CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

TRANSCRIPTION OF RECORDED PUBLIC MEETING

March 8th, 2024

SACRAMENTO, CALIFORNIA

Present: JENNIFER M. URBAN, Chairperson
LYDIA DE LA TORRE, Board Member
VINHCENT LE, Board Member
ALASTAIR MACTAGGART, Board Member
JEFFREY WORTH, Board Member
ASHKAN SOLTANI, Executive Director
PHILIP LAIRD, General Counsel
ELIZABETH ALLEN, Moderator

KRISTEN ANDERSON, Staff Attorney
NEELOFER SHAIKH, Staff Attorney
LISA KIM, Senior Policy Counsel and Advisor
MEGAN WHITE, Deputy Director of Public and External Affairs
EDWIN LOMBARD
GRACE GEDYE
PETER LEROE-MUNOZ
MATT SCHWARTZ
RONAK DAYLAMI
EMORY ROANE
DEANA IGELSRUD
ROBBIE ABELON
BRUNO O'NEAL

ANNETTE BERNHARDT

DANIEL GELLER

CAROLINE KRACZON

HAYLEY TSUKAYAMA

MINSU LONGIARU

JULIAN CANETE

IVAN FERNANDEZ

KARLA ORTIZ

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CALIFORNIA PRIVACY PROTECTION AGENCY

TRANSCRIBED RECORDED PUBLIC MEETING

March 8, 2024

MS. JENNIFER URBAN: Good morning everyone. Welcome to this meeting of the California Privacy Protection Agency Board. It is March 8th, 2024 at 9:05 AM. My name is Jennifer Urban. I am the chairperson of the board, and I'm very pleased to be here in person with the board and some members of the public, and to welcome any of you via Zoom as well. Before we get started with the substance of the meeting, as usual, I have some logistical and legal announcements. First, I'd like to ask everyone to please check your microphone is muted when you're not speaking. Second, I'd like to ask everyone who is here in person to silence or turn off their cell phones to avoid interruption. And I will make sure mine is silenced right now. Thank you. And then third this meeting is being recorded. We strongly encourage everyone to wear masks. If you are attending in person, we're not requiring this, just encouraging it. COVID-19 is, of course, still with us. And we want to avoid exposing vulnerable members of the community or inadvertently making our public meetings less accessible. As you may know, our temporary ability to meet remotely and still comply with Bagley Keene has expired. Therefore, this meeting is in a hybrid format with the board members in person. And the public is welcome to join us in person or in Zoom. That said, the hybrid format is technically complex, so if we have any technical kinks during the meeting, we will pause the meeting and address the issue. Thank you in advance for your patience if any of these issues arise. Also the logistics can be a little bit more complicated within a hybrid format. So bear with me while I go over logistics and meeting participation. Today's meeting will be run by the, according to the

Bagley Keene Open Meeting Act as ever and as required by law. We will proceed through the agenda, which is available as a handout here in Oakland and also on the CPPA website. If you are joining us remotely. Materials for the meeting are also available as handouts here and on the CPPA website, you may notice board members accessing their laptops, phones, or other devices during the meeting. We are using these devices solely to access meeting materials. And a few minutes ago, I silenced my phone. After each agenda item, there will be an opportunity for questions and discussion by board members, and I will also ask for public comments on each agenda item. Each speaker will be limited to three minutes per agenda item. We also have a designated item on today's agenda for general public comment. That's agenda item eight, and I'll say a bit more about that in a second. If you are attending via Zoom and you wish to speak on an item, please wait until I call for public comment on the item to allow staff to prepare for Zoom public comment. Then please use the raise your hand function, which is in the reaction feature at the bottom of your zoom screen. If you wish to speak on an item and you are joining via phone, please press star nine on your phone to show the moderator that you are raising your hand. Our moderator will call your name when it is your turn and request that you unmute yourself for comment at that time. Those using the webinar can use the unmute feature, and those dialing by phone can press star six to unmute. When your comment is completed, the moderator will mute you. Please also note that members of the board will not be able to see you, only hear your voice, thus, that it's helpful if you identify yourself. But this is entirely voluntary. And you can also input a pseudonym when you

log into the meeting via Zoom. If you're attending in person and wish to speak on an item, please wait for me to call for public comment, then move toward the podium on my right and form a line. You will be called to speak in your turn, as with the Zoom attendees. It's of course helpful if you identify yourself when you would be begin, but this is again, entirely optional and you're free not to give a name or to give a pseudonym. Please speak into the microphone so that everybody participating remotely can hear you. And so your remarks can be recorded in the meeting record. Again, the technical features of a hybrid meeting are somewhat complex. So first I'd like to thank the team who managing the technical aspects of the meeting today, Ms. Trini Hurtado and Mr. Oscar Estrella. Thank you. And second, I'd like to explain what to do if you are attending remotely and you experience an issue with the remote meeting, for example, the audio dropping. If something happens, please email info, I for India, N November, Foxtrot O Oscar@cppa.ca.gov. This will be monitored throughout the meeting. If there's an issue that affects the remote meeting, we will pause to let our technical staff work on fixing the issue. The board welcomes public comment on any item on the agenda, and it is our intent to ask for public comment prior to voting on any agenda item. If for some reason I forget to ask for public comment on an agenda item and you would like to speak on that item, please let us know by using the raise your hand functions and the moderator will recognize you. If you are in person, please raise your hand and let me know I forgot. And I will call you to your podium, to the podium to provide your comment. Remind, relatedly I'd like to remind everybody of some of the other rules under Bagley Keene. Board

members and members of the public may discuss agendized items only under those items. If you are speaking on an agenda item, you must contain your comments to that agenda item, whether you're a member of the public or a member of the board. However, there are two additional options under Bagley Keene. First is just for the public. The public can bring up additional topics when the board brings up the agenda item just for that purpose. That is number eight today. However, board members can't respond. We can only listen to you and perhaps consider the items for discussion at a future meeting. Once again each speaker will be limited to three minutes per agenda item. And we will also have an agenda item dedicated to proposals for agenda items at future meetings. We will take breaks as needed today, including one for lunch and one at 3:00 PM. I will announce each break and when we plan to return so that members of the public can leave and come back if they wish. Before we begin again, please note that the 10th item today is a closed agenda item, and we will be leaving the room in order to hold the closed session. My thanks to the board members for their service and to everybody working to make the meeting possible. I would like to thank the team supporting us and a team of who have organized the meeting infrastructure. Mr. Philip Laird, who's acting as our meeting council today, Mr. Ashkan Soltani in his capacity here as executive director and several members of staff who would be giving us some really interesting and wonderful presentations. And I would like to thank and welcome our moderator, Ms. Liz Allen. Good morning and ask you now Ms. Allen to please conduct the roll call.

MS. ELIZABETH ALLEN: Okay, great. Here I'm. Board member De La

Torre.

MS. LYDIA DE LA TORRE: Aye.

MS. ALLEN: Board member Le? Le present. Board member Mactaggart.

MR. ALASTAIR MACTAGGART: Aye.

MS. ALLEN: Yep. Mactaggart present. Board member Worth?

MR. JEFFREY WORTH: Present.

MS. ALLEN: Worth present. Chair Urban?

MS. URBAN: Present.

MS. ALLEN: Madam Chair Urban present. Madam Chair, you have four present members and one absence.

MS. URBAN: Thank you very much, Ms. Allen. The board has established a quorum. I'd like to let everybody know we'll take a roll call vote on any action items. With that, we'll move to agenda item number two, which is the chairperson's update. I don't have much of substance in the update. So I will just preemptively thank everyone for all of the really interesting and exciting substantive material that we expect to go over today and move on to agenda item number three, which is an update from our executive director, Mr. Ashkan Soltani. Mr. Soltani, please go ahead when you're ready.

MR. ASHKAN SOLTANI: Thank you, Chair Urban and thank you board for the opportunity to provide a brief update. I'm going to keep it relatively short and sweet just because I know we have a packed agenda. Couple key updates since last time we met. One, I'm proud to say that the strategic plan, which was discussed in the January meeting, is completed and is on our website. I really appreciate the input from the board and the hard work of SorelloSolutions. The consultant and our team for getting that finished. Staff are now

working on the process of implementing the KPIs, which will begin tracking and reporting out as appropriate. I'm also pleased to announce that assembly member Josh Leventhal introduced AB 3048, the bill concept. The board previously supported in our December meeting, which would require browsers and devices to offer consumers the ability to exercise their privacy preferences through opt op preference signals. The board can expect to hear updates on the development of this legislation during the regularly scheduled ledge update in May. I also wanted to plug that we're rapidly growing. We have 16 open recruitments in various stages ongoing right now. I'd really appreciate the board and any of members of the public promoting those positions. It's an incredible opportunity to join this brand new agency, or no longer brand new, but this new agency. And I'm really looking forward to bringing on that staff as well. Also folks that are freezing in the room, we'll be pleased to hear that we've secured the CPUC meeting room for the next, we hope to schedule the next meeting in May in that facility, which is in San Francisco. Lastly, happy to introduce that the data broker registry implementation went off successfully which is a huge accomplishment given that we really only got heads up that we would have to do it on our own in late fall. I'm really kind of proud of the team for how hard they pushed and how they were able to get up, particularly Miss Liz Allen and folks at DCA as well as all of staff for legal, exec staff as well. I've asked Ms. Allen to briefly do a quick demo for the board, just so folks would be interested in seeing that functionality. And bear with us. This is our first screen share, so let's see if it shows up remotely. Great. Perfect.

MS. ALLEN: Okay, great. So as you know, SB 362 transferred the data broker registry. Let me see if I can make this a little bit bigger. How's that? Yay. The data Broker registry to from the DOJ to the agency in the fall. While this was a compressed timeline, we have been able to launch, we launched the data broker registry up here. You can see the new tab on March 1st. So we successfully processed nearly 500 data brokers and we released this first iteration down here where you can see and search for different data brokers. Because data brokers, by definition do not have a direct relationship with consumers, consumers may not know the names of these companies. Therefore, the registry highlights some important aspects of these firms as per statute. For example whether they collect data from minors, precise geolocation or reproductive healthcare data, and somebody could, for example, search and sort by all the businesses that do collect minor data. Additionally anyone can download the full CSV to see everyone's extended registration, or they can click view and see the full registration and all answers from the data brokers. So the registry will continue to be updated by the agency, including annually per statute. Failure to register or failure to complete their registration may result in civil penalties that increase each day that the data broker fails to register. So we're proud to be able to offer this public, offer the public this much needed, improved transparency around data brokers handling California and consumer data. As Ashkan mentioned, building this system from scratch was a big lift and happened truly in light speed for government time. So I'm happy to answer any questions, but expect this to be updated periodically throughout the year. This team will continue to run

the data broker registry, and we have already begun to start research on the accessible delete mechanism, and we'll update the board on that next big project in the near future.

MR. SOLTANI: Proud of the team for that. Beyond that, I have no other updates. Thank you, Chair Urban and thank you board for the opportunity to just provide this brief update.

MS. ALLEN: Thank you. Thank you. Thank you, Mr. Soltani and Ms. Allen. Any questions or comments from the board?

MR. WORTH: Yes, I have one.

MS. URBAN: Mr. Worth.

MR. WORTH: Yeah. Thank you. What's the amount of penalties for failure to register?

MS. ALLEN: In the statute it's $200 a day.

MR. WORTH: You said it increases daily or it's—

MS. ALLEN: It's $200 per day. So it would increase the number of days.

MR. WORTH: And how do I understand that it's a requirement. How do I get contacted that it and where to go, what's the process?

MS. ALLEN: So we, the DOJ has been running the registry for the last, since 2020 essentially. And so we emailed everyone on that list, and the DOJ has an announcement up that's like, you need to go register with the CPPA.

MR. WORTH: Okay. Thank you.

MS. ALLEN: Yeah.

MS. URBAN: Do you have a sense of what percentage of the data brokers who are required to register have registered?

MS. ALLEN: Yeah, that's a good question. So we're close. So the DOJ had a 550 data brokers registered. We have about 480. And

we have more registering currently. So we're still getting registrations in. If you look at the whole universe of every data broker, we don't have that list. But yeah, of course. You know, that would be something that we could enforce on, for example, to try to figure out who isn't registering, who should be, and then try to bring people.

MR. WORTH: But isn't there 70 already? You said the DOJ at 550 and you have 480.

MS. ALLEN: We have 480, yeah.

MR. WORTH: So isn't there already 70 that we are missing.

MS. ALLEN: Well, we've actually gotten some emails from folks being like, we're not, we're either deprecated that because the compliance is high. Or we have less than, we don't think we qualify anymore. So we've gotten about 30 or 40 emails of people being like, we're not going to, we're not, we are registering out of an abundance of caution. We don't think we need to or so.

MR. WORTH: Thanks.

MS. ALLEN: Yeah.

MS. URBAN: Other questions? Thank you Mr. Soltani. I did have a very quick question, which I'm sure comes from the fact that I spend most of my days in academia. What is a KPI?

MR. SOLTANI: A key performance indicator.

MS. URBAN: Key performance indicator. Excellent.

MR. SOLTANI: Sorry for acronyms. Yeah.

