

1 CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

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9 PRE-RULEMAKING STAKEHOLDER SESSION - SACRAMENTO

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11 AUDIO TRANSCRIPTION OF RECORDED PUBLIC MEETING

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1 APPEARANCES:

2 Present: JENNIFER M. URBAN, Chairperson of the Board

3 PHILIP LAIRD, Meeting Counsel

4 ASHKAN SOLTANI, Executive Director

5 SERENA MARZION, Moderator

6 MARINA FEEHAN, Attorney for CPPA

7 DREW LIEBERT, Board Member

8 MEGAN WHITE, Deputy Director for Public  
and External Affairs

9 UNKNOWN FEMALE SPEAKER 1, on behalf of  
10 Gig Workers Rising and Power Switch Action

11 MR. JASON, Lyft rideshare driver

12 ALEX TORRES, ESQ., Brownstein Hyatt Farber  
Schreck, LLP

13 EDWIN LOMBARD, ELM Strategies

14 SAMANTHA GORDON, Chief Program Officer at  
15 Tech Equity Collaborative

16 MAGGIE OATES, Consumer Reports

17 CARMEN COMSTI, Lead Regulatory Policy  
Specialist with California Nurse Assoc.

18 THOMAS YATES, Professional Illustrator

19 KELLY JONES, Professional Illustrator

20 ANNE FLANAGAN, Vice President for A.I. at  
21 The Future of Privacy Forum

22 UNKNOWN FEMALE SPEAKER 2, business owner

23 TASIA KEEFER, LA County Business Federation

24 JULIAN CANETE, California Hispanic Chambers  
of Commerce

25

1 APPEARANCES (Continued):

2 SAM TUNG, Storyboard artist

3 ALESSANDRA MANASCO, California Fuels and  
4 Convenience Alliance

5 MATT SCHERER, Center for Democracy and  
6 technology

7 BRYNNE O'NEAL, National Nurses United

8 IAN MALONEY, Senior Vice President and  
9 Head of Policy and Regulatory Affairs at  
10 the American FinTech Council

11 ALLISON ADEY, Personal Insurance Federation

12 RICK ARNEY, Vice Chair of Californians for  
13 Consumer Privacy

14 TIANA AURELIA, Professional Illustrator

15 PETER LEROE MUNOZ, Silicon Valley  
16 Leadership Group

17 YADI, Oakland Privacy

18 BERNADETTE KING, Research Analyst at SEIU,  
19 United Healthcare Workers West

20 NATALIE BAST, California Business Roundtable

21 BARBARA LAWLER, President of the Information  
22 Accountability Foundation

23 IAN MCPHERSON

24 ISABELLA ROJAS, Los Angeles Area Chamber of  
25 Commerce

CARLA ORTIZ, Artist

ROCIO BABAESA, Business Owner

DINA, Concept Art Association

SIRSHA GRACE, Oakland Privacy

1  
2 CHAIR URBAN: Good afternoon, well warm welcome to  
3 all of you from myself. I'm the Chair of the Board of the  
4 California Privacy Protection Agency, and all of us at the  
5 Agency. We really appreciate you taking time out from your  
6 busy schedules to join us for the stakeholder session this  
7 afternoon. Really pleased to welcome folks here in person  
8 in Sacramento, and also everyone who's joining us via Zoom.

9 Thank you so much for coming. I'm joined here  
10 today by members of the CPPA team to discuss important  
11 issues that affect all Californians. Privacy and the use of  
12 personal information in Automated Decision Making  
13 Technology, which we refer to as ADMT for short. Although  
14 we try to keep the acronyms to a minimum. So first I'll say  
15 a little bit about the Agency and the plan for today's  
16 session.

17 The CPPA team will provide an overview of the  
18 Agency's history and our responsibilities under the law.  
19 That will be brief, and I'll leave that overview to their  
20 very capable hands. But in the briefest little pressy, we  
21 are a new state Agency. We were established by initiative,  
22 a statute of vote by the voters directly in 2020 and got  
23 going in 2021. So we are really new.

24 We're governed by a five member Board. And I'm  
25 incredibly honored to serve as the chair of the Board. I

1 was appointed by Governor Gavin Newsom in March of 2021 when  
2 the Board was established. And in my day job, I'm a  
3 Clinical Professor of law at the University of California,  
4 Berkeley School of Law and the Director of Policy  
5 Initiatives at the Samuelson Law Technology & Public Policy  
6 Clinic. But that's just color. You don't need that for  
7 today.

8 I served with four other appointees another person  
9 appointed by the governor even closer. Okay, sure. Oh,  
10 yes. Now, I can hear it picking up. This is a very -- this  
11 is not a sensitive mic. This is -- this is a very thin --  
12 thick skinned mic. One person appointed by the governor,  
13 one person appointed by the Attorney General, one person  
14 appointed by the assembly, the Speaker of the Assembly, and  
15 one person appointed by the Senate Speaker Pro Temp.

16 And I'm thrilled that the Senate's appointee, Mr.  
17 Drew Liebert. Is it okay that I point you out? Mr. Liebert  
18 is able to join us from the Board today as well. And I'd  
19 like to spend just a moment introducing him because he is  
20 our newest appointee and only joined us in April. He brings  
21 exceptional California legislative experience to the Board  
22 and to the Agency. He served over two decades in various  
23 staff, legislative positions in the California legislature.

24 I'm sure many of you who are joining us from  
25 Sacramento will know Mr. Liebert and may have worked with

1 him in the past when he was Chief of Staff for the Senate  
2 Majority Leader and for 18 years Chief counsel for the  
3 Assembly Judiciary Committee, which saw a lot of technology  
4 -- sees a lot of technology measures, and saw them when Mr.  
5 Liebert was there. So, it's a real pleasure to welcome him  
6 to the Board, and I'm grateful to you, Mr. Liebert, for  
7 taking the time to join us today.

8 I'm so worried about the program. If you haven't  
9 had a chance yet, please feel free to take an agenda. And  
10 the handouts located on the check-in table. They're also  
11 available on our website, which is cppa dot ca dot gov on  
12 the meetings and events page.

13 The agenda will give you a sense of the flow of  
14 today's pre-rulemaking stakeholder session. And the fact  
15 sheets, which are available in English and Spanish, provide  
16 helpful overviews of the topics we will discuss here today.  
17 As you'll see from the agenda, the CPPA team will give a  
18 presentation that'll take about an hour or so. And we've  
19 devoted the rest of the time to hearing from stakeholders,  
20 to hearing from you.

21 We look very -- we look forward to hearing your  
22 important feedback. And we may be able to answer questions,  
23 but this is where I want to just pause and explain that  
24 these are draft rules. They're not yet even informal  
25 rulemaking. The Agency hasn't taken an official position

1 and can only do that through the Board. And so that means  
2 that we often -- or we, staff, often won't be able to answer  
3 questions yet.

4 And Mr. Liebert and I aren't able to give, take  
5 any positions because the Board as a whole, as a body has  
6 not. So that means the staff will go through the proposed  
7 draft and none of us will ultimately be -- say what we  
8 decided at this point, which of course is one reason why  
9 it's so crucial to have your feedback. And we are in  
10 listening mode.

11 So, today we're focusing on the draft rulemaking  
12 to implement the law. That's one of our important  
13 responsibilities. We've been working on pre-rulemaking on  
14 the ADMT related topics for quite a while almost since we  
15 started. So in fall 2021, we started thinking about it and  
16 doing some pre-rulemaking questionnaires and asking for  
17 feedback. And today is an important next step. Now, that  
18 we have draft rules getting this input in advance of putting  
19 the rules into formal rulemaking process by which they could  
20 become enforceable regulations. This is a key time right  
21 now.

22 So in addition to not being able to often answer  
23 questions, and we do not mean not to be responsive, we are  
24 listening hard. We can't give legal advice. And what that  
25 means is if you have a question that relates to your own

1 specific situation, we are not able to respond to that  
2 because it would be legal advice outside of what is allowed  
3 in a lawyer client relationship.

4 So for next steps we are going to take all this  
5 feedback. Staff is going to put it all together. And once  
6 the Board has a chance to consider, we would move to the  
7 formal rulemaking process, at which point the public has an  
8 opportunity to provide formal comments, and there will be a  
9 formal hearing at a minimum. Sometimes there are more than  
10 one round of that.

11 So I don't want to take away from the staff's  
12 presentation. I will stop there. But I would like to  
13 introduce them. I'm joining us today are Philip Laird.  
14 Philip Laird on my right, general counsel for the Agency,  
15 Marina Feehan, Attorney for the Agency and Megan White, our  
16 Deputy Director of Public and External Affairs.

17 So, Ms. White is going to go over some  
18 housekeeping topics, including how to provide comment today.  
19 Please note that public comment will be five minutes per  
20 person. And she'll explain how to do it here and on the  
21 Zoom link. So thank you very much, Deputy Director White,  
22 and I will turn it over to you.

23 MS. WHITE: Thank you so much, Chair Urban, and for  
24 all of you who have joined us here today in person and also  
25 online. Some of the things I'm going to be taking care of



1 right now are just some general housekeeping, so it probably  
2 applies more to the people in this room than the people who  
3 are joining us online.

4 But as Chair Urban mentioned, my name's Megan  
5 White. I'm the Deputy Director of Public and External  
6 Affairs for the Agency. Just a reminder, this is a hybrid  
7 meeting, so if you all are here in this room, you're welcome  
8 to stay. Of course, if we have more people come in, we have  
9 an overflow room that they'll be welcome to join us from.  
10 And of course, all of our online viewers today.

11 If you have any issues online, technical issues,  
12 please feel free to e-mail info at cppa dot ca dot gov.  
13 That's info at cppa dot ca dot gov. We're monitoring that  
14 e-mail address and we will make sure to address any issues  
15 if there are any. For the people here in this room  
16 emergency exits.

17 If there is an emergency, we're going to head  
18 basically right out back by where you came. The staircase  
19 is close to the elevators, we'll be taking that down and  
20 heading right out the room. I'm sure we'll be fine, but  
21 it's always good to know.

22 Another really important tip, bathrooms. You're  
23 going to head out again towards the elevator where you were  
24 before, right past the elevator, and you'll find a men's and  
25 women's restroom on your right hand side. For people who

1 are here, just a gentle reminder, you're welcome to grab  
2 handouts. We have them available in English and Spanish  
3 along with our agenda.

4 For people joining us online, just go to the  
5 events tab on cppa dot ca dot gov. There you can find all  
6 the handouts along with the agenda. And for public comment,  
7 we are going to keep it to three minutes today simply  
8 because we have so many people joining us online as well.

9 So once we go to public comment, we're going to  
10 take public comment from everybody here in the room first.  
11 We'll also take from the overflow room if we happen to go --  
12 to get that large in person. After that, we'll be taking it  
13 from online. You'll be using the raised hand feature for  
14 those on Zoom, or also if you're joining us by phone, you'll  
15 press star six.

16 I will mention this information again as soon as  
17 we're done with the presentation. So if you're not sure  
18 exactly, don't worry. I'm going to be mentioning it before  
19 we go into the public comment portion. I believe that's it  
20 for me. So now I'm going to hand it over to the team.

21 They're going to go through their presentation  
22 approximately 45 minutes, and then we'll be jumping into  
23 public comment as chair mention -- Chair Urban mentioned.  
24 We are listening deeply to public comment and we're so  
25 grateful for so many of you who showed up today in person

1 and also online. Now, over to the team.

2 MR. LAIRD: Hi there. Good afternoon, everybody.  
3 All want to make sure everybody can hear me all right, I  
4 think so. Excellent. So, again, from Marina and me at  
5 least, welcome to the third of three pre-rulemaking  
6 stakeholder sessions we've been holding throughout the  
7 state. Last week we were in Los Angeles in Fresno. We're  
8 happy to be here in Sacramento today.

9 And we really are looking forward to hearing the  
10 feedback today after today's presentation. I know you've  
11 heard that again, but truly that is a major purpose for  
12 these stakeholder sessions is to hear from the stakeholders.  
13 Next slide please. And I'll wait a moment for our slides to  
14 catch up.

15 Perfect, thank you. Well, as the attorney in the  
16 room, I can't help myself, but give a good disclaimer here.  
17 So before we get started, I do want to be clear the  
18 California Consumer Privacy Act, CCPA requires us to issue  
19 regulations on Automated Decision-making Technology, Risk  
20 Assessments, and Cybersecurity Audits.

21 For ease, Marina and I will often be referring to  
22 Automated Decision-making Technology as ADMT to save us all  
23 a few minutes today. But as we talk about these, I want to  
24 be clear, I know the chair mentioned this, and we will say  
25 this a few times. These are only draft regulations and we

1 are not yet in the formal rulemaking process yet.

2 Rulemaking process in California actually has many  
3 steps involved, including additional opportunities for  
4 public comment. And we'll talk more about that at the end  
5 of the presentation. Our presentation today is designed to  
6 explain the draft regulations in their current form so that  
7 you can better understand them and then to participate in  
8 the rulemaking process when it does kick off. So, again,  
9 one more time, I'll just be clear, these draft regulations  
10 are not in effect and are subject to change based on  
11 direction of our Agency's Board.

12 Finally, in addition to the disclaimer language  
13 you see on the slide I'll note that any opinions we express  
14 today if we happen to are our own and not necessarily those  
15 of the Agency, its Board or individual Board members. And  
16 as we've described already in some part Board -- the Board  
17 is the decision makers for our Agency, and therefore it will  
18 be the Board who collectively decides on how and whether to  
19 implement these regulations moving forward.

20 So, next slide please. To give you just a brief  
21 agenda of how we -- what we plan to cover today. We'll  
22 start with just a little bit of background on our law and  
23 our Agency and the activity we're discussing today. Then  
24 we're going to walk through our draft regulations on ADMT,  
25 risk assessments and cybersecurity audits in that order.

1           And then finally, we will conclude with  
2 information about how you can participate in the formal  
3 rulemaking process when that kicks off. And then  
4 afterwards, as Megan has described, is when we will have the  
5 opportunity for public comment. Next slide, please. Okay.  
6 So kicking off background on the CCPA and current activity.  
7 Next slide please.

8           So, the California Consumer Privacy Act, or the  
9 CCPA passed in 2018 and went into effect in 2020. It was  
10 the first comprehensive consumer privacy law in the nation,  
11 and it gave consumers rights over their personal information  
12 that businesses collect about them. It requires businesses  
13 to inform consumers about how they collect, use, disclose,  
14 and retain personal information. Then in November, 2020,  
15 California voters approved Proposition 24, the California  
16 Privacy Rights Act or CPRA, which amended the CCPA.

17           That's a lot of acronyms, I promise I'm not going  
18 to keep coming at you quite in that regard. I'll just be  
19 referring to the law we are implementing as the CCPA moving  
20 forward. So those amendments went into effect in 2023, such  
21 now that the CPPA also provides privacy protections to  
22 employees, independent contractors and job applicants, which  
23 is relatively rare among consumer privacy laws in the US.  
24 And it also includes new rights for consumers, including the  
25 right to correct personal information that a business has

1 about them, the right to limit a business's use and  
2 disclosure of your sensitive personal information.

3 And we'll be discussing today the right to access  
4 information about and to opt out of business' use of ADMT,  
5 including profiling. It'll define what profiling means in  
6 just a little bit. The amendments also created our Agency,  
7 the California Privacy Protection Agency. So our Agency is  
8 tasked with implementing and encouraging -- enforcing  
9 apologies, the CCPA, and that includes issuing regulations  
10 to implement our requirements. And we are here today  
11 because the CCPA requires the Agency to issue these  
12 regulations on these three topics. Next slide, please.

13 So when you really boil down a lot of the  
14 functions of our Agency, one way we like to summarize it is  
15 these three primary functions, these key roles. First, we  
16 have a rulemaking rule, and that rulemaking rule is to issue  
17 rules that implement, define, and further explain the CCPA's  
18 statutory requirements. We also have a role of promoting  
19 public awareness by providing information and guidance to  
20 both consumers and businesses about the CCPA.

21 And finally, we have an auditing and enforcement  
22 function. We can audit for compliance, and we can also  
23 initiate investigations which may lead to enforcement  
24 actions when violations are detected. Next slide, please.  
25 So today we are leaning really into our first two functions,

1 rulemaking, and public awareness. As we've been saying, we  
2 were talking about draft regulations that are not in effect.  
3 I'll say it probably a few more times today. And we haven't  
4 started formal rulemaking.

5 So right now we are really in the preliminary  
6 rulemaking stage. And during this time, we really do find  
7 stakeholder engagement to be important component of the  
8 development of these regulations. We are seeking your  
9 feedback, your thoughts, your concerns, and further  
10 suggestions. And we invite you to share your thoughts after  
11 today's presentation. Next slide, please. All right. And  
12 now I am going to stop talking for a little bit and turn it  
13 over to my colleague Marina Feehan.

14 MS. FEEHAN: I have to push the button. Can you  
15 guys hear me? Okay? Thank you so much, Phil. So today  
16 I'll be talking about ADMT or for long Automated  
17 Decision-making Technology. The CCPA directs the Agency to  
18 issue regulations about access and opt-out rights relating  
19 to business' use of ADMT. So today we'll spend some time  
20 talking about what ADMT is, what it includes and what it  
21 doesn't include.

22 We'll also talk about when a business would need  
23 to comply with the proposed regulations for ADMT. But one  
24 thing to note is that these requirements don't apply to all  
25 uses of ADMT, just certain uses that we'll explain today.

1 Lastly, we'll talk about what the proposed requirements are  
2 for those specific uses of ADMT that fall under these  
3 proposed regulations. Next slide, please.

4 So, what is Automated Decision-making technology  
5 or ADMT? When we talk about ADMT, it's helpful to break it  
6 down into four parts. It's technology that collects, uses,  
7 retains or discloses personal information. It's technology  
8 that uses computation and most importantly, it replaces or  
9 substantially facilitates human decision making. So  
10 substantially facilitating. What we mean is using ADMT to  
11 generate a score about a consumer that a human reviewer  
12 would use as a primary factor to make a significant decision  
13 about them.

