available today, maybe we  
23 could see on next meeting that definition. I'm sure that the staff  
24 already has some form of criteria, but I would like to see the  
25 criteria get approved. The second piece is in terms of the request  
26 to sponsor a bill. It's very different. Sponsoring a bill is very  
27 different from supporting a bill. It's a significant commitment of  
28 resources for the agency. I don't have an understanding of what

1 commitment might be. I know that we are not part of the GO process,  
2 so if we do support the bill, it doesn't have to go through their  
3 office to be determined whether it's something that they will  
4 pursue or not. I imagine that we'll have to draft it, we'll have to  
5 testify, etcetera. So, I would like to have an understanding of  
6 what commitment of resources any sponsoring of bills entails. And  
7 the second piece that I would like also to see is an analysis on  
8 the potential for litigation and whether that litigation will end  
9 up with effort that will be potentially really significant being  
10 not effective. And this goes to what a member, Mactaggart mentioned  
11 before, because we had a recent experience with the age appropriate  
12 design code. So, I'm generally supportive of the idea. I just want  
13 to know what resources we're committing and whether there is going  
14 to be an effective enactment on the other side that is resilient to  
15 litigation before I vote.

16 **MS. URBAN:** Thank you, Ms. de La Torre. Ms. Mahoney, do you  
17 want to respond? I see Mr. Le is here as well.

18 **MS. MAHONEY:** Yes. So, these are all very good questions with  
19 respect to a fuller description of the types of bills with which  
20 the agency will weigh in on. We flushed out a bit in the board  
21 handbook but also to continue to work to provide more specificity  
22 there. Happy to discuss further at the next meeting. In terms of  
23 time commitment, agree that sponsoring Bill is a very large time  
24 commitment. And that's why staff wanted to focus on this one bill  
25 rather than, you know, moving forward with several ideas that we're  
26 excited about. So, you know, we'll play a significant role in  
27 developing the legislation. You know, we'll answer questions from  
28 staffers and other stakeholders. Work to get support for the Bill,

1 testify, as you mentioned. But I think it makes sense for the  
2 agency to play this role given how closely tied this proposal is to  
3 the agency's goals in terms of making it easier for consumers to  
4 exercise their privacy preferences. And then I'll also point out  
5 that we did a lot of similar work, where behind the scenes, you  
6 know, after we supported SB 362 to help shape that. So, there is  
7 some precedent for the agency getting more involved in legislation.  
8 With respect to the legal analysis, our legal team has performed an  
9 initial analysis, is comfortable recommending that the board  
10 approve this proposal and have pointed to precedents for similar  
11 legislation such as seatbelt laws that require a mobile  
12 manufacturers to include these important safety features. 911  
13 rules, you know, the FCC requirements that all telecom providers  
14 transmit 911 calls to a public safety answering point, even if the  
15 caller's not a subscriber. And importantly, we're not seeking to  
16 require default. Consumers would still need to make a choice to  
17 enable them, but we think this proposal has value for consumers.  
18 And I'm not sure, Phil, if you want to--

19 **MS. DE LA TORRE:** I appreciate that, and I'm generally  
20 supportive. I just would like to see that analysis in some written  
21 form provided to the board before we are asked to vote. And I think  
22 that there's a perfect opportunity in January to come back and make  
23 sure that you give us that kind of analysis in written form and  
24 then ask us to vote.

25 **MS. URBAN:** Can I pause with a process question here to Ms. de  
26 La Torre's point? Mr. Laird or Ms. Mahoney, could you let us know  
27 what staff would need for you to pursue this? I don't have in my  
28 mind exactly the legislative schedule, and if we were to wait with

1 some general approval that it could make us miss the legislative  
2 cycle or something.

3 **MS. DE LA TORRE:** We don't, we don't. They don't start until  
4 January. We'll definitely be within the cycle. That's why I'm  
5 asking.

6 **MS. URBAN:** Thank you, Ms. de la Torre. Mr. Worthe.

7 **MR. WORTHE:** Yeah, I'm less concerned about the legislative  
8 process. I'm more concerned about the understanding the legal  
9 process that we're probably going to face with these groups. So  
10 that would be helpful to understand that before we sign up for it.  
11 So, you know if you already have it, great. If not, let's get  
12 something on somebody on board to help us develop a realistic plan  
13 of what we should expect coming our way if we pursue this.

14 **MS. URBAN:** Thank you, Mr. Worthe. Additional comments or  
15 questions? And Mr. Laird, do you have further that you wanted to  
16 say?