MS. URBAN: Yeah. And thanks to everybody for getting the strategic plan done. That's wonderful. And we look forward to hearing how we are going along the path that we've set out. And yeah, data broker registry is very exciting. Thank you. Any

comments or questions from the public, either on Zoom or in person?

MS. ALLEN: Okay. This is for agenda item number three which is the executive director update. If you'd like to make a comment at this time, please raise your hand using the raise hand feature or by pressing star nine if you're joining us by phone. Again, this is for agenda number three, executive director update. Madam Chair. Okay. Alright. Roane Emory, we are going to unmute you. You'll have three minutes. You may begin now.

MR. EMORY ROANE: Thank you so much. I want to also extend thanks and congratulations for spinning up the new registry so quickly. It's amazing. We're already seeing some really interesting statics reporting metrics that we've never been able to see from data brokers before, so that's really, really cool. I had a question about one of the categories that is being reported on the registry. It currently reports as healthcare data, but I was wondering if that should instead be reproductive healthcare data? Is that incorrect or a more broad category than the statute required?

MS. URBAN: Mr. Soltani or Ms. Allen or Mr. Laird? Mr. Laird, thank you, our general counsel.

MR. PHILIP LAIRD: Hi, good morning. Happy to take it. Yes, under the law, this is reporting reproductive healthcare data. I think on the website we've attempted to streamline some of the reporting information, but I think that's an update we're looking to make.

MR. EMORY: Oh, really, really, really appreciate that. Thank you so much.

MS. URBAN: Thank you.

MS. ALLEN: Okay. Thank you. We have one other comment. Deana, we are going to unmute you. You will have three minutes.

MS. DEANA IGELSRUD: Hello? Can you hear me okay?

MS. ALLEN: We can.

MS. IGELSRUD: Okay. So I actually am a legislative and policy assist advocate with the Concept Art Association. And we're an advocacy organization for artists working in film, television, animation, and video games. And we're working with a group of industry artists from chapters in IASI[Inaudible 18:12 – 18:13] as well as a number of independent artists who have all been sort of victims of having their works, both personal, private, stolen and scraped across the internet. And earlier this month, our group went to Sacramento to meet with legislators to discuss the effects of generative AI on the creative industries. One of the folks that was suggested that we meet with was Mr. Soltani. And we were wondering the best way to possibly get in touch with him. So that, or the best way to work with you because we're a bunch of artists, we're not exactly sure how to do this. So that's really my question is the best way we could connect up to make sure that artists and creators are added as part of this conversation.

MS. URBAN: Thank you very much.

MR. SOLTANI: Me to respond.

MS. URBAN: Sure.

MR. SOLTANI: Great. Thank you for that comment. We have a contact form on our website. The info at CPPA would be the best contact point. And then that will get routed to me and our public affairs team appropriately. Thank you for that comment.

MS. IGELSRUD: Thank you.

MS. URBAN: Very much @cppa.ca.gov. And the comment form is easily findable, but of course let us know if you can't find it. Thank you.

MS. ALLEN: Yes. Great. If there are any other members of the public who would like to speak at this time, please go ahead and raise your hand using Zoom's raise hand feature or by pressing star nine if you're joining us by phone. Again, this is for agenda item number three, executive director update. Madam Chair, I'm not seeing any additional hands at this time.

MS. URBAN: Thank you very much, Ms. Allen. And thank you to members of public, the public for the comments. And thank you very much to Mr. Soltani and the staff for all of the amazing work that he was reporting on for us today. With that, we will actually take agenda item five out of order. So we will come back to agenda item number four and move to agenda item number five, which is our annual public affairs update and priorities. This is one of the items on our regularized calendar. It will be presented by Ms. Megan White CPPA's, Deputy Director of Public and External Affairs. Ms. White. Welcome. I know we're all excited to hear your updates. Please do go ahead and I would ask if you wouldn't mind mentioning when you advance the slide so we can see them on this side since we can't see the screen behind you. Thank you.

MS. MEGAN WHITE: Lovely. Here I am now. Okay, great. Thank you so much board member or Chair Urban and thank you members of the board for having me here today. Again, my name is Megan White. I'm the Deputy Director of Public and External Affairs at the agency and I am so proud to present the annual updates and the priorities for the next 12 months. So first I thought I'd give a quick update

since this is the first annual report since public affairs was established. So we can go ahead and do next slide please. So last month or last March, I did not present because I was not part of the agency. I was the first person hired into the public affairs division and I joined mid-April of 2023. I'm so thrilled that the very talented Ms. Nicole Cameron joined me in September of 2023. And so now we're a robust team of two. But that's not to say that communications efforts didn't happen prior to us joining. Definitely Mr. Soltani and Ms. Mahoney did outstanding work in doing their full-time jobs, plus doing all the comms efforts before the public affairs department was formed. But now that we're established, I wanted to give you a really brief overview of what falls under our division. So first, as you're well aware, public education right there at the top. And just a reminder, this is part of the mandate that was Prop 24. In addition, we handle all of the external communications, everything from our websites, social media, interactions with stakeholders, our website, a whole bunch of different things for external, oh, speaking engagements, a whole bunch of things for external communications. In addition, we handle internal communications. That includes updating our intranet and making sure our staff is informed about what's going on at the agency as a remote centric for agency. That's really, really important. And in addition, we handle the board meeting logistics. Moving on. Next slide. I'm excited to share some highlights of what have happened over the past approximately 10 months, 12 months since the public affairs team was first established. So media relations. Number one, our media relations program is really, really important. And over the past 12 months, we've put out

approximately a dozen announcements and press releases. Just to clarify, an announcement is something that would go on our website under the announcement page. A press release is what we distribute out to members of the media. Sometimes we also put it on a press wire depending on the reach that we want to get. And every single time we do an announcement or a press release, we meet as an internal team to discuss the reach and who we're trying to get to in this announcement. So every single one has a comms plan behind it. Sometimes we just want the announcement on our website and social media. Other times it involves pitching members of the media to making sure that our story gets out there and reaches a broad audience. To make sure that we're informing members of the media, we establish a press listserv. So now all the reporters that cover us regularly or touch the industries that we touch are on that list and we make sure where they get the press release as soon as it comes out so they can cover it fairly and accurately. Next is our speaking program. So whenever our executive team goes out and they speak, and I'm proud to say they've done more than two dozen speaking engagements over the past 12 months and we're on track to, well surpass that just in 2024. But our team is responsible for writing the talking points, speeches, handling all the logistics, and also working on slide decks for our team. And you're going to see just more and more of this in the coming years as we get out more and more to the community. In addition, we handle recruitment efforts. So our very talented HR team handles the administrative aspect of this and we handle the marketing of positions. So first off, let's start with the fact that we established and grew our team. And we'll continue to grow in 2024, but we've also promoted

more than 30 positions at the agency. And this ranges from members of our executive team to people who participate in our internship program. In addition, we've made it easier to apply for a job at the agency by really improving our career opportunities webpage that you'll find on the CPPA website. So this includes creating a careers lister. So people come to the website, they're interested in applying to the agency, but they don't have, they don't see a job that's right for them. They can go ahead and sign up, give us their email, and they'll get a notification as we open new jobs. In addition, we have a lot of people who are really interested in working at the agency, but they've only been in the private sector, they've never worked for the state before. So we updated the career opportunities page to make it really easy for people to know how to apply for a job. So just a few things that we've done there in terms of recruitment efforts. Next slide please. In addition, we've really upped our social media game. So we are currently on LinkedIn and X and we formally known as Twitter and we will continue to do so. So originally we had a lot of social media and it was just around our announcements and job posts. But what you'll notice as you look now is we're really trying to become a thought leader in this space and a reliable, trusted source for the public. So we're starting to promote things that are adjacent to our agency and this includes things like the National Consumer Protection Week. So if you go on our social media channels this week, because it's actually happening this week, you'll see we have a lot of great information out there for the public. In addition, we promote things like Cybersecurity Awareness Month in October, Data Privacy Awareness Week in January. And in addition, we promoted the Data

Brokers registry when that launched. So to all your questions that you had earlier, we worked very closely with Ms. Allen to make sure that information was up on our social media channels as well. In addition, we made updates to the CPPA website. So I won't go into the career opportunities page again, but we've done other things to make the website a lot more user friendly. In addition, we added business guidance. Again, I have to point out Ms. Allen's assistance with that, along with Ms. Kim's, they were both very helpful in making sure we had accurate information up there that was visually easy for the audience to understand. In addition, as Mr. Soltani pointed out, we've finalized our strategic plan, which is now on the website as well. And in addition, every single PDF that you see on our website requires remediation. This makes it easier for people with accessibility issues to understand the documents. It's a very heavy lift as you know from the board packets you received. There's a lot of PDFs that are involved every single time we do a board meeting or anything along those lines. And so our team is responsible for making sure those documents are accessible. Prior to this, we relied on an outside department, so I'm pleased that we were able to bring that in-house. And in addition, something that I am really, really excited to share is the privacy.ca.gov website. So I know Mr. Soltani mentioned this in January and hopefully you've all had the chance to take it, take a look at it. Addition members of the public, I highly encourage you to check out the website. It's incredibly helpful source of information for you. So we worked on everything. And again, I have to point out the talents of Ms. Cameron who wound up being an amazing graphic designer and web designer. And we were able to

really utilize her talents to build out the complete website. We built out the architecture ourselves. We did not use consultants for this. We wrote all the text to make sure it's as accurate as possible. We also developed all the images. So in addition, we host the website ourselves. We manage the backend. And so we are able to do this. We're able to make changes to the website incredibly quickly. And from what we were thinking about the privacy website, of course, Chair Urban was instrumental in getting us the URL. So it's not that the website was a new idea, but when we decided we wanted to partner with Senator Dobbs office and launch this with Data Privacy Awareness Week, we had about two months to go from no website to a fully built out version one of the website. And I'm really proud of the work we did there. In addition, over the past 12 months, we launched our polling. So I will definitely go into more detail on this, but that set the groundwork for the public education campaign. Next slide please. So let's go ahead and do a deeper dive into the polling. Now first, before we did any polling, we reviewed all the existing research and polling, but we really felt that we needed to do not, and not all, of course, but we went through stacks and stacks of research and we decided it was still really important to do our own because we didn't see any research that had been done since the agency was established that was specific to Californians. So we surveyed more than 500 Californians. We performed the survey in three different languages, English, Spanish, and Mandarin. In addition, we administered the survey via a survey vendor that's in line with our privacy philosophy. And this was really, really important. Unfortunately, it added a little bit of time to the polling effort because we had

to vet a lot of vendors. And although some may be compliant, they weren't in line with our philosophy. But once we found one, we were able to launch our survey. I'm so glad we did this before we launch the public education campaign because now we forever have a benchmark of what happened before the campaign was launched. And that's just something we couldn't have gotten if we had waited or if we had done it once the campaign has launched. It provides that great benchmark. Now we'll be able to see is our campaign effective. Where are we lacking, where can we grow. It also helped us understand the concerns of Californians. So if we don't know what Californians were most concerned about, we wouldn't know how to prioritize our messaging to them. As you know, people have a very short attention span, so we can't go through every single right and how to exercise that right necessarily. We need to prioritize, especially as we start. And this survey was a great source of information for that. It was also important so we can get our most bang for our buck in terms of advertising dollars. And you'll see as I go into our paid media plan, how we kind of are looking at what we might do. And by surveying Californians and understanding where they get their information, we were better able to adapt our plan to their needs. So once again, even though the polling took a little longer than we like, we really felt that it was a really important first step on the campaign. Next slide please. Okay, so key takeaways. The first and most interesting one, at least to me, and perhaps this was something that other people were anticipating, but I simply was not that there's a u-shape relationship between age and privacy. I thought perhaps the younger generation was more familiar with their rights and how to exercise

those rights. And you might see a decline as age goes on. Not true, according to the survey that we did, it's actually a U shape. So you're seeing your younger generation who's more familiar with their rights and how to exercise those rights. And then you're seeing the older generation, senior citizens who are much more aware of their rights and how to exercise their rights than we originally thought. I think this is kudos to a lot of the senior associations such as ARP who've been great about getting the message out. So that was an important piece of information. Now we know that the large majority of people who are not aware of their rights and how to exercise their rights fall between that 30 and 60 age range. In talking with our consultant census, they share that generally speaking, these are individuals who are probably in their careers. They have families, they consider themselves really busy and maybe they haven't had a chance to prioritize this. In addition, we found that Californians lack specific understanding around their privacy rights. So they may know about their rights generally speaking, and I'll show you one of the questions we did in just a moment to gauge that. But they don't understand the details of it. And sometimes they get frustrated and they just sort of walk away from the whole situation. Our campaign's going to help them realize how they can do things quite simply that make a big difference. But the wonderful thing that we realized is though almost everyone surveyed was worried about their personal information being shared or stolen. And this is really important because where a lot of agencies have to deal with regulations and things that they're tasked with doing and people just don't care about the topic. We're quite different here at the agency. People