14 So examples of ADMT would include things like  
15 resume screening tools that a business would use to decide  
16 whether or not to interview an applicant. And ADMT also  
17 includes profiling. And we'll go into what profiling means  
18 in the next slide. But one thing to note is that ADMT  
19 generally does not include routinely used technologies such  
20 as spreadsheets or spell check. Next slide please.

21 So what is profiling generally profiling? Ooh,  
22 excuse me. Talking too loud. Profiling generally refers to  
23 evaluating a consumer with automated processing, such as  
24 using technology to analyze a consumer's personality, their  
25 interests, their behavior, or their movements. Profiling



1 technologies are considered Automated Decision-making  
2 Technology or ADMT. Next slide please.

3 So who would need to comply with ADMT  
4 requirements? First, you must be a business that falls  
5 under the CCPA. Generally, the CCPA does not apply to  
6 nonprofit organizations or government agencies. To be a  
7 business under the CCPA, you have to be a for-profit entity  
8 that meets certain additional thresholds. For example,  
9 making over 28 million in annual gross revenue would subject  
10 you to the CCPA.

11 We have a fact sheet available online that can  
12 help you assess whether or not your business needs to comply  
13 with the CCPA. Secondly, assuming that you're a business  
14 under the CCPA, you'll have to use ADMT in any of the three  
15 ways to make significant decisions. Conduct extensive  
16 profiling or to train ADMT. Next slide please.

17 So first, a business must use ADMT for a  
18 significant decision concerning a consumer to comply with  
19 the ADMT requirements. And what do we mean about a  
20 significant decision? It's a decision that has important  
21 consequences for consumers, for instance, using ADMT to  
22 result in providing or denying and consumer financial  
23 services, housing, educational employment opportunities,  
24 healthcare services or essential goods and services such as  
25 medicine.

1           So as an example, if a business is using video  
2 screening technology that is part of a job interview,  
3 analyzes the applicant's body movements, facial expressions,  
4 and gestures to determine whether or not they would make a  
5 good employee and should be hired. This would be the use of  
6 ADMT for a significant decision about a consumer. Next  
7 slide, please.

8           Second, a business using ADMT for extensive  
9 profiling would have to comply with the ADMT requirements.  
10 As you recall, profiling generally refers to a consumer  
11 using -- I'm sorry, generally refers to evaluating a  
12 consumer using automated processing such as technology to  
13 analyze a consumer's personality, interests, behavioral  
14 movements. When we talk about extensive profiling, we're  
15 generally talking about three types of profiling.

16           Work or educational profiling. That means  
17 profiling a consumer who's acting in their capacity as an  
18 applicant, a student and employee or independent contractor  
19 through systematic observation, for example, that would be  
20 using product -- sorry, productivity monitoring software to  
21 monitor how quickly factory workers are packaging up goods.

22           The second is public profiling. This means  
23 profiling a consumer in public through systematic  
24 observation in a publicly accessible place. For example,  
25 deploying facial recognition technology in a stadium or a

1 mall. And lastly, for those ADMT uses for behavioral  
2 advertising. This would be profiling a consumer to target  
3 advertising to them by tracking what the consumer buys or  
4 what they read in order to send targeted ads. Next slide,  
5 please.

6 Closer, further away. Okay, thank you. Lastly, a  
7 business would be subject to ADMT requirements for training  
8 uses of ADMT. Training uses of ADMT generally means that  
9 the business is using consumer's personal information to  
10 train an ADMT technology for certain purposes, such as to  
11 make significant decisions, to identify people, to use  
12 physiological or biological identification or profiling, or  
13 to generate deepfakes. And deepfakes would be using ADMT to  
14 generate fake images or voices of real people and then  
15 passing them off as truthful or authentic. And I think at  
16 this point, I'm going to turn it over to Mr. Laird to  
17 continue the discussion on ADMT.

18 MR. LAIRD: So now that we've covered which uses of  
19 ADMT are covered by our draft regulations, what would a  
20 business have to do if it actually used ADMT in one of those  
21 three ways? So only if a business uses ADMT for a  
22 significant decision, extensive profiling or training uses,  
23 would it have to comply with the proposed requirements we're  
24 discussing today.

25 Specifically, the business would have to; first,

1 provide a pre-use notice to the consumers whose information  
2 it wants to process using the ADMT. There we go. Second,  
3 it would have to give consumers an easy way to opt out of  
4 its use of ADMT. And third, it would have to give consumers  
5 an easy way to access information about how the ADMT was  
6 used with respect to them, which the consumer can exercise  
7 later if they proceed with the business' use of that ADMT.

8 And so now I'm going to unpack each of those  
9 requirements just a little further. Next slide please. So  
10 before a business can use ADMT in any of the ways we've  
11 discussed, it would have to provide a pre-use notice to the  
12 consumer so that the consumer can decide whether to opt out  
13 or to proceed. And whether to access more information about  
14 the business' use of ADMT. So when a a pre-use notice was  
15 -- would be generated, it would have to include the  
16 following.

17 Why the business wants to use the ADMT. That  
18 means they would have to explain the specific purpose and  
19 not use something generic like to improve our services when  
20 describing the use. It would also have to explain how ADMT  
21 would work and include things like the logic used in the  
22 ADMT, including the key parameters that affect the ADMT's  
23 output, the intended output of the ADMT, for example, does  
24 it create a score about a consumer or does it place them  
25 into a specific profile or segment?

1           And then finally, how the business plans to use  
2 the output, including the role of human involvement. For  
3 example, if a business plans to use the output score that a  
4 resume screening tool generates to determine who will be  
5 offered an interview, the business would need to disclose.  
6 That's how it plans to use the tool and the role the human  
7 interviewers will have in that process.

8           The business would also have to provide a  
9 description of the consumer's right to opt out and how they  
10 can exercise that right. Alternatively, if the business is  
11 relying upon the human appeal exception that we'll discuss  
12 in a little bit the business would instead describe the  
13 consumer's ability to appeal the decision and how they can  
14 submit that appeal. A description of the consumer's right  
15 to access info about the business uses the ADMT with respect  
16 to the consumer and how the consumer can submit their access  
17 request.

18           And finally, they -- the business would have to  
19 convey in this pre-use notice that the business is  
20 prohibited from retaliating against consumers for exercising  
21 their CCPA rights so that a consumer is aware of this fact.  
22 Next slide please.

23           Now, if a consumer opts out at the pre-use notice  
24 stage, that is before the business uses the ADMT, the  
25 business is not allowed to start processing their personal

1 information using that ADMT. If the consumer went ahead  
2 with the business' use of ADMT and decides to opt out later,  
3 the business has to immediately stop processing their  
4 personal information using the ADMT and inform anyone else  
5 that may have involved in that ADMT, for instance, its  
6 contractors or vendors that they need to stop the use as  
7 well. Now, there are exceptions to when a business must  
8 provide an opt out, and we will go over those in a few  
9 slides. And one thing to note here is that there is no  
10 exception for profiling for behavioral advertising or  
11 training uses of ADMT. A business would always have to  
12 provide an opt-out for those uses of ADMT. Next slide,  
13 please.

14 So when we talk about these exceptions to that  
15 rule I just laid out, they -- the first one is this. And  
16 that is an exception for security, fraud prevention, and  
17 safety. It applies when a business wants to use ADMT for  
18 profiling in the workplace or educational settings or in  
19 public. And in these cases, a business is not required to  
20 provide the ability to opt out if it's using ADMT only for  
21 security, fraud prevention, and safety. But to rely on this  
22 exception, the business cannot use the ADMT for any other  
23 purpose except for that security, fraud prevention or safety  
24 purpose. Next slide, please.

25 So the next exception is one I referenced earlier,

1 the human appeal exception. This applies when a business  
2 wants to use ADMT to make a significant decision about a  
3 consumer. That business would not be required to provide  
4 the opt-out if it provides the consumer with the ability to  
5 appeal to a human decision maker. And to qualify for this  
6 exception, the business generally would have to do the  
7 following.

8 It would have to provide the consumer with a  
9 method to appeal the decision to a qualified human reviewer  
10 who has authority to overturn the decision of the ADMT and  
11 clearly describe to the consumer how they can submit their  
12 appeal and enable them to provide information for the  
13 reviewer to consider when submitting such an appeal. Next  
14 slide, please.

15 And the third exception to that rule I stated  
16 earlier is for an evaluation. And this applies when a  
17 business uses ADMT explicitly for admissions acceptance or  
18 hiring decisions, allocation and assignment of work and  
19 compensation decisions or for work or educational profiling.  
20 Now, the business would not be required to provide the  
21 opt-out if the business has one, evaluated the ADMT to  
22 ensure it works as intended for the business' purposes and  
23 does not discriminate based on protected classes. And two,  
24 has also implemented accuracy and non-discrimination  
25 safeguards when deploying that technology. Next slide

1 please.

2 Now finally, what would a business have to provide  
3 if a consumer requested access for additional information  
4 about how the ADMT was used? If the consumer has proceeded  
5 with the use of that ADMT, which is processing their  
6 personal information, they can request access for more  
7 information about how exactly it was used in their case. So  
8 if a consumer requests that access, the business' response  
9 to the consumer would have to include the following.

10 First, why the business used the ADMT. That's the  
11 specific purpose with respect -- with respect to the  
12 consumer. And again, not using generic terms such as to  
13 improve our services. Secondly, they would have to explain  
14 how the ADMT worked for that consumer. This would mean  
15 providing the consumer with output of the ADMT with respect  
16 to that consumer. For instance, if a technology generates a  
17 score for the consumers, the business must tell the consumer  
18 what their personal score was.

19 Secondly, how their -- how the business used the  
20 output with respect to the consumer. So if to make a  
21 decision -- significant decision concerning a consumer, the  
22 role of that output and human involvement in making that  
23 decision. And also for example, it to engage in extensive  
24 profiling of the consumer, the role of the output in  
25 evaluating a consumer.



1           And finally, the logic of the ADMT, the key  
2 parameters that affected the output and how they applied to  
3 the the consumer. And then finally, the business is  
4 prohibited from retaliating against consumers for exercising  
5 their CCPA rights and instructions for how the consumer can  
6 exercise their other CCPA rights such as the right to  
7 correct. So a quick note though a business using personal  
8 information to train ADMT is not required to provide an  
9 access response to the consumer. And also a business that  
10 makes an adverse significant decision using ADMT has  
11 additional notice requirements.

12           An adverse significant decision, as you can  
13 imagine, would be things like being demoted or terminated  
14 from a job and being denied housing or essential goods or  
15 services. An additional notice would be necessary in those  
16 instances to make sure consumers know that a significant  
17 decision has been made about them using ADMT.

18           And because there may be of a long time between  
19 the time the consumer got that pre-use notice and made that  
20 decision to proceed with the ADMT, and when a significant  
21 decision is actually made about them, the consumer may not  
22 remember that they have these rights available to them. And  
23 so this would be an obligation to provide a different --  
24 additional notice that they're informed of their choices and  
25 can exercise their rights. Next slide please.

1           So lastly, if a business is using physical or  
2 biological profiling for significant decisions or extensive  
3 profiling, they would have additional requirements. Now,  
4 when we talk about this type of profiling, it generally  
5 refers to evaluating people using ADMT with information  
6 about their physical or biological characteristics. So some  
7 examples you can imagine are facial recognition technology  
8 that analyzes your face to identify you or emotion  
9 assessment tools that evaluate your eye or other facial  
10 movements or gestures to analyze or infer your emotions or  
11 behavior.

12           Now, a business that uses physical or biological  
13 identification or profiling for a significant decision or  
14 for extensive profiling must do two things. It must first  
15 evaluate to ensure it works as intended for the business'  
16 proposed use and doesn't discriminate on the basis of a  
17 protected class. And also implement accuracy and  
18 non-discrimination safeguards to make sure it's acting as  
19 it's supposed to. So with that, that concludes our  
20 presentation and overview of the ADMT portion of the  
21 regulations. And now we're going to switch modes to the  
22 risk assessments portion of the regulations. And I'm going  
23 to turn it over to Ms. Feehan once again.

24           MS. FEEHAN: Thank you, Mr. Laird. So I'll be  
25 talking about the Risk Assessments. The goal of a risk

1 assessment is to ensure that businesses don't do things with  
2 a consumer's personal information when the risk to  
3 consumer's privacy outweighs the benefits of the activity.  
4 A risk assessment generally involves the identification of  
5 risk to consumers' privacy for a given activity and the  
6 mitigation of those risks.

7 Next slide, please. So who would need to conduct  
8 a risk assessment? A business under the CCPA would need to  
9 conduct a risk assessment before doing any of the four  
10 things on this slide because each of them poses significant  
11 risk to the consumer's privacy.

12 The first is selling or sharing personal  
13 information. Because the risk basically undermines  
14 consumer's control over their personal information could  
15 perpetuate discrimination and enable stalking and  
16 harassment. The second is the collecting, using,  
17 disclosing, retaining, or otherwise processing of sensitive  
18 information. Sensitive information includes things like  
19 social security numbers, financial information, precise  
20 geolocation, health information, and will include children's  
21 personal information. That is the personal information of  
22 consumers that the business had actual knowledge were less  
23 than 16 years of age.

24 And the third is using ADMT for significant  
25 decisions or extensive profiling. And lastly, the use of

1 ADMT or AI in certain ways, such as for a significant  
2 decision to establish individual identity, for physical or  
3 biological identification or profiling or to generate  
4 deepfakes. Next slide, please.

5           So what else would a risk assessment need to  
6 include? At a high level it would have to include why the  
7 business needs to do the activity, what is the purpose of  
8 it. Second, it would have to include the types of personal  
9 information the business would process, what they want to  
10 collect, use, disclose, retain, or otherwise process in a --  
11 in order to do the activity, including whether it includes  
12 sensitive personal information.

13           Third, the risk assessment would have to explain  
14 how the business plans to do the activity. This would  
15 include things like how many consumers would be affected by  
16 the activity, what the business would tell consumers about  
17 the use of their personal information, who else might be  
18 involved in the activity, and whether the technology -- and  
19 what technology the business plans to use in order to do the  
20 activity.

21           Next slide, please. Note that for certain uses of  
22 ADMT, such as to make significant decisions concerning a  
23 consumer or for extensive profiling, the business would also  
24 have to include information about how the ADMT would work or  
25 how the ADMT would use -- how the business would use ADMT to

1 make those decisions.

2 Fifth, the business would also have to include in  
3 the risk assessment the benefits and consequences to  
4 consumers associated with doing the activity and any  
5 relevant protections that the business plans to put in  
6 place. Lastly, the business would have to include whether  
7 the business will actually do the activity and details about  
8 who in the business contributed to, reviewed, and approved  
9 the risk assessment.

10 Finally, note that a business would not be allowed  
11 to start an activity if the risk to consumers' privacy  
12 outweighed the benefits of the activity. This lines up with  
13 the goal of conducting a risk assessment in the first place,  
14 making sure that businesses don't do things with consumers'  
15 personal information when the risk to consumers' privacy  
16 outweighs the benefits of the activity. Next slide, please.

17 So in terms of when a business would have to  
18 conduct or update a risk assessment, a business would have  
19 to conduct a risk assessment before it starts the activity.  
20 They would also have to review and update as necessary its  
21 risk assessment at least once every three years to make sure  
22 that they remain accurate. Also, if something important  
23 changed about how the business did the activity, for  
24 instance, it started collecting more sensitive personal  
25 information, then the business would have to immediately

1 update its risk assessment. Next slide, please.

2           What would a business have to submit to the Agency  
3 and when? A business would need to submit a certification  
4 of compliance to the Agency and an abridged risk assessment.  
5 What is an abridged risk assessment? This shorter form of  
6 risk assessment would include the relevant activity, the  
7 purpose of that activity, the categories of personal  
8 information used for the activity, and the protections that  
9 the businesses put into place. The business would have 24  
10 months to submit its first certification and the abridged  
11 risk assessments to the Agency, and then it would need to  
12 submit them annually thereafter.

13           Also, if requested by the Agency or the attorney  
14 general, a business would have 10 business days to submit an  
15 unabridged. That would mean a full risk assessment to the  
16 Agency or the AG upon request. Note that if a business did  
17 not start the activity because it determined that the risk  
18 outweighed the potential benefits, it would not be required  
19 to submit anything to the Agency for that type of activity.  
20 And next slide, please.

21           The other thing to note is that we're not  
22 requiring duplicate risk assessments. A business would not  
23 be required to conduct one -- I'm sorry. This means a  
24 business could conduct one risk assessment for comparable or  
25 similar sets of activities. And it could also mean that a

1 business could use a risk assessment that it used to  
2 complete -- to comply with other laws in order to comply  
3 with the CCPA. So for instance, if the the business  
4 conducted a risk assessment for GDPR compliance or GLBA  
5 compliance, then they could use that same risk assessment in  
6 order to comply with the CCPA. However, if that risk  
7 assessment didn't include all of the requirements of the  
8 CCPA regulations, then the business would have to add those  
9 as needed for CCPA compliance. Next slide, please.

10 And lastly, we'll end this talk about risk  
11 assessments with some illustrative examples. So these  
12 examples don't cover potentially all applicable laws or  
13 enforcement circumstances. However, we think they may be  
14 useful for businesses seeking to understand how our draft  
15 regulations would apply under certain circumstances. Next  
16 slide, please.

17 Our first example is a retailer that wants to use  
18 facial recognition technology in its stores solely to  
19 identify shoplifters. What would the retailer need to do  
20 under the proposed regulations? First, the retailer would  
21 have to conduct a risk assessment. They would need to  
22 evaluate through -- the facial-recognition technology to  
23 ensure it works as intended for the retailer's use and does  
24 not discriminate.

