



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.

Purpose

**Right to Opt-out
or Ability to Appeal**

**Right to Access
Information**

**Business Cannot
Retaliate**

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.



Appendix

Summary Chart of Proposed Requirements for ADMT Use Cases

Use of ADMT for:	Risk Assessment	Pre-use Notice	Access	Opt-out	Exceptions to Opt-out
The following significant decisions: <ul style="list-style-type: none"> • Admission, acceptance, or hiring • Allocation/assignment of work and compensation 	YES	YES	YES	YES	<ul style="list-style-type: none"> • Human appeal exception; <i>or</i> • Evaluation exception
All other significant decisions	YES	YES	YES	YES	<ul style="list-style-type: none"> • Human appeal exception
Work or educational profiling	YES	YES	YES	YES	<ul style="list-style-type: none"> • Safety, security, and fraud prevention exception; <i>or</i> • Evaluation exception
Public profiling	YES	YES	YES	YES	<ul style="list-style-type: none"> • Safety, security, and fraud prevention exception
Profiling for behavioral advertising	YES	YES	YES	YES	
Training uses of ADMT	YES	YES	—	YES	

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.