17 **MR. LAIRD:** Sure, just a couple points I'll make. And that is,  
18 first of all as you know, the legislature has its own office of  
19 legislative council who reviews bills and kind of for exactly these  
20 issues. And so, they would be doing an independent analysis before  
21 any, well, either before or during the legislature's own pursuit.  
22 And obviously, there would have to be a legislature involved to  
23 sponsor and carry the bill. Beyond that, I'll just say too you  
24 know, at this point, this is at a conceptual stage in terms of  
25 litigation risk. I mean, to me there's an open question of sort of  
26 who would actually be responsible for enforcing. I think we assume  
27 our agency, but depending on how the bill shakes out, if there  
28 isn't a responsibility in our agency to enforce it, then obviously

1 it doesn't carry litigation risk against the agency itself.

2 **MS. DE LA TORRE:** I just want to point that I'm very supportive  
3 of the idea. I just want to be able to make that decision on  
4 commitment of resources with a little bit more information.

5 **MS. URBAN:** Thank you Ms. de La Torre. Mr. Mactaggart.

6 **MR. MACTAGGART:** Really quickly, I support the idea of having  
7 some kind of process, you know in place to think about it, but I  
8 also support the notion of increasing privacy through legislative  
9 means. That's why we put in the amendment process that we did. And  
10 I'll just make the same pitch I always do. If we have effective  
11 enforcement of the do not sell, do not share buttons on every  
12 single page that collects your information as per statute. We won't  
13 have to do this because I think the browser and device manufacturer  
14 will rush to implement this so that they don't have to have a world  
15 where every single page that collects your information displays  
16 this button cause they'll be so horrified that they'll want to have  
17 this provision that allows the 135(b) exemption to take place. But  
18 anyway, I support the notion, that's just me wasting your time.

19 **MS. URBAN:** No, thank you, Mr. Mactaggart. No, it's important  
20 because as ever, we have a substantive question which is shaped by  
21 procedural question. And we have a procedural question as well. Ms.  
22 Mahoney.

23 **MS. MAHONEY:** I just wanted to point out, you know, the reason  
24 why staff made the recommendation that we did in order to allow  
25 staff to develop the legislation, work with legislators and support  
26 and sponsor the bill is because it'd be more difficult to find one  
27 of those legislators if it's not clear whether or not that at the  
28 end of this process the agency would support. So, it's directly

1 related to the potential success of this proposal. In terms of  
2 timeline, you know, the bill introduction deadline is in February.  
3 But getting language to alleged counsel is in January. Again, you  
4 know, we're already in December. So, these are the reasons why we  
5 recommended a faster timeline.

6 **MS. DE LA TORRE:** And I think that there might be a middle  
7 ground. I wouldn't want to impede the process if there is a need to  
8 propose language in January, least allow the agency to go ahead and  
9 do that. But I also am mindful of the limited resources that we  
10 have that are tax funded, and I want to make sure that we invest  
11 them in things that are pragmatically helpful. And Mr. Mactaggart  
12 just mentioned there's another path to potentially get into the  
13 same place that wouldn't necessarily require the legislature, which  
14 is an uncertain process, by the way. I mean, we could invest  
15 significant resources from the agency and not have a loan on the  
16 other side. So, I think there's no need for that delay in terms of  
17 preparing that language if the agency would like to shop that  
18 around. But I don't want to vote without knowing the resources that  
19 we are committing. And some actual analysis on the viability of the  
20 law one once it goes into place, because this is one that  
21 anticipate we'll have litigation around. And so, I just want to be  
22 mindful of the resources that we have and how we invest them.

23 **MS. URBAN:** Thank you Ms. de la Torre, and Mr. Mactaggart and  
24 everything. I would suggest perhaps something. Like that middle.  
25 So, what I'm hearing is a little bit of a chicken and an egg issue.  
26 It seems to me we don't have the ability as a regulatory agency of  
27 actually sponsoring or carrying legislation. What we can do is have  
28 the board and thus the Agency support legislation that legislators

1 would, of course, be the ones to actually carry it. And given these  
2 timelines for the legislative process, I'm wondering if, and it  
3 sounds to me like people are supportive in principle, I'm wondering  
4 if it would be acceptable to the board and would also give staff  
5 what is needed in a practical sense if we were to approve this in  
6 principle. And to be clear that we are authorizing staff to work  
7 with the legislature in advance putting together what the actual  
8 bill would look like but also to expect that we would be informed  
9 of any legal issues that staff needs us to know that come through  
10 the legislative counsel's office or otherwise before we finally,  
11 sorry, that we expect that goes back because I see this, the  
12 chicken and egg thing, right? If I'm a legislator, I want to know  
13 in principle at least about support before I move forward. But I  
14 completely understand what Ms. de la Torre is mentioning as well.