25 Then it would have to implement accuracy and

1 non-discrimination protections and provide a pre-use notice  
2 to consumers. It must also provide consumers with the  
3 ability to access more information about the use of ADMT.  
4 Note that the retailer would not have to provide an opt-out  
5 from its use of ADMT so long as it uses the ADMT only for  
6 fraud protection and prevention. Fraud prevention means to  
7 resist malicious, deceptive, fraudulent or illegal actions  
8 directed at the business and to prosecute those responsible  
9 for those actions. Next slide, please.

10 Our second example is a business whose HR team  
11 wants to use a spreadsheet to input junior employee's  
12 performance evaluation scores from their managers and their  
13 colleagues. And then calculate each employee's final score  
14 so that the manager can use those to determine which of  
15 those employees will be promoted. What would a business be  
16 required to do under the proposed regulations for this type  
17 of use?

18 Based on this type of use, the business would not  
19 have to conduct a risk assessment at all because it would  
20 not be subject to ADMT requirements. This is because the  
21 business is using the spreadsheet only to organize human  
22 decision to make -- using human decisionmakers evaluations.  
23 And this would not be ADMT in the first place. Recall that  
24 ADMT requires that the business is using technology to  
25 replace or substantially facilitate human decision making.



1 Here they're merely using a spreadsheet to tally scores.  
2 Next slide, please. And now I'm going to be turning it over  
3 to Mr. Laird to talk about Cybersecurity Audits.

4 MR. LAIRD: Thank you, Ms. Feehan. All right. So  
5 the third leg of our regulations trio we're talking about  
6 today is Cybersecurity Audits. So this would be another  
7 separate requirement of businesses under this kind of joint  
8 proposal. Now our proposed cybersecurity audit requirements  
9 are designed to ensure that businesses meet certain  
10 thresholds independently and thoroughly assess how they  
11 protect consumers' personal information. Taken together,  
12 the proposed requirements will help businesses identify and  
13 remediate problems in their cybersecurity programs,  
14 resulting in further protections for consumers' personal  
15 information.

16 Now today we'll cover who will need to complete a  
17 cybersecurity audit, what a business and a business's  
18 auditor would have to do to complete that audit. And we'll  
19 include things like how the business would complete a  
20 cybersecurity audit, who the auditor could be and what they  
21 would have to do, what the cybersecurity audit would  
22 include, and when the business would have to complete its  
23 cybersecurity audit by. So next slide, please.

24 We'll start with the who. So assuming you are a  
25 business under the CCPA, you'd have to be one or both of

1 these two thresholds to be subject to the cybersecurity  
2 audit requirements, meaning you'd need to conduct this  
3 annual cybersecurity audit.

4 The first threshold is a business that made more  
5 than half of its annual revenue in the prior year from  
6 selling or sharing consumer's personal information. The  
7 second threshold is that you're a business that made over  
8 \$28 million in gross revenues in the preceding year. And  
9 you also process the personal information of 250,000 or more  
10 consumers or households in the preceding calendar year, or  
11 you process the sensitive personal information of 50,000 or  
12 more consumers in the preceding calendar year.

13 As previously noted, sensitive personal  
14 information will include the personal information of  
15 consumers that the business has actual knowledge are less  
16 than 16 years of age. Now the fact sheet on cybersecurity  
17 audits, which is available online and at the front desk over  
18 here, will include the -- provides additional resources you  
19 can look at about what personal information and sensitive  
20 personal information include. All right. Next slide,  
21 please.

22 Now there are four main things a business would  
23 have to do to complete this cybersecurity audit. First, it  
24 would have to select an auditor. Now note, the auditor  
25 would have to meet certain requirements, which we will cover

1 in the next slide. But secondly, the business would have to  
2 provide all information the auditor requests as relevant to  
3 the audit and not hide important facts about -- from them.  
4 This is to make it possible for the audit -- auditor to  
5 complete a thorough and accurate audit using their own  
6 judgment and the information that they consider necessary.

7 Third, the business would have to report the audit  
8 results to the most senior individuals in the business  
9 responsible for cybersecurity. There would be guardrails  
10 now to make sure that the business didn't improperly  
11 influence the auditor as they complete the audit. But at  
12 the end of the day, the people who are responsible for  
13 cybersecurity need to know the audit results so that they  
14 can understand how they're doing and where to focus their  
15 attention to better protect consumers' personal information.

16 So forth and finally, the business would have to  
17 submit a certification -- a certification of completion to  
18 the Agency through the Agency's website. Now, the  
19 certification would be signed by the senior most individual  
20 in the business responsible for cybersecurity audit  
21 compliance. And it would certify that the business has  
22 completed the audit as set forth in these draft regulations,  
23 and that they reviewed and understand the audit's findings.  
24 Next slide, please.

25 So as we just discussed, the business would start

1 by selecting an auditor. And the auditor couldn't just be  
2 anyone. First of all, the auditor would have to be  
3 qualified, unbiased, meaning their objective and an  
4 independent professional. Using professional auditing  
5 standards and procedures, these generally are accepted in  
6 the profession of auditing.

7 Now the auditor can be someone working in the  
8 business or outside of the business. So if the business  
9 already employed someone who met those requirements I just  
10 described, that person could be the cybersecurity auditor.  
11 But I'll emphasize that independent and qualified are  
12 important requirements when we talk about these  
13 cybersecurity audits.

14 Next slide, please. Now that we've discussed who  
15 the auditor can be, let's get into the three main things an  
16 auditor would have to do to complete the audit. Now, first,  
17 the auditor would determine which of the business' systems  
18 would need to be audited and how to assess them. They would  
19 do that based on their expertise, the information provided  
20 by the business as well. That information would likely  
21 include things like where and how the business collects  
22 processes and stores consumers' personal information.

23 Second, the auditor would independently review  
24 documents, conduct tests, and interview people to support --  
25 to support and to assess the business' cybersecurity

1 program. The draft regulations list the parts of a  
2 business' cybersecurity program that the auditor would have  
3 to assess, document, and summarize. We'll cover those as  
4 well as some of the -- as well as what the audit would have  
5 to include on the next slide. But finally, the auditor  
6 would have to certify that they completed an independent and  
7 unbiased audit. Next slide, please.

8 Now, we've talked about what the auditor would  
9 have to do at a high level, but the next two slides I'll  
10 talk more about what the auditor would have to include in  
11 the audit report, what they'd be reviewing for. Now we  
12 break down. The cybersecurity audit would have to include  
13 into eight key pieces. So the first one is that the audit  
14 would have to include the description of those systems they  
15 audited.

16 Secondly, the audit would have to include the  
17 information the auditor used to make their decisions and why  
18 it supported their findings. This would include why they  
19 scoped the audit the way they did, why they assessed the  
20 systems and components of the business' cybersecurity  
21 program, the way they did, what evidence they examined to  
22 make their decisions and assessments.

23 For example, the documents they reviewed, the  
24 sampling and testing they performed and the interviews they  
25 conducted, and why all of this was appropriate and

1 sufficient to justify their findings. Third, the audit  
2 would have to include the auditor's assessment of how the  
3 business protects consumer's personal information through  
4 its cybersecurity program. And that includes the written  
5 documentation of the business' cybersecurity program,  
6 including its cybersecurity policies and procedures.

7 And it also includes common ways that businesses  
8 protect personal information. Like how it authenticates  
9 that its employees and customers are who they claim to be,  
10 how it uses encryption to protect personal information, and  
11 how it's prepared to handle security incidents. In total,  
12 there's a list of about 18 of these components in our draft  
13 regulations that an auditor does have to at least check for.  
14 Next slide, please.

15 Now, fourth, the audit would describe how the  
16 business follows its own policies and procedures. Policies  
17 and procedures aren't really worth much if people aren't  
18 aware of them or following them. So the audit would have to  
19 look into this as well.

20 Fifth, the audit would describe the gaps and  
21 weaknesses of cybersecurity program and how the business  
22 plans to address them, including the resources the business  
23 has allocated to resolve them, and the timeframe in which it  
24 will resolve them. This is part of how the audit assesses  
25 effectiveness of business' cybersecurity programs.

1 Sixth, the audit would have to include a  
2 description or sample copy of data breach notifications that  
3 were sent to consumers or agencies, as well as related  
4 information and fixes. Seventh, the audit would have to  
5 include the dates of when the cybersecurity program was  
6 reviewed and presented to the most senior individuals in the  
7 business responsible for its cybersecurity program.

8 And eighth, finally, the audit would have to  
9 include the certifications from both the auditor and the  
10 business that the audit was independent and unbiased and not  
11 subject to any influence or attempted influence by the  
12 business. Next slide, please.

13 So now that you have a sense of who would be  
14 responsible for what and what the audit itself would  
15 include, let's talk about when all of this would have to be  
16 done. So, a business would have 25 -- 24 months from the  
17 effective date of these draft regulations to complete their  
18 very first cybersecurity audit. Note however, the  
19 regulations likely won't go into effect until at least 2025.  
20 So the first audits would be -- would have to be completed  
21 in approximately 2027.

22 Now, after a business completes its first  
23 cybersecurity audit, it would then have to complete a  
24 cybersecurity audit and submit its certification annually.  
25 In other words, every year thereafter, there must also be no

1 gap in the months covered by successive audits. Next slide,  
2 please.

3 So much like with risk assessments, we recognize  
4 that there isn't a need to duplicate audit efforts within a  
5 business. So we want to make the same point here that if a  
6 business has completed a cybersecurity audit assessment or  
7 evaluation for some other purpose, for some other compliance  
8 requirement, and what it has done already meets all of the  
9 requirements of these draft regulations, the business would  
10 not have to redo the same cybersecurity audit.

11 However, if it doesn't have all of the same  
12 components required in these regulations, then it would need  
13 to add and supplement to that audit. So, for instance, if  
14 it -- with the purposes just meet a few of the requirements,  
15 but some are left undone, this audit would have to be  
16 upgraded to basically meet all of the requirements of our  
17 draft regulations.

18 And so that in a nutshell is our audits overview  
19 for our regulations as well. So now I'm going to talk to  
20 you just a little bit further for the final part of our sort  
21 of scheduled agenda, and that is about how to participate in  
22 formal rulemaking. So next slide, please.

23 So there are three key steps in the California  
24 rulemaking process, and we are still just as you'll see in  
25 step number 1. As of today, staff is still refining draft



1 regulatory text upon the Board's -- based on Board's  
2 feedback at meetings in December and March most recently,  
3 and drafting the necessary documents to begin the formal  
4 rulemaking process.

5 But before we can do that, the Board will receive  
6 and review the draft package for that formal rulemaking, and  
7 the Board will actually have to vote and make a decision of  
8 whether or not to initiate formal rulemaking making. Step  
9 two, however, is the formal rulemaking process you've heard  
10 me talk so much about.

11 And this is very prescribed in the law of these  
12 steps and processes and documentation we have to follow.  
13 After these documents are prepared, we file them with the  
14 Office of Administrative Law and we publish them in what's  
15 called the notice register. And that kicks off a 45-day  
16 public comment period. Now these public comments can be  
17 received through in writing -- through as instructed as  
18 you'll see in the notice documents.

19 And also through oral and written comments during  
20 a public hearing that the CPPA would host during the formal  
21 rulemaking period. After the public has provided comments,  
22 the Agency will consider these public comments and we will  
23 in fact respond to all comments received during the formal  
24 comment period. The Board will then consider the extent to  
25 which the regulations are appropriate as drafted or whether

1 further modifications are warranted.

2 And if the Agency decides -- if the Agency and its  
3 Board decide to substantively revise or modify the draft  
4 regulations, then it will provide an additional public  
5 comment period, which is typically a 15 day comment period.  
6 And again, we will consider and respond to all public  
7 comments during that time. But once we have considered  
8 public comment and the Agency Board has determined the draft  
9 regulations are in their final and appropriate form, it  
10 would take action to adopt those regulations.

11 And that's when we move to step three. And that  
12 is we review this full -- send this full package over to the  
13 Office of Administrative Law, which is an independent state  
14 Agency that we are not associated with. And they would have  
15 30 business days to review the rulemaking record to ensure  
16 we've complied with all of the laws applicable to this  
17 process I've been describing. And if OAL approves the  
18 regulatory text, it files the text with the Secretary of  
19 State and the regulations become enacted typically on a  
20 quarterly basis. Next slide, please.

21 So as you consider participating in public  
22 comment, and I see some of you in the room here today, and I  
23 know there's people joining us online. So we're looking  
24 forward to getting your public comment already today. I  
25 wanted to give some tips too, especially when we move into

1 formal rulemaking of what makes for really effective  
2 comments.

3           So first -- and also how you can keep aware of  
4 these things. So first, you can subscribe to our e-mail  
5 list to receive updates on our rulemaking and upcoming Board  
6 meetings. We've provided the subscribe link right here on  
7 the slide, and it's also easy to find on our website as  
8 well. This is a way to keep informed of when, for instance,  
9 that formal public comment process starts. You will get an  
10 e-mail saying it is started and they'll tell you the  
11 relevant information about how to submit public comments.

12           Secondly, you can attend our Board meetings and  
13 our public hearings. The agenda for these are always posted  
14 on our website at least 10 days in advance. And you can  
15 also watch recordings of past meetings if you weren't able  
16 to attend in real time. And finally, you can submit public  
17 comments through the formal rulemaking process. Again, we  
18 have a link here for -- more on tips for effective  
19 rulemaking that I encourage everybody to look at. But once  
20 we are in that process, we would be -- we'd have the  
21 opportunity to hear from you further.

22           But importantly, part of the reason we're here  
23 today is to actually hear from you now because we appreciate  
24 all the input we can get as early as possible. So that is  
25 -- concludes our presentation at least from the lawyers up

1 front. And now we are very happy to turn it over to you all  
2 so that we can get the feedback on what we've proposed here.  
3 I'm going to turn it over to Megan, though to give you the  
4 rules of the road.

5 MS. WHITE: Can you all hear me? I think you can  
6 hear me. Okay. Great. Thank you so much. That was a  
7 wonderful presentation. So now we are going to move into  
8 the public comment portion. As I mentioned earlier -- let  
9 me just grab my information. We are going to start with  
10 people in the room here. You'll be -- can you hear me?  
11 Sorry, let me try a different mic.

12 MS. SERENA: Testing one, two.

13 MS. WHITE: Serena wins the day. I won't get too  
14 close. Okay. So now we're going to move into public  
15 comment. As I mentioned, we're going to be taking it from  
16 the room first. We'll be -- it'll be up at the podium.  
17 I'll be turning this podium around. So people here in the  
18 audience will be introducing their public comments to our  
19 staff. As you can tell, the microphones are a little  
20 touchy. We might have to do some switch out here and there,  
21 but we will certainly get to everybody's public comment.

22 As I mentioned, we're going to go for three  
23 minutes for public comment. I'll be timing you for people  
24 who are here in the room. I'll be located right there.  
25 I'll try my best to give you a single one minute and then

1 you're going to hear the alarm go off at three and we'll be  
2 wrapping it up. As I mentioned in room first, if any of you  
3 is joining from the overflow room, please come in here and  
4 you can provide public comment in here. Then we'll be  
5 moving to online.

6           So for our online people, when you'd like to make  
7 public comment, please go ahead and raise your hand using  
8 the raise hand feature on Zoom. Or if you're joining us by  
9 phone, press star six and we'll make sure to get to you.  
10 We'll -- our team here will be calling people unmuting and  
11 muting you at three minutes. Okay. So now I'm going to  
12 turn the podium around and we'll open it up for public  
13 comment here in the room. And if everybody up here can just  
14 -- are you guys ready? Okay, lovely. Feel free to go  
15 ahead.

16           UNKNOWN FEMALE 1: (Inaudible) and I'm here on  
17 behalf of Gig Workers Rising and Power Switch Action, a  
18 national network of 21 community-based groups, including  
19 seven affiliates here in California. California's consumer  
20 privacy protection Agency offers a historic opportunity to  
21 put data and a measure of control over how that data is used  
22 back into the hands of workers. We have a real chance to  
23 set a benchmark for the rest of the country. I will  
24 dedicate my comment to sharing stories and themes that  
25 emerged in a series of learning sessions we held with

1 California app-based drivers from companies like Uber and  
2 Lyft and others to hear more about their experiences on the  
3 front lines of today's digital economy.

4 First, lack of transparency. Not having access to  
5 your own data and not knowing how it's being used to make  
6 decisions, makes the company seem like a black box. The  
7 company's algorithm could be secretly penalizing you or  
8 flagging you as a problem without you even knowing it until  
9 it's too late. It makes you feel like you're fighting with  
10 one hand behind your back.

11 Second, loss of control. The company knows even  
12 more about your actions every minute than a human supervisor  
13 would. Sometimes it feels like the company can use that  
14 information to try to control you or get you to take certain  
15 actions sometimes without you even being fully aware of it.

16 Third, arbitrary discipline and firings. A lot of  
17 times if there's a problem, the company expects you to  
18 interact with a bot to solve it. Sometimes what the bot  
19 says doesn't make sense or you feel like you're talking in  
20 circles. Even when you can get in touch with a human, a lot  
21 of times that person will assume you're wrong because they  
22 think that computers don't make mistakes. The human will  
23 just rubber stamp what the bot did.

24 Fourth and finally, power imbalances. It's a  
25 Catch-22, on the one hand, data is power. To have power you

1 need access to your data so that you can know the decisions  
2 the company is making about you. On the other hand, because  
3 you don't have power in the workplace, the company has  
4 incentives to resist your data request. When you're a  
5 customer, at least there's this idea that the customer is  
6 always right, but when you're a worker, it's the boss who  
7 thinks they're always right. The race of our digital  
8 economy is underway, but where are the seat belts, the  
9 airbags, and the basic protections in place for workers. We  
10 can change this through sound rulemaking that requires  
11 disclosure of decision making systems to workers, impact  
12 assessments, and true human review of automated decisions  
13 like firing. Thank you.

