



Comments of

TechFreedom

Andy Jungⁱ

In the Matter of

Public Comment on CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations

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ⁱ Andy Jung is Associate Counsel at TechFreedom, a nonprofit, nonpartisan technology policy think tank. He can be reached at ajung@techfreedom.org.

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INTRODUCTION

TechFreedom is a nonprofit, nonpartisan think tank based in Washington, D.C. It is dedicated to promoting technological progress that improves the human condition. It seeks to advance public policy that makes experimentation, entrepreneurship, and investment possible and thus unleashes the ultimate resource: human ingenuity. TechFreedom champions a light-touch approach to artificial intelligence regulation¹ that promotes open-source development,² protects consumers from concrete harms,³ and upholds free speech under the First Amendment.⁴ TechFreedom regularly engages on privacy issues ranging from data collection and security⁵ to the Fourth Amendment⁶ to children’s online privacy.⁷

¹ Corbin Barthold, *397: AI Policy Potpourri (Part One)*, Tech Policy Podcast (Feb. 17, 2025), <https://podcast.techfreedom.org/episodes/397-ai-policy-potpourri-part-one>; Andy Jung, *Don't California My Texas: Stargate Edition*, TECHFREEDOM (Jan. 24, 2025), <https://techfreedom.substack.com/p/dont-california-my-texas-stargate>; Andy Jung, *'Unregulated AI' is a myth*, THE ORANGE COUNTY REGISTER (Apr. 1, 2024), <https://www.ocregister.com/2024/04/01/unregulated-ai-is-a-myth/>.

² TechFreedom, Comment on Managing Misuse Risk for Dual-Use Foundation Models (Sept. 9, 2024), <https://techfreedom.org/wp-content/uploads/2024/09/TechFreedom-NIST-AI-800-1-Comments.pdf>; Andy Jung, *California's AI Bill Threatens To Derail Open-Source Innovation*, REASON (Aug. 8, 2024), <https://reason.com/2024/08/13/californias-ai-bill-threatens-to-derail-open-source-innovation/>; *TechFreedom Delivers Remarks at FTC's August Open Commission Meeting*, TECHFREEDOM (Aug. 1, 2024), <https://techfreedom.org/techfreedom-delivers-remarks-at-ftcs-august-open-commission-meeting/>.

³ Andy Jung, *The FTC, AI, and Its Existing Authority*, STATE OF THE NET (Feb. 12, 2024), <https://sotn24.sched.com/event/1Z1C0/the-ftc-ai-and-its-existing-authority-how-the-commission-has-and-will-apply-its-authority-to-artificial-intelligence>; *TechFreedom Delivers Remarks at FTC Open Commission Meeting*, TECHFREEDOM (May 19, 2023), <https://techfreedom.org/techfreedom-delivers-remarks-at-ftc-open-commission-meeting-2/> (Remarks of Andy Jung).

⁴ TechFreedom, Comment on Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements (Sept. 19, 2024), <https://techfreedom.org/wp-content/uploads/2024/09/TechFreedom-FCC-AI-Comments.pdf>; Letter from TechFreedom to the Senate Committee on Rules and Administration Re: S. 2770, The Protect Elections from Deceptive AI Act (May 14, 2024), <https://techfreedom.org/wp-content/uploads/2024/05/Coalition-Letter-S.-2770-The-Protect-Elections-from-Deceptive-AI-Act.pdf>; Ari Cohn, *A.I. Panic is Causing First Amendment Hallucinations...in Humans*, TECHFREEDOM (Jan. 29, 2024), <https://aricohn.substack.com/p/ai-panic-is-causing-first-amendment>.

⁵ *TechFreedom Delivers Remarks at FTC's Commercial Surveillance and Data Security Public Forum*, TECHFREEDOM (Sept. 8, 2022), <https://techfreedom.org/techfreedom-delivers-remarks-at-ftcs-commercial-surveillance-and-data-security-public-forum/>; TechFreedom, Comment on Trade Regulation Rule on Commercial Surveillance and Data Security (Nov. 21, 2022), <https://techfreedom.org/wp-content/uploads/2022/11/TechFreedom-Comments-Trade-Regulation-Rule-on-Commercial-Surveillance-and-Data-Security.pdf>.

⁶ Corbin Barthold, *395: The Digital Fourth Amendment — With Orin Kerr*, Tech Policy Podcast (Jan. 23, 2025), <https://podcast.techfreedom.org/episodes/395-the-digital-fourth-amendment-with-orin-kerr>.

