Risk Assessments and Automated Decisionmaking Technology (ADMT)

OVERVIEW OF PROPOSED REVISIONS
March 8, 2024
AGENDA

- Key Definitions
- Risk Assessments
- Automated Decisionmaking Technology
Key Definitions

OVERVIEW OF PROPOSED REVISIONS
Revisions to Definition of ADMT

Proposed revisions include:

- Clarifying that ADMT executes a decision, replaces human decisionmaking, or substantially facilitates human decisionmaking
- Clarifying which types of technologies are not ADMT
- Reorganizing definition to improve readability
Revised Definition of ADMT

Proposed revisions in blue:

“Automated decisionmaking technology” means any technology that processes personal information and uses computation to execute a decision, replace human decisionmaking, or substantially facilitate human decisionmaking.

“Technology” includes software or programs, including those derived from machine learning, statistics, other data-processing techniques, or artificial intelligence.

To “substantially facilitate human decisionmaking” means using the output of the technology as a key factor in a human’s decisionmaking.

ADMT includes profiling.

ADMT does not include the following technologies, provided that the technologies do not execute a decision, replace human decisionmaking, or substantially facilitate human decisionmaking: web hosting, domain registration, networking, caching, website-loading, data storage, firewalls, anti-virus, anti-malware, spam- and robocall-filtering, spellchecking, calculators, databases, spreadsheets, or similar technologies.
Revised Definition of “Profiling”

Proposed revisions in blue:

“Profiling” means any form of automated processing of personal information to evaluate certain personal aspects relating to a natural person and in particular to analyze or predict aspects concerning that natural person’s intelligence, ability, aptitude, performance at work, economic situation; health, including mental health; personal preferences, interests, reliability, predispositions, behavior, location, or movements.
Revisions to Definition of “Significant Decision”

Proposed revisions include:

- Clarifying the types of information that are exempt from this definition
- Providing examples of “essential goods or services”
- Clarifying which “educational or enrollment opportunity” decisions are significant decisions
- Clarifying which “employment or independent contracting opportunities or compensation” decisions are significant decisions
Revised Definition of “Significant Decision”

Proposed revisions in blue:

“Significant decision” means a decision using information that is not subject to the exceptions set forth in Civil Code sections 1798.145, subdivisions (c)-(g), or 1798.146, subdivisions (a)(1), (4), and (5), that results in access to, or the provision or denial of:

- financial or lending services, housing, insurance
- education enrollment or opportunity
- criminal justice (e.g., posting of bail bonds)
- employment or independent contracting opportunities or compensation
- healthcare services, or
- essential goods or services (e.g., groceries, medicine, hygiene products, or fuel)

**Education enrollment or opportunity** includes admission or acceptance into academic or vocational programs; educational credentials (e.g., a degree, diploma, or certificate); and suspension and expulsion.

**Employment or independent contracting opportunities or compensation** includes hiring; allocation or assignment of work; salaries, hourly or per-assignment compensation, incentive compensation such as bonuses, or other benefits; promotion; and demotion, suspension, and termination.
Revised Definition of “Artificial Intelligence”

Proposed revisions in blue:

“Artificial intelligence” means a machine-based system that infers, from the input it receives, how to generate outputs that can influence physical or virtual environments.

The artificial intelligence may do this to achieve explicit or implicit objectives.

“Outputs” can include predictions, content, recommendations, or decisions.

Different artificial intelligence varies in its levels of autonomy and adaptiveness after deployment.

For example, artificial intelligence includes generative models, such as large language models, that can learn from inputs and create new outputs, such as text, images, audio, or video; and facial- or speech-recognition or -detection technology.
Proposed Definition of “Behavioral Advertising”

“Behavioral advertising” means the targeting of advertising to a consumer based on the consumer’s personal information obtained from the consumer’s activity — both across businesses, distinctly-branded websites, applications, or services, and within the business’s own distinctly-branded websites, applications, or services.

Behavioral advertising includes cross-context behavioral advertising.