14 MR. JASON: Good afternoon. My name is Jason. I  
15 drive a Lyft.

16 MR. LAIRD: Sure.

17 MR. JASON: What about that? Yeah. Good  
18 afternoon. My name's Jason. I drive a Lyft. I've been a  
19 rideshare driver for 10 years. This is my little notebook  
20 that I fill out and keep track of my mileage and expenses  
21 and such, and I jot down thoughts about how I might be more  
22 effective and efficient as a rideshare driver.

23 Ever since I started driving 10 years ago, it's  
24 been my intention to enter it all into a spreadsheet and get  
25 some high level insights. This whole time's been

1 frustrating knowing that almost all the data that I'd like  
2 to use is already being collected by Lyft and is  
3 inaccessible to me. Not only that, but the data that I like  
4 to use to maximize my earnings is being used for the exact  
5 opposite. With rideshare companies trying to maximize their  
6 bottom line by setting drivers against each other.

7 Rideshare drivers are given certain expectations  
8 by Uber and Lyft when we sign up in terms of pay and  
9 flexibility. The reality of the rideshare economy is much  
10 worse. If a driver wants to figure out what's going on,  
11 we'd have to take on what amounts to another part-time job.  
12 We'd have to do all the data collection and analysis. All  
13 this while Uber, Lyft, DoorDash, Instacart, et cetera, have  
14 full and easy access to the relevant data.

15 I know Rideshare corporations are collecting the  
16 following, the star rating each passenger gives me, the star  
17 rating I give each passenger, my GPS at any moment, which  
18 rides I accept, which I refuse, which rides I cancel or are  
19 canceled by the passenger, how much I was paid for each  
20 ride, including bonuses, accelerometer on my phone. The app  
21 also requests access to my notifications, camera, contacts,  
22 microphone, music and audio, photos and videos. They're  
23 collecting all of this and probably more. All of this data  
24 could be of use to me, and really a lot of it might be  
25 inaccurate. And if so, detrimental to my to be -- to my



1 ability to my job.

2 At the most extreme inaccurate data costs us our  
3 livelihood in the form of deactivations. Deactivation is  
4 getting fired. It could happen to me if my star rating  
5 drops below a certain number chose by Lyft, if I cancel too  
6 many rides or if a passenger files a complaint. The most  
7 common cause of driver deactivation comes from false  
8 reporting by a passenger. It's happened to me. How serious  
9 the allegations of passengers are taken is entirely at the  
10 discretion of Lyft. False allegations are data. I was able  
11 to get my deactivation overturned, but many don't. It leads  
12 to a high turnover rate that makes it extremely difficult to  
13 organize rideshare drivers to fight for our collective  
14 rights.

15 This is why the CCPA and agencies like the CCPA  
16 are so important. Workers should have the ability to at  
17 least get a human review of automated decisions like firing.  
18 Strong regulations needed to give us access to all the data  
19 collected as we work. I work with the driver led group  
20 called Gig Workers Rising. And in that capacity, I'd be  
21 happy to participate in providing any information needed in  
22 developing these important protections. And thank you for  
23 the opportunity to provide comment. Thank you.

24 MR. SIRSHA: Hi, my name is Sirsha(ph), and I want  
25 to say I'm looking forward to talking to the CPPA about the

1 CCPA at the CCAP about COPPA, aka COPPA. Like I said, my  
2 name is Sirsha Grace and I'm a research fellow with Oakland  
3 Privacy, a regional coalition that advocates for safeguards  
4 and guardrails in the interest of privacy protections, civil  
5 rights, and community consent.

6           Oakland privacy appreciates the opportunity to  
7 provide comments on the CPPA's pre-rulemaking on cyber  
8 security, audits, risk assessments, and automated decision  
9 making. My comment concerns the actual knowledge standard  
10 when it comes to triggering a risk assessment due to the  
11 processing of sensitive personal information for minors, and  
12 to ask that the Agency strengthen these provisions to ensure  
13 the protection of minor's private information.

14           Section 7150 (b) requires that a business conduct  
15 a risk assessment of shares, sells, or processes personal  
16 information. And in Section 7001, the portion of the  
17 proposed revisions to the CCPA regulations that defines  
18 terms says sensitive personal information is personal  
19 information to consumers that the business' actual knowledge  
20 are less than 16 years of age.

21           Yeah, sorry. COPPA or the Children's Online  
22 Privacy Protection Act of 1998 places strict limits on what  
23 companies and websites can do of children younger than 13  
24 years of age used its services. These strict limitations  
25 have led to a number of websites requiring users to affirm

1 they're at least 13 years old. Many major websites use the  
2 13 and older age gate, which allows a website to operate  
3 under the assumption that the restrictions described in  
4 COPPA do not apply to its users.

5 And ADMTs make use of AI engines that have been  
6 trained on LLMs. And many of these LLMs gather data to  
7 create content for their training sources from websites that  
8 have COPPA age gates. This all but ensures that content  
9 within the LLM contains personal information of minors  
10 between the ages of 13, 50 -- 13 and 15, which should  
11 trigger the requirement for a business to conduct a risk  
12 assessment under 7150.

13 Therefore, a business can assume -- the  
14 fundamental argument here is that the standard should be  
15 changed from actual knowledge to a construction -- a  
16 constructive knowledge standard, which is based on what a  
17 reasonable person would know or ought to have known in a  
18 given situation. There could also be two standards where  
19 constructive knowledge is the bar for when the stakes are  
20 high, and actual knowledge for when the stakes are lower.

21 If left as is, the actual knowledge standard would  
22 allow businesses to process minor's information while still  
23 being able to claim that they do not need to conduct a risk  
24 assessment or undergo that significant cost. We thank the  
25 Agency for its work to strengthen the privacy protections,

1 and we ask that the definition of actual knowledge be  
2 clarified and strengthen -- strengthened to ensure there are  
3 robust protections of minor's personal information with  
4 regards to AI training models and ADMTs. Thank you.

5 MR. TORRES: Chair Urban and members, Alex Torres  
6 here with Brownstein Hyatt Farber Schreck on behalf of a few  
7 clients. First and foremost, the Bay Area Council. On  
8 behalf of the Bay Area Council, we represent more than 330  
9 of the largest employers in the nine- county Bay Area. We  
10 appreciate the stakeholder sessions that the CPPA has held  
11 so far, and the emphasis of course on listening to feedback  
12 from a variety of stakeholders.

13 These policy areas require deliberate and  
14 thoughtful consideration by the Agency and its impact will  
15 yield significant consequences within the Bay Area and will  
16 extend through -- throughout California to businesses of all  
17 sizes. The Bay Area Council and our member companies  
18 continue to offer ourselves as a resource to this Agency to  
19 develop guardrails, while also encouraging and supporting  
20 Automated Decision Making and Artificial Intelligence.

21 On the local level, Bay Area communities are  
22 enthusiastic about creating an AI hub respectfully request  
23 that you refrain from enacting regulations and mandates that  
24 inhibit the growth of that sector. On behalf of the new  
25 California Coalition, a statewide organization focused on

1 mobilizing the 700 -- over 700 ethnic, regional and local  
2 chambers of commerce in California in pursuit of solutions  
3 of -- to pressing policy challenges. I would echo some of  
4 the previous comments I just made and just note the concern  
5 from the business community, particularly on the impact of  
6 small businesses.

7           One major concern of the draft risk assessments,  
8 which are understood to be covered by essentially all  
9 businesses. This is an onerous provision that we believe  
10 should be narrowed to cover those who utilize the most high  
11 risk applications of AI. Additionally, we urge you to align  
12 the proposed regulations with the guidance that Governor  
13 Newsom has set forth in his executive order signed in  
14 September of 2023. Of note, I would read, you know, or  
15 would quote, better yet highlighting how California's  
16 measured approach will focus on shaping the future of  
17 ethical, transparent, and trustworthy AI while remaining the  
18 world's AI leader.

19           Remaining that global leader in AI yields many  
20 benefits for consumers, businesses, and all levels of state  
21 government, particularly as it relates to economic benefits  
22 and job opportunities. With more than 60 plus bills being  
23 considered in the legislature related to AI, and with the  
24 guidance from the aforementioned executive order, in  
25 addition to the patchwork of state privacy laws across the

1 country, we hope that the Agency will consider the massive  
2 obstacles ahead for businesses as they attempt to comply  
3 with these policies.

4 We strongly encourage the Agency to seek  
5 harmonization across various departments and levels of  
6 government, and that the CPPA will strongly consider  
7 increased outreach to the business community to help educate  
8 on the provisions and how it will impact businesses before  
9 advancing the proposed regulations. Thank you for the  
10 opportunity to express our concern today.

11 MS. WHITE: Thank you. And just a quicker reminder  
12 for everybody to speak into the mic, and we have a team  
13 member who will be adjusting the mic to make sure it's at  
14 your mouth level.

15 MR. LOMBARD: Thank you very much. Good afternoon  
16 Mayor Urban and members. My name is Edwin Lombard. I'm  
17 with ELM Strategies. Today I'm representing ethnic minority  
18 chambers throughout the State of California, both  
19 African-American, Hispanic, and Asian. The Governor's  
20 executive order, which was previously alluded to -- he  
21 proclaimed that California small businesses have account  
22 from 99 percent of total businesses in the state and employ  
23 7 million people, nearly half of the state's private sector  
24 workforce.

25 Our small businesses are global leaders in

1 innovation and economic competitiveness and employ the  
2 entrepreneurial spirit that drives the economy of our golden  
3 state. Recently here in Sacramento, we held an AI symposium  
4 with our small business stakeholders. We invited the Board  
5 members and no one showed up and we couldn't understand why.  
6 I guess, you know, we've been coming to your Board meetings  
7 and making public comment and seems like we're being  
8 ignored, and we don't think that that's something that  
9 should continue. It should actually cease.

10 I appreciate the fact that you're doing this road  
11 show and you're giving people an opportunity to come and  
12 speak to you. Unfortunately, when you do events in the  
13 middle of the week, in the middle of the day, small business  
14 owners can't break away and attend and participate in these  
15 types of opportunities. This was the only one that you gave  
16 them opportunity to be on Zoom.

17 And you know, unfortunately, quite a few people  
18 were not even aware of that. So not as many people who  
19 should be on Zoom and put -- making these public comments  
20 are not going to be able to do so. We ask that you meet us  
21 where we are. Most of our chambers throughout the state do  
22 monthly events, and it would be very easy for you to log  
23 -- tag on to one of those monthly events, show up and make  
24 your presentation, and give them the opportunity to express  
25 what I'm expressing to you today.

1           The concern with small business is this, because  
2 of COVID, a lot of our businesses transitioned to online  
3 instead of brick and mortar, and because of that, they found  
4 that they were able to increase their revenues extremely and  
5 it also, increase the ability to reach more people.  
6 Unfortunately, if the regulations are so sternly put in  
7 place, a lot of these companies are going to go under.  
8 Thank you very much.

9           MS. GORDON: Hello, my name is Samantha Gordon.  
10 Can you hear me? Okay. I'm the Chief Program Officer at  
11 Tech Equity Collaborative. Thank you for the opportunity to  
12 comment today. I am submitting these comments on behalf of  
13 Tech Equity, as well as my colleague, Dr. Annette  
14 Bernhardt, who is the UC Berkeley Labor Center's Director of  
15 Technology and work, and couldn't be here today.

16           At Tech Equity we envision a world where the tech  
17 industry is responsible for building widespread economic  
18 prosperity and is held accountable for the economic harms it  
19 creates in our communities. We have a lot to say about  
20 ADMTs, opt-outs and a variety of things within the proposed  
21 rulemaking. But for today, we're going to focus our  
22 comments on the workplace context given the constraint of  
23 time. So we believe that AI and other digital technologies  
24 represent one of the most important issues that will shape  
25 the economic opportunity of workers in California for



1 decades to come.

2           At Tech Equity over the last four years, we've  
3 conducted participatory research with contract workers in  
4 the tech industry. Many of these workers are the humans  
5 behind the magic we see in these AI systems. They do  
6 everything from training search algorithms, moderating  
7 content online, cleaning, and labeling data that power the  
8 large language models and AI systems. And while they build  
9 the technology, they're also managed through technologies  
10 like ADMTs and other digital technologies that control their  
11 workload, performance ratings, pay, and ultimately whether  
12 or not they continue in those roles.

13           I want to share two examples gleaned from our  
14 research relevant to this rulemaking on how these systems  
15 can impact workers. In repeated interviews, we heard  
16 workers share similar patterns where they work for a tech  
17 company through a third party employer. As a W-2 employee,  
18 their work product was often reviewed and assessed by an  
19 algorithmic or automated process. In some instances, that  
20 automated process denied submissions of work product leading  
21 to uncompensated time, deemed their work product  
22 insufficient or low quality, and created a quota system for  
23 work production based on information that was unknown to  
24 workers and that they found unsustainable.

25           For example, one worker who was transcribing and

1 training an artificial intelligence system shared that they  
2 would submit approximately 500 files per hour on a typical  
3 day to do automated -- to an automated review system. At  
4 times, they would get a rejection for that submission. When  
5 a submission was rejected, they'd receive a vague air  
6 message and the system would deny their entire set of 500  
7 files or one hour of work. The worker would then not be  
8 compensated for that time and will receive no notice as to  
9 why they were denied. When asked what recourse they had  
10 when that happened, the worker said, you do it again.

11 Another example is the ways in which these systems  
12 are deployed to survey and compare workers' productivity  
13 rates and contest whether or not a worker had completed a  
14 quote -- appropriate amount of work for the time they are  
15 said to have worked. If a worker completed 150 tasks per  
16 hour, but the system had determined a different benchmark  
17 for the number of tasks that should be completed in that  
18 hour, workers would receive an e-mail warning them about the  
19 imbalance between the tasks completed and the hours they had  
20 billed. However, workers shared they had no way to verify  
21 if the comparison was accurate, what the employer deemed was  
22 an appropriate productivity rate or baseline to provide  
23 context about why their rate might be higher or lower for  
24 that period of time. Thank you.

25 MS. OATES: Howdy. I am tall. There we go. I'm

1 Maggie Oates. I'm here on behalf of Consumer Reports.  
2 We're a hundred year old nonprofit focused on making tech  
3 policy work for consumer interest. I want to start off by  
4 giving you all a compliment. I don't think anyone's done  
5 that yet today. I want to say that there is a lot to love  
6 in these draft rules, and it's clearly not a first draft.  
7 There's a lot of thought and detail poured in, and we see  
8 that and shout out to the CPPA staff for undoubtedly putting  
9 in many hours on this topic.

10 We said it before, and I'll say it again, that one  
11 thing we're really excited about in this draft is the  
12 innovative and very comprehensive expansive definition of  
13 behavioral advertising. We love that it's making clear that  
14 consumers have a right to opt-out of ads across multiple  
15 sites under one company. So, for example, we love the idea  
16 and we want to live in a world where consumers can opt-out  
17 of Google using Gmail data to target Google Flight's ads.  
18 And this is something that we've supported for years and  
19 we're excited to see glimpses of it in the (inaudible).

20 And now I will un-compliment, I'm sorry to say. I  
21 have several points, mainly focused on ADMT today and some  
22 changes we saw since the December draft that we're concerned  
23 about. The first is that we notice the narrowing of the  
24 definition of ADTM and we're worried that it creates an easy  
25 way for businesses to sidestep these rules. You know, this

1 definition is the crux on -- upon which all the rest of the  
2 rules reside. And we're seeing glimpses to support this in  
3 our research. We put out a report recently with Cornell and  
4 Data and Society that looked at New York City's new AI bias  
5 rule, and we found that only four percent of major employers  
6 in NYC put out any notice required -- related to AI and  
7 hiring.

8           In comparison, if you look at Harvard Business  
9 Review's recent reports about industry surveys, industry  
10 members said that 63 percent of them had automated part of  
11 their hiring process. So four percent of people are telling  
12 consumers that they're using automation in hiring versus 63  
13 percent of businesses are telling Harvard Business Review  
14 that they're using automation and hiring.

15           This discrepancy could be for a lot of reasons,  
16 but we're pretty certain that one of them is the fact that  
17 the weak definition of substantially assisting human  
18 decision making in that bill. So we'd love to see a  
19 stricter definition of ADMT reinstated or at minimum we'd  
20 love to see more clarifying examples that cover what  
21 substantially facilitate and what key factor mean to help  
22 gesture more and to what that means in practice.

23           The second is that we'd love to urge the Board to  
24 revise the definition of adverse significant decisions to  
25 incorporate not only binary yes, no decisions, but also

1 things like increases in pricing. So on a personal level,  
2 last year in a series of freak accidents, I had two cars  
3 totaled. And just last month, my insurance company called  
4 me -- and this is too short. I thought we had five minutes,  
5 but I want to lift up the voices of the labor coalitions as  
6 well. It's not our area of expertise, but we love that  
7 they're here and we support their voices. And thank you for  
8 having us.

9 MS. SERENA: Testing.

10 MS. COMSTI: No, I don't think so. Wait, I'll go  
11 close. That's -- okay. Are we good still? Okay. Good  
12 afternoon. I'm Carmen Comsti, lead regulatory policy  
13 specialist with the California Nurses Association, the  
14 largest union representing registered nurses in California,  
15 over a hundred thousand registered nurses throughout the  
16 state. Nurses see healthcare employers use ADMTs being  
17 rapidly adopted as cost cutting measures that automate,  
18 descale and devalue the work and professional clinical  
19 judgment of nurses.

20 Nurses urge the CPPA and state regulators to use  
21 what we call in the healthcare sector, the precautionary  
22 principle when approaching ADMTs. This means that when  
23 there's new healthcare tools, including ADMTs, we must find  
24 evidence of safety before being deployed. The use of  
25 automated tools in clinical prediction and assessment leaves

1 patients without the human to human relationships that is  
2 the basis of nursing, undermining nurses' professional  
3 judgment, and threatening both patient and worker safety.