15 **MS. DE LA TORRE:** And I just want to highlight -

16 **MS. URBAN:** Before we get to this, I just want to ask if that  
17 would work as a practical sense from Mr. Laird and Ms. Mahoney. All  
18 right. Sorry, Ms. de la Torre. Go ahead.

19 **MS. DE LA TORRE:** Yeah, I just want to highlight there's a big  
20 difference between supporting legislation, that is a very low  
21 commitment in terms of resources and sponsoring. And I think that I  
22 understand what we're talking about. This is sponsoring, and I'm  
23 not against voting to sponsor legislation, but I believe that we  
24 should be providing more information before we are asked to commit  
25 the resources that will go into that. It's not just saying I  
26 support the bill. We'll have to find somebody who will carry it,  
27 and we will have to draft it. And it's a much bigger commitment.

28 **MS. URBAN:** I understand. Okay.

1           **MS. DE LA TORRE:** And it's not common that agencies will take  
2 that step. It's not unheard of, but it's certainly not common and  
3 it typically happens only when the GO office approves it. We won't  
4 have to seek that approval because of the way we're created. So I  
5 just want to be mindful of taking that role that the deal will have  
6 on other proposals and considering the commitment at the board  
7 level.

8           **MS. MAHONEY:** And then I would just like to add, I mean, in my  
9 experience with sponsoring, it definitely differs. The workload  
10 differs depending on the author and the agreements of the division  
11 of workloads between them. So, it can vary.

12           **MS. DE LA TORRE:** So why don't we maybe we have a motion around  
13 reaching out and trying to identify a sponsor and start that  
14 initial commitment, and then we can come back in January with that  
15 full analysis and just vote on supporting the bill forward?

16           **MS. URBAN:** Well, I do think in principle, I'm not opposed, I  
17 just want to be sure Ms. Mahoney is able to help us sort of help  
18 her since we are supportive in principle and what is necessary from  
19 us, Ms. Mahoney, in order to get to the place that Ms. de la Torre  
20 is describing, for example, I just want to be sure that we're not  
21 arming you with our sense that in principle we really support this,  
22 if that's going to be helpful in terms of moving things forward  
23 before January.

24           **MS. MAHONEY:** You know, obviously staff's recommendation would  
25 be to have the delegation, you know, for staff to work with the  
26 author and be able to support the bill and sponsor. That would be  
27 the ideal situation. But, you know, I understand that this is our  
28 first time putting forward bill language. So, my goal is to get



1 some sort of agreement moving forward to go ahead with this  
2 proposal.

3 **MS. URBAN:** Thank you, Ms. Mahoney. Mr. Le?

4 **MR. LE:** Yeah, I mean, I'm going to be honest, like, I do this  
5 a lot and most of the time you're trying to finalize the language  
6 and get the people on board in November if you're trying to do a  
7 bill properly and have time to build a coalition and support,  
8 obviously, you know, you have spot bills, you have things figured  
9 out last minute. But you know, I think what would be helpful is  
10 like if we did develop this legislation, right? If there was a  
11 mandate to require companies not pro like inhibit consumers from  
12 expressing their opt-out signals through their browser  
13 architecture, you know, would the board support it? I know we don't  
14 have the language, but I just don't see an author willing to put  
15 their name on it and spend their staff resources if we don't, if,  
16 you know, the CPPA is going to be like, no, we don't actually like  
17 it in January or whatever board meeting. So, you know, we aren't  
18 going to give, if we don't come a decision on how we feel about the  
19 legislation, at least in concept, I don't think it's going to be  
20 super helpful for Ms. Mahoney in saying like, you know, if we get  
21 this done, the board's going to support it.

22 **MS. DE LA TORRE:** So, I think that Mr. Le comments might have  
23 offered the solution here. Maybe we vote to support the concept of  
24 the legislation and then we don't necessarily need to vote to  
25 sponsor it, right? And then when we have the information, we can  
26 make that decision because if this was a proposal to just support a  
27 bill that we know somebody's going to present and sponsor, I will  
28 not be asking for an analysis on resources on our end, because that

1 has very low impact in terms of resources.

2 **MS. URBAN:** Thank you, Ms. de la Torre. In that case, what are  
3 reactions to a motion to approve staff's legislative proposal to  
4 require browser vendors, et cetera, to include this feature in  
5 concept with the understanding that the board will be informed as  
6 to updates in January?

7 **MS. DE LA TORRE:** I think that could work. We could go to  
8 support the concept of the bill and then take back this once we get  
9 a report on resources and visibility.

10 **MS. URBAN:** Mr. Le, I've just asked because you're the other  
11 legislative appointee.

12 **MR. LE:** I mean, that's fine. I think that's the best we can do  
13 today. Yeah.

