

CALIFORNIA PRIVACY PROTECTION AGENCY

2101 ARENA BLVD.
SACRAMENTO, CA 95834
cppa.ca.gov



Date: July 11, 2024

To: California Privacy Protection Agency Board
(Meeting of July 16, 2024)

From: Maureen Mahoney
Deputy Director of Policy & Legislation
California Privacy Protection Agency

Subject: Agenda Item 7— Legislative Update and Possible Authorization for CPPA's Positions on Pending Legislation. AB 1008 (Bauer-Kahan), California Consumer Privacy Act of 2018: personal information, as amended June 24, 2024)

AB 1008, previously a conservation bill, was recently amended to reiterate the definition of personal information in the California Consumer Privacy Act (CCPA). Specifically, it underscores that personal information can exist in a variety of formats, including in “artificial intelligence systems that are capable of outputting personal information.” AB 1008 seeks to underscore existing law so that consumers can better exercise their CCPA rights with respect to personal information maintained by artificial intelligence systems. Because it provides a helpful reiteration of existing law, staff recommends a support position on the bill.

Summary

The CCPA gives California consumers rights with respect to the access, deletion, correction, and sale/sharing of personal information. It defines personal information as “information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.” It includes a non-exclusive set of categories that are considered personal information. “Publicly available information,” as defined, is not considered personal information.¹

The July 3, 2024 version of AB 1008 amends the CCPA to underscore that personal information, as defined in Civ. Code Sec. 1798.140(v), can exist in various formats, including but not limited to, all of the following:

¹ Civ. Code § 1798.140(v).

- Physical formats, including paper documents, printed images, vinyl records, or video tapes.
- Digital formats, including text, image, audio, or video files.
- Abstract digital formats, including compressed or encrypted files, metadata, or artificial intelligence systems that are capable of outputting personal information.

It also restructures the definition of “publicly available information.” The amendments to the definition of “publicly available information” are non-substantive, but arguably make the definition easier to comprehend.

Analysis

Generative AI systems typically are trained on information that can often include personal information as defined by the CCPA. The use of personal information to train AI could pose novel challenges to consumer privacy. Researchers at Indiana University recently found that by providing ChatGPT’s application programming interface with names and email addresses of *New York Times* reporters, subsequent querying of ChatGPT could result in outputs that included those names and addresses.²

Thus, this bill seeks to underscore that personal information that exists in AI systems is still personal information, and therefore subject to existing CCPA obligations on businesses, such as data minimization, and the requirement to respond to consumer requests to access, delete, correct, and stop the sale/sharing of their personal information.

In staff’s view, this is consistent with and reflective of existing law, and in fact the Agency is already working to clarify through regulations how AI training must align with certain rights under the CCPA. For example, the CPPA’s draft automated decision making (ADMT) and risk assessment regulations cover the use of personal information to train automated decisionmaking technology in certain situations. In these situations, consumers have the right to opt-out of the use of their personal information to train ADMT.³ Per the draft regulations, large language models that use personal information to train their systems are also required to submit risk assessments to the Agency.⁴

By underscoring the scope of personal information as it applies to artificial intelligence systems, this bill will help provide clarity to consumers seeking to exercise their CCPA rights, and thus advances privacy.

² Jeremy White, *How Strangers Got My Email Address from ChatGPT’s Model*, THE NEW YORK TIMES (Dec. 22, 2023), <https://www.nytimes.com/interactive/2023/12/22/technology/openai-chatgpt-privacy-exploit.html>.

³ California Privacy Protection Agency, Draft Risk Assessment and Automated Decisionmaking Technology Regulations at 21 (March 2024), https://cpa.ca.gov/meetings/materials/20240308_item4_draft_risk.pdf.

⁴ *Id.* at 7.

Recommendation

Support

Public support/opposition

Please note that these are positions registered on the June 10, 2024 version of the bill, per the Senate Judiciary Committee analysis, and may not necessarily reflect positions on the July 3, 2024 version of the bill.⁵

Support

None on file

Opposition

American Association of Advertising Agencies
American Council of Life Insurers
American Property Casualty Insurance Association
Association of California Life & Health Insurance Companies
Association of National Advertisers
California Association of Realtors
California Chamber of Commerce
California Land Title Association
Coalition for Sensible Public Records Access
Computer & Communications Industry Association
Consumer Data Industry Association
Insights Association
Software & Information Industry Association
State Privacy and Security Coalition, Inc.
TechCA
Technet

⁵ Senate Judiciary Committee Analysis at 8 (June 29, 2024), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB1008.