4 Automated clinical prediction tools are  
5 increasingly being used by healthcare employers to make  
6 decisions under staffing levels, bed assignments, whether or  
7 not to provide care, when to discharge a patient, but it's  
8 often difficult, if not impossible for direct patient cared  
9 nurses and patients to identify when or how a predictive  
10 tool is being used, let alone understand the patient and  
11 worker safety risk that they may pose.

12 Two thirds of nurses who said their employers use  
13 ADMTs to predict patient acuity, so this is how sick a  
14 patient is did not match their own clinical assessment. But  
15 over half of these nurses said that these tools could not be  
16 modified to reflect the nurse's judgment and assessment of  
17 the patient. Inadequate and inaccurate patient assessments  
18 can lead to adverse events, harmful delays in denials of  
19 treatment, medical errors, and even death.

20 Predictive algorithms have been found to result in  
21 significant racial bias, even when race was not a factor  
22 reducing care for black patients -- Latino patients and  
23 other patients of color. Employers use ADMTs through  
24 chatbots, wearable devices, electronic medical records, to  
25 replace hands-on assessment of nurses. And these tools are

1 used to recommend when a patient should be seen by a doctor  
2 or sent home or moved to a cheaper, lower level type of  
3 care.

4           Instead of 24 hour nursing care, patients are  
5 given remote monitoring tools and wearable devices that  
6 track their movement and biometric data. Major health  
7 systems have come under fire for predictive tools that  
8 pressure clinicians to move patients to hospice and  
9 palliative care early. These predictive clinical tools  
10 simply do not work as intended and fail to evaluate vital  
11 cues about patients or issue false alarms. Regulations must  
12 be drafted broadly to ensure pre-market testing and  
13 regulatory approval of any new technology and healthcare  
14 before they are deployed. Thank you.

15           MR. YATES: I'm here. Thanks for coming and doing  
16 these hearings, much appreciated. I want to say before my  
17 statement that I think that the ADMT needs more regulation  
18 than I've heard in your presentation. So good afternoon.  
19 My name is Thomas W. Yates. I was born and raised in  
20 Sacramento, and I currently live here. I have been a  
21 professional illustrator for most of my adult life, mainly  
22 drawing comic books. For the last 12 years, I've drawn the  
23 Sunday newspaper strip Prince Valiant, running currently in  
24 hundreds of newspapers across the country. Before that, I  
25 drew Tarzan of the Apes, Zorro and many other characters for

1 DC and Marvel comics.

2           The reason I've come here is to testify is my  
3 profession and those of creative artists, illustrators,  
4 writers, musicians, songwriters, actors, et cetera, are  
5 under my profession, is under threat from very powerful  
6 forces. Those forces are often represented by highly paid  
7 lobbyists, working for those who are stealing and would like  
8 to continue stealing our life's work through forgeries of  
9 that work.

10           These forgeries are created from computer software  
11 programs and applications. This software is used by  
12 artists, illustrators, et cetera, to create their work in  
13 our -- as necessary today as the pencils, paper, pen, and  
14 ink were, when I began my career illustrating for DC comics  
15 45 years ago. Unfortunately, these programs that is now  
16 necessary to use are scraping or harvesting all our data,  
17 personal, professional, et cetera, from our personal  
18 computers and from the internet. This personal data is then  
19 used to create forgeries of our work.

20           This has gotten to the point that our calling to  
21 create from our imaginations, work that millions of people  
22 enjoy and purchase around the world is no longer paying us  
23 for all of our work, because more and more of it is being  
24 forged, and it is the forgers who are paid for that product  
25 of our imaginations. To fight back against these forgeries,



1 I am here to implore California regulators to include  
2 forgeries in proposition for the law against deepfakes in  
3 ADMT. Creators must have the right to opt out of their  
4 names being a prompt of AI. Ultimately, we really need  
5 harvesting of our very identities and the resulting thefts  
6 to be stopped. Thank you very much.

7 MR. JONES: Hi, my name is Kelly Jones. I'm --  
8 like Tom, I've been doing comic books and illustration for  
9 film and television. Most recently, Sandman for Netflix  
10 adapted my work. I had just recently finished some work for  
11 Tim Burton on Beetlejuice and I'm -- just had working on  
12 some Batman stuff for DC, so you get around a lot.

13 What will happen if there isn't something for  
14 illustration is it will take away the elements of ideas.  
15 And what I mean is that you -- we're now struggling with  
16 this technical thing where people can just take stuff and do  
17 what they do. What will happen is that homogenizes  
18 everything in my world, and the ideas will stop because  
19 they're just going to go for the technical. If there isn't  
20 some kind of protection, then what will happen is those  
21 ideas will dry up.

22 For example, I was asked to redesign the character  
23 of Mr. Freeze about middle nineties. And so I did, and the  
24 design went all the way up the chain. They accepted it,  
25 took it. The people making the Batman film were going to

1 use this character of Mr. Freeze. So what what happened was  
2 they liked it so much at the -- at the film studio that they  
3 asked for all of my work and wanted to see my development  
4 and they recast the film based on that to what they were  
5 going to do to Arnold Schwarzenegger, the former governor of  
6 the state.

7 If it were done the way they're doing it now,  
8 without having to go through us, they would just program or  
9 just ask for something and get something completely  
10 different. It wouldn't have had any kind of eccentricity to  
11 it. So my main thing is you don't want the next governor to  
12 lose out on a big part, right? So, as far as I'm concerned,  
13 there does have to be some kind of consideration for how  
14 much of this. It's very -- I know it's bizarre but these  
15 things just don't -- well, they do come out of thin air. It  
16 -- it's hard to put that in. But what will happen is it's  
17 easier and easier is always better than harder, but harder  
18 is what everyone knows, and that's what they all remember,  
19 and it gives governors an extra job. So I think that has to  
20 be considered. Thank you very much for listening.

21 MS. FLANAGAN: Thank you so much. Good afternoon,  
22 Chair Urban and members of the CPPA. Thank you for this  
23 opportunity to comment. My name is Anne Flanagan. I am the  
24 Vice President for Artificial Intelligence at a non-profit  
25 organization called The Future of Privacy Forum. At FPF we

1 specialize in responsible data practices, including the  
2 intersection of emerging technologies, business practices,  
3 and their -- and their impact on individual privacy.

4 And we have testified before this Agency  
5 previously, and we'll be happy to do so again. Thank you so  
6 much for the opportunity to comment. I have three short  
7 points to make today and I'll get right to them. In the  
8 interest of time, I'm going to restrict my comments  
9 specifically to ADMT and risk assessments and exclude  
10 cybersecurity at this juncture.

11 First recommendation is to ensure that the most  
12 vulnerable to harm are explicitly recognized across the  
13 regulations. At FPF in 2017, we documented a wide range of  
14 potential harms that are related to the risks of using  
15 personal data in ADMT, including particularly in respect of  
16 protected classes. When decisions, particularly significant  
17 decisions are made in respect of protective classes and ADMT  
18 is the tool that is used, the harms tend to be more acute.  
19 It is therefore recommended that the regulations be  
20 explicitly inclusive and reflective of California's diverse  
21 population and we welcome your inclusion of public opinion  
22 and bias experts in this process.

23 Second recommendation is to build on existing  
24 frameworks and other ongoing processes to ensure  
25 interoperability and proportionality. Risk assessments are,

1 of course, a longstanding aspect of privacy impact  
2 assessments, and we really welcome that the -- that the  
3 impact assessment piece here is additive rather than an  
4 extra-- an extra burden on businesses. We hope that the  
5 Agency continues to draw lessons from global governance  
6 efforts, including processes underway at NIST where the NIST  
7 RMF is being updated for generative AI and including most  
8 recently, Colorado's Privacy Act.

9           There may be some aspects there that might be  
10 interesting including their definitions around the degree of  
11 human involvement in a process -- a profiling system, and  
12 how profiling is evaluated for fairness and disparate  
13 impact. And my final recommendation is to ensure that any  
14 new risk assessments are effective and pragmatic. And a  
15 couple of small points on this. Given that many high risk  
16 ADMT systems are continually ingesting data and training  
17 their models, it can be difficult to determine when they  
18 undergo material change.

19           We see that there are time-bound revisions to when  
20 impact assessments and risk assessments need to take place.  
21 That may depend on the degree of severity of risk of any  
22 individual model. We also recommend that it may be useful  
23 to distinguish between developers and deployers in risk  
24 assessments, particularly because the different respective  
25 roles will have different visibility and different

1 empowerment to adjust systems. Thank you so much for the  
2 opportunity to comment. Thank you.

3 MR. YATES: Right. Yeah. So this is from Dan  
4 Brereton. He's -- lives in northern California, Roseville  
5 area professional illustrator, graphic storyteller for 36  
6 years. "As a fan of illustration and graphic storytelling,  
7 viewing simulated artificial attempts at creativity makes me  
8 cringe. As a practicing creative professional who realizes  
9 what I am seeing is a form of theft, it makes me angry.  
10 Maybe a little worried as well, especially after a few years  
11 ago when I found a disturbing amount of my artwork being  
12 used to train AI revealed by the Do Not Train website.

13 Basically, this text scrapes up the creative  
14 endeavors of thousands of artists who cover more than a  
15 century of endeavor and brilliance piles it into a trove of  
16 riches, takes what it wants, free of any current  
17 restrictions. Since that time, I'm sure hundreds more  
18 examples of my work have been captured by the scrape our  
19 names and our visual trademarks and innovations all  
20 collected for use. Stolen.

21 Stealing from hardworking artists, co-opting  
22 individual brilliance and making it commonplace, but  
23 attractive enough to an audience which may not realize it's  
24 seeing a deceptive form of plagiarism. AI tech may make it  
25 easier to displace the jobs of tens of thousands or more

1 people who earn a living by being uniquely gifted and  
2 enormously experienced. That's a lot of creative  
3 professionals who pay taxes, have families who depend on  
4 them, who will by necessity after give up what was once a  
5 career, a future body of work, contributing to any number of  
6 media. Imagine the careers of creative professionals who  
7 have left an indelible mark on our society through their  
8 craft. Imagine they're stifled because they can't get work.  
9 It's scary to think about.

10 Here's an example. When I see people using AI to  
11 reimagine Star Wars, that is one of the greatest insults I  
12 can think of. If George Lucas had come after AI, there may  
13 have been no Star Wars, apply any groundbreaking creator and  
14 their genius work to this formula, imagine the results.  
15 That's a world we're entering if we don't take action.  
16 Personally, nothing is going to stop me. Not a computer  
17 program or an audience, briefly taken in by a cheap trick.  
18 I have dedicated audience, but it's taken over 30 years in  
19 this career to build up. Not every artist has that,  
20 especially the young and upcoming. And because of this  
21 technology, they may not get that chance. Thank you."

22 That's from Dan Brereton, great artist.

23 MS. WHITE: Great. Wonderful. If we have  
24 additional public comments, wonderful. Feel free to come  
25 up.

1 UNKNOWN FEMALE 2: Okay. So my reason for being  
2 here today is to highlight some foundational cybersecurity  
3 components that are not clearly articulated and need to be  
4 accounted for as we're talking about the regulations that  
5 we're focusing on here, and I'm representing those of us  
6 that want to get this right. I am a mom of two kids. I'm a  
7 business owner. I flew in from Chicago because I'm very  
8 passionate about this topic, and I find this to be a very  
9 historical period of time that we are in. And like Maggie  
10 said, like kudos to the group for the extensive work that  
11 has gone into this many years of work, and I applaud that.

12 So I would like to direct the focus on the  
13 cybersecurity audit piece. So, Mr. Laird, I'm going to  
14 address it to you since you were sharing the slides. So I'm  
15 very concerned that there's language here on what a  
16 cybersecurity audit should include. Cybersecurity, the  
17 terminology is very interesting. It means at a very high  
18 level, we're looking to protect information. And oftentimes  
19 it's information that we're not able to see. It's  
20 information that lives in devices that can connect to  
21 services. And there can be copies of lots and lots of datas  
22 and transformation. And we're talking about measuring risk  
23 for something that we're not able to see, which is just like  
24 mind boggling.

25 So if we're looking to be specific on what a

1 cybersecurity audit should include we need to do several  
2 things. Specifically remove the requirement to -- for the  
3 auditor to assess, assess how a business protects personal  
4 information. A security audit is -- you're measuring  
5 against something. You're comparing if something is being  
6 done, yes or no. An assessment is something different.  
7 Here we're conflating two different things, and specifically  
8 for the assessment piece, that belongs more in the risk  
9 management portion.

10 I could have never imagined how much these kinds  
11 of devices would impact my personal life, able to call an  
12 Uber to get here, check in at the gate for my flight. I  
13 wasn't expecting that my 6-year-old son would be addicted to  
14 YouTube, and that we have to fight that. That concerns me,  
15 and I applaud you for being here to taking the time to seek  
16 our input. I think you have done an extraordinary job of  
17 soliciting comments from the public, and I look forward to  
18 providing more input as more opportunities arise. Thank  
19 you.

20 MS. WHITE: Is there anyone else in the room who  
21 would like to provide public comment? Okay, then I think  
22 we're going to move over to Zoom. Just a reminder, if you'd  
23 like to make comment. Oh, one second, please. We're  
24 actually going to take a quick break, so we will be back in  
25 about 10? Five to 10 minutes, just a quick break, and then



1 we will take comments online. Thank you so much.

2 (BREAK).

3 MS. WHITE: Okay. Thank you everybody who's  
4 joining us online and in the room for allowing us to take  
5 that quick break. We are going to come back now and we're  
6 going to start with public comment online. Everybody  
7 online, same as in the room. It's a three minute public  
8 comment. If you're joining us via Zoom, please use the  
9 raise hand feature. If you're joining us via the phone,  
10 please press star six after we complete public comment  
11 online. And since we've completed it in the room, we will  
12 allow people to provide a second public comment because we  
13 will be here until 6:00 p.m. So I'm going to turn it over  
14 to our moderator who will be calling on people, muting them  
15 and unmuting them. Oh, I'm sorry. One more thing. If you  
16 are providing comment in Spanish and need a translation  
17 service, please let us know before you begin your public  
18 comment. We have a translator here who can assist. Thank  
19 you.

20 MS. SERENA: Tasia Kiefer, I'm going to unmute you  
21 at this time. You'll have three minutes to make your  
22 comment, so please begin as soon as you're writing.

23 MS. KEEFER: Hi everyone, my name is Tasia Keefer  
24 and I'm here representing the LA County Business Federation,  
25 also known as BizFed. BizFed is composed of over 240

1 diverse business organizations and represents over 410,000  
2 employers with 5 million employees across Southern  
3 California and California's capital. We thank you for  
4 hosting a stakeholder session today and allowing us to  
5 provide comments. But you should be aware that business  
6 organizations and individual businesses are completely  
7 unaware of the risk assessment and Automated Decision Making  
8 requirements that you are proposing.

9 We do not know what problems the CPPA is intending  
10 to address and whether those are legitimate problems that  
11 justify a new regulatory program. And actually, I spoke  
12 with business members who will be significantly impacted by  
13 these rules the Agency is proposing, and they were not aware  
14 of the Agency or the drafted rules. We respectfully request  
15 that the CPPA engage in an effort to inform Californians  
16 about the regulations that you're proposing by engaging with  
17 business sectors like entertainment, goods, movement, and  
18 manufacturing.

19 Furthermore, every region in California utilizes  
20 automation and AI, or in this case ADMT. Throughout the  
21 state, small businesses leverage these technologies to boost  
22 productivity, streamline business processes, and guard  
23 against cybersecurity threats and more. In fact, a new  
24 small business entrepreneurship council survey found that 75  
25 percent of small businesses are utilizing AI tools. In a

1 time where business expenses are at an all time high, every  
2 dollar is critical to business survival.

3 We need to ensure that we preserve the use of ADMT  
4 and we urge you to avoid regulations that would hinder AI  
5 innovation. The draft rules also create a new opt-out  
6 mechanism that would break basic website functionalities  
7 that businesses rely on to improve customer service. These  
8 simple low risk uses of ADMT are critical functions that  
9 ultimately drive revenue. Therefore, we urge CPPA to offer  
10 a narrower definition of ADMT.

11 And lastly, we strongly recommend that the CPPA  
12 coordinate all regulatory efforts with Governor Newsom and  
13 the legislature, especially regarding automation and AI.  
14 The legislation is considering over 35 AI related bills,  
15 many of which intersect with the CPPA's proposals. It is  
16 important for businesses to have clarity when it comes to  
17 complying with regulations and the Agency's draft rules will  
18 be a burden on the business community and businesses are  
19 what make California work. We appreciate your consideration  
20 of these requests. Thank you very much.

21 MS. SERENA: Julian Canete, you have three minutes.  
22 I have unmuted you. Go ahead and speak.

23 MR. CANETE: Thank you. Julian Canete on behalf of  
24 the California Hispanic Chambers of Commerce and the  
25 California businesses. We were represent through our

1 membership of over 125 Hispanic and diverse Chambers of  
2 Commerce and Business Associations to -- we wish to express  
3 our collective concerns about CPPA's lack of collaboration  
4 and engagement with California's small business community.  
5 As Governor Newsom has often said, California small  
6 businesses account for more -- over 90 percent of total  
7 businesses in the state and employ more than 7 million  
8 individuals. Nearly half of the state's private sector  
9 workforce.

10 Our small businesses are global leaders in  
11 innovation and economic competitive competitiveness and  
12 embody the entrepreneurial spirit that drives the economy of  
13 the golden state. Over the last two years, we have raised  
14 our concerns about CPPA's regulatory approach. We have made  
15 and wrote numerous comments and have offered to collaborate  
16 with CPPA to better understand small business concerns. But  
17 the CPPA has not once responded to our concerns or offer to  
18 the best of our knowledge any collaboration.

19 Recently, California's major statewide ethnic  
20 chambers held an AI policy symposium in Sacramento to  
21 educate policymakers and regulators of the importance of AI  
22 in the day-to-day operations of small business. We had made  
23 both verbal and written invites to CPPA to attend the event.  
24 No Board member or staff member from CPPA attended. The  
25 lack of attendance is troubling and amplifies the CPPA's

1 lack of interest in collaborating and engaging with our  
2 communities and business altogether. We appreciate the  
3 scheduling of recent meetings held in Fresno and Los  
4 Angeles.