Behavioral advertising does not include nonpersonalized advertising, provided that the consumer’s personal information is not used to build a profile about the consumer or otherwise alter the consumer’s experience outside the current interaction with the business, and is not disclosed to a third party.
Risk Assessments

OVERVIEW OF PROPOSED REVISIONS
Overview of Risk Assessment Requirements

Section 7150: When a Business Must Conduct a Risk Assessment
Section 7151: Stakeholder Involvement
Section 7152: Risk Assessment Requirements
Section 7153: Requirements for Businesses Training Certain ADMT or AI
Section 7154: Prohibition Against Processing if Risks Outweigh Benefits
Section 7155: Timing and Retention Requirements
Section 7156: Conducting Risk Assessments for a Comparable Set of Processing or in Compliance with Other Laws
Section 7157: Submission of Risk Assessments to the Agency
Revisions to Risk Assessment Thresholds (§ 7150(b))

Proposed revisions include:

- Incorporating minors’ personal information into the definition of “sensitive personal information”
- Adding a new term, “extensive profiling,” to address work/educational profiling, public profiling, and profiling for behavioral advertising
- Addressing the use of “systematic observation” for work/educational profiling and public profiling
- Clarifying that risk assessments are required when training ADMT or AI for: a significant decision; to establish identity; for physical or biological profiling; for generating deepfakes; or for operating generative models
Revised Risk Assessment Thresholds (§ 7150(b))

A business must conduct a risk assessment for any of the following:

1. Selling or sharing personal information

2. Processing sensitive personal information (includes the personal information of consumers that the business has actual knowledge are less than 16 years of age)

3. Using ADMT for a significant decision or extensive profiling
   - “Extensive profiling” means work or educational profiling, public profiling, or profiling a consumer for behavioral advertising

4. When training ADMT or AI that is capable of being used:
   - For a significant decision concerning a consumer;
   - To establish individual identity;
   - For physical or biological identification or profiling;
   - For the generation of a deepfake; or
   - For the operation of generative models
Revisions to Risk Assessment Requirements (§ 7152)

Proposed revisions include:

- Clarifying which operational elements must be identified in a risk assessment
- Clarifying which negative impacts to consumers’ privacy a business may consider
- Clarifying which safeguards a business must identify for ADMT to ensure the ADMT works as intended and does not discriminate
Revisions to Submission Requirements (§ 7157)

Proposed revisions include:

- Streamlining what must be included in an abridged risk assessment
- Clarifying exemptions to risk-assessment submission requirements
Automated Decisionmaking Technology

OVERVIEW OF PROPOSED REVISIONS
Overview of ADMT Requirements

**Section 7200:** Uses of ADMT

**Section 7201:** Requirement for Physical or Biological Identification or Profiling

**Section 7220:** Pre-use Notice Requirements

**Section 7221:** Requests to Opt-out of the Business’s Use of ADMT

**Section 7222:** Requests to Access Information About the Business’s Use of ADMT
Revised Thresholds for Pre-use Notice, Opt-out, and Access Requirements (§ 7200(a))

1. For a significant decision concerning a consumer

2. For extensive profiling of a consumer:
   - Work or educational profiling;
   - Public profiling; or
   - Profiling a consumer for behavioral advertising

3. Training ADMT that is capable of being used:
   - For a significant decision concerning a consumer;
   - To establish individual identity;
   - For physical or biological identification or profiling; or
   - For the generation of a deepfake
Proposed Framework: Three Key Components

1) Pre-use Notice Requirements (§ 7220)

2) Opt-out Right Requirements (§ 7221)

3) Access Right Requirements (§ 7222)
Revisions to Pre-use Notice Requirements (§ 7220)

Proposed revisions include:

- Tailoring requirements to specific uses of ADMT
- Requiring that businesses disclose that they cannot retaliate against consumers
- Providing flexibility for businesses in how they present required information
- Providing examples of outputs of ADMT
- Streamlining the information that a business must provide
Complying with Pre-use Notice Requirements (§ 7220(b))

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

Additional Information About How the ADMT Works:

- Logic used in the ADMT, including key parameters that affect its output; and
- Intended output of the ADMT and how the business plans to use it, including the role of any human involvement
Complying with Opt-out Requests (§ 7222(l) and (m))

For opt-out requests submitted **before** the business initiates processing:

The business must not process consumer’s personal information using that ADMT.