14 **MS. URBAN:** Okay. Thank you, Mr. Le. Ms. Mahoney, would that  
15 help support the endeavor?

16 **MS. MAHONEY:** So just to be clear, let's see, so at the next  
17 meeting, would I be expected just to provide an update, or would  
18 there be a need for another?

19 **MS. URBAN:** So, I think that Mr. Worthe and I, at least we're  
20 nodding about the update. So, in my view, and this is my view on  
21 the fly would be that we want to give you the tools that you need  
22 to explore this in a concrete way and help the legislature  
23 understand our support of the concept and that you would bring back  
24 to us things that have come up that we need to know about. So, for  
25 example, Ms. de La Torre asked about costs and what it would take  
26 in terms of resources Mr. Worthe mentioned or followed on Ms. de la  
27 Torre the question about any sort of legal impediments that we  
28 haven't anticipated yet in order to be sure that we agree that

1 we're on the right track.

2 **MS. MAHONEY:** Okay, that sounds entirely reasonable. My  
3 assumption this whole time would be that I'd be providing plenty of  
4 updates and information to the board moving forward.

5 **MS. URBAN:** Okay. Let me see if I can put that together. So  
6 that we have something in front of us. I would ask for a motion to  
7 approve staff's legislative proposal to require browser vendors and  
8 other platforms or devices as defined by regulation to include a  
9 feature that allows users to exercise their California privacy  
10 rights through opt-out preference signals as defined by regulation  
11 in concept, that this is the plan that we in concept support, and  
12 to direct staff to pursue the legislative proposal with the  
13 California legislature coming back to update the board on necessary  
14 topics that we've discussed today.

15 **MS. DE LA TORRE:** I'd like to move.

16 **MS. URBAN:** Thank you, Ms. de la Torre. May I have a second?

17 **MR. WORTHE:** Second.

18 **MS. URBAN:** Thank you, Mr. Worthe. I have a motion and a  
19 second. Ms. Allen, could you please find out if we have public  
20 comments on this item?

21 **MS. ALLEN:** Sure. This is for agenda item number five,  
22 Legislation Update and Agency Proposals. If you would like to make  
23 a comment at this time, please raise your hand using the 'Raise  
24 Hand' feature of Zoom or pressing star nine on your phone. Again,  
25 this is for agenda item number five, Legislative Update and Agency  
26 Proposal. We have one public comment at the moment, so Matt  
27 Schwartz, I am going to go ahead and unmute you and allow you to  
28 talk. You have three minutes. Go ahead and start when you're ready.

1           **MR. MATT SCHWARTZ:** Good afternoon, once again. My name is Matt  
2 Schwartz, Policy Analyst at Consumer Reports. And thank you to the  
3 board for the opportunity to comment. Consumer Reports supports the  
4 CPPA's staff draft memo and its recommendation for the board to  
5 support legislation that would require browser vendors and other  
6 platforms and devices to include a feature that allows users to  
7 exercise their California privacy rights through opt-out preference  
8 signals. Consumer Reports is a firm believer in the utility of  
9 universal opt-out tools. We think they make it far easier for  
10 consumers to effectuate their rights under privacy laws. Consumer  
11 reports has previously conducted research into the usability of  
12 opt-out rights prior to the existence of universal opt-out tools.  
13 And we found that consumers struggle to complete opt-out requests.  
14 And we've also found that companies often erect burdensome opt-out  
15 processes that have the effect of reducing take-up. For those  
16 reasons, CR has played a key role in the development and  
17 implementation of universal opt-out tools, particularly global  
18 privacy control, which is now considered a legally binding opt-out  
19 mechanism. Under CCPA, we've advocated for universal opt-out  
20 provisions to be included in privacy legislation around the  
21 country, and we've been excited to see universal opt-out become a  
22 more standard facet of privacy legislation. Most recently, we  
23 supported the California Delete Act, which allows consumers to  
24 universally delete their information held by all of the state's  
25 registered data brokers at once. Despite, or perhaps because of the  
26 fact that we know that these types of tools work and that consumers  
27 tend to enthusiastically adopt them, when presented the  
28 opportunity, several of the major browser vendors and operating

1 systems do not natively support universal opt-out mechanisms, which  
2 severely limit the reach of these technologies. Of course, many of  
3 these entities plainly benefit from suppressing opt-out choices  
4 since in many cases, greater adoption of opt-outs would reduce  
5 their own ability to track or otherwise monetize consumers' data  
6 and maintain a competitive advantage in the marketplace. In any  
7 case, the status quo means that many consumers might not even  
8 realize that they have the ability to take control of their privacy  
9 in a more systemic manner. We think that legislation requiring  
10 browser vendors and other platforms to at least present consumers  
11 with the choice to operationalize their privacy rights via  
12 universal mechanisms would absolutely advance the purposes of CCPA  
13 and give consumers more choices over the treatment of their  
14 personal information. And we think that the board should support  
15 this rulemaking or support this undertaking. Thank you very much.