5           While we appreciate the gesture, truthfully, it  
6 appears to be a check the box type of activity for CPPA.  
7 The timing and location, especially in the LA area made it  
8 almost prohibitive small business to participate and with no  
9 online access. Like today's meeting, it makes it even more  
10 prohibitive for small businesses to engage. There are many  
11 opportunities to engage small business and hear our concerns  
12 and our solutions and for potential regulations. Our  
13 organization throw events that you can participate in or be  
14 a part of. You can meet us where we are, we can -- we can  
15 set up webinars and you must provide a -- to participate  
16 online.

17           And finally, by adhering to the balance sought in  
18 section 39(c)(1) under Proposition 24, which states "the  
19 rights of the consumer and the responsibilities of business  
20 should be implemented with the goal of strengthening  
21 consumer privacy while giving attention to the impact on  
22 business and innovation". I appreciate the opportunity to  
23 share our perspective again with the CPPA and we look  
24 forward and are prepared to work with CPPA in getting it  
25 right. Thank you.

1 MS. SERENA: Thank you Julian. Sam Tung, I'm going  
2 to unmute you at this time. You have three minutes to make  
3 your comments, so please begin when you're ready.

4 MR. TUNG: Hi, everyone. My name is Sam Tung. I  
5 am a storyboard artist for film animation and video games.  
6 And I -- and I really appreciate you taking the time to hear  
7 comments from us today. You might know some of my work from  
8 the recent animated series, Xmen 97, or the upcoming Twister  
9 sequel, which is coming out this summer.

10 The first thing I want to say is that these, these  
11 jobs working in illustration, working in entertainment,  
12 these are great jobs. If you -- if you work hard and you  
13 master your craft, you can earn a good middle class living  
14 in a creative field. I can -- I can pay my mortgage and I  
15 can send my kid to preschool, right? And the culture and  
16 business of the entertainment industry is a cornerstone of  
17 California and the United States, and something that we  
18 absolutely do not want to see disappear.

19 But these jobs are at serious risk. If generative  
20 AI as part of ADMT is allowed to propagate in its current  
21 form you know, there's a lot of risks that I know that  
22 you're looking to mitigate here. A lot of these generative  
23 AI programs, which are powered by data that was taken from  
24 all of us without our consent, credit, compensation, or  
25 transparency they are prone to hallucinations, right? So

1 they can -- they spit out things that are inaccurate. They  
2 can perpetuate stereotypes. If you -- if you try to  
3 generate an image of a family, it usually generates a white  
4 family, which is not particularly representative of  
5 California or the US. And if you leave decision making up  
6 to these things it might tell you to do things that also  
7 perpetuate stereotypes.

8           For example, in animation rendering black hair is  
9 challenging and takes more computing power. And AI system  
10 that is telling you what movies to make might tell you to  
11 make movies that don't have black characters in it, right?  
12 And that would not be something that we're trying to do,  
13 right? So we need to make sure that these companies are  
14 operating ethically and that they are not taking  
15 Californians private work and material to create products  
16 that directly compete with us functionally, right? Like  
17 this is a violation of trade dress and deepfakes are  
18 tantamount to forgery, right?

19           If these companies can go online and take all of  
20 my work and create a piece of software that tirelessly  
21 replicates me and cuts me out of employment that's bad,  
22 right? Like -- and they're creating work that is in my  
23 style that I have no control over. But that might look like  
24 my work and reasonably confuse someone who might employ me.  
25 I know we're getting low on time, but these are the big

1 points that I want to hit. And please keep an eye on these  
2 companies. Window's new operating system, Windows 11 seeks  
3 to take screenshots of your computer constantly to improve  
4 performance apparently. So again, privacy for Californians  
5 is really threatened by these generative AI systems. Thanks  
6 so much for your time.

7 MS. SERENA: Oops, sorry. Thank you, Sam. Julian  
8 Canete, I'm going to unmute you now. You have three  
9 minutes. The FCA admin, I'm going to unmute you. Go ahead  
10 and speak.

11 MS. MANASCO: Alessandra Manasco on behalf of the  
12 California Fuels and Convenience Alliance, a statewide trade  
13 association representing the needs of independent wholesale  
14 and retail marketers of gasoline, diesel, lubricating oils,  
15 and other alternative fuels products, transporters of those  
16 products and retail convenience store operators. The vast  
17 majority of our members are small business owners, with many  
18 of them being family owned businesses passed down from one  
19 generation to the next. Our association provides the  
20 lifeblood of our economy, transportation, fuels and energy  
21 to the motoring, public and business economy.

22 In simple terms, our members deliver  
23 transportation, fuel, and energy from the -- their  
24 manufacturers to end customers, such as wholesale, retail  
25 participants who then deliver the fuel to individual users



1 or to bulk purchasers. Our members serve every region,  
2 city, county, and locality in this state. AI holds  
3 tremendous values for our members to make their work more  
4 efficient and environmentally conscious. Benefits include  
5 optimizing routes, which allows them to use AI to minimize  
6 fuel consumption and emissions. While predictive  
7 maintenance ensures vehicles operate at peak efficiency,  
8 further reducing their carbon footprint.

9           Additionally, AI-driven inventory management  
10 reduces waste and energy usage in warehouses. Machine  
11 malfunction prediction when implemented in the  
12 transportation industry, plays a critical role in cost  
13 optimization. It increases safety by allowing for  
14 predictive maintenance, performance forecasting, and  
15 real-time risk management. AI collects data by connecting  
16 to all types of machinery. Sensors will be able to identify  
17 machine malfunction before it is noticed by humans. With  
18 this, accidents can be prevented and a ton of money can be  
19 saved by looking at the damage predominantly before the  
20 machine collapses.

21           By hindering innovation for our members to utilize  
22 these efficient technologies, it is not only hurting small  
23 business growth, the safety of workers, but the overall  
24 environment and its -- and its goals to combat climate  
25 change in the golden state. Thank you for the opportunity

1 to give our comments. Thank you.

2 MS. SERENA: Matt Scherer, I'm going to unmute you  
3 at this time. You have three minutes. Go ahead and start  
4 when you're ready.

5 MR. SCHERER: Good afternoon. I'm Matt Scherer and  
6 I lead the workers' rights project at the Center for  
7 Democracy and Technology. I appreciate your work on this  
8 issue, and thank you for taking the time to hear from  
9 stakeholders like Ms. Oates from Consumer Reports, I want to  
10 address the narrowing of the definition of ADMTs and the  
11 revised draft regulations. I fear that the revised  
12 language, which would apply only to systems that are a  
13 substantial factor in covered decisions, would basically  
14 give companies a license to opt themselves out of the laws  
15 requirements. Here's why.

16 Workers and regulators and consumers usually don't  
17 know which companies are using ADMTs, much less how. It was  
18 interesting hearing business representatives object that  
19 they haven't had an opportunity to have input on these  
20 regulations because the millions of consumers and workers  
21 who are subjected to ADMT decisions without being told that  
22 they are doing so definitely have not had any input in this  
23 process. Companies have strong incentives to keep their use  
24 of these systems hidden and generally do so whenever they  
25 can.

1           This is in large part because having an  
2 information monopoly gives companies a huge competitive  
3 advantage over consumers and workers. It makes it much  
4 easier for companies to use ADMTS to drive up prices, drive  
5 down wages, or otherwise use these systems to increase their  
6 profits at Californian's expense. But the part that they  
7 won't say out loud is that many companies fear transparency  
8 because they know that many, if not most ADMTs are biased  
9 snake oil or both, and that disclosing their use will  
10 subject them to discrimination in consumer protection  
11 lawsuits.

12           Consequently, companies are likely to take  
13 advantage of any loopholes that give them discretion to  
14 wiggle out of ADMT regulations that would reveal their use  
15 of these systems and the substantial factor requirement to  
16 create such a loophole. Companies always claim that ADMTs  
17 merely make recommendations that are one factor among many,  
18 and that humans have final say in decisions. It would be  
19 easy for companies to avoid compliance by adopting an  
20 internal policy saying that ADMTs shouldn't be over relied  
21 upon, even if in reality those tools recommendations are  
22 decisive and human reviewers defer to AI outputs, this  
23 creates a catch 22.

24           Once a company chooses to assert that a tool does  
25 not meet the substantial factor requirement, it may not even

1 disclose the existence or use of the tool. The outside  
2 world may not then be even aware of the tool and thus won't  
3 be able to challenge the company's determination that the  
4 tool's not being used as a substantial factor. In effect,  
5 that requirement gives companies the unilateral ability then  
6 to opt out of complying with the law. Such a requirement  
7 threatens to make the ADMT regulations a dead letter with  
8 companies largely ignoring them. That's what appears to  
9 have happened with New York City's ordinance on AI and  
10 hiring.

11 According to a study by Cornell Consumer Reports  
12 and Data and Society release earlier this year, I urge you  
13 to go back to the original broader definition of ADMTs.  
14 It's essential that the CCPA rules be written in a way that  
15 ensures companies cannot use their information monopoly on  
16 ADMTs to avoid transparency and accountability. Thank you  
17 so much.

18 MS. SERENA: Thank you Matt. Brynne O'Neal, I'm  
19 going to unmute you at this time. You have three minutes to  
20 make your comment, so please begin as soon as you're ready.

21 MS. ONEAL: Hello, my name is Brynne O'Neal with  
22 National Nurses United. Rulemaking on AI and automated  
23 decision making technology is urgent and essential. Our  
24 nurses are already seeing ADMT used to make staffing  
25 decisions that can be life or death for patients. And

1 industry is rushing to use generative AI to communicate with  
2 patients about their healthcare, replacing professional  
3 nurses with unproven unreliable technology.

4 For example, nurses working at Kaiser hospitals in  
5 California have reported that their electronic health record  
6 system called EPIC feeds algorithms that determine a  
7 patient's acuity. Acuity measures how ill or fragile a  
8 patient is and predicts how many hours of nursing care that  
9 patient will need. Algorithmically driven acuity  
10 measurements, work off a limited set of data and miss the  
11 subtleties and nuances that a nurse's observational skills  
12 can have. They don't take into account the educational or  
13 emotional needs of a patient or their family.

14 And importantly, these systems depend on a nurse's  
15 ability to chart in real time, which in the midst of a  
16 staffing crisis with understaffed hospitals and overloaded  
17 healthcare workers isn't possible. So as a result, on a  
18 daily basis in unit after unit, nurses have multiple  
19 patients whose acuity is underrepresented, meaning there are  
20 not enough nurses to provide optimal care in a timely  
21 manner. This in turn, makes it impossible for nurses to  
22 chart in real time and you get a vicious cycle. These  
23 systems collect extensive workers data on workers and on  
24 patients, and use it for really harmful decisions on the  
25 healthcare that consumers get and the allocation of work to

1 employees. And AI isn't just being used to minimize nurse  
2 staffing. Industry is also threatening to use it to replace  
3 nurses altogether.

4 NVIDIA and Hippocratic AI are advertising the  
5 development of virtual healthcare assistance, which they  
6 claim can use gen AI, generative AI, to discuss critical  
7 healthcare issues with patients like medication and chronic  
8 disease management. And their marketing materials  
9 explicitly say this tech is cheaper than paying a nurse, but  
10 this represents incredibly unsafe processing of sensitive  
11 personal information from patients, which due to the nature  
12 of of generative AI, does not allow the issuance of any  
13 meaningful information about the logic involved in the  
14 system's decision making processes as is required in the  
15 CCPA statute.

16 So right now, really strong regulations are needed  
17 to ensure that patients and workers personal data are not  
18 being fed into ADMT systems that put them at risk. We must  
19 preserve patient's rights to safe, high quality person to  
20 person care and nurses' rights to exercise clinical judgment  
21 and override unsafe automated decisions. Thank you so much.

22 MS. SERENA: Thank you. Ian Maloney, I'm going to  
23 unmute you at this time. You'll have three minutes to make  
24 your comment.

25 MR. MALONEY: My name is Ian Maloney. I'm the

1 Senior Vice President and Head of Policy and Regulatory  
2 Affairs at the American FinTech Council. I just want to  
3 thank Chair Urban and members of the CPPA Board for holding  
4 this meeting along the opportunity to provide comment on the  
5 draft risk assessment and ADMT regulations. AFC is a  
6 standards based trade association representing some of the  
7 largest financial technology companies and innovative  
8 financial institutions to partner with them. Our members  
9 offer innovative financial products and services to millions  
10 of Californians each year.

11 AFC seeks to promote innovative, transparent,  
12 inclusive, and consumer-centric financial system by  
13 supporting responsible innovation in FinTech and encouraging  
14 sound public policies. AFC members use ADMTs to improve  
15 access to financial services in a number of situations,  
16 especially for communities that have been historically  
17 underserved. Given the time constraints, I'll be more  
18 targeted with my -- and concise with my comments and try to  
19 provide some signposts to relevant provisions as it relates  
20 to the risk assessment sections of the draft regulations.

21 I think first on section 7152, subsection (3)(d),  
22 articulating the approximate number of consumers whose  
23 personal information the business seeks to process could  
24 create potential compliance issues for lenders entering new  
25 markets or seeking to expand their offerings without perfect

1 information. Therefore, I think CCPA should provide  
2 additional regulatory guidance or flexibility for this  
3 provision.

4 Secondly, given the breadth of meaning that within  
5 section 7153(a), the "making automated decision making  
6 technology or artificial intelligence available to another  
7 business may have within a bank FinTech partnership, CCPA  
8 should provide additional clarity within the regulation or  
9 provide subsequent guidance on that point."

10 And then lastly, with risk -- with regards to risk  
11 assessment as written in section 7154, there's inherent  
12 ambiguity in how to implement the prohibition against  
13 processing if risk to consumers privacy outweigh the  
14 benefits. Therefore, CCPA or CPPA should provide additional  
15 guidance and or regulatory flexibility regarding the cost  
16 benefit analysis to ensure proper compliance with the  
17 regulation. Two points as it relates to the ADMT sections I  
18 think while plain language explanations of Automated  
19 Decision-making Technology are beneficial, I think there  
20 needs to be additional exemptions on that point. And then  
21 also there's a lot of costs that are associated with CPPA as  
22 it relates to training uses. So there should be additional  
23 points on that considered by CPPA. I thank you for my --  
24 for allowing me to provide these comments.

25 MS. SERENA: Thank you. Allison Adey, I'm going to



1 unmute you at this time. You have three minutes to make  
2 your comment, so please begin as soon as you're ready.

3 MS. ADEY: Thank you very much. Good afternoon,  
4 Chair Urban and members. My name's Allison Adey,  
5 representing the Personal Insurance Federation of  
6 California. PIF is a statewide trade association that  
7 represents 11 of the nation's largest property and casualty  
8 insurance companies. We appreciate the opportunity to  
9 provide comments on the draft regulatory package that the  
10 Agency has prepared. The majority of our feedback has been  
11 provided in prior written comments. So today I want to  
12 focus on two particular issues that are of paramount concern  
13 to us.

14 The 2018 negotiations in the legislature around  
15 the California Consumer Privacy Act widely recognized that  
16 the insurance industry requires certain personal information  
17 in order to write personal lines insurance, and that the  
18 consumer protections inherent in Proposition 103 already  
19 prohibit rates from being excessive, inadequate, or unfairly  
20 discriminatory. Because of the unique positioning of the  
21 insurance industry, there was explicit language that certain  
22 information necessary to continue to offer insurance would  
23 remain under the exclusive regulatory power of the  
24 Department of Insurance. We are urging continuous and clear  
25 ongoing communication between the agencies to ensure that

1 those lines are delineated in accordance with the original  
2 intent of the CCPA.

3           Additionally, under the CCPA, there are clear  
4 carve outs for entities that are subject to certain federal  
5 laws, specifically The GrammLeachBliley Act (GLBA). Given  
6 that reiterating the explicit exemption for GLBA practices  
7 was deemed necessary in the ADMT regulations, we feel it is  
8 in -- essential that similar clarity be included in the  
9 cybersecurity audit and risk assessment regulations. Should  
10 the exemption be reiterated in one regulation and not stated  
11 in another, it could be construed that the Agency is  
12 attempting to limit the scope of the exemptions in the  
13 original statute, resulting in confusion regarding the scope  
14 of the regulations. Thank you again for the opportunity to  
15 raise these concerns, and we look forward to working with  
16 the Agency as they move forward on this regulatory package.

17           MS. SERENA: Thank you. Rick Arney, I'm going to  
18 mute you at this time. You have three minutes to make your  
19 comment, so please begin as soon as you're ready.

20           MR. ARNEY: Thank you very much. My name is Rick  
21 Arney. I'm Vice Chair of Californians for Consumer Privacy,  
22 The umbrella organization that sponsored Proposition 24. As  
23 such, I was a co-author of CCPA and CPRA. I want to focus  
24 my comments just real quickly on, I'll start with risk  
25 assessments. My comment here is that the inclusion criteria

1 for risk assessments is just simply too broad, and I don't  
2 believe that this will actually help the case for privacy.  
3 It actually will hurt it. And the Agency's own example in  
4 this proposed regulation, I think proves the point. The use  
5 of a simple spreadsheet to determine which employees of a  
6 given business should be terminated under the proposed  
7 regulations does constitute ADM. But if we pull the lens  
8 back and look at that, what is being described there is --  
9 what I think is the most basic computer functionality that's  
10 been around since the advent of Lotus 1-2-3 in the early  
11 eighties.