really are concerned and want to know how to protect their personal information because they understand that there's a lot of risk involved if they don't. Next slide please. So moving on to the numbers, familiarity with the CPPA, we found that 32% of Californians were familiar with the agency. Now that's a pretty small number, but if you think about the fact that we're relatively new compared to like a Cal EPA, it's going to take a little time to get our name out there, but I have an exciting statistic to share that's not up there of those aware. So that 32%, 70% fit felt favorable about us, 25% were neutral. So there's a very small percentage of the population who has a somewhat negative or negative feeling about our agency. Why is this important? We don't have to spend a lot of time trying to do, get the public to trust us, to feel good about our agency. For those familiar with other government agencies, many are not as blessed as we. And we take that very seriously. We're proud to have a strong reputation and we tend on to just grow our positive reputation as time goes on. Going down to awareness collection of personal information specifically we asked for this question, when a business collects your personal information, how well do you feelyou understand why they are collecting it. You see here, 44% had some awareness related to the collection of their personal information. The next strongest vote getter was 31% with not so well. So people know that their information's getting collected, but they're just a little, they don't seem to know exactly why or the details of why and they really don't know how to exercise their rights. And that goes to the next one we have up here. Have you ever been asked, have you ever asked a business to, we're really getting at, have you ever

exercised your rights? As you see right up there, less than half have exercised their rights. So we have a lot of work to do there to encourage people to exercise their rights. So next slide please. Okay, so the next question we asked and we asked numerous questions. These are just the highlights. Top two sources to learn how to protect your personal information. You see right there, number six, 61% is from a .gov website. We're very lucky that we have two wonderful websites, cppa.ca.gov and privacy.ca.gov just to plug it one more time. And they're great sources of information for the general public. Now we understand polling is a snapshot in time. If we had taken this poll maybe six, seven years ago when trusting government was a little bit lower, we wouldn't be afforded this luxury. And that's why we want to stay on top of these trends. But currently we're so happy to see that.gov websites are performing quite well. In addition, people look for articles online. So this speaks to the importance of our media program, media relations program, having good relationships with various reporters writing op-eds, doing white papers. In addition, we'll be adding a blog to the privacy.ca.gov website. Another great resource for people to find articles online. I won't go through all these, but I will touch on the next one at 37% information from a dot org website that just speaks to the importance of grassroots outreach that we'll be doing even more in 2020 or 2024. I'll go into it in just a bit, but obviously partnering with nonprofits and community-based organizations is really important for us to help get our message out. Moving over to the next one, top two sources for understanding technical information, you see at the very top videos are a great way to understand information and we are so excited to

hear this because we will be launching a whole bunch of informational videos. Short, easy to understand, likely an animation format because that seems to way be the way people best understand technical information. And we'll be launching so many more of these in the coming years. And the next one, and again, I won't touch on all these, but I would like to touch on the next one briefly. I ask someone I trust. Again, this goes to how people get information. So if you think of information dissemination as a pyramid, at the top, you have those individuals that are maybe really comfortable with tech, really interested in privacy related issues and they might do the research and really get the ins and outs. Their friends know them as the information person to go to related to these topics. And so they're asking them those important questions and hopefully that person received a lot of their information from us, from our websites, our videos, our social media channels. And then they're either educating their friends and family or encouraging their friends and family to go to one of our communication channels so they can get the information too. So just again, really, really important and great way to get information out to the public. As I always say, when you teach one, you teach many. Onto the next slide. So here I'm just going to briefly go through the public affairs campaign. And really when you think of this, you're thinking of our public education campaign. Speaking in broad strokes. Phase one really kicked up in the late summer fall of 2023. And here we did a lot of prep work. We signed our consultant, our creative consultant on census. They joined the team and we started working on the survey, survey questions. Once again, we managed all those questions in-house to make sure they were

really, really accurate. Ms. Mahoney was instrumental and Mr. Soltani in helping with the survey questions. So we really got to the root of what the questions were. We also prepped the privacy website in terms of developing content and we started preparing for the creative campaign. Phase two winter 2023. We launched the survey in December. We launched the privacy website in January. We worked with our creative consultants, we provided them a lot of information about our agency, our brand. We provided them examples of what we thought was done well and not well in terms of educating the public in videos. We also worked with our consultant on the media buy plan. They provided us a lot of vendors for us to vet. Again, just like with the survey situation, when we do media buys, we not only want to work with companies that are compliant, but also companies that follow our commitment to privacy. And so we've had to vet through quite a few vendors and we'll continue to do so. We drafted the script for radio and we also worked on out-of-Home Ads. When I say out-of-home ads, I'm really talking about billboards, bus signs, bus shelters, posters that you might see at a grocery store, things along those lines. We also recorded the radio scripts and we drafted the informational videos. Moving on to phase three, that's the launch and that's going to be happening spring. So here we are. We'll be launching the radio spots very shortly. We'll be launching the out-of-home advertising very shortly and we'll really move forward with the video development. Next slide please. So in light of that, I'm really excited to share a couple of ad examples. These are the mockups. Again, I have to really tip my hat to the very talented Ms. Nicole Cameron, who as I said, she's an amazing graphic designer and she and I worked on

these mockups very closely. We got the rights to use the images from our consultant census so that we can use them in our paid media campaigns. We have many more examples than justice, but I just wanted to give you a quick flavor for what the campaign will look like. When we think about exercising your rights what might the public retain the concept of exercising? I exercise to move my body so I'm healthy. I exercise my privacy rights so I can protect my personal information. And so you'll see the first example on your far left is that an example of a bus shelter. The next one is a poster that you might see at an ethnic grocery store. All of our campaign materials are going to be in both English and Spanish. And we'll be branching out into Mandarin soon, I'm sure. So we'll be including more languages as we go. And then there's a general ad about it being a team sport. So again, this is something that you might see on a billboard, on a bus shelter on the back of a bus. So, and here you see we have ads that are customized to the younger generation. We have ads that are customized to the seniors, but as you can say, because we did that survey result, we realized that a target demographic that we really need to lean into is that 30 to 60 year olds. And you see that represented here. So next we're going to play you a little brief sample of one of our radio spots. This is the 30second spot. It's in English. They were done in English and Spanish. Just to note, these are a hair rough. We're just going to be tuning the mixing a little bit more, but it'll give you a flavor for what an ad is going to sound like. So if you please would play.

Video: My watch says we've gone three miles. This app is like

having a personal trainer, but those apps collect a lot of your personal data. Aren't you worried? Really? That's creepy. How do I stop that? You should go to privacy.ca.gov to learn about your privacy rights and get on the best path to protect your privacy. I think they could help us get up this next hill, one step at a time. Californians have the strongest privacy protections in the country. Go the extra mile to protect your information. Learn moreat privacy.ca.gov.

MS. WHITE: Okay, so that was just a little example of an English ad that you'll be hearing soon on your streaming services and also terrestrial radio. Okay, so going on to the next slide please. Perfect. Okay, so I did cover the radio ads. I won't go through it again. Of course. Happy to answer any questions you have at the end of the presentation. Animation videos. I think I already kind of explained the importance of that and where we're moving forward with that in 2024. So these are all things that you will see in the next 12 months out of home ads launching. As I mentioned before, very soon, digital ads. This is a place where we're really looking for feedback from the board. We've been in discussions about whether or not to do digital ads internally and with our consultant, but I'm really looking to your feedback at the end of this presentation. In addition, we'll be doing a lot more speaking events. So currently we've been really active in speaking at privacy conferences, law conferences. But what I'm really excited to share is over the next 12 months you'll see us at more industry conferences, more community events, more association events, so really getting out and doing more speaking engagements. And in addition, we'll be creating and growing our grassroots community

outreach efforts. So this is working with community-based organizations being at community events, and I'm excited to share that. Soon we'll be recruiting for an outreach manager and an outreach specialist. Both of these individuals will be tasked with doing this. In addition, these individuals will be tasked with putting on a roadshow for the stakeholder events to engage the public on our draft approach regulations. They'll also be responsible for developing interest in engagement in advance of rulemaking. So these individuals aren't just working with grassroots organizations. They're also going to be handling the stakeholder outreach as we do the regulation outreach in the future. Onto the next slide please. So, as I mentioned, we're growing our team as I said, really excited to hire an outreach manager and an outreach specialist to help with the grassroots and also the rulemaking efforts. In addition, we'll be hiring a board support role, which I'm sure you're all thrilled to hear. This individual will help with scheduling the meetings. They'll offer you general support as well, coordination and general assistance. So look for that individual to be hired very soon. In fact, we're very close to hiring that person. We'll also be building out our privacy.ca.gov website, so you're going to find more videos, visuals. We'll also be adding the blogs, more information to our existing social media channels. So we'll be staying current on social media trends and just growing our reach on the social media channels. In addition, you'll see improvements to the cppa.ca.gov website. We're going to make it a lot more user-friendly, and we're hoping to change some things on the backend so we can update things a lot more quickly. In addition, we'll be developing the formal

branding and style guidelines of the agency. So you're going to see a nice more refined look coming out of our agency. And, sorry, just to go back, one additional thing with social media, we'll also be updating our YouTube channel, so it's a little bit more user-friendly, and it has informational videos for the public and not just our board meetings. So last slide. Thank you for your attention and listening, but now I'm really excited to hear from you all. Pivoting to the final aspect of the public affairs, updates and priorities. The team would appreciate your feedback on integrating digital ads into the public education campaign. We've not launched this aspect of the campaign yet, and we thought, because we thought it was important to get the board's insights first. Now we do want to reach some of our key demographics and instrumental in that is meeting them where they are. And that could look like doing digital ads. Of course, our out of home has a broad reach, many of us drive, see billboards, things along those lines. But the digital ad might be an important component to add to the mix. We wouldn't do targeted ads in the traditional sense, but we would need to do at least one targeting. And that would be to refine it down to just Californians. We wouldn't want to spend ads on digital buys and have them run in Oklahoma or in another country. So we will have to do a little bit of targeting. Of course, that’s legal, but I just wanted to raise that. But it will allow us to get to a broader audience if we choose that approach. So really appreciate the board's insights here. But that concludes my presentation. I look forward to hearing your thoughts, answering any questions you have, and I really appreciate your time and attention.

MS. URBAN: Thank you so much, Ms. White. That was tremendous. A lot of information there. I will turn to my fellow board members to see if anyone has questions or comments. Mr. Le?

MR. VINHCENT LE: Yeah. Great work. You know, this is such a big improvement from when, I think Ashkan, Mr. Thompson and I were sending scripts to NPR and other radio stations. So really, really happy with the progress we've made. On the question of digital ads, I think I'm pretty supportive. I don't think I'm anti digital ads. Just want to make sure that folks that don't want to be targeted or want to protect their privacy are able to do that. And so meeting people where they are using contextual targeting California seems to be an effective strategy.

MS. WHITE: Thank you.

MS. ALLEN: Thank you Mr. Le. Mr. Mactaggart.

MR. MACTAGGART: Yeah, great job. Lots of progress. So well done. At the January meeting we were talking about numbers and I asked if we could get an update on the money to be spent. So I think at the, just looking back at the transcript, there's, we're talking about roughly $12 million, and I wanted a little more granularity on, because I guess some of it needs to be spent by, I don't know, end of the fiscal, this fiscal year. Is it six? And I guess there were sort of one pot for media buys. And so I was hoping to get a little more granularity on timing, how we're spending it. Like, let's literally, like what's going out the door where when sort of we can be as a board comfortable about where this, because this, I think it's $12 million we're talking about spending. So do we have any, I'd love to see some data on that, if we have any.

MS. WHITE: Yeah, I'm happy to share in broad strokes. We have $6.7 million for our paid media campaign. And we are working with forever Evergreen options with our ad, with our media buy consultants, Mr. Soltani, feel free to jump in as well. But, so that money, we feel very confident we will be able to deploy over the following fiscal year. There will not be that concern there. In addition, we have approximately $7 million to build out our creative campaign too.

MS. URBAN: Ms. White, could you clarify the fiscal years here? So the 6.7 million starts in July, 2024, or ends in June, 2024.

MS. WHITE: That's a contract that ends in June, 2024. But we've worked with Census, our media by partner. And we'll be able to extend that money through the following fiscal year.

MS. URBAN: I understand. And then the 7 million is for 2024. 2025.

MS. WHITE: That is, yes. And that does not expire until July 30, 2026.

MS. URBAN: Oh, okay. So there's two more years on that.

MS. WHITE: Yeah, exact chunk.

MS. URBAN: Okay. Sorry, Mr. Mactaggart, I didn't mean to interrupt you.

MR. MACTAGGART: No, I brought this up in January. I'm just kind of wondering how I can get more than just sort of two lines, 6.7 million for this is going to go out and then seven million's going to go out. I mean, can we get an actual budget of where is it, is it going papers, which actual outlets and how it's actually going to get spent. Because it’s a $13 million is a lot of money here. 14 million.