16 **MS. URBAN:** Thank you very much, Matt Schwartz. Ms. Allen, is  
17 there further public comment?

18 **MS. ALLEN:** At this point, if you would like to make a comment  
19 on agenda item number five, Legislative Update and Agency  
20 Proposals, please go ahead and raise your hand using the raise hand  
21 feature of Zoom or pressing star nine. Chair Urban, at this time,  
22 I'm not seeing any more hands.

23 **MS. URBAN:** Thank you very much, Ms. Allen. In that case, I  
24 would ask you to please conduct the roll call vote on the motion as  
25 stated and seconded.

26 **MS. ALLEN:** Great. The motion is for agenda five as previously  
27 stated by the chair. Board member de la Torre?

28 **MS. DE LA TORRE:** Aye.

1           **MS. ALLEN:** De la Torre Aye. Board member Le?

2           **MR. LE:** Aye.

3           **MS. ALLEN:** Le aye. Board member Mactaggart?

4           **MR. MACTAGGART:** Aye.

5           **MS. ALLEN:** Mactaggart aye. Board member Worthe?

6           **MR. WORTHE:** Aye.

7           **MS. ALLEN:** Worthe aye. Chair Urban?

8           **MS. URBAN:** Aye.

9           **MS. ALLEN:** Urban Aye. Madame Chair, you have five ayes and no  
10 noes.

11           **MS. URBAN:** Thank you very much. The motion carries with the  
12 vote of 5-0. Yes, Mr. Worthe?

13           **MR. WORTHE:** I just think this might be a good jumping off  
14 point for me. I don't want to have to depart during the middle of  
15 an item.

16           **MS. URBAN:** Of course. Alright. Thank you so much, Mr. Worthe.

17           **MR. WORTHE:** Thank you all.

18           **MS. URBAN:** Alright. Thank you.

19           **MR. WORTHE:** Have a good holiday too.

20           **MS. URBAN:** You too. Happy holidays. Thank you. And thank you  
21 very much, Ms. Mahoney and everyone who's been working on this, and  
22 we will look forward to what comes next. With that, we will move to  
23 agenda item number seven, which is an item regarding the California  
24 Privacy Protection Agency's inter-governmental engagement and  
25 priorities. This item is responsive to board discussion regarding  
26 updates on CPPA engagement, which we've talked about in previous  
27 board meetings. I believe Ms. de La Torre mentioned this in our  
28 September meeting. And this will also be presented by Ms. Mahoney.

1 Ms. Mahoney, please go ahead.

2 **MS. MAHONEY:** Thank you, Chairperson and members of the board.  
3 As you know, our statute directs us to work with privacy  
4 authorities and other jurisdictions to work towards consistency and  
5 privacy protections. Where possible, under this direction, our  
6 agency regularly participates in national and international forums  
7 that relate to our authority. So, in this item, first I'll go over  
8 an update on multi-state engagement and then international  
9 engagement, including looking to next year. So, with respect to  
10 multi-state privacy laws, we've been actively engaging now  
11 approximately 13 states have comprehensive privacy laws. Seven  
12 states, including California, require businesses to honor browser  
13 privacy signals. As an opt out of sales subjective discussion of  
14 the earlier item, we expect this activity to continue next year and  
15 perhaps expand this fall state such as Maine, Massachusetts, New  
16 Hampshire, Wisconsin, Pennsylvania, and Michigan. Worked on privacy  
17 legislation in many cases during recess to prepare to move bills  
18 quickly at the start of the New Year. So mostly states go into  
19 session in January. I expect that over 20 states will seriously  
20 consider privacy legislation next year, and that many of these  
21 bills will be adopted. We have will continue to engage by sharing  
22 California's privacy framework. I also expect the next year  
23 there'll be a lot of legislative interest in ADM and AI. On the  
24 state level, staff participated in a multi-state working group this  
25 fall to hear about different approaches to AI and ADM and we'll  
26 continue to share the draft ADM and risk assessment. Drafts as they  
27 evolve to widely encourage consistency as legislators can consider  
28 bills on these topics. And we expect to continue to step up our