12 It's simply a spreadsheet that's been used with  
13 some numbers to make that type of decision. And I guess I  
14 challenge the Agency to think through how is the use of a  
15 spreadsheet a significant risk to privacy? Why should that  
16 generate a risk assessment? What will result with this  
17 proposed regulation from my perspective is that the Agency  
18 will be overwhelmed with paperwork. There'll be really no  
19 signal to noise ratio. This will not help privacy. It will  
20 swamp the Agency with largely meaningless form documents.  
21 And so then the question becomes, well, what -- what's an  
22 alternative? Well, one alternative should -- would be to  
23 say that risk assessments should examine the usage of PI and  
24 SPI that actually presents serious risk to consumer privacy.  
25 That's what's in the statute as written, and if it goes

1 further beyond that as proposed, it's very clear to me that  
2 industry will sue and they will probably win.

3 This regulation could be essentially meaningless,  
4 problematic and not actually pro privacy. The second  
5 comment I want to make is about Automated Decision Making.  
6 Under the proposed regulations, consumers have the right to  
7 opt out of ADM if there is a "significant decision  
8 happening. A significant decision is defined basically as a  
9 massive, huge swath of the economy, access to provision or  
10 denial of housing, insurance, education, justice,  
11 employment, healthcare, essentially all essential goods and  
12 services. It also includes what's defined as profiling any  
13 form of automated processes or personal information to  
14 evaluate certain personal aspects.

15 If you -- if you really dig deep in that, you  
16 actually realize that that proposed regulation actually  
17 includes contextual ads. So what this would mean is that a  
18 consumer would be able to opt out of all ads for a huge  
19 swath of the economy, and it's really unclear about how  
20 would that actually work. How does a site pay for itself?  
21 It will essentially break the internet if that -- if that  
22 type of regulation survives and it really destroys the  
23 concept of a privacy protective contextual ad as written I  
24 challenge the Agency to engage.

25 MS. SERENA: Thank you so much, Rick -- Rick.

1 Tiana, you have three minutes. Go ahead and speak when  
2 you're ready.

3 MS. AURELIA: Thank you. Hi, sorry. Can you hear  
4 me.

5 MS. SERENA: Yes, we can hear you.

6 MS. AURELIA: Okay, great. Hello, my name is Tiana  
7 Aurelia and I'm a concept artist and illustrator based in  
8 San Francisco that primarily works in the games industry.  
9 As a professional artist, I rely on or more accurately used  
10 to rely on tools like Adobe Photoshop to complete my  
11 professional work. With the introduction of their new  
12 generative AI system Firefly, my trust began to falter.

13 The fact that they trained on stock images without  
14 the explicit permission of many of the artists within the  
15 Adobe stock system has made me rethink my trust in these  
16 programs and companies. How am I to know what will or won't  
17 suddenly -- won't suddenly decide to change within their  
18 terms of service. What data becomes fair game to -- for  
19 them to use for profit? When service terms are often  
20 coercive, there isn't the ability to opt out, especially  
21 when there are no alternatives.

22 This doesn't just apply to me as an artist, but  
23 also to consumers across the Board that must agree to  
24 coercive terms of service that put their data in the trusted  
25 hands of these services. Many industry professor

1 --professionals, including myself, sign NDAs. And the fact  
2 that I can't trust entities like Adobe or Slack now puts me  
3 at risk.

4 Breaking an NDA can put you in a precarious  
5 position and even result in job loss. It is a threat to my  
6 livelihood, but also my own private data that I did not  
7 consent to for use. Artists need the definition of deep --  
8 Deepfakes to include forgeries in order to protect their, --  
9 our livelihoods and the future of our other artists and  
10 workers. Some of the work I have that got scraped into the  
11 LAION-5B dataset that many of these AI companies use to  
12 change -- train their models is artwork I did as a child.

13 If you're unfamiliar with the LAION-5B dataset,  
14 the 5B stands for 5.87 billion images that were scraped into  
15 this dataset. I have no way to know that my work -- I  
16 posted online to art forums and communities to help build my  
17 skills and get inspired would be used in the very software  
18 that is now currently trying to replace me. The fact that  
19 these companies can indiscriminately use this type of data  
20 even of children is troubling. We need complete  
21 transparency and the ability to opt out. Clearly, companies  
22 often make it difficult to know how to opt out or completely  
23 impossible.

24 Many people aren't even aware that their data was  
25 used. How are people supposed to protect themselves from

1 this data heist if they aren't even aware it's happening?  
2 We can build an innovative and -- innovation with consent  
3 and compensation if we truly want a future that is filled  
4 with innovation and possibility. We can't let an industry  
5 full of that creativity be squashed in favor of the few who  
6 benefit. Thank you so much for your time and allowing  
7 me to comment.

8 MS. SERENA: Thank you. Peter Leroe Munoz, I'm  
9 going to unmute you at this time. You have three minutes to  
10 make your comment, so please begin as soon as you're ready.

11 MR. MUNOZ: Good afternoon. My name is Peter Leroe  
12 Munoz. I'm here on behalf of the Silicon Valley Leadership  
13 Group, which represents hundreds of innovation economy  
14 companies. The use of AI and ADMT technologies is crucial  
15 for our members and the customers they serve. These  
16 technologies have powered the functions of self-driving cars  
17 help delete fraudulent credit card fraud and identity theft,  
18 analyze medical data to diagnose diseases, develop solutions  
19 to minimize climate change impacts, etc. These are the just  
20 a few examples of groundbreaking use cases that we fear  
21 could be at risk due to the regulations proposed by the  
22 Agency.

23 Our organization and members recognize the  
24 transformative power of AI and have been active participants  
25 in business meetings discussing widespread uses of AI, harms

1 of over-regulation by the Agency, and the need to protect  
2 the technological advancements that yield benefits for  
3 communities in California and across the country.

4           During these meetings, we hear growing concern  
5 among the business community that the Agency's actions will  
6 stall AI innovation and that the CPPA is going beyond its  
7 mandate of privacy while getting ahead of the legislature  
8 and the governor. As it relates to specific areas of the  
9 Agency's proposed regulations, our concerns today are  
10 regarding the definition of AI and ADMT, risk assessment  
11 requirements, and opt-out provisions, AI and ADM  
12 definitions. The definitions of AI and automated decision  
13 making are too broad, potentially including even basic  
14 algorithms and simple uses that are low risk.

15           As it relates to risk assessments, the current  
16 requirements for assessments to the Agency are overly  
17 burdensome, presenting challenges for staff and may require  
18 businesses to hire additional team members solely for  
19 compliance, and pose significant risks to businesses because  
20 it may require documentation of proprietary information.  
21 Regarding the impact of opting out, while the opt-out  
22 provisions for Automated Decision-making Technologies are  
23 well intended, allowing users to opt out could degrade the  
24 quality of models produced. This would stifle innovation  
25 negatively impact technological advancements and lead to



1 poor AI and ADMT outputs.

2           Lastly, many of our members in California  
3 businesses operate beyond state lines and are already  
4 navigating a complex patchwork of privacy regulations.  
5 Adding another layer of industry specific privacy mandates,  
6 especially for sectors like finance, healthcare,  
7 entertainment, etc, complicates compliance, further  
8 harmonization across states, (inaudible) for businesses. We  
9 share the CPPA's commitment to consumer privacy. However,  
10 we're in need of a solution that strikes a balance between  
11 regulation and fostering a thriving AI economy that benefits  
12 us all. Thank you.

13           MS. SERENA: Thank you, Peter. Yadi, I'm going to  
14 unmute you at this time. You have three minutes to make  
15 your comment, so please begin when you are ready.

16           MS. YADI: Hi, I'm Yadi, a member of Oakland  
17 Privacy. My comments are related to the ADMT opt-out  
18 because the opt-out preference model -- excuse me, was  
19 selected over opting in. This has placed consumers in the  
20 position of having to overcome status quo bias or the lack  
21 of inertia to undertake action to change the status quo in  
22 order to exercise their privacy rights. Denying customers,  
23 the -- consumers, the opportunity to explicitly consent or  
24 opting into the sharing of their personal information means  
25 that these optout mechanisms, must be made straightforward,

1 and frictionless for consumers to use if they wish to do so.

2 We also want to waste concerns with two of the  
3 exceptions to providing opt-out, the human appeal exception,  
4 which states that a business does not need to offer the  
5 option to opt-out if the business grants consumers the  
6 ability to appeal significant decisions to a qualified human  
7 decision maker, significantly hamstrings the power of opting  
8 out.

9 This human appeal process is significantly more  
10 burdensome than executing an opt-out preference. The burden  
11 will likely result in few consumers taking advantage of the  
12 human appeal process, even if they feel they have been a  
13 victim of an adverse significant decision. The evaluation  
14 exception, which states that a business does not have to  
15 provide a consumer the opportunity to optout as long as the  
16 business has conducted a self-evaluation of the ADMT to  
17 ensure it worked as intended and has implemented safeguards  
18 to ensure that the ADMT worked as intended and was not  
19 discriminatory.

20 Places an enormous amount of trust in companies,  
21 that they will in fact conduct a rigorous self-evaluation  
22 and will attest honestly to having met the obligations set  
23 forth under the permissible exceptions. A recent PEW study  
24 found 52 percent of Americans are more concerned than  
25 excited about AI in daily life, and only 30 percent of

1 Americans were able to correctly answer questions about  
2 awareness of AI in everyday life, and consumers are not  
3 alone with concerns about AI.

4 A report found that organization leaders have  
5 concerns about the bias and ethics of their AI systems. Of  
6 the organizations polled most reported, having encountered  
7 ethical issues relating to the use of AI within the last  
8 three years. In nine out of 10 organizations, executives  
9 admitted to having awareness of ethical issues resulting  
10 from the use of AI at their organizations.

11 Moreover, some major employers who are already  
12 aware of issues with the use of ADMT have come together with  
13 a commitment to some form of self-regulation. However, it's  
14 been mostly centered around AI literacy, but lack meaningful  
15 commitments or assurances to preventing bias or  
16 discrimination. Given the growing examples of companies  
17 misusing consumers' data and the lack of trust by the public  
18 about how their data is used, it is important to tighten the  
19 opt-out requirements and make the process as frictionless as  
20 possible to give consumers the strongest possible  
21 protections. We thank the CPPA for its work to protect  
22 consumer privacy. Thank you.

23 MS. SERENA: Thank you -- thank you. Bernadette  
24 King (inaudible). I'm going to unmute you this time. You  
25 have three minutes to make your comment, so please begin

1 when you're ready.

2 MS. KING: Good afternoon. My name is  
3 Bernadette and I'm a research analyst at SEIU, United  
4 Healthcare Workers West. We are a labor union representing  
5 120,000 allied healthcare workers across California. Our  
6 members are frontline caregivers as well as patients and  
7 consumers who aim to improve the healthcare system by  
8 providing quality care for all patients, expanding access to  
9 excellent, affordable healthcare for all Californians and  
10 improving standards for all workers.

11 We're very grateful to the staff and Board of the  
12 CPPA for inviting the opportunity to comment, which we are  
13 eager to do because of the profound impact of this policy on  
14 the healthcare workforce. For our union healthcare workers,  
15 AI represents one of the most important issues that will  
16 shape the future of work in California for decades to come  
17 and have significant daily impact on the lives of working  
18 people. These technologies have the potential to affect  
19 workers' wages and conditions, race and gender equity, job  
20 security, health and safety, the right to organize and  
21 issues of autonomy and dignity.

22 It is vital that this rulemaking process be  
23 informed by workers, their unions, and other worker  
24 advocates who have concrete knowledge about how AI and  
25 related technologies are actually playing out in the

1 workforce. I'd like to provide a brief example from our  
2 members to illustrate some of these impacts. Northern  
3 California hospital facilities and a large hospital chain  
4 has started rolling out the use of automated carts to  
5 deliver food to patients aside from potential harm to  
6 (inaudible). If the cart, for example, misdelivers a  
7 non-diabetic meal to a diabetic patient, we are concerned  
8 about adverse employment actions like suspension or  
9 termination being taken against a worker who gets blamed for  
10 a mistake made by the robot.

11 Two, proper training for workers to integrate the  
12 use of these new technologies into their work duties. And  
13 three, data monitoring and tracking of worker activity that  
14 are done by the robot that could be used to surveil the  
15 activities and efficiencies of workers.

16 These devices include electronic monitoring  
17 mechanisms, but it's not clear what data is being collected  
18 and how it's being used against workers. We have have  
19 similar concerns about a set of robotic room cleaners that  
20 have been used in some healthcare facilities where our  
21 members work. One of our concerns highlighted by these  
22 examples is the lack of healthcare workers' ability to know  
23 and understand how the data collected by these technologies  
24 are being used in ways that could or do impact their jobs  
25 and performance assessments.

1 Workers and their union representatives should get  
2 full disclosure about these technologies before they are  
3 rolled out and should be partners in assessing the impacts  
4 on their jobs ahead of deployment. Examples like these are  
5 why labor groups and other advocates are paying such close  
6 attention to the CPPA rulemaking process.

7 California is the first and only place in the US  
8 where workers are starting to gain basic rights over their  
9 data and how employers use their data to make critical  
10 decisions about them. We have a historic opportunity to  
11 lead the United States in establishing workers as key  
12 stakeholders in decisions about how best to govern  
13 artificial intelligence and related technologies. It will  
14 take the CPPA's sustained attention to data-driven  
15 technologies in the workplace to realize that promise,  
16 including in this very rulemaking process.

17 MS. SERENA: Thank you so much, Bernadette.

18 MS. KING: Thank you.

19 MS. SERENA: Natalie Bast, I'm going to unmute you  
20 at this time. You have three minutes to make your comment,  
21 so please begin as soon as you're ready.

22 MS. BAST: Sorry, I was muted. Good afternoon,  
23 chairwoman Board members. Thank you for the opportunity to  
24 speak today. My name is Natalie Bast and I'm here  
25 representing the California Business Roundtable. Our

1 organization represents major California employers across  
2 all sectors of the state's economy with a combined workforce  
3 of over a million employees. I'm speaking today to urge the  
4 CPPA to provide additional stakeholder sessions to allow the  
5 business community to address the concerns related to the  
6 risk assessments and AI and ADMT in a meaningful way.

7 While we appreciate the brief overview of the  
8 proposed regulations shared today, we recognize the  
9 intricacies and varying degrees of compliance involved, so  
10 we believe it's essential to allocate more time to  
11 comprehend these regulations and their potential impact on  
12 our business' operations. Additional sessions would help  
13 the business community digest the information you provided  
14 today and determine the necessary steps to ensure  
15 compliance.

16 Only then can we provide informed feedback and  
17 responses to the specific regulations. AI has tremendous  
18 potential for California, serving as a pivotal industry  
19 sector that will further bolster our state's leadership and  
20 technology, stimulate job growth and drive economic  
21 development. From safeguarding consumers against fraud and  
22 cybersecurity threats to enhancing customer service and  
23 supporting understaffed businesses, ADMT has demonstrably  
24 positive business applications.

25 By slowing down and engaging more stakeholders,

1 the Agency can ensure that regulations not only address  
2 potential concerns, but also cultivate an environment  
3 conducive to harnessing the full potential of these powerful  
4 tools for the benefit of all of California. Rushing the  
5 regulatory process risks, inadvertently stifling innovation  
6 affecting California's national and international  
7 competitiveness, and impeding the positive contributions  
8 ADMT can make across the various sectors of our economy.  
9 Thank you very much for your time.

10 MS. SERENA: Thank you. Barbara Lawler, I'm going  
11 to unmute you at this time. You have three minutes to make  
12 your comments, so please begin when you are ready.

13 MS. LAWLER: Hello, I'm Barbara Lawler. I am  
14 president of the Information Accountability Foundation, an  
15 independent nonprofit think tank, creating research and  
16 education on accountable risk and governance frameworks.  
17 Our members are committed to the foundational principle of  
18 accountability. First developed out of the Global  
19 Accountability Dialogue in 2009.

20 We applaud the extensive effort to draft the draft  
21 regulations, and thank you for holding these stakeholder  
22 sessions. We believe that to be trusted business must be  
23 responsible and answerable and be prepared to demonstrate  
24 their accountability. We believe that governance frameworks  
25 based on accountable risk and data governance enable



1 beneficial data-driven innovation, while protecting  
2 individuals in society from the potential harms that may  
3 arise in the digital age. We have three comments as part of  
4 our current research project, demonstrable accountability  
5 with evidence. We note the crucial emphasis on  
6 accountability and the need to demonstrate. We note that  
7 parts of the draft rules also go beyond what is expected or  
8 required by the GDPR.

9           However, we encourage the Agency to consider where  
10 possible and appropriate harmonization of requirements  
11 across ADMT risk and cyber assessments, which contain  
12 overlapping elements. Many organizations today conduct  
13 multiple risk assessments through embedded business  
14 processes and technology. While the concept of use the  
15 assessment you have, but add to it is laudable. It belies  
16 the complexity of changing internal business workflows and  
17 the supporting technology.

18           Two, we encourage additional outreach and  
19 education to business. It's important to remember that the  
20 impact of these draft rules go well beyond tech companies  
21 and digital advertising technologies. It's important for  
22 California to maintain its global leadership and innovation.  
23 Third, and finally, we encourage seeking interoperability  
24 with other frameworks such as the NIST privacy, security,  
25 and risk AI -- AI risk frameworks through such tools as the

1 Crosswalk, a resource that will help businesses of all types  
2 and sizes while avoiding the paperwork of privacy.  
3 Additionally, such a tool can provide consistency,  
4 interpretive capability for enforcement actions by both the  
5 Agency and the AG office. Thank you.

6 MS. SERENA: Thank you. Ian McPherson, I'm going  
7 to unmute you at this time. You have three minutes to make  
8 your comment, so please begin as soon as you're ready.

9 MR. MCPHERSON: I'm ready. Thank you so much. I'm  
10 here just representing myself and I wasn't planning to speak  
11 today except for listening to all the feedback from  
12 everybody else. You know, I've actually been in technology  
13 sales for a long time, specifically in data privacy and  
14 security. I helped a lot of companies maybe 75 or so with  
15 preparation for GDPR and CCPA, and I can tell you that the  
16 most companies really don't have an idea of what data they  
17 collect or what they do with it. And even for folks who,  
18 you know, saw GDPR coming, they did a data inventory. They  
19 haven't kept that up to date.