⁷ TechFreedom, Comment on Children’s Online Privacy Protection Rule (Mar. 11, 2024), <https://techfreedom.org/wp-content/uploads/2024/03/TechFreedom-COPPA-Rule-Comments-3.11.2024.pdf>.

The Proposed Regulations on Automated Decisionmaking Technology (ADMT regulations) are outside the scope of the California Consumer Privacy Act (CCPA). The California Privacy Protection Agency (the Agency) is attempting to shoehorn artificial intelligence regulations into implementation of a privacy law. Instead, to respect the will of California voters and lawmakers, the Agency should narrow the proposed definition of “automated decisionmaking technology” to target only automated technologies that directly implicate consumer privacy.

I. By defining “automated decisionmaking technology” so broadly as to cover virtually all software, the ADMT regulations shoehorn misguided artificial intelligence rules into a privacy law.

The CCPA is a *privacy* law — not an artificial intelligence law. “In enacting this act, it is the purpose and intent of the people of the State of California to further protect consumers’ rights, including the constitutional right of privacy.”⁸ The ADMT regulations, however, extend far beyond the scope of the CCPA and the Agency’s core competence.

II. The CCPA is not an artificial intelligence law.

Prior to September 2024, the CCPA did not discuss artificial intelligence at all. That changed last year, when Governor Newsom signed into law Assembly Bill 1008, which expanded the Act’s definition of “personal information” to include “artificial intelligence systems that are capable of outputting personal information.”⁹ Yet, even with the amendment, the Act’s focus remains squarely on consumers’ private information. This focus is appropriate: the CCPA is a *privacy* law. Artificial intelligence is, at most, at the periphery of the authority given to the Agency by California voters and lawmakers.

Accordingly, current CCPA regulations do not address artificial intelligence. Instead, the regulations focus on topics directly related to privacy, such as data collection and disclosure to consumers.

The ADMT regulations would reverse course, extending far beyond traditional privacy concerns. The new regulations read like an artificial intelligence law, adding twenty-two references to artificial intelligence to CCPA regulations. The ADMT regulations include a

⁸ Cal. Proposition 24 (2020) (Section 2), https://cppa.ca.gov/regulations/pdf/prop24_text.pdf#page=2.

⁹ A.B. 1008, 2024-24 Sess. (Cal. 2024). Future of Privacy Forum criticized A. B. 1008 for cutting short the “evolving, complex techno-legal debate” over the relationship between artificial intelligence and consumer privacy, “recommending that California regulators collaborate with technologists and their U.S. and international counterparts to share expertise and work toward a common understanding of this evolving issue.” Jordan Francis et al, *Do LLMs Contain Personal Information? California AB 1008 Highlights Evolving, Complex Techno-Legal Debate*, FUTURE OF PRIVACY FORUM (Oct. 25, 2024), <https://fpf.org/blog/do-llms-contain-personal-information-california-ab-1008-highlights-evolving-complex-techno-legal-debate/>.

broad definition of artificial intelligence and a variety of rules for businesses using the technology, including pre-use notices and opt-out requirements.

As a result, consumers would be inundated with frequent (if not constant) disclosure and opt-out notifications before interacting with AI-powered technologies, degrading their online experience and reducing overall engagement. For example, before applying for a job, using a financial service, or receiving personalized online recommendations, consumers would have to review detailed notices explaining how the services use artificial intelligence. Consumers would then have to parse these notices and decide whether to consent or opt out, creating friction during the onboarding process and deterring consumers from unlocking the full benefit of the technology.

The root of the problem is the Agency's proposed definition of "automated decisionmaking technology," which would cover automated technologies with no clear impact on privacy, including a wide variety of artificial intelligence systems.

III. The proposed definition of ADMT is overly broad.

The proposed ADMT regulations define automated decisionmaking so broadly as to cover virtually any software, including artificial intelligence:

"Automated decisionmaking technology" or "ADMT" means any technology that processes personal information and uses computation to execute a decision, replace human decisionmaking, or substantially facilitate human decisionmaking... For purposes of this definition, 'technology' includes software or programs, including those derived from machine learning, statistics, other data-processing techniques, or artificial intelligence.¹⁰

The proposed definition has three components: ADMT is (1) *any* technology (2) that processes personal information and (3) uses computation to execute *or* substantially facilitate a decision. All three components are broad: technologies that process data to execute or facilitate decisions, such as algorithms that make personalized product recommendations, power the modern Internet. Many uses of automated technology are beneficial to consumers with only negligible impacts on privacy.