MR. SOLTANI: Happy to provide that update, as Megan mentioned, we're developing, so we just finished the polling. We're developing some, what we're calling evergreen options. So these are like bus ads, billboards, things that can live on past this June date. And so we think those are really important to extend the value of that, that fund. And that's that first bucket. In addition to those options, we're currently and taking this feedback to go to the consultant based on, for example, are we doing digital ads? Are we doing social media ads? That's going to give us what we essentially our media spend breakdown. And that's essentially something that's ongoing right now that we're working with the consultant. So we could bring that back to the board at some point when we have essentially ready to, or we'll probably have by the next board meeting executed that plan. But we can report out on that plan. Except for example, how much will be radio, how much will be television, how much will be out of home, how much will be digital ads. We're going to have that line by line breakdown and how that will be spent over, basically up until June. And then pieces of it will extend past June because there'll be evergreen, as I said, like billboards. So we'll have that all that, that's clearly ongoing and we'll be happy to report that out. And then as Ms. White mentioned, we also have this other creative contract that we're developing further. And so that we have until 2026, I believe and so, and we can report out on those funds as they get as we start kind of pulling from those funds and deploying those funds. So if it's helpful to the board, we can, once we've essentially pulled the trigger on the media buy, we can report back kind of what allocation we've committed to and what the timing is, or what

timeline. Is that what would be helpful?

MR. MACTAGGART: I just find it such a huge amount of money that it would be, I think, appropriate and interesting for me to actually see where it's being spent and where it's being planned to be spent. And I guess it sounds like we're not going to have the opportunity to weigh in before you've allocated it now. Because I was kind of hoping we'd be able to, I mean, in terms of numbers, right? Like you can say we want more digital ads. We don't know, is that $200,000? Is it 7 million? You know, I don't have any sense of what these…

MR. SOLTANI: The percentages and stuff.

MR. MACTAGGART: What the costs are to reach a certain number of people. And you could have, we could have had a presentation saying, well, we'll reach this many people if we go on digital, this many people, if we go on…

MR. SOLTANI: That's exactly what we're actually evaluating right now. For example, by not doing certain types of targeting, we may not have that precision. And we are also coming up in an election year, so we're trying to figure out how do we not get into the fray. And things get a lot more expensive. Yeah. Literally, prior to this meeting, we are evaluating the media plan and we weren't ready to go back to the consultant with any feedback until we heard from you all in terms of like, what allocation would we do to digital? But we certainly have a rough sense of what our allocation will be for all the kind of terrestrial TV, radio, that kind of stuff already in our head. And depending on the timing I don't, we would like to get started, but we defer to the board if you'd like to also wait until we bring it back.

MR. MACTAGGART: Well, I mean, look, you're going to have more knowledge. I don't, you're going to have the right priority.

MR. SOLTANI: I really make it.

MR. MACTAGGART: So I'm not going to.

MR. SOLTANI: Yeah.

MR. MACTAGGART: But I feel like, well, you, the team are going to have more knowledge, but I feel like I would still love to see, as opposed to just kind of two big numbers, like here's how we're planning to reach how many people where, what parts of the state really kind of a granular, because it, after all, $14 million of the, people's money is a lot of money. And I just think it would be, I think it would be good for the public to see. I think it'd be good for us to see. So if I could request, maybe in May, could we actually have a really, a much more detailed kind of on the budget of where the money is actually being spent. I just think it would be, for me it would be very, very instructive. And I think it would be useful.

MS. URBAN: I've put it on my future agenda items.

MR. MACTAGGART: We're going to get that.

MS. URBAN: Yeah. Right. No, but I've added details. So that's really helpful. Thank you. Mr. Soltani, I don't want to, I do not mean to put you on the spot in any way, so just feel free to say, this is not something that can be revealed now. But to Mr. Mactaggart's question and understanding that we don't have the allocations yet. Do you have a rough sense of what's like the most expensive thing? Is it the out of home? Is it no.

MR. SOLTANI: Oh, I mean, by far, television, right.

MS. URBAN: Television. Television.

MS. WHITE: Hopefully by advertising at airports. Who knew?

MS. URBAN: Oh, okay. Alright. That's a lot of people. Yeah. A lot of people see those ads.

MR. SOLTANI: And this is again, why we're eager about digital as well. So like, billboards are great, but it's hard to read about your privacy rights or change your privacy settings while you're going 50 on the 101, right? Versus like…

MS. URBAN: Let's hope you don't do that.

MR. SOLTANI: So airports or if you're sitting and receiving an ad or your social, if you're on social media, if you're on, you know some of the channels that kids are these days, you might receive that informational video. And then from there immediately either link to our website or enable your privacy settings. I mean, global privacy control, et cetera. So that's why we're kind of eager for those other channels, but certainly reach in terms of like non-targeted reach, things like TV and terrestrial radio. Have a very broad reach. But TV this year particularly is going to be not cheap.

MS. WHITE: Yeah. Those prices do fluctuate as we talk to our media, but so currently they've gone down a lot because the election's over, they're going to pick up tremendously in the fall. So, and that's why we can't give you exact numbers, because once we get a feel for what you want, then they'll price it out and then they can tell us, because it's not like it stays the same cost all the time. It's a bidding situation, as I'm sure you're aware. So.

MS. URBAN: Okay.

MR. SOLTANI: But certainly we can come back in May with all our planned, media spend and allocation and in terms of the buckets

as well as which kind of we're trying to hit all of California too. So sometimes we'll go broadcast radio, but we'll have to go streaming in like Visalia or something. Yeah, Megan's home town. And so, we can come back with that. What I would say if the boards comfortable is we may want to try to execute on some of those pieces before that meeting, just because we'd like to, we have two pieces here. As Megan laid out. We have some baseline public awareness we'd like to do around bus ads and stuff. And then we'd like to do kind of an educational campaign through animations and videos that we push people to. And that second piece will take longer because we have to develop that content. But that first piece, we might want to just get the ball rolling on, just because I think you know, it's important to drive people and make them aware of their rights. And then as Ms. White also mentioned, we are going to try to do a bit of that grassroots following this meeting and depending on what happens on the ADM rules, we would like to do some of that kind of engagement roadshow, I like to call it, around our engagement of our regulation. So engaging the public in kind of meeting them when they are, and in terms of business communities, different communities and talking through and is encouraging people to come, comment in our rulemaking. So we'd like to get that kind of, that planning underway too. So if the board are comfortable we can give you a rough allocation. I think today you want to just talk about like, how we're thinking about splitting it generally? Are you comfortable saying that.

MS. WHITE: The percentages generally, I think it really is a linchpin on what we're doing with digital, right? I mean—

MS. URBAN: So, it would be helpful now for us to thank you Mr.

Le for voicing an opinion on digital. It would be helpful for you, Ms. White and Mr. Soltani, if we had a conversation about digital. We'll give you feedback on that. And then perhaps based on what you just said, Mr. Soltani, if we have strong feelings about some of the other formats offer that as well.

MR. SOLTANI: That'd be great. Yeah, that'd be great. Like, tell you guys we can spend a lot of money on television and reach a really you know, I'm not saying we'll take a Super bowl ad, but reach a broad audience or we can target folks on TikTok, for example. Right. And that's perhaps differs from our philosophy, but it's also the stats show, that's where kids are today. That's where a lot of kind of actually people in the middle age are as well. So there's all these philosophical questions that we'd love to have you all chime in on, and then we can take that back, synthesize that into a media plan, bring back most of it in May, but start on small pieces of it before that, that would be my suggestion.

MS. WHITE: I agree.

MS. URBAN: Okay. Well, the U shape suggests maybe TV is lesser or yet, right? I'm not actually sure who watches TV anymore, but—

MS. WHITE: Yeah. So advertising on streaming services or ads on YouTube, you're right. Because broadcast television perhaps not reaching that demographic that's not as aware because they maybe don't have cable anymore.

MS. URBAN: Great. Thank you. So thank you Mr. Le for your thoughts, and I will get more if you have them, Mr. Worth?

MR. WORTH: Yeah, I mean, I think trying to be mindful of the board's role staff's fault, there was a request in January for a real detailed breakdown. I couldn't make a decision on what

direction we should go without knowing not only what it costs, but what the fees are to the agencies. Like, how much am I paying somebody to then turn around and just give our money to a radio station? I just, I need to have all of that to make any decision. If it was my own business, first question I'd say is what it's going to cost. And then I need your feedback on what's the viewership, what's the, so I don't know how much you want to spend between now and May, but I would just, but this dollar amount, I think we've got to have a real detailed budget. Right? And I'm saying that it's for us to approve. If you want direction from us, I couldn't give you any of that without a real detailed budget.

MS. URBAN: Okay.

MR. WORTH: Personally. So hopefully we don't spend a whole lot between now and the next time we could talk about it personally.

MS. WHITE: Understood. Yeah. That's great feedback.

MS. URBAN: Alright, Mr. Soltani.

MR. SOLTANI: That's a great point. I will just flag this first contract that we're talking about was done through a procurementvehicle, which is a least cost bid. And it was based on the lowest markup, the vendor that could provide them lowest overall markup. So we went through state contracting for this vendor, and the vendor basically, that won the media buy contract was the one that essentially just purely based on the requirements we set out, had the lowest markup. And so that should hopefully address some of the concerns, but certainly we can bring back the breakdown and within both the allocations and then the markup for each channel, essentially. And then—

MR. WORTH: Okay. Thank you. Yeah.

MS. URBAN: Alright. Mr. Le.

MR. LE: Yeah, I mean, I had also considering there's like a June date, I don't know how the timing works. Perhaps meeting with staff beforehand. Because I think they can chat separately with you all about that, that specific budget. And yeah, and we can see it in May as well, but if there is timing issues with like, we need to make the buy, I would recommend that. But yeah.

MS. URBAN: Yes, Mr. Worth.

MR. WORTH: I'd be happy. I didn't know what we can and can't do, but I'd be happy to have a meeting individually about that. I just want to get up to speed on it before we start launching that type of spend.

MS. URBAN: Yeah. That makes a lot of sense. Thank you Mr. Worth. Mr. Mactaggart?

MR. MACTAGGART: Yeah, just kind of based on what Mr. Worth said, I do think to the extent that you want feedback, I do think it's appropriate with $14 million kind of on the table, I think it would be good to the extent that you can minimize spending between now and June, you have to do stuff, do it. But bringing it back, and again, just kind of keeping us informed, because I do think it would be useful for us to sort of say, oh, wow, TV, its way cheaper to get to people on social media and the TV we're going to spend 40% of budget and we're going to be and that's the kind of thing we all could have a reaction to. And again I don't think it's our business to micromanage, but I do think it's our business to kind of give feedback. And so what my sort of 80/20 would be, do what you have to in the meantime if you're going to lose money, clearly spend it, but at the same time, bring back what you can and give us

much more detail about reach, fees, all that, all the rest of it. Like, for example, social media might be a very cost effective way but I don't know. So I just would like to know it. And I think your comments about the election are well, and there may be a window in here before November ramps up that we can spend some money. So.

MS. URBAN: Yeah. Wonderful. Thank you, Mr. Mactaggart. Welcome. Ms. De La Torre. We're delighted to have you here. We're discussing agenda item number five. And the public awareness effort. I was wondering about the digital ads question because I know even for the purposes of looking at allocating in the budget, you're wondering about our, essentially our substantive guidance on using that format. So like Mr. Le, I'm certainly comfortable with advises that would just target California. That seems fine to me. Are there any other considerations that we should have in mind though? For example, I confess, I'm not actually aware if you can do that on TikTok. Like can you just target California and otherwise have it be contextual? Or kind of, what is the universe of our sort of substantive choices? I guess I'm asking.

MR. SOLTANI: I can respond and want to add some details. So I think those, so certainly the level of targeting is one of the, so way back up. So even before any questions of targeting, we do a first pass in terms of the vendors. And as Ms. White laid out, it took us some time to do our public affairs polling because we wanted to find a vendor that was in line with our philosophy about how they provided notice to consumers, what choices they offer. So first and foremost, we only work with lenders that really are in line with the agency's philosophy. And quite honestly, enforcement is also a legal and the team, the whole team are comfortable with.

So then from there, we, then there's questions of, for example, what level of targeting, whether it's even IP location to target Californians is a level of targeting, but certainly retargeting, if they've been to our website, for example, or if they've expressed interest in digital, I don't know, digital privacy, that's a form of behavioral targeting. And so to what degree we employ any of those techniques is I think a question for the board. And then just simply channels as well. Like, are we comfortable engaging if, let's say we want to do geo-targeting solely with no demographic profiling. And are we comfortable doing that on TikTok if it's possible, for example, are we comfortable doing that on Facebook? Are we doing Instagram? What channels are we comfortable with? So currently we employ LinkedIn and Twitter-X I guess and YouTube as our social media channels. We haven't explored Instagram, we haven't explored TikTok, but we understand that's actually from the consultants. That's where a lot of people are today…

MS. URBAN: Where the kids are.

MR. SOLTANI: Not even the kids. It's more the kids are not there, actually kids are like… [Cross talk 01:04:06 – 01:04:08]. Yeah. They're all like, I don't know. Yeah. They're not there, but the adults are. Right. The adults are.

MS. WHITE: And Tiktok is really strong for that younger generation too.

MS. URBAN: Okay. Thank you. Mr. Mactaggart? Yep.

MR. MACTAGGART: Yeah, my 2 cents would be Mr. Soltani, as you recall over the years, and I think you were the first person to explain the difference to me years and years ago. I would urge us to try to do contextual advertising. Because I think it's totally

fine targeting that way. Because we've been public about saying that's good targeting, right? You're reading an article about privacy, see something about our website, but not the behavioral targeting. And I think you more than probably anybody understand the difference and can understand the nuance. And so I would just say we should probably lead with our, lead by example. So let's target where it's appropriate and how it's appropriate. And again, this is where I, in terms of the vehicle or the channel, I look to the next presentation to sort of say, wow, it turns out that we can get that, YouTube's way too expensive. Maybe TikTok's much cheaper. I don't know. But I would look to you guys to come back to us.