20 And hearing the feedback of everybody else here  
21 today, there -- there's a lot of, I think fear and I -- lack  
22 of education on what it means for privacy. That privacy is  
23 about consumers and protecting personal data about people.  
24 And, you know, hearing the small business folks they've all  
25 asked to have these sessions on Zoom like this more often.

1 And so thank you for doing this. It's really actually  
2 enlightening to hear other people's concerns. And so I  
3 would encourage the Board to do these more often and hear  
4 this, but also to provide more education, right? Like the  
5 idea that optimizing routes or machine performance would be  
6 at risk, I think is misguided, right? That those are about  
7 creating a route that makes the most sense. But there is a  
8 way that could be applied to the driver specifically in  
9 measuring their performance versus the route itself. And so  
10 helping people and educating people about what it means to  
11 be, you know, high risk versus low risk.

12 It also isn't about risk to the business. It's  
13 risk to the consumer -- to the individual. And so, you  
14 know, I'm a nerd about privacy. I listen to podcasts all  
15 the time, and once you start getting into it, you can  
16 identify that there are real harms to real people in terms  
17 of data tracking. But most of these small business teams,  
18 they're worried about what they're doing and they don't have  
19 time to worry about privacy.

20 And so I would just encourage the Board here to do  
21 more proactive education about how data is used in different  
22 ways and how that actually in the end has a result, an  
23 impact on real people and their data. And so thank you so  
24 much for having this. The other one thing I would just say  
25 back to that risk assessment idea is it's sounds like it's

1 similar to legitimate interest in under GDPR, which again,  
2 is not weighing the interest necessarily of the business,  
3 but the interest to the consumer and their use of data, what  
4 they get out of it versus the risk to them and educating  
5 people about that would be helpful as well. So thank you.

6 MS. SERENA: Thank you. Isabella Rojas, I'm going  
7 to unmute you at this time. You'll have three minutes to  
8 make your comment, so please begin when you're ready.

9 MS. ROJAS: I'm ready. So I'm here on behalf of  
10 the Los Angeles Area Chamber of Commerce, the oldest and  
11 largest business organ association in the region,  
12 representing the interests of a broad spectrum of  
13 organizations across the private, nonprofit, academic, and  
14 public sector, including the business, community, job  
15 creators and innovators in the LA region.

16 We're here to express our deep concerns regarding  
17 the proposed rules set forth by the Agency, which we believe  
18 will impede the growth in operational efficiency of our  
19 members. While we appreciate the CPPA's aim to protect  
20 consumer privacy and understand that the proposed rules are  
21 well-intentioned, the proposed draft rules go beyond its  
22 statutory mandate and will have far reaching consequences on  
23 our business community, local and statewide. We ask the  
24 CPPA avoid advancing regulations that would harm AI  
25 innovation and peed upon the business and societal benefits

1 gained by this technology.

2 AI is an instrumental tool for the business  
3 community. Recently, the Small Business and  
4 Entrepreneurship Council reported nearly half of small  
5 businesses started using AI tools in the past year, and 29  
6 percent have been using them for one to two years, which has  
7 allowed them to vastly improve efficiency and save hundreds  
8 of billions of dollars annually. The proposed regulation  
9 must ensure that we preserve the use of AI technology for  
10 low risk purposes that many businesses utilize the  
11 technology for.

12 The increased efficiencies and boost and  
13 profitability enabled by ADMT has a significant impact, not  
14 just on businesses, but the consumers and communities that  
15 we serve. Organizations using ADMT would need to provide --  
16 or sorry -- as the regulations are currently drafted in  
17 regards to ADMT, food delivery platforms may treat every  
18 individual delivery that's offered to an individual worker  
19 as a significant decision that is on par with things like  
20 the denial of housing or withholding of healthcare. Thank  
21 you.

22 MS. SERENA: Thank you -- Thank you. Rick Arney,  
23 I'm going to unmute you at this time. You'll have three  
24 minutes to make your comment, so please begin as soon as  
25 you're ready.

1 MR. ARNEY: Thank you. Just finishing off my  
2 comments earlier, this is Rick Arney, Vice Chair of  
3 Californian's for Consumer Privacy and co-author CC --

4 MS. SERENA: I'm so sorry. I'm going to have to  
5 circle back to you once everyone has had a -- an opportunity  
6 to comment for the first time. Carla Ortiz? Yes. This is  
7 our last person, and then we can circle back. Carla Ortiz  
8 I'm unmuting you now. You have three minutes. Go ahead and  
9 begin when you're ready.

10 MS. ORTIZ: Can you all hear me.

11 MS. SERENA: Yes.

12 MS. ORTIZ: Great. Then I am ready. Hi everybody,  
13 my name is Carla Ortiz. I'm a San Francisco based artist.  
14 I'm sure you'll have many things to consider when it comes  
15 to the harm generative AI has presented. I, myself, have  
16 been personally affected and harmed by generative AI. You  
17 see, the training data utilized to build many of these  
18 models is taken indiscriminately from the internet. This  
19 includes almost the entire body of my artistic worth, both  
20 personal and commercial, but not just me. Also the entire  
21 body of my peers, my friends, heck, even my own family.

22 As companies like Meta have claimed ownership of  
23 the imagery available on Facebook and Instagram, and soon  
24 Microsoft itself will ensure every single thing you do on  
25 your PC is recorded, analyzed for their own generative AI

1 models. In another time, this would've been called Spyware.  
2 The kicker is it just doesn't stop at huge overreach in  
3 claiming all media and information that the inner is theirs.  
4 But generative AI companies take this media and information  
5 that is not theirs, utilize it, train their models without  
6 anyone's consent, and use that to profit immensely without  
7 any regards to our rights or consent or even ability to  
8 choose. This is most recently shown case by OpenAI's  
9 kerfuffle with Ms. Scarlett Johansson. As an artist, has  
10 been taking advantage of this same -- in this exact same  
11 way. My work is copyrighted, yes, but it goes so far beyond  
12 that. This is work that I have toiled over for decades, for  
13 which is a part of me. I remember every single detail of  
14 every painting I've made, how I felt. It is a reflection of  
15 my life.

16 So when generative AI companies take that work  
17 without consent, then profit from it, and then compete in my  
18 own -- in our own markets with it, well, this feels more  
19 about copyright, that feels more like identity theft to me.  
20 Because of this is so personal to us, and this is so  
21 egregious. I'd like to offer three solutions, expand the  
22 definition, deepfakes to also include forgeries, because  
23 forgeries are a type of deepfake.

24 Art -- artist's style is their trade dress. And  
25 it's important that both artists and consumers are protected

1 from copies and forgeries and any forms of trade dress  
2 violations, and reconsider that opt-outs are not technically  
3 feasible and shift of responsibility to consumers and  
4 Californians, and that's just not okay. It's also deeply  
5 unsustainable. So opt-in is really the only solution here.  
6 That way we can protect the creativity, innovation, hard  
7 work, and privacy of all Californians.

8 Guys, we really know what is right and wrong here,  
9 and a few tech businesses with vested interest cannot derail  
10 or delay the action we so desperately need. Delay, deny and  
11 deflect is how these companies, you know, are trying to do  
12 it. But this will not just affect just these few companies.  
13 These things affect whole industries like the entertainment  
14 and injure artists like myself. So the more the delay, the  
15 less protections I have and the scar it gets for all of us.  
16 And that's a loss, not just California's economy to our  
17 creative innovation, but our overall health as a society.  
18 Thank you all so much for your time.

19 MS. SERENA: Rick Arney, I'm going to unmute you at  
20 this time. You have three minutes to make your comment.

21 MR. ARNEY: Thank you so much, Rick Arney, vice  
22 chair, California Consumer Privacy and co-author of CCPA and  
23 CPRA. Thanks for letting me come back just briefly to  
24 finish off my comments. I'll just finish with Automated  
25 Decision Making. Under the proposed regulations, consumers



1 have the right to opt-out of ADM if there is a "significant  
2 decision." Point I'd like to make here is that is quite  
3 broadly defined covering a very large SWAT of the economy,  
4 access to provision or denial of housing, insurance,  
5 education, justice, employment, essentially all essential  
6 goods and services.

7 This then goes into of course, profiling, which  
8 again is written very with wide breadth. My feeling is that  
9 this reg as written includes the ability to allow a consumer  
10 to opt-out of contextual ads. And that's, I think, a bit of  
11 a problem because if someone's allowed to opt-out of  
12 essentially all advertising on a site, what -- then how does  
13 a site actually end up paying for itself?

14 This, from my perspective, destroys the concept of  
15 price -- privacy protective contextual ads. There is indeed  
16 an exception for appeal, but there's not really a lot of  
17 meat on the bone on the appeal process. What if a company  
18 just denies all appeals? Then we're kind of back where we  
19 started.

20 I'll leave you with the challenge. Think of an  
21 exercise where ask yourself, do we want a consumer opting  
22 out of Amazon's grocery delivery schedule or a simple online  
23 booking for a medical appointment? This section should  
24 really be reworked in light of those examples where we  
25 really don't want consumers to be able to opt out of what

1 are essentially just basic business processes. I advocate  
2 that perhaps this should match Colorado's approach where you  
3 do not have the right to opt out of human assisted  
4 decisions, period. So thank you so much for your time.  
5 Appreciate all the hard work you're doing this, and thanks  
6 for hearing out my comments.

7 MS. SERENA: Thank you. We have one more  
8 commenter, Ian Maloney. I'm going to unmute you at this  
9 time. You'll have three minutes to make your comment, so  
10 please begin when you're ready.

11 MR. MALONEY: Thank you. Ian Maloney with the  
12 American FinTech Council. I just wanted to finish up my  
13 comments as well. First on the ADMT section 722 or 7221  
14 subsection 6. You know, lenders will likely face  
15 significant costs if they're required to allow consumers to  
16 opt-out of the use of Automated Decision-making Technology  
17 used to train other models. And it may inhibit their  
18 ability for lenders to effectively train their models to  
19 ensure that they properly assess risk and avoid any bias.

20 Therefore, CPPA should consider adding training  
21 uses of Automated Decision-making Technology as set forth in  
22 section 7,200 to the list of exempted activities for  
23 consumer opt-out requirements. Then there are some rather  
24 beneficial provisions within this regulation. So I wanted  
25 to note those as you all are considering any changes to the

1 draft. For the risk assessment section, I think the use of  
2 the GLBA risk assessments to avoid any duplicative  
3 requirements is -- is very important and beneficial.

4 Similarly, the cybersecurity audits allowing for  
5 any existing laws and regulations to allow, you know, that  
6 exemption is important. I think it should be spelled out a  
7 little bit further there as a previous commenter noted. And  
8 then also within section 7220 (c) I think that the  
9 consolidated pre-use notification provisions could be  
10 beneficial for streamlining the user experience. So those  
11 are -- those are definitely beneficial and should be kept.

12 And then lastly, for seven -- section 7222  
13 subsection (4)(d), the exemption on providing consumer  
14 explanations on security fraud prevention, safety use cases,  
15 I --that's, you know, very important and, you know, really  
16 -- I think is crucial to ensuring that those use cases  
17 remain functional. So thank you for allowing me the  
18 opportunity to finish up my comments and I look forward to  
19 working with you all in any capacity in the future. Thank  
20 you.

21 MS. SERENA: Thank you. Chair Urban, it doesn't  
22 look like we have any more public comments online.

23 CHAIR URBAN: We have one more public comment in  
24 the room, so we'll move a mic back up.

25 MS. ROCIO: Ooh, testing. All right. Yes, it

1 actually is. So thank you for allowing me to close out my  
2 comments. Rocio Babaesa (phonetic) mum of two, business  
3 owner. There's a number of implementation steps that I  
4 think make sense to consider as part of the rulemaking  
5 process specifically for cybersecurity audit regulations.  
6 So my background -- so born in LA, so raised in Chicago.  
7 I've been in the tech space for the last 20-ish years  
8 specifically right now supporting online lenders that are  
9 partnering with banks and they don't have the in-house  
10 expertise to comply with a number of regulations one of them  
11 being CCPA.

12 So this is a very interesting topic because it's  
13 not mature like accounting is, or the medical space is.  
14 Like I said previously, we're looking to manage risk on  
15 information that we're not able to see and it lives in many  
16 different places. And when we've worked with clients, we  
17 actually spend a considerable amount of time educating  
18 compliance officers and general counsel who have an amazing,  
19 capability to like assess laws and regulations. But when  
20 something like this cybersecurity audit requirement enters,  
21 there's a number of foundational cybersecurity components  
22 that are not commonly known.

23 Different people's understanding of encryption,  
24 like that's a thing. And because -- or until we have this  
25 idea of being able to standardize concept so that we can

1 communicate on the same level, we'll continue to spin wheels  
2 and likely create a situation where just creating  
3 administrative burden that in the end of the day is not  
4 going to be helping Californian consumers and beyond because  
5 other states are going to be following suit. It's only a  
6 matter of time.

7 I'm very passionate about this space. I was a  
8 host of GDPR standup a few years back. And I think that  
9 these commentary opportunity -- opportunities are very  
10 helpful and I just want to leave you with the two takeaways.  
11 So I invite industry professionals to make contributions and  
12 that the -- Agency develop guidance to show how to do this.  
13 So we can do it right. Thank you.

14 MS. WHITE: So just for those online who may not  
15 have heard, we are going to take a 10 minute break. So we  
16 will be back at 5:10. So a little bit more than a 10 minute  
17 break. And we will be here until 6:00. So if additional  
18 people would like to speak, we will be reopening public  
19 comment at approximately 5:10. Thank you so much.

20 (BREAK)

21 MS. WHITE: Okay. For members of the public who  
22 are joining us online, just to let you know, public comment  
23 is reopened. If you'd like to make public comment, please  
24 use the raise hand feature on Zoom. And if you're joining  
25 us via phone, please press star six.

1 MS. SERENA: Dina I'm going to unmute you at this  
2 time. You have three minutes to make your comment, so  
3 please begin as soon as you're ready.

4 MS. DINA: All right. I'm I unmuted? Okay.

5 MS. SERENA: We can hear you.

6 MS. DINA: Okay. Dina (inaudible), Concept Art  
7 Association. So our organization represents a number of  
8 artists and creators in film, television, video games,  
9 cartooning, and throughout entertainment. One thing that  
10 needs to be made abundantly clear is that artists are  
11 consumers of software programs, applications, and cloud  
12 storage that they must use as employees to do their job.

13 Additionally, they need to advertise themselves on  
14 websites so that they can get work. This is now the  
15 industry standard. There's no way that they can avoid this.  
16 As consumers, artists have to buy and use these products to  
17 do their job. These products then steal their data from  
18 them while they're working and they then have to compete  
19 against themselves in the marketplace for work. A number of  
20 artists have already mentioned today that the ability for  
21 these AI programs to generate forgeries is problematic for  
22 them. Forgeries are a form of deepfake right now.

23 An AI model could presumably generate a Simon  
24 Stalinhag painting that he never painted, both the artist  
25 Simon Stalinhag and the unsuspecting consumer or fan who was

1 unfortunately duped into paying for the forgery for a fake  
2 Simon Stalinhag painting also need to be protected. AI can  
3 harm an artist's future prospects for work. A lot of these  
4 artists, especially the ones who work in Hollywood, need to  
5 sign NDAs to take a job.

6 If all of a sudden there are forgeries out there  
7 of things these artists aren't legally allowed to create,  
8 which appear to have violated an NDA that they signed, they  
9 could legally be in jeopardy for something they had nothing  
10 to do with. Additionally, forged images could be generated  
11 of offensive materials that can accidentally be attributed  
12 to an artist and fundamentally destroy their reputation. So  
13 it's essential that the training data and the methods for  
14 acquiring training data have to be addressed via  
15 regulations.

16 Some of the solutions we are thinking about could  
17 include things like expanding the definition of Deepfakes to  
18 also include forgeries because forgery is a type of  
19 Deepfake. Also an artist's style is their trade dress.  
20 It's important that both artists and consumers are protected  
21 from copies and forgeries or any other forms of trade dress  
22 violations. There should be some sort of filter or ban on  
23 artists' names being used as prompts. Artists should be  
24 able to opt-out, like do not call but say, I don't want my  
25 name to be an input or a prompt for an AI.

1           Some of the other things we're thinking about like  
2 in section 7030 (c)(1), when you're requiring that they  
3 provide notices, we think that those links should also  
4 explain why pre-use opting out is necessary. And they  
5 should also inform consumers that once data has been used  
6 for generative artificial intelligence training, that there  
7 is no practical way for the business to remove that data  
8 from the training data sets so that they truly understand  
9 the gravity of not opting-out. The way artists earn a  
10 living is being severely diminished right now. We've had  
11 artists lose their jobs, their livelihoods, their homes,  
12 some have even sadly lost their lives at this point through  
13 suicide. We thank you for these listening sessions these  
14 past two weeks and can hope to continue working with you and  
15 that we get some strong regulations written. Thank you so  
16 much.

17           MS. SERENA: Thank you so much. If there are any  
18 other members of the public who'd like to speak at this  
19 time, please go ahead and raise your hand using the Zoom  
20 raise hand feature or by pressing star six. If you're  
21 joining us by phone, if there are any other members of the  
22 public who'd like to speak at this time, we'll be here for  
23 10 more minutes. So please go ahead and raise your hand  
24 using Zoom's raised hand feature or by pressing star six if  
25 you're joining us by phone. Thank you.



1 (BREAK)

2 MR. LAIRD: Thank you all for attending today's  
3 presentation. We are going to go ahead and conclude. And  
4 once more, thank you on behalf of the Privacy Protection  
5 Agency for all those who attended and provided public  
6 comment. We've really learned a lot today and we look  
7 forward to hearing more as we move into formal rulemaking in  
8 the coming months. Thank you. Bye.

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