¹⁰ California Privacy Protection Agency, Proposed Text § 7001(f) (CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations), Nov. 22, 2024, https://cppa.ca.gov/regulations/pdf/ccpa_updates_cyber_risk_admt_ins_text.pdf#page=2.

At the March 2024 California Privacy Protection Agency Board public meeting, board member Alastair Mactaggart, the author of the ballot measures which created the CCPA, explained the broad reach of the proposed regulations:¹¹

And I think what we're going to do here with our broad definition of ADM ... with this definition of substantially facilitate human decision making, being a key factor in the human decision making, that means *essentially ADM is going to be all software. If you're using software to help you make a decision about something, you're going to be caught. You're going to be caught in this net of having to do a risk assessment.* And if it, sort of the same thing, *if you go over into the ADM, a huge swath of our economy, we're going to be saying that if you're using software to help you make a decision, the consumer's going to be having the right to opt out.*¹²

As MacTaggart acknowledged, mandatory risk assessments and opt-out requirements for artificial intelligence would be irrelevant to consumer privacy, the lodestar of the CCPA:

And we're saying, basically, if you're the human being and you've used this software to make a decision, the consumer can opt out. *I don't think that helps privacy, and I don't think that that is what will work.* So I'm very much where I was in December, I think these definitions are extraordinarily broad, and I would like to go back to the drawing board and not move these forward right now because I feel like they will be, *the impact, we will basically be requiring every covered business to do a risk assessment, which I don't think is what we want to do. Because we should be focusing on really where the heightened risk is. And I think that with the ADM, it'll be very problematic given how the internet and our technology system works in the world.*¹³

¹¹ MacTaggart also raised the issue of the broad definition at the December 2023 public meeting: "I think that the definitions of ADM and profiling are so vast, so broad that they basically cover kind of all technology, all the use of technology, and then to evaluate why you're doing that as opposed to doing manual thing. Well, of course you are, because that's world we live in." California Privacy Protection Agency Board, Transcription of Recorded Public Meeting (Dec. 8, 2023),

https://cpa.ca.gov/meetings/materials/20231208_transcript.pdf#page=55.

¹² California Privacy Protection Agency Board, Transcription of Recorded Public Meeting (Mar. 8, 2024), https://cpa.ca.gov/meetings/materials/20240308_transcript.pdf.

¹³ *Id.* at 110.

MacTaggart first raised concerns about the ADMT regulations failing to protect privacy in December 2023.¹⁴ The Agency, however, has not addressed his comments or fixed the definition of ADMT. Instead, the regulations continue to reach far beyond traditional privacy concerns, implicating attenuated issues like discrimination and disparate impact:

Where we're really asking a business to get into areas that are kind of far afield from the risk assessment of what's the risk of processing the information feels different than how are you using, what's the output when you're using this software to determine compensation for an employee. And if you go to section eight, the Negative Impacts to Consumers Privacy Association ... I look at all that stuff, the constitutional harms, the political participation, the religious activity free assertion, I'm like, wow, *this is requiring businesses to start weighing in on the discrimination harms and the disparate impact of upon protected classes*. I don't think that's where we should be going with this.

...

*I'm a business, I'm buying an accounting software that might recommend remind me when to pay my bills or something like that. But it's making, it's helping me make a decision. Now, I have to say whether I evaluated it for validity, reliability, fairness...*¹⁵

As the architect of the CCPA has highlighted throughout this rulemaking, the proposed definition of ADMT is overly broad: the definition applies to virtually all software, sweeping in artificial intelligence technologies with no clear impact on consumer privacy.

IV. The ADMT regulations contravene Governor Newsome's call for artificial intelligence policy driven by experts in the field.

By contorting the CCPA into an artificial intelligence law, the Agency undermines Governor Newsome's call for "a delicate balance" to AI regulation lead by experts and technologists.¹⁶ In his Veto Message rejecting SB 1047, Governor Newsome criticized the bill

¹⁴ California Privacy Protection Agency Board, *supra* note 12, at 49 ("And yet our decision of automated decision or our definition of automated decision making is so broad. It's basically software, like any time, it helps you make a decision. So, now we're going to be saying to every business, essentially, why are you using your software? And for little businesses that are, not little, but are not software businesses that develop the software themselves, it's like, why did you buy this accounting software and not another one? And so that struck me as we're going to ask these questions, and the overarching aim of this section is to improve privacy and security. And I don't think that does.").