1 policy engagement in the coming years we build capacity. So, onto  
2 international engagement. We followed a similar approach as  
3 directed by statute. We're now a member of several international  
4 bodies, the Global Privacy Assembly and network of over a hundred  
5 data production authorities. Staff attended the annual GPA meeting  
6 this fall. We're also a member of the Asia Pacific Privacy  
7 Authorities, a similar organization for a subset organizations in  
8 the Asia Pacific region. A PBA meets twice yearly. The staff have  
9 not attended in person largely because of conflicts with board  
10 meetings, but we've attended remotely and provided updates at the  
11 last three meeting in video conference. We're also members of the  
12 Global Privacy Enforcement Network, which facilitates coordination  
13 on privacy enforcement initiatives. And lastly, we're in the  
14 process of applying to the I Bureau American Network of Data  
15 Protection that to suggestion of board member de la Torre. I wanted  
16 to go into a bit more detail on the Global Privacy Assembly  
17 meeting. Cause it was a very productive trip, our main goal was to  
18 introduce our new head of enforcement, Mike Macko, to set the stage  
19 for future collaborations as appropriate. But we also have a lot of  
20 value to add to the European framework. From a policy perspective,  
21 there's a lot of interest in aspects of California law that make it  
22 easier for consumers to exercise their privacy rights.  
23 Specifically, the global opt-out, the New Delete Act. We  
24 highlighted these policies to the French German, Spanish, the  
25 Central Authority, the Federal Trade Commission, among others, also  
26 connected with the British Canadians, Norwegians, and Japanese.  
27 Executive director Soltani also recently traveled to Europe. To  
28 further build on these discussions, have an opportunity to present



1 the California privacy perspective to a number of senior EU policy  
2 makers. He was able to meet with the UR European Data Protection  
3 Supervisor and the European Data Protection for the French Canal  
4 and the OECD to further encourage consistency. So, looking ahead to  
5 the future the next GPA meeting will be in Jersey in the Channel  
6 Islands next fall. We expect that APBA will hold a meeting this  
7 summer which we'll likely want to participate in either remotely or  
8 in person. And I'm happy to share more information about meetings  
9 for the ABER American Network as it become available. Per the  
10 request of the board, I plan to provide an annual update at a  
11 regular meeting on staff's priorities and plan activities for  
12 intergovernmental engagement and invite input and feedback from the  
13 board and provide follow-up information if necessary. Similar to  
14 the process for domestic conferences staff, sports, board members,  
15 attending meetings of international bodies. But we are looking to  
16 have a process in place, so we request the board members to notify  
17 staff if there's a meeting of an international body of which the  
18 agency's a member that they would like to attend. And then we can  
19 coordinate the chairperson and manage logistics to ensure that  
20 we're complying with existing law, including that no more than two  
21 board members are planning to go. And the goals are to comply with  
22 existing law and to streamline the process for this engagement. And  
23 this concludes my update.

24 **MS. URBAN:** Thank you very much, Ms. Mahoney. And thanks to Ms.  
25 de la Torre for suggesting this in the way that she did because I  
26 think it helped us sort of bundle some really exciting news and  
27 some sort of process thoughts into an efficient agenda item. Are  
28 there comments or questions from the board? No? Okay. In that case

1 Ms. Allen, would you mind asking if there's public comments on this  
2 item?

3 **MS. ALLEN:** Sure. We are discussing agenda item number seven,  
4 which is about CPPA, intergovernmental engagement updates and  
5 priorities. If you'd like to make a public comment on this item,  
6 please go ahead and raise your hand using the Zoom 'Raise Hand'  
7 feature or press star nine if you have dialed in on the phone.  
8 Again, this is for agenda item number seven, CPPA Intergovernmental  
9 Engagement. Chair Urban, I'm seeing no hands.

10 **MS. URBAN:** Thank you very much, Ms. Allen. With that, I would  
11 actually like to take one last item out of order and move to agenda  
12 item number nine, which is future agenda items. In part because I  
13 think it follows nicely from the discussion we've had thus far. And  
14 in part because I want to give the public the opportunity to offer  
15 us any thoughts off the agenda at the end of the meeting. So as a  
16 reminder, this is our agenda item for discussion of future agenda  
17 items. And it allows both the board and the public to suggest  
18 things for future board meeting agendas. Although we can't discuss  
19 them in detail, we can propose them. And I'm keeping a list and say  
20 a little bit maybe about why you propose it. There are a number of  
21 different kinds of agenda items that members have proposed. We just  
22 had one that Ms. de la Torre had proposed. I know Mr. Mactaggart  
23 has used this time, from time to time to propose that we discuss potential  
24 regulations and so forth. And so, let's have that discussion now. I  
25 will first run through my list that I have right now. One is of  
26 course the legislative proposal updates we recently spoke about  
27 with Ms. Mahoney under agenda item number seven. Another is the  
28 regulation updates and requests for board feedback and votes as