MS. URBAN: Thank you Mr. Mactaggart. I 100% agree with that. My question was more, what are the options for ad targeting with these different channels? And I think that's important. On the substance, I absolutely agree with Mr. Mactaggart. I would observe that the wonderful presentation you gave Ms. White. First of all, I was pretty delighted that 49% of people have exercised their opt out rights. We're brand new. It's a brand new law. I think that's pretty good. And obviously we can do a lot better and help a lot more people exercise that right. And there are other rights where I'm going with this is that I think we do want to be careful not to capture just the people who've already shown some interest, because we want to be sure that we are available and open to everyone. And everyone that we're making, we're helping people be aware of their rights, who are not aware now. Other comments or questions. So if I could just briefly summarize a couple of points from the board decision as I understand them. There is a definite interest and desire from the board for more information on the more targeted

numbers, sorry, to use a term from a different context, targeted numbers where that up to about $13 million could go. We can interact with you individually but also we would like more detail in May. And I think if money needs to be spent, it sounds like everybody is fine with the choices staff makes there. But we would like to be updated and to the extent that board members would like to weigh in earlier, we can talk to you individually, but generally we would just like to have some more detail soon. Yes. Mr. Soltani?

MR. SOLTANI: I want to make sure you have a chance to respond to that as well. Just one clarification.

MS. URBAN: Sure, sure.

MR. SOLTANI: So two things. So certainly we, for the first we plan to really focus this around that first contract. So not the 13 million, but the six point something. So the media, what we'll come back with in May, we'll be focused around that, those funds and those dollars of how we plan to allocate them. And we certainly would be eager to meet with individual board members. I just checked, I think we would only be able to meet with two board members that. Right. So is that right?

MR. LE: Sure. Yeah, that's correct. In terms of us delivering kind of unique information to board members, we couldn't provide it to a majority in a private setting, so up to two members. But we could obviously, any information the board members want to direct to us without sort of that private benefit of information we can receive. It would just be the information we share outside of a public meeting is limited. Sure.

MS. URBAN: Thank you. Yes, Mr. Worth?

MR. WORTH: So how much would be committed to be spent between

now and our next meeting?

MS. WHITE: We could spend nothing if you would prefer we not.

MR. WORTH: Well, let me ask differently. How much would you, based on all this feedback, how much would you like to spend between now and the next meeting? I'm not trying to…

MS. WHITE: Oh no, I think that's fair. I mean, our thought is better to launch sooner rather than later. So we actually did ask our consultants for a phased approach. So something that we could do in the really short term. In terms of hard numbers, I mean, have you thought about how much we'd spend before May? We haven't really had that conversation. I mean, I certainly…

MR. WORTH: Can get an answer today if you get time to talk to them.

MS. WHITE: Yeah. I can reach back out to that. I'm happy to share that.

MR. WORTH: I mean, I understand why, but if only two people could engage on it I would opt out, but I would be useless then. Right? It should be a board discussion. Right? So I'd just love to know that it's not 3.7 between now and may…

MS. WHITE: No.

MR. WORTH: I don't know.

MS. WHITE: No, that's a fair point. No, I don't even see us touching a million. We haven't committed to anything. We're still vetting vendors, to be honest with you, to see whom we can work with. So I would—

MR. WORTH: What if we said 10%, 670 between now and May?

MS. WHITE: I think that saying 10%, we would not go above 10%.

MR. SOLTANI: I'm comfortable with that. The only thing I would

like to maybe come back if there's a chance today, is to make sure that we don't have to at least set in motion given the timelines of trying to meet before June. If we don't have to like, my understanding is we can commit to allocation and adjust. But I just want to make sure that we don't have to actually at least set it in motion so that, because the way it works is then the vendor then works with all the radio stations and they start planning and rejecting. And so there may be lead time. So the 10% number or what percentage, I'm happy to not necessarily deploy those funds to whatever the board, but I just want to make sure that we don't need to potentially commit some of those funds into play. So if I may suggest we just briefly bring this back and just provide a kind of a response. But I think my plan would be to take this input with Megan, discuss it, work with the vendor, put together a media buy plan, start. And then the big thing we haven't kind of touched on is the building of the things is actually the time consuming part. They're like the developing of an animation script, like a radio script, animation script. We're going to continue to do that independently because we want to build those materials and we're going to do those independent of what allocation we do, right? We're going to, we want to develop, for example, you've seen our locked presentation, how to limit opt out you know kind of correct delete, et cetera. We're going to develop kind of long form informational animations around that. And that takes quite some time. We'd like to start from that because that's what feeds into the pipeline once we go out and whatever channels we go out. So but certainly for the kind of media buy, we're happy to come back in May before fully deploying those. I just want to get a confirmation

from the vendor that like, they're comfortable, they don't need us to start committing before that. So if that's okay, maybe we can just move this.

MS. URBAN: Well, and if they were able to also give you an idea of what we would be working with, I can, I would be of course happy to recall this agenda item later in the day.

MR. SOLTANI: Perfect. What I can do chair is if we, so if it's easier, we can just go ahead to commit to this plan. If we find that this is first any reason non tenable because the vendor's like, that's going to not let you deploy by June. I'll mention it to the chair and you can optionally recall it then if, does that makes sense or does that not…

MS. URBAN: Admit to the plan the 10%.

MR. SOLTANI: Yeah, so I think we're fine with the 10%. And then the only kind of piece that I don't know is whether delaying till May will cause any issues with regard to fully deploying those funds before the end of the fiscal year, before July, basically. So I'd like to just check in with Megan and the vendor and make sure they're comfortable until after the next board meeting for us, before we can pull the trigger. And if they're comfortable with that and doesn't cause any delays, then I don't think we need to recall it. But if it does, we may want to just have one more clarification once we have some more information from the vendor. Does that make sense?

MS. URBAN: I think so.

MR. WORTH: Yeah. No, that makes sense to me. We don't need to talk about it again unless we need to talk about it again.

MR. SOLTANI: Yes, much more clearly. But thank you.

MS. URBAN: Any further comments or questions for now anyway? Thanks very much for the really robust discussion and to staff for working to answer our questions. Are there any comments or questions from the public?

MS. ALLEN: Okay. This is for agenda number five, annual public affairs update and priorities. If you would like to make a comment at this time, please raise your hand using the raise hand feature or by pressing star nine if you're joining us by phone. Again, this is for agenda number five, annual public affairs update. Okay. Alright, Edwin, we see your hand. We are going to unmute you and allow you to speak. You'll have three minutes. You may begin when you're ready.

MR. EDWIN LOMBARD: Yes, good morning. My name's Edwin Lombard. I'm with ELM strategies. I've been before this board on making public comment for a number of times over the last year and a half. First off, thank you for the great work that you're doing. I think you've done, you've come a long way in a very short period of time. You mentioned the polling that was done. My concern is how much of that went to ethnic communities because I believe the ethnic voices very important here. And also how much of it went to minority small businesses. Because we want to be represented in every phase of what's going on here. And then secondly, you got to, you mentioned the press and media buys. I would highly recommend that you spend money with the ethnic Medias throughout the state. I would highly recommend Regina Wilson with the California Black Media Association as someone you should reach to because we would also like to see this information coming to us through the feeds that we pay attention to. Mainstream media is great, but we don't really get

our trusted information from that source. We more likely get it from the local ethnic papers that we receive on a regular basis and through those ethnic channels. And so that's my comments for today. Thank you.

MS. URBAN: Thank you very much Mr. Lombard. Is there further public comment?

MS. ALLEN: If there's any other members of the public who would like to speak at this time, please go ahead and raise your hand using Zoom's raise hand feature. We're pressing star nine on your phone. Again, this is for agenda item number five, annual public affairs update. Madam Chair, I'm not seeing any additional hands at this time.

MS. URBAN: Yes, Mr. Mactaggart, would you like, please go ahead.

MR. MACTAGGART: I just wanted to address the previous caller's comment that, I just wanted to echo that because I found during the campaign that that was an incredibly cost efficient way of getting the local ethnic papers, especially the black media have papers that are really a very cost effective way of reaching communities. So I think that's a great idea.

MS. URBAN: Thank you Mr. Mactaggart. And very important, our state is extremely diverse and we want to reach all communities.

MS. WHITE: And proud to say that we're already in the works with doing just that.

MS. URBAN: That's excellent. Thank you, Ms. White. Alright, thanks everyone. With that we will move back up if staff are ready to agenda item number four. Thank you. Agenda item number four is discussion and possible action to advance draft regulations to

formal rulemaking for automated decision making technology risk assessments and updates to existing regulations. As I'm sure the board recalls, we have discussed the second to in September and in December, and we discussed the updates in December. Please turn your attention to the materials for this agenda item. We have some draft regulations keying off the board discussion last time. And the slide presentation. This item will be presented by attorneys from our legal division and our general counsel, Mr. Philip Laird, we'll start the presentation. So welcome Mr. Laird, and please begin when you're ready.

MR. LAIRD: Thank you, Chair Urban.

MS. URBAN: It didn't sound on.

MR. LE: It didn't sound good.

MR. LAIRD: Let's see. Can you hear me now?

MR. LE: Yeah.

MR. LAIRD: Alright. There we go. Thank you, Chair Urban. Before I turn the presentation over to my colleagues here, I do want to briefly orient us with where we are in this process. I'm aware that to date there may be some confusion from stakeholders and the public generally about where we are in this rulemaking. And so I want to make very clear from the outset that we are not adopting any regulations today. And in fact, we're not even beginning the formal rulemaking process for the proposed regulations today. Instead, we remain in what's been a years long preliminary rulemaking effort. The board made recall that it began preliminary rulemaking on the topics being discussed today, including ADMT opt out rights all the way back in 2021 with the solicitation for written public comments, followed by a series of

informational stakeholder and public hearing sessions in 2022. After completing its first major rulemaking the agency then again solicited additional more targeted public feedback on the topics of cybersecurity audits, risk assessments, and automated decision making technology in the spring of 2023. And with assistance of the board's new rules subcommittee staffed developed and presented draft regulations on cybersecurity audits and risk assessments last September and on ADMT in December. And if it's okay, I'm going to use ADMT for auto automated decision making technology just to save half an hour today. The board also considered new updates to the existing regulations in December as well. And at the end of that meeting directed staff to make further revisions to the update regulations, the risk assessment regulations, and the ADMT regulations after considering all board feedback. So where does that leave us now? The board is presented today with a new draft of the update regulations, the risk assessment regulations, and the ADMT regulations. And if the board deems it appropriate to advance this draft of the regulations to the next stage of rulemaking, then I really want to be clear about what that next stage looks like. Direction from the board to advance the draft text to formal rulemaking only means that staff will begin preparing the paperwork necessary, which is quite significant to just file the notice of rulemaking for publication in the state's register. This includes preparation of a detailed statement of reasons for each provision in the regulations, as well as a robust economic analysis of the draft regulations that will be reviewed by the Department of Finance before we can even begin formal rulemaking. And what the board has agreed to is once the paperwork is complete, it will

again review the entire notice package one more time before deciding whether to actually begin the formal rulemaking. And at this point, staff anticipates this paperwork would be complete and ready for this board's final review to begin formal rulemaking this summer. Simultaneously, and I should note this is not required under the Administrative Procedures Act. Staff plans to conduct additional stakeholder engagement sessions this spring and early summer to clearly explain the scope and application of these draft regulations to receive further preliminary feedback and to explain to interested parties how they can submit their comments once that formal rulemaking actually begins. And only then will we begin to actually begin formal rulemaking process. So state agencies are required to complete any formal rulemaking within a year of their starting their 45 day public comment period. Coincidentally July, 2022 is when the agency began its last formal rulemaking. And so it would not be unreasonable to assume a similar timeline here with rulemaking potentially beginning in July of this year and concluding in 2025. But to be clear, even after the initial 45 day public comment period, the board will have a wide open opportunity to further amend, add, or delete any aspect of the proposed draft regulations being discussed today. And in fact, if the board recalls they did just that with the initial set of regulations, we had at least one modified period of text where a number of provisions changed significantly. And so before I go on, I'd like to pause now to just see if the board has any questions about where we are in this process.

MS. URBAN: Ms. De La Torre?

MS. DE LA TORRE: Like clarification because it was confusing

to me, but you send me an email to make it clear. Cybersecurity is not in this package because it has already moved forward in the sense of the board approving it, right?

MR. LAIRD: That is correct. So the unique component is in December, the board did decide that the draft of cybersecurity audit regulations was far enough along that staff could begin the paperwork development for that. But we also discussed submitting this and promoting this as a single rulemaking package. And so nothing will advance there until the full package of what we're discussing today. And the cybersecurity audits come back potentially in July of this year.

MS. URBAN: Thank you. Oh, sorry. Go ahead, Ms. De La Torre.

MS. DE LA TORRE: Yes. Just for clarity. So cyber, we will see back at the board when everything is combined and all of the paperwork is ready, right? But not until that.

MR. LAIRD: That's correct.

MS. DE LA TORRE: Thank you.