¹⁵ California Privacy Protection Agency Board, *supra* note 11, at 50, 54.

¹⁶ Office of Governor Newsom (Sept. 29, 2024), <https://www.gov.ca.gov/wp-content/uploads/2024/09/SB-1047-Veto-Message.pdf> ("Adaptability is critical as we race to regulate a technology still in its infancy. This will require a delicate balance.").

for, among other things, failing to “take into account whether an AI system...involves critical decision-making or the use of sensitive data.”¹⁷ The ADMT regulations have the same scoping issue, covering virtually all software and extending far beyond standard privacy concerns.

The CCPA plays no role in Governor Newsome’s framework for regulating artificial intelligence. Newsome calls for regulation “informed by an empirical trajectory analysis of AI systems and capabilities.”¹⁸ The governor supports “endeavors underway, led by experts, to inform policymakers on AI risk management practices that are rooted in science and fact.”¹⁹ And Governor Newsome is “committed to working with the Legislature, federal partners, technology experts, ethicists, and academia, to find the appropriate path forward, including legislation and regulation.”²⁰ The governor’s vision for artificial intelligence does not include the CCPA or the Agency at all.

The ADMT regulations would shoehorn artificial intelligence rules into a privacy law: the antithesis of Governor Newsome’s call for artificial intelligence policy informed by experts. The California Consumer Privacy Act is a *privacy* law, and the California Privacy Protection Agency is a *privacy* agency. Artificial intelligence is outside the scope of the Act and the Agency’s authority.

V. The Agency should seek additional public comments and narrow the definition of ADMT.

Multiple Agency board members have acknowledged that the proposed definition of “automated decisionmaking technology” would “benefit” from additional rounds of public comment.²¹ The Agency should initiate a new round of public comment and solicit input on how to define ADMT and to which specific automated technologies the regulations should apply. As the rulemaking proceeds, the Agency should explain how the proposed regulations protect or enhance consumer privacy, citing specific automated technologies that raise concrete privacy concerns.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ California Privacy Protection Agency Board, *supra* note 11, at 63 (“On the definition of automated decision making technology...It is something that we think would really benefit from the public comment process. We have reviewed as many secondary sources as possible on this, but the businesses who are actually using these technologies, we would absolutely benefit from what they actually would recommend on tightening up the definition. So, my recommendation would be to keep the definition as is with, of course, any additional feedback by the board at this time, but that we move forward with that definition largely intact for public comment and actually refine it once we get more technical expertise received via public comment.”).

At a minimum, the Agency should amend and narrow the definition of “automated decisionmaking technology” to make clear the ADMT regulations are limited to scenarios involving automated technologies processing consumers’ personal information in a manner which implicates or harms their privacy:

~~“Automated decisionmaking technology” means any **automated** technology that processes personal information and uses computation **for the primary purpose of making a solely automated significant decision about a consumer** to execute a decision, replace human decisionmaking, or substantially facilitate human decision making. (1) For purposes of this definition, “technology” includes software or programs, including those derived from machine learning, statistics, other data processing techniques, or artificial intelligence. (2) For purposes of this definition, to “substantially facilitate human decisionmaking” means using the output of the technology as a key factor in a human’s decisionmaking. This includes, for example, using automated decisionmaking technology to generate a score about a consumer that the human reviewer uses as a primary factor to make a significant decision about them. (3) Automated decisionmaking technology includes profiling.~~

This amendment would ground the new rules in the Agency’s statutory authority. In 2020, California voters approved Proposition 24, establishing the Agency and tasking it with implementing the CCPA.²² Proposition 24 states: “The rights of consumers and the responsibilities of businesses should be implemented with the goal of strengthening consumer privacy while giving attention to the impact on business and innovation.”²³ As written, the proposed ADMT regulations fail to strengthen consumer privacy — while disincentivizing businesses from deploying innovative artificial intelligence technologies *as well as* discouraging consumers from adopting them. The Agency should change course on ADMT.

²² *General Information about the CCPA*, CALIFORNIA PRIVACY PROTECTION AGENCY, <https://cppa.ca.gov/faq.html> (last visited Feb. 19, 2024).

²³ Cal. Proposition 24 (2020) (Section 3), https://cppa.ca.gov/regulations/pdf/prop24_text.pdf#page=3.

Respectfully submitted,

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Andy Jung
Association Counsel
TechFreedom
ajung@techfreedom.org
1500 K Street NW
Floor 2
Washington, DC 20005

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