1 appropriate. Discussed with the regulations we've discussed today,  
2 the draft regulations. On our regularized calendar for January, we  
3 have our regular board briefing on what's called the January 10  
4 budget from the governor in order to have an update on that and  
5 provide thoughts to staff. And we have relatedly a direction, an  
6 item to direct the staff on spring budget changes and priorities to  
7 feed into that process. Just so we can look out a little bit  
8 further on the regularized calendar for March we have a public  
9 affairs annual awareness re report and priorities on that. It would  
10 be good to check in on that. And we know that we will probably have  
11 some regulation to talk about in one or both of those meetings. I'd  
12 also like to remind everybody that we will be doing our next stage  
13 of strategic planning. We did not schedule it for today, given the  
14 very intense amount of substance on regulations and so forth, we  
15 needed to talk about. The rulemaking process subcommittee, Ms. de  
16 La Torre, and I will have an update at the appropriate time. And we  
17 will be talking about the chief privacy auditor position again at  
18 the appropriate time. So that is my sort of list that I've kept so  
19 far. And my pen is ready to add things. Ms. de la Torre? Please  
20 unmute yourself.

21 **MS. DE LA TORRE:** I have nothing to add. Thank you for keeping  
22 the list. But I do have a question. The board book that the  
23 agency's working on, and it was referred to today as where the  
24 description of what directly affects the work of the agency is. Do  
25 we expect that to be in front of us in the January meeting? I know  
26 we might not be able to commit, but is that the timing that we have  
27 in mind for that?

28 **MS. URBAN:** I'm not certain. But Ms. Mahoney mentioned the

1 handbook, which is something that I forgot. And let me just make  
2 sure that I have it on my list because we will, as I'm sure, I  
3 remember handbook has been with staff for feedback from board  
4 members. And so that will come back at the appropriate time. And I  
5 would expect not too long from now, I just want to leave staff some  
6 ability to help juggle.

7 **MS. DE LA TORRE:** But do we have a general idea meeting Mr.  
8 Laird? I mean, without committing, is that kind of -

9 **MS. URBAN:** Mr. Laird, I mean, is there any problem I'm not  
10 seeing with saying January or maybe March for these things?

11 **MR. LAIRD:** And I'm sorry, I want to make sure I'm not  
12 misunderstanding the item. Can you please state it again?

13 **MS. URBAN:** Well, I should say there are two potential parts.  
14 One is the handbook, which has a variety of different aspects that  
15 people have commented on, and then Ms. de la Torre asks a  
16 specifically about more detail on when something affects the  
17 agency.

18 **MS. DE LA TORRE:** Well, I'm just asking about the handbook.  
19 When's the handbook -

20 **MR. LAIRD:** The handbook for January. We'll be prepared to  
21 bring it back at that stage.

22 **MS. DE LA TORRE:** Perfect. Thank you. That was helpful.

23 **MS. URBAN:** Thank you, Ms. de La Torre. Mr. Mactaggart?

24 **MR. MACTAGGART:** Yeah, super quick. I just would love to add to  
25 the list of eventual rules. And I think it's just worth bringing up  
26 in public. The notion that the 185 A7 gives us the responsibility  
27 to promulgate regulations around deletion. And I think it would be  
28 a neat feature for people to say, I'd like to be able to delete

1 some poor parts of my information, not all of it. So, I could  
2 delete, you know, where I've been for the last month, but not  
3 necessarily my whole account. That's just, if we could just add a  
4 list, that's probably a Ms. Kim thing. Thank you.

5 **MS. URBAN:** Thank you, Mr. Mactaggart. And I have it on the  
6 list. Other potential agenda items from board members. All right,  
7 well, we have a strong list. We have a robust list. With that, Ms.  
8 Allen may I ask if there's public comments on this item?

9 **MS. ALLEN:** Sure. We are on agenda item number nine, future  
10 agenda items. If you would like to make a public comment, please  
11 raise your hand using the raise hand feature of Zoom or STAR nine  
12 on your phone. And we do have one public comment at this time. So,  
13 Nicole Smith, I'm going to go ahead and allow you to talk and  
14 unmute you. And you have three minutes. You can begin when you're  
15 ready.