MS. URBAN: Thank you Ms. De La Torre. Mr. Worth?

MR. WORTH: Thank you. This could goes back further that I've been involved. So can you give me a sense though, what amount of public comment you received? You know, tell me more about the stakeholder meetings that had already occurred. I'm just trying to get a sense of how wide this…

MR. LAIRD: Absolutely, yeah. I'm going to let Mr. Soltani, because some of this actually predates my tenure with the board even speak to that.

MR. SOLTANI: Thank you, Mr. Laird. So that's a great question. So the board had the foresight in September of 2021 to start an

invitation for preliminary comments led by chairperson Urban and chairperson De La Torre, but the full board and I was brought on October of 2021, we received something like I believe 1500 pages of comments during that period. If I'm right, I'm looking at Maureen, so on ADMT. So that included both the CCPA roles and ADMT. Got it. We also held two days of stakeholder sessions. So a full day on the CCPA roles and a full day on automated decision making. So this is where the public had a chance to provide comment. Now, that was two years ago. That was in 2022 when that occurred. And we, as Mr. Laird pointed out, we expect to do that again. But overall, between the pre-roll making comments, the stakeholder sessions, and the formal comments we received I think over two or 3000 pages of public comment. I think that's still on our website today. So some of which pertain to the CCPA roles and some of which pertain to ADMT…

MR. WORTH: Were the stakeholder meetings in person back then, or were they?

MR. SOLTANI: The stakeholder meetings, the rulemaking hearings were in person, the stakeholder meetings, stakeholder sessions we call them. The two-day stakeholder sessions were done over Zoom and we had but we made, we recorded them all and made that all available to the board as well. In advance of the actual formal rulemaking.

MR. WORTH: What would be the plan for in the summer, the stakeholder sessions?

MR. SOLTANI: So, yeah. So prior to July, we and I think Ms. White mentioned that in her update. We plan to do essentially what it's known as a roadshow, which is we plan to take these

regulations and Mr. Laird just mentioned that as well. And go across California. We haven't figured out the exact right reach, but we certainly want to reach outside to the previous callers. And outside of just the main power centers and make sure that we're reaching the diverse population of California and use that opportunity to both explain our framework as it's a very kind of, I don't want to say complicated, but it's a very detailed framework. And then certainly we receive feedback at that point and make those that feedback similarly available to the board in the form of recordings and transcripts. In addition, we hoped in that process to also help the public understand how to engage in our formal rulemaking. Because one thing that I've regretfully have seen historically based on the comments that I mentioned we received in pre-roll making and formal rulemaking, the primary, the 90% of those comments were made from lobby groups and some advocacy groups, but a lot of industry groups. And what we hope is to actually receive input from the public that at large, because this is an area that affects everybody, not just businesses, but also consumers and how they experience the world. So we hope to, as part of this kind of road show, to really help people understand what we're doing, help people understand what we're not doing, and then help them understand how to engage with us to give us feedback through the formal rulemaking process. That's the hope, that's the goal.

MS. URBAN: Thank you, Mr. Soltani.

MR. WORTH: Right. So yeah, just to clarify, because I think there is some confusion, right? Today is not a final decision and based on your timeline, it's over a year from now when these would

be completed.

MR. SOLTANI: I'd agree with that, yes.

MR. WORTH: Okay. Alright. Thank you. That helpful.

MS. DE LA TORRE: Just for clarity, so the road show that we are referring to that will be once the rules move forward into formal rulemaking that's within those 45 days, we will go out or do you plan to do that before?

MR. SOLTANI: We plan to do that before. So the board will actually have the benefit of anything we've learned as well as the public will have the benefit of better understanding the regulations being discussed by the board by the time this comes back for officially beginning the formal rulemaking process, likely in July.

MS. DE LA TORRE: So for my reference, it will be similar to what the AG did way back when they issued the first set of rules that they went to different universities and that's something similar.

MR. SOLTANI: Yeah.

MS. URBAN: Yes. I think so. They had draft rules that were complete, but draft and they went to various locations. I think it was nine places around the state.

MS. DE LA TORRE: Yes, they went to several places. I don't think they had the rules at the time, but I remember.

MS. URBAN: Oh, I'm sorry, Ms. De La Torre, it's supposed to me and I didn't notice. Thank you Mr. Worth. Thank you. Okay. So just one more clarifying, well, others may have more clarifying questions. But one more clarifying question from me, just so I can be clear. So I know we haven't gotten into the three different

topics yet today, and they may be slightly in different stages of development, but my under, so if I'm understanding this correctly one decision that we could make today would be analogous to the decision we made for the cybersecurity regulations in December, which means we obviously do not have a formal rulemaking package in front of us. We would be giving staff the ability to prepare that formal rulemaking package and all the pieces that have to go with it. And then in the interim, between this meeting and when it would come back in the summer, that's when the stakeholder sessions would happen. You would gather more information, you being staff in all of these different formats that we were talking about. So do I have that kind of right about our decision making, potential decision making structure today and sort of how that fits in?

MR. LAIRD: Absolutely. That would be the sequence.

MS. URBAN: Okay. Does that make sense to everybody? And Mr. Le?

MR. LE: I have a question. So we, assuming we vote out the rules to prepare for formal rulemaking, what happens if we get a bunch of feedback during those stakeholder sessions and change the regulations? Does that mess up the timeline for July?

MR. LAIRDSOLTANI: The board in July will have the opportunity to make another decision, and that decision will be whether or not to start formal rulemaking with the draft that we've prepared all that supporting paperwork for or to further update, in which case staff would probably have to go back and make certain changes to that supporting paperwork. I'll mention also to the extent there were significant changes that have an impact on the economic assessment. We'd also have to revisit that component of the

preparation of rulemaking. But that's where I emphasize the benefit of the formal rulemaking process is that you start with one thing and it very well can be modified and changed with the benefit of the input. I mean, that's why we talk about the formal process, and that's the minimum process. We're trying to expand greater opportunities for public feedback and public understanding. But the process very much is we start with an idea and then the board can further refine after getting that formal comment.

MS. DE LA TORRE: Yeah. I have a question. So, assuming that we were voting this to move forward, you mentioned the staff will start preparing paperwork, and you also mentioned that we will get feedback. So isn't that a little potentially not a good use of resources? Because if we get a lot of feedback, then that paperwork that you will immediately start preparing will have to be redone, basically.

MR. SOLTANI: I just want to clarify one thing. The goal of the roadshow is really to kind of have a meeting of the minds of what we're doing, how to engage with us and what the concerns are and help that inform the formal rulemaking, you know? Like, our hope is that to go ahead and like, what I've seen based on, and this is my personal opinion from a lot of the commentary and letters we've received in this area is a fundamental misunderstanding of what our regulations cover and don't cover, as well as a misunderstanding of the rulemaking process. The one we're just discussing right now. And the goal of the roadshow is to really kind of have a dialogue with the kind of the broad community that is impacted, including all stakeholders, not just business communities, but the public and consumer groups, and kind of every groups that we just talked about

earlier in the public affairs campaign and make sure everyone kind of knows what we're doing, knows how we're doing it, and knows how to properly engage us. And to Mr. Laird's point that typically the best way to engage us is through the formal rulemaking process. Because at that point, staff, everyone will have the full set of impacts, costs, the economic analysis will have been done and staff will read and review every comment provided to the agency, which we're actually creating more work for ourselves because we're encouraging broader public input from what the normal groups would be that are engaging with us. But we think this is really important to do because again, it impacts a lot of people's lives and we really want people to understand what we're doing, again, understand how to engage with us. And then when we go to formal rulemaking to provide that input. Now certainly we can receive input in that time period that convinces the board to change the approach in July before. And we can, as Mr. Laird said, make those changes. But again, that would essentially be a decision you all make in July, and that has some impact on the timeline. I think that would probably put us back another four months to do the economic analysis, depending on the scope of the changes. Of course, if the changes don't have a major economic now aspect, then those changes can be made. But if there's kind of changes that fundamentally change the economic analysis, we would then have to redo that analysis. And then Department of Finance would have 60 days to review and approve that analysis before we could start formal rulemaking. So for those reasons, we think, again, this spring summer is a great opportunity to really kind of talk it out, talk about this, this stuff, and then help everyone go into formal

rulemaking, better informed and ready to understand one another when we receive those comments.

MS. URBAN: Thank you, Mr. Soltani.

MS. DE LA TORRE: I just want to repeat back to make sure I understood correctly. Can I do that?

MS. URBAN: Sure. And then Mr. Worth and Mr. Le and I also—

MS. DE LA TORRE: So my understanding then is that once we start the work to do the paperwork, basically we do not anticipate that we'll have to modify that paperwork to start the process. Like the paperwork will be done and then the input that comes in, if it was to trigger any change, it will be basically at the board level or once the formal process starts, I just don't want to duplicate paperwork basically.

MR. LAIRD: That's correct. And that would be the goal again, to have prepared that, make sure the board feels comfortable still with the direction we're going. But then really the board will receive the benefit of, I think, very informed, hopefully public comments as a result through the formal comment period. And then again, we'd be back at that place of, then the board will then be deciding do we get it right or do we need to change things in the text we started with? And that's—

MS. DE LA TORRE: And then if we have to change this, we have to do the paperwork again, basically.

MR. LAIRD: Well, and the APA actually contemplates that, there is a concept we'd have to do in our final package called an update to the initial statement of reason. So it is the second wave of paperwork that's inherent to the process…

MS. DE LA TORRE: But even the initial statement of reasons

will have to be modified. The board decides to make a modification in the next meeting, isn't that not correct?

MR. LAIRD: That's correct, that's correct. Before we start formal rulemaking.

MS. DE LA TORRE: So we could avoid that potentially if we cannot consolidate all behind the test and we don't make modifications before we move into rulemaking.

MR. LAIRD: That's correct.

MS. DE LA TORRE: Okay. Thank you.

MS. URBAN: Thank you, Mr. Worth. And then Mr. Le.

MR. SOLTANI: Can we?

MR. WORTH: Go ahead?

MR. SOLTANI: Sorry, could I ask the AV team to stop sharing the slides? I just realized we're just showing the slides to the zoom stream rather than the board.

AV: There we go. Sorry about that.

MR. SOLTANI: It's okay.

MR. WORTH: Can we commit to have the road show completed before the July meeting?

MR. LAIRD: I think we can.

MR. WORTH: Because we said summer. I just want to make sure. And then by the way, just personally, yeah, if we missed it and we have to add four months to the schedule, I mean, it looks like we've been working on this for three years, four months is not a hurdle that you wouldn't overcome. And I just assume, let's assume you get to July 25, 2 years later, life changes. These aren't set in stone forever. I assume we always will be receiving comment and addressing those comments in perpetuity.

MR. LAIRD: Absolutely. The board will have full authority to amend, adopt, repeal regulations ongoing.

MR. WORTH: Okay. Thank you.

MS. URBAN: Thank you, Mr. Worth. Mr. Le?

MR. LE: The idea of four more months terrifies me, I'm working on this for so long. But, so I think my question was mostly answered. So by July, we hope to have all the paperwork ready as well as feedback from the roadshow. And if the board approves that, we would just enter formal rulemaking right after that?

MR. LAIRD: That's correct.

MR. LE: Okay. And then there will be another chance to take in all the feedback from the roadshow, perhaps, which might not be on the record, and the formal rulemaking, which is on the record, those comments and make any edits to the regulations as you know, the comments and the record shows, right?

MR. LAIRD: That's correct. And I'll just say in terms of on the record or off the record, there's mandatory components of our rulemaking file, which include all the public comments during that formal rulemaking. But the board is welcome to consider anything in addition, and we anticipate that you all would take seriously anything we bring you from the roadshow.

MR. LE: Yeah. And for the most part, yeah, I think I heard the roadshow is to get better participation in that formal rulemaking, but things may bubble up that are significant to share with the board.

MR. LAIRD: That's correct. We'll always be listening.

MS. URBAN: And to help people understand the scope and size of the rules, and also how the rulemaking process works, which is,

it's just simply not intuitive. I think for a lot of folks, and I love California. I'm a proud Californian, and I am very proud of the transparency that our particular rulemaking process creates. But it does mean that and plus Bagley Keene, but it does mean that it can be pretty confusing for members of the public as to sort of what we're doing at any given time. So I know we haven't yet talked about the substance of the draft packages that you gave me today, but this sounds to me like a very solid and thoughtful compromise to what is just essentially a chicken and egg problem. There is a lot of analysis and work that needs to be done in order to prepare a package for formal rulemaking. We need to have that in order to decide whether to put it before formal rulemaking. As Mr. Worth pointed out, it's a rapidly, well, he said in two years things will be different. In two years, things might be, it might look like Mars because things are moving really rapidly. And so we have to find a way to get as much public input as we can, as much information as we can without putting it off indefinitely. So I think this is a really thoughtful plan. And I am very much in favor of getting as much informal public input as we can. I was very proud of all the input that we got in response to our invitation for comments. I know the board has received letters from various interested parties. All of this is really useful. Any information gained and given through the roadshows, I think would be incredibly useful. And so will the formal rulemaking process. So I'm glad this is, staff is putting together such a thoughtful, robust process and I'm looking forward to that pub that, that formal process as well when we get there. So thank you. Other comments or questions on the process? Alright, Mr. Laird, I will turn it back over to you.