For opt-out requests submitted **after** the business has initiated processing:

The business must cease processing the consumer’s personal information using that ADMT and notify relevant entities of the opt-out and instruct them to comply.
Overview of Exceptions to Providing Opt-out (§ 7221(b))

Retaining security, fraud prevention, and safety exception

Adding human appeal exception for significant decisions

Adding evaluation exception for admission, acceptance, or hiring decisions; allocation/assignment of work and compensation decisions; and for work or educational profiling
Security, Fraud Prevention, and Safety Exception (§ 7221(b)(1))

Businesses using ADMT for security, fraud prevention, and safety are not required to provide an opt-out. To qualify for this exception, the use of ADMT must be necessary to achieve, and be used solely for:

1) **Security:** To prevent, detect, and investigate security incidents that compromise the availability, authenticity, integrity, or confidentiality of stored or transmitted personal information;

2) **Fraud Prevention:** To resist malicious, deceptive, fraudulent, or illegal actions directed at the business and to prosecute those responsible for those actions; or

3) **Safety:** To ensure the physical safety of natural persons.
Human Appeal Exception (§ 7221(b)(2))

Businesses using ADMT for a significant decision are not required to provide the opt-out if they provide consumers with the ability to appeal to a human decisionmaker.

To qualify for this exception, the business must:

1) Provide the consumer with a method to appeal the decision to a qualified human reviewer with authority to overturn the decision; and

2) Clearly describe to the consumer how they can submit their appeal and enable the consumer to provide information for the reviewer to consider.
Evaluation Exception (§§ 7221(b)(3)–(5))

Businesses using ADMT for the decisions or profiling listed below are not required to provide the opt-out if the business has:

1) Evaluated the ADMT to ensure it works as intended for the business’s proposed use and does not discriminate based upon protected classes; and

2) Implemented accuracy and nondiscrimination safeguards.

The evaluation exception applies only to:

- Admission, acceptance, or hiring decisions;
- Allocation/assignment of work or compensation decisions; or
- Work or educational profiling.
Complying with an Access Request (§ 7222)

- Purpose of using the ADMT
- The output with respect to the consumer
- How the business used the output with respect to the consumer
- How the ADMT worked with respect to the consumer
- That the business cannot retaliate against consumers for exercising CCPA rights
Additional Notice Requirements for Access Right (§ 7222(k))

When a business uses ADMT to make an adverse significant decision,* it must notify the consumer that:

• The business used the ADMT to make the decision;
• The business cannot retaliate against the consumer for exercising CCPA rights;
• The consumer has the right to access information about the business’s use of the ADMT and how the consumer can exercise that right; and
• If the business is relying upon the human appeal exception, that the consumer can appeal the decision and how they can submit their appeal.

*Being denied educational credential; having compensation decreased; being suspended, demoted, terminated, or expelled; being denied financial or lending services, housing, insurance, criminal justice, healthcare services, or essential goods or services.
Requirement for Physical or Biological Identification or Profiling (§ 7201)

A business that uses physical or biological identification or profiling for a significant decision, or for extensive profiling, must:

1) Conduct an evaluation to ensure that it works as intended for the business’s proposed use and does not discriminate based upon protected classes; and

2) Implement accuracy and nondiscrimination safeguards.
<table>
<thead>
<tr>
<th>Use of ADMT for:</th>
<th>Risk Assessment</th>
<th>Pre-use Notice</th>
<th>Access</th>
<th>Opt-out</th>
<th>Exceptions to Opt-out</th>
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<td>The following significant decisions:</td>
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<td>• Human appeal exception; or • Evaluation exception</td>
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<td>• Admission, acceptance, or hiring</td>
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<tr>
<td>• Allocation/assignment of work and compensation</td>
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<td>All other significant decisions</td>
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<td>Work or educational profiling</td>
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<td>• Safety, security, and fraud prevention exception; or • Evaluation exception</td>
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<td>Public profiling</td>
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<td>YES</td>
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<td>Profiling for behavioral advertising</td>
<td>YES</td>
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<td>Training uses of ADMT</td>
<td>YES</td>
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<td>YES</td>
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</tbody>
</table>
Revised Thresholds for Pre-use Notice, Opt-out, and Access

Proposed revisions in **blue**:

1. For a **significant decision** concerning a consumer.
2. For **extensive profiling of** a consumer, which means:
   A. Profiling a consumer **through systematic observation** when they are acting in their capacity as an **applicant to an educational program**, job applicant, student, employee, or independent contractor (**“work or educational profiling”**);
   B. Profiling a consumer **through systematic observation of** a publicly accessible place (**“public profiling”**); or
   C. Profiling a consumer for behavioral advertising.
3. For **training uses of automated decisionmaking technology**, which includes processing consumers’ PI to train ADMT that is capable of being used for any of the following:
   A. For a **significant decision** concerning a consumer;
   B. To establish individual identity;
   C. For physical or biological identification or profiling; or
   D. For the generation of a deepfake.