16 **MS. SMITH:** All right. Thank you so much for the board and all  
17 of your work that you've put into this marathon meeting. I'll make  
18 this very quick since the hour is very late. A couple of years ago,  
19 and this is pre COVID, this is actually pre GDPR, when Kamala  
20 Harris was our State Attorney General, I was at a meeting in DC of  
21 the IAPP, the International Association of Privacy Professionals.  
22 And one of the former members of either EU Parliament or EU  
23 Commission, was on a panel and made a comment that California, with  
24 all of its legislative activity in the privacy field may qualify in  
25 the near future as a region that has adequate data privacy laws.  
26 And that's a concept of adequacy decision, which allows the free  
27 transfer of data. And that was huge at the time. I don't think many  
28 people paid that much attention to it, because there was, at the

1 time, no CPPA that could take the lead on that. But if we had an  
2 adequacy decision that would allow for the free flow of data  
3 between EU and US companies, and certainly for Silicon Valley and  
4 any company that does data processing with all of the security and  
5 vendor vetting, third party vetting that we do, it would lower the  
6 barrier and make the ease of data exchange a lot better for  
7 California companies. So, I encourage the CPPA to consider that  
8 perhaps not in the immediate future, but at some time looking for  
9 an adequacy decision from the EU because they've already sent  
10 signals that they would be amenable to this and it would be a  
11 tremendous boom for California corporations that adhere to all of  
12 these laws and are very critical about sharing data with third  
13 parties. We're very careful and, you know, we're minding our P's  
14 and Q's and it would be great to have an adequacy decision. That's  
15 it. Thank you so much.

16 **MS. URBAN:** Thank you very much, Nicole Smith. Ms. Allen, is  
17 there further public comment?

18 **MS. ALLEN:** All right, this is for agenda item number nine,  
19 future comments or future agenda items. If anyone has a public  
20 comment, please raise your hand using raise hand feature of Zoom or  
21 press star nine on your phone. Chair Urban, at this time, there's  
22 no other hands.

23 **MS. URBAN:** Thank you very much, Ms. Allen. With that then we  
24 will travel back one agenda item to request public comments on  
25 items that, or on issues and items that are not on the agenda. As a  
26 reminder, this is an item that is available for the public  
27 specifically, to bring up topics that are not on the agenda for  
28 today. Before we proceed with public comment, please do note that

1 the only action the board can take in response is to listen to  
2 comments and consider whether it will discuss the topic at a future  
3 meeting. No other action can be taken on the item at this meeting.  
4 We do not intend to seem non-responsive. Following these guidelines  
5 is critical to ensure that the Bagley-Keene Open Meeting Act is  
6 followed and to avoid compromising the commenter's goals or the  
7 board's mission. So, with that, I would ask Ms. Allen to let us  
8 know if there is public comment on items on the agenda.

9 **MS. ALLEN:** Yep. This is agenda item number eight, public  
10 comment, and items not the agenda. If you would like to make a  
11 public comment, please raise your hand using the Zoom raise hand  
12 feature or pressing star nine on the phone. Again, last call. This  
13 is agenda item number eight, public comment on items not on the  
14 agenda. If you would like to make a public comment, please indicate  
15 so now. Chair Urban, I see no hands.

16 **MS. URBAN:** Thank you very much, Ms. Allen. With that, we will  
17 move to our final agenda item, which is adjournment. I would like  
18 to reiterate our last speakers, thanks to the board and to the  
19 staff and to the public for an attentive, substantive and  
20 thoughtful meeting with some very complex topics underway. And  
21 thank everybody for that and look forward to seeing you when we  
22 again meet. With that, our final agenda item is adjournment. And  
23 with the thanks and a wish for very warm, bright, and happy  
24 holidays to all, may I have a motion to adjourn the meeting?

25 **MR. LE:** I will make that motion.

26 **MS. URBAN:** Thank you, Mr. Le. May I have a second?

27 **MS. DE LA TORRE:** I second.

28 **MS. URBAN:** Thank you, Ms. de la Torre. Ms. Allen, there is a

1 motion on the table and seconded to adjourn the meeting. Could you  
2 please conduct the roll call vote?

3 **MS. ALLEN:** Yes. The motion is for adjournment. Board member de  
4 la Torre?

5 **MS. DE LA TORRE:** Aye.

6 **MS. ALLEN:** de la Torre, aye. Board member Le?

7 **MR. LE:** Aye.

8 **MS. ALLEN:** Le, aye. Board member Mactaggart?

9 **MR. MACTAGGART:** Aye.

10 **MS. ALLEN:** Mactaggart, aye. Board member Worthe? Chair Urban?

11 **MS. URBAN:** Aye.

12 **MS. ALLEN:** Chair Urban, aye. Madam Chair, you have four ayes  
13 and one nothing.

14 **MS. URBAN:** Thank you very much, Ms. Allen and to the board.  
15 With a vote of four to nothing, this meeting of the California  
16 Privacy Protection Agency Board is hereby adjourned. Thank you very  
17 much everyone.

18 (end of recording)

19

20

21

22

23

24

25

26

27

28