MR. LAIRD: Alright, onto substance. So thank you. And as I've mentioned, there's really what I consider three somewhat distinct, although interrelated. Also components of the regulations that we're discussing today. There is the update regulations, which are updates, modifications, amendments to the existing regulations that are already in effect. There's also then proposal and discussion around risk assessment regulations and ADMT regulations. If it's alright, I'd like to start with the update regulations because the update is, there's not much of an update. Since December a handful of things have been updated from what you all saw back, back at that meeting. One specifically is in the sensitive personal information definition. We embedded the actual knowledge standard that exists under the law as well to make it more consistent. We also did a few things like clarified that homepage was every internet page where PI is collected. We clarified some language in some of the examples in section 7004. And let's see, oh, and also out of provision of that, has businesses tell the consumer how they will reimburse them for a notarization. One addition, however that staff is proposing that is not reflected in the text that's come to our attention is we would further propose to make a revision to section 7015, the alternative opt-out link. And the guidance would be essentially this, that the opt out icon could have, that it would be okay to adjust the icon to make it easier for consumers to see, for example, inverse colors or things like that. It's come to our attention that sometimes strict application of that symbol might mean that it's hard to see on a webpage or not be readily accessible. So it would just be a clarification that modifications could be made.

MS. DE LA TORRE: So for clarity, that's not in the paperwork that we're looking at?

MR. LAIRD: That's correct. That was something that came to our attention within since that was distributed.

MS. DE LA TORRE: In the last few weeks?

MR. LAIRD: Yes.

MS. DE LA TORRE: Oh, okay. And which provision is that again?

MR. LAIRD: It would be in 7015. And I should mention we have available to us via Zoom today. Lisa Kim, who's been instrumental behind all of this and is happy to answer questions if there are further questions about any specific components of this set of the regulations.

MS. URBAN: Welcome, Ms. Kim.

MS. LISA KIM: Hi. Thank you for having me.

MS. URBAN: We're glad to have you with us if virtually. Anything else you wanted to discuss Mr. Laird, before…?

MR. LAIRD: This would, I would just at this point welcome if the board did have further questions or thoughts about this portion of the regulations, but we've anticipated that the broader discussion will be over the next two portions. So if there are no further comments, we'd be happy to move forward to the next.

MS. DE LA TORRE: And what page is 7015? I'm just not finding it. The one that we want to add additional language is not here.

MS. KIM: It's not reflected in the draft because it came to our attention more recently. So this is the example that was given by Mr. Laird saying that there would be one adjustment to the draft that is before the board today.

MS. DE LA TORRE: So, we are not only not seeing what is

adjusted, but we are not seeing the whole provision, right?

MR. LAIRD: That's correct.

MS. URBAN: Okay. Because the adjustment is in a section that wasn't in the document.

MR. LAIRD: Yes. The board doesn't have to move it forward. I can be abundantly clear with that, but it's something staff would recommend. And we apologize. We weren't able to make it into this version of the draft, but…

MS. URBAN: Understood. Understood.

MR. LAIRD: We think that opportunity is warranted.

MS. URBAN: Okay, thank you. I mean, it seems sensible to me. We certainly don't want a regulation that has unintended effects like that. I would like to invite the board to offer any comments or feedback on this portion. Yes, Mr. Le?

MR. LE: Yeah, I mean, I don't have any substantive changes to ask for. I just, I appreciate the new language on you know, what is consent? And I've already seen an improvement on accepting cookies, denying cookies when going to websites. And I think when you click that X, I never know what happens, right? Did I deny? So putting that in there. And I think the browsing experience will be better in California for it.

MS. URBAN: Thank you Mr. Le. Mr. Mactaggart?

MR. MACTAGGART: Yes. Thank you. I've been on a little bit of a mission here a couple of times. I think in May 15th, May, I sent a letter and then in, it's certainly in December I brought up just, it's a small thing, but can you just maybe walk me through Ms. Kim, why? So this is page 11, section 7003. And maybe I'm not understanding it properly, but certainly when I look at the

statute, we're talking about the ability to the link to opt out before you download an application. And the language in the regs sort of says it's got to be available within the application. But I would really love consumers to have to see this before and have a chance to say yes or no. And I don't know why we wouldn't write the regulation in that manner, because it doesn't strike me as very complicated to write the regulation in that manner. And I've been sort of on this for a while, and it's, you could think it's a small thing, but actually you're on the go going back to the early discussion. Everybody's got the busy people are, are busy. And it would be nice to know, hey, right before I download this, I'm going to have this notice saying this is what's about to happen. So could you maybe just discuss that? Because I've been seeing this for a while and it doesn't, it keeps on not getting reflected. So.

MS. URBAN: Mr. Mactaggart, are you talking about 7003D. D for dog.

MR. MACTAGGART: Oh, I'm sorry. Sorry. Thank you, Chair.

MS. URBAN: Alright. Ms. Kim, please go ahead. Thank you, Mr. Mactaggart.

MS. KIM: Yes, I believe we've talked about this before. Just to be clear, notice has to be includedprior to download on the download page, there must be a notice that is reflected within the privacy policy, and that is currently existing. This was a work that was done way back by the AG in working together with the Google Play Store as well as the Apple Store, to ensure that a privacy notice is available to consumers prior to download. And what we have done in the regulations even before this, was to make sure that in the privacy policy, that information as to what kinds

of rights and what kind of practices are available, is available to consumers. So the notice that collection must be reflected within the privacy policy so that that notice is available to consumers prior to download. The adjustment that has been made with regard to the regulations that we're speaking about now, is requiring also that there is an opportunity for consumers to be able to access their settings within the app itself. And this is something that we thought was useful, because sometimes consumers will see or download an application or a mobile app without really considering their privacy and settings. And then later on maybe see an ad by the CPPA and think, oh, I need to go and double check and do maybe a hygiene check with regard to their data and check and see if their mobile apps are sharing or selling their data and or whether or not they have exercised their rights as it pertains to that mobile app. And so we think it's really important that that level of ability for consumers to check on their apps that they already have is something that is accessible to them, rather than having to go back to the Google Play store or go back to the app store to access the privacy policy and then look for whether or not their privacy, what the privacy practices are and whether or not they have actually exercised their rights using that mobile app. And so this doesn't change the fact that consumers meant, like are businesses are required to give notice to consumers at the time of download through their privacy policy. But it does also require that mobile apps give consumers the ability access them within the app itself. So it gives dual opportunity to the consumer.

MR. MACTAGGART: Okay, so you feel confident that before I download, I'll see the right to opt out of the sale or sharing.

MS. KIM: It is required under the privacy policy. And I mean, this may be a discussion for the board in the future, if they want to require something that is not functionally able to be done on a Google place or a privacy, on an app store where you have to have an additional notice in addition to the privacy policy to opt out through an app store. That is not something that we have contemplated or written into the regulations. If this is something that the board wants to discuss, I believe it requires additional discussion and consideration by the entire board.

MS. URBAN: Thank you Ms. Kim. Mr. Mactaggart. Yeah, go ahead.

MR. MACTAGGART: Yeah, so I wouldn't, so as you're saying if we wanted to have a separate screen sort of before you down download saying please don't sell or share my information, that would be a separate discussion.

MS. KIM: Well, what I'm saying is, I believe, perhaps I'm misunderstood you but I was under the impression that you wanted something to be available at the download page so that the consumer can exercise their right prior to download. And that's different than if you download it and have notices pop up as you open and use the mobile app. It’s slightly different than that.

MR. MACTAGGART: Yeah. And I don't want to derail things right now, but I would love it if we could have the discussion at some point about just that architecture, because I think the statute says that, so that before I download or as I'm downloading, I can say, yes, I would like to download the app, and I would like you not to sell my information. Because I think we're all busy and you'll do it and you won't forget it. That's my 2 cents. My kids want me to download some app. really nice to be able to be like,

yep, you can have it, but they can't sell the data and it'd be quick, but we don't have to discuss this right now if we have time to bring it back. But I do think that's what I would like in order to effectuate people's privacy choices. It needs to be simple.

MS. URBAN: Thank you, Mr. Mactaggart. Mr. Soltani, did you want to?

MR. SOLTANI: I was going to just respond if we're not having the conversation now, we can revisit, there's some architectural challenges with that design, but certainly I think it would dovetail well with the legislation we're considering with regards to global privacy controls as they apply to mobile platforms as well as potentially app stores. So there's some architectural changes, but I think we could discuss it. It's a much kind of more detailed discussion. We'd have to think through.

MS. URBAN: Thank you, Mr. Soltani.

MR. MACTAGGART: So maybe the next, if Ms. Kim would just going to calendar that in the next set of times we look at this. And then my second question going back to the thing I've been bringing up for a while also. So if I go to page just 54 of this, which is 70-50, and this time I'll try to remember Madame Chair. A four on the top of 54. And this gets back to the prevent, detect, investigate the data security incidences in my sort of focusing on their words, prevent and investigate. And just given that we spent a lot of time fighting that in the statute, a lot of time trying not to have these big catchall words where I can as a business say I can keep your information for a long time because at some point I may want to be able to go investigate a data security incident. And I'm just kind of wondering why we've kept those two words in to prevent and

investigate, especially given that the, oh, the security, in the statute we say detect and resist. And I think that's lots of leeway for businesses to have what they want. And I, again, you could say, well, this is just two words, but as we've seen time and again a small loophole ends up being something you can drive a truck through. So maybe could we just talk about why the staff continues to not want to remove these two words?

MS. KIM: So I believe that inherent in understanding, I think there's a distinction that is being made here with regard to detect versus prevent. And the clarification that, or the guidance that is being provided to businesses is that sometimes you need to be able to anticipate data security incidents as opposed to detect them as they are happening. And that is the guidance that we are including in this regulation. That said, I do think that there's a reasonable and necessary and proportionate component to this that is also reflected in the regulations themselves as well as the law itself. And also 7002, that if there is a situation in which there is a loophole that is, as you say, having a tow truck being driven through it, I think that that would be reflected and considered from an enforcement perspective. But at this time I understand the concern. I understand that we're concerned that something can be used in a way that is excessive or overly disproportionate. But that said, I'm not aware at the present moment, a really good example, to not be able to give this guidance to businesses that sometimes you need to have this information in anticipation and to prevent a data security incident as opposed to just detect a data security incident. I welcome. I know that this is something that will be reintroduced discussed by Kristen and Neelofer, and I also

welcome Mr. Soltani to speak to this.

MR. MACTAGGART: I have a quick suggestion. One of the things I think you guys did really well, and it was the first time I'd seen him in regulations to have all these examples and potentially this could be addressed by just an example, maybe just saying that this shouldn't be used as a loophole. I don't want to, again, take too much time on this, but I am concerned about it, especially given that we did have a legislative fight in 2018 over just these words, and we were kind of concerned that industry really wanted to have them in. So if we could just maybe have an example that sort of just, you guys have got plenty of them, and then they're very good saying, hey, this means not holding onto all data forever, just in case you get sued in six years and you're going to hold onto my data just, that doesn't feel proportionate to what we're trying to get at here. So could we, could I request that and I'll trust, I'm happy to trust your drafting prowess. Would that be okay?

MS. URBAN: Yeah.

MR. LAIRD: I'm not opposed unless Ms. Kim has any concerns with us taking a shot of at least an example. Yeah, I think that'd be helpful.

MS. KIM: Yeah, that's fine. I can work on that.

MR. SOLTANI: And I could just share, I'll show you and I know you and I, Mr. Mactaggart, back in 2018, we didn't have an agency with audit authority and we also didn't have a data minimization and purpose limitation function under 7002. And therefore this entire framework still works under 7002. And so if our enforcement team or audit team see this being abused, we certainly would highlight it. But as the industry, the security industry operates

today, there are things known as indicators of compromise IOCs, where you might profile an IP address or profile a particular kind of user email address or some sort of login that indicates the fraudulent use or security threat. And those are shared including by the federal government, in fact. And so we wanted to kind of balance what the practice is with some of the concerns around privacy. But we are feeling confident that between our audits and 7002, we do have some ability to get at any potential abuse of this. But certainly I think we can find an example if the team are.

MR. MACTAGGART: Thank you.

MS. URBAN: Well, and the other big benefit of the audit and enforcement process is that we can learn if somebody is trying to drive a truck through a loophole or if it turns out that, but in any way, I think clarifying example, I agree that's a good idea. Mr. Le.

MR. LE: Yeah. On that point, yeah, I share the concern with, yeah, this can be a big loophole and it is an exception to the opt out rights, I believe, in the upcoming regulations. So yeah, I think this should be addressed there as well, that companies aren't allowed to collect whatever they want, keep all the data they want, and claim that, oh, we need this to detect violations of our terms of service which could be entirely way too broad. So yeah, just want to double click on that.

MS. URBAN: And Mr. Le do you think that adding an example and recognizing the audit and enforcement is a good approach to start with?

MR. LE: Yeah, there's no perfect way to fix this loop pull yet. So I think it’s a flag for enforcement perhaps and the auditor

when we get that. But just something to monitor as these regulations get implemented and enforced.

MS. URBAN: Thank you, Mr. Le. Ms. Kim, does that all make sense to you?

MS. KIM: Yes, it does.

MS. URBAN: Thank you, Ms. Kim. Other comments, questions on this set? And you can always, if something occurs to you, we can always circle back.

MS. DE LA TORRE: Are we talking about this provision or everything?

MS. URBAN: Anything in the update part. The update regs.

MS. DE LA TORRE: Okay. Mr. Mactaggart.

MR. MACTAGGART: Yeah. Thank you.

MS. DE LA TORRE: Okay, so we mentioned 7002. This section establishes the principles of data minimization and purpose limitation for the first time.

MS. URBAN: Ms. De La Torre, can you speak into the microphone please?

MS. DE LA TORRE: We mentioned 7002, and that's the section that establishes the principles of data minimization and purpose limitation for the first time in the US when this was enacted back, I don't remember, but it was probably a couple of years ago. There were very, very drastic changes between the draft that was approved by the subcommittee and then the drafts that were presented to the board while we were discussing the rules during the formal process. Mrs. Urban will remember this because she was a member of the subcommittee that approved the initial draft. During those conversations that we had at the board level, I mentioned that the

use limitation test that we have included is misaligned with the use limitation test both in Europe and in Colorado. And I ask that it be modified. I had, I think, support from all of the board members at the time, but it was decided that maybe it was not the right timing due to the fact that we were trying to finalize the rules. I am disappointed to see that we are looking at a set of rules where we haven't had the time or maybe dedication to revisit that so that we can ensure that our test is not aligned only with Europe, but also with Colorado because Colorado enact their [Inaudible 01:59:14] their purpose limitation test in a way that is very much aligned with GDPR. So if we could speak as to what was the reason why that decision from the board supported by the board has not been implemented in this draft? And maybe if we have time, perhaps we can make those changes before we go into formal rulemaking this time.

MR. LAIRD: I'll begin by just saying you know, the process we've sort of taken on as an agency is to revisit the rulemaking priorities and concepts being pursued on a biannual basis. So twice a year. And we've been, this, the updates to this package is based on discussions had by the board last May, and again in November or not November, sorry, December of this year. And so the draft we're seeing today is reflective of those discussions by the board at that point. I don't recall that issue being discussed or supported by the board.

MS. DE LA TORRE: I can guarantee you that I brought it up.

MS. KIM: If I could speak to that as well.

MS. DE LA TORRE: The board members will remember that are here, right? Mrs. Urban and Mr. Le will remember that I brought it

up during that conversation.

MS. URBAN: You definitely, yeah, I certainly remember a discussion when we were considering the formal, when we were in the formal rulemaking. When we were discussing the concepts for this package. Did we talk about it then? I don't recall that.

MS. DE LA TORRE: I brought it up…

MS. KIM: If I could.

MS. DE LA TORRE: I'm a teacher, I teach this every year and I don't understand why we will have a use test. It is really been solid for over 30 years in Europe and Colorado was able to actually create one that aligns with Europe. And it's just one thing that it has more implications than you think, because every use case, I agree that data minimization and purpose limitation as Mr. Soltani mentioned, are one of the strongest principles that we can establish. And every use case has to be run through that test. So I'm just wondering if you didn't make it into this draft, why and what should be our expectations in terms of when will the agency work towards that?

MS. KIM: If I could speak to this, I believe it was back in May or sometime in the middle of last year when I introduced to the board a list of priorities or a list of topics for the board to consider with regard to rulemaking. And it was during that time that we highlighted a number of different topics and Miss De La Torre, board member De La Torre's topic about purpose limitations was brought up at that point in time. I believe that the direction given to me by the board was not to identify specifically which ones would take priority over other topics. And there was deference given to the staff to determine which ones were doable and which

ones were things that based upon the exertion of resources and the timing and the priority, the mandate as well, which ones we should focus on going forward. I don't believe that there was clear direction by the entire board to focus and utilize resources to prioritize this discussion about purpose limitations. If that is something that the board would like to prioritize and put on the top of our list, that is certainly something that we can do based upon the entire board's direction.

MS. DE LA TORRE: Could we perhaps do that with an indication to fix it between now and the next draft?

MR. MACTAGGART: Can I suggest probably, because Mr. Worth is probably in the dark here. It could be. So it might be useful Madam De La Torre for you to just refresh.

MS. DE LA TORRE: Okay. Sure. So I am very good at this. I do it every year. So there's this principle in Europe that when you collect data that data is collected for a specific use and you cannot just take that data and use it for whatever you want, right? So once you have that principle embedded in the law, then the question becomes, well, what is the original purpose? What can't you really do with the data without going back to the data subject and ask for consent? And for that purpose Europe has had since GDPR before a test that goes through basically several factors that tell you, is the new purpose sufficiently connected to the original purpose that you can go ahead and do this without going back to the data subject and ask for consent. So this is something that organizations have to run through every, every, every situation where they're trying to do something with the data that maybe was not completely anticipated at the beginning. Colorado enacted use a

purpose limitation and is used test in a way that's identical to GDPR. That's what the organizations have been doing for, for years. And our test just has missing factors. Some of them are in minimization, so I just, I'm asking to align it so that it's just easier for organizations to understand the compliance piece. And I don't think there is any, the treatment for the users at all. I understand that it might be a question of resources, but I am very, very willing to indicate to the agency to put the resources behind fixing this. And if other members are, I'm happy to just leave it with the agency so that between this draft and the next draft, we can see an alignment. It will facilitate the process for organizations in that instead of having to figure out, okay, I have one test for Colorado and something different from California, I just have one that I can do across the world for the US, I can do it for Europe. I think it's solid, the approach in Europe. So I don't want to make it something that we discuss the details here, but if we can clearly indicate to the agency that the board supports this, we can allow them to just dedicate the resources that they might need to fix it between these draft. And I think the next draft might be two, four months out. So, I mean, I could, if you give it to me in a doc, I'll fix it in six hours. So I mean, I understand that there's a lot of legal research that they have to do to think about whether the office of administrative law will approve it and took the language. But I will appreciate the board supporting, asking the agency to revisit this so that we can align it basically.

MS. URBAN: Thank you Ms. De La Torre, and thank you Ms. Kim. Her description of the May meeting did jog my memory and I just, I

apologize. Ms. De La Torre, sometimes I need more context. Yes, I do remember you went through this in May. I do agree with Ms. Kim that my understanding was we ultimately decided that, for them to decide where to put the resources. That said you are telling us now where you'd like to put the resources.

MS. DE LA TORRE: Yeah, we would agree with the resources being put behind just that alignment.

MS. URBAN: I mean, I certainly would agree with, I don't know what if staff have looked into it closely. I certainly would agree with them taking that approach. Yeah, absolutely. Perfect. Mr. Worth.

MR. WORTH: My question was any reaction to…

MS. ALLEN: We may not be understanding fully what this means. Yeah.

MR. WORTH: Was it looked into and for that reason were not included? Or was it just something we have to look into now? Sorry.

MS. KIM: If I could…

MR. WORTH: Yeah, go ahead. Ms. Kim.

MS. KIM: Yes. This is something that we did work on. I do not think it could be fixed in six hours. And this is a discussion that we had with the subcommittee probably two years ago. I believe that there is a difference in opinion as to how to structure 7002. And I'd just like to point out that the California law is different than GDPR and the restrictions that are placed or the guidance and the statutory language spoken, like the statutory language does not clearly align with GDPR as to this provision. And so what we have done with regard to 7002 back 2000 2 years ago was do our best to align with GDPR while taking into consideration the statutory

framework that we were given under CCPA that differs from GDPR. Now, there is areas in which we can explore further alignment with regard to adding explicitly certain kinds of purpose limitations that may be accounted for in GDPR, but not accounted for necessarily in CCPA, but that would require some significant discussion as well as some background information and discussion by the board as to what to do in those situations. It's not something that can be decided wholly going forward. So just easily. And so I do state, or I do want to give my own personal opinion that this is not something that can be fixed in six hours. This is something that warrants further discussion as well as briefing by staff if that is something that the board would like to explore.

MS. DE LA TORRE: So I have one suggestion that maybe can be a compromise here. There is two provisions that should be in the use limitation principle that actually are already there, but they are under the wrong section 7002B, two and three have reference to possible negative impacts on consumer. I think that's one thing that should be considered in use limitation. It's in not only GDPR, but Colorado. Colorado is, Colorado 60AC5, and GDPR is 640. The three is existence of additional safe words. For the personal information, I think it's important to consider the additional safeguards when you're thinking about use limitation. Again, GDPR 64E, Colorado is 608C7. Could we move those two pieces of language that have already been approved by the Office of Administrative Law and belong with the use limitation to the right section, which will be 7002B, or is that maybe something that needs additional feedback from staff?

MS. URBAN: Thank you, Ms. De La Torre. Ms. Kim, is that

something that my understanding of the way 7002 is structured now is that it captures two mechanisms of the statute, one in A and one in B. So it may be difficult to move, but it may not be. So Ms. Kim may be able to give us a reaction now, or she may need to think about it more.

MS. KIM: I do not think it should be moved only because the data minimum, so sub to explain, just to take a step back one second, is the way 7002 is structured is that it mirrors the language of the statute in civil code section 1798.100, subsection C. It literally sets forth the three different ways in which a business can find, three different ways in which a business can have confidence that they can use a consumer's personal information in accordance with the law. Those three ways are set forth in subsection B and C and then as well as in E and those subsections are number one, whether or not is reasonably expected by the consumer. Number two, whether it is compatible with the expectations of the consumer, and three, whether consent is provided. Now, subsection D sets forth the components of what is reasonably necessary and proportionate as to those three uses. And that test that is provided in subsection D that Ms. Board member De La Torre is mentioning is a test that applies in every situation. So I do not think it's necessary to move those components of subsection D into subsection B because a business will be going through that exercise of determining both subsection B, is it a reasonable use and is it reasonably necessary and proportionate to fulfill that use. So I don't think there's any reason to combine the two because a business will already be going through that test and already factoring in those negative consequences in every

potential way in which they use personal information.

MS. DE LA TORRE: Okay. I actually want to state that just for clarity for Mr. Worth's benefit when you fail the use limitation test, what you need is consent. However, if you're not compliant with necessity, which is where these two things were moved, you don't need consent. You are potentially subject to enforcement, but you do not need consent. So moving factors away from a test that gives data subjects the strongest position that they can be, which is their consent has to be obtained. It does have an impact on the rights. I don't see it difficult to take two sections and move them over. And I do see a need for it because as I mentioned, and Mrs. Soto knows one of these tests requires consent from the data subject. The other one is subject to enforcement. I will prefer it to have it in the consent one is the strongest position for the data statute.

MS. URBAN: Thank you, Ms. De La Torre. Mr. Mactaggart?

MR. MACTAGGART: I might have a little suggestion here which is that I am very mindful that I have two experts here who I don't think they're opposed at all in terms of outcome, but I think there's a disagreement right now in terms of potentially either workability, feasibility or actual substance. And I know a little bit about this law and I'm kind of getting a little bit thinking what I would want to have is more time to consider and more information. So one suggestion if Ms. De La Torre were willing to do this with her time might be for her to produce kind of a memo saying, here's what I would fix and here's why it's important, and here's why I think what we have does not align with Colorado/EU, and here's why I think it would be important, and at least we could

see that and read it before maybe the next board meeting it would be a public document, obviously. And if you're willing to do that, at least we could kind of, I just feel like for the other, I mean, you're a law professor Chair, so you may be way ahead of us, but maybe for the rest of us here and Mr. Le's a lawyer, but I just think it would be useful for us to, as opposed to kind of try to spend a bunch of time on this. Because I really don't want to just ignore this discussions. You've been bringing this up multiple times, and I feel like it's very important for me to listen to what you're saying, because I think you're an expert on GDPR, and to the extent that we can align and have one standard for businesses to follow, it's way better and it'll be way more effective for the world. So that might be my suggestion if that were amenable to folks involved.

MS. URBAN: Mr. Worth?

MR. WORTH: I think that'd be helpful, but I would also want to see prior to that together a response from Ms. Kim.

MR. MACTAGGART: I'm saying both. I'm saying Ms. Kim would respond as well.

MR. WORTH: Right. Or great, if they just come together and…

MR. MACTAGGART: Agree.

MR. WORTH: Right.

MS. DE LA TORRE: Right. And I'm happy to do that. I'm a little reluctant to agree to write the memo without staff support, because that will be my personal time. But I'm happy to take this to a conversation with Mrs. Soto if they a board agrees with the understanding that the next version will reflect the outcome of that conversation.

MS. KIM: Sorry, who's Ms. Soto?

MR. SOLTANI: Ms. Kim, you mean?

MS. DE LA TORRE: Kim. I'm sorry.

MR. SOLTANI: Sorry, I just want to clarify. It's not just Ms. Kim. It's, I have a team of lawyers here who, and we are in constant consultation with Colorado as well as other regulators internationally. And we, you know, I think our team has come together and taken the position that based on our statute, based on the requirements of Office of Administration/Administrative law to clarify, for example, necessity and proportionality and reasonableness where we have to articulate that our team has essentially taken kind of this work. I'm not sure I can task my team to then try to work on a different legal analysis. That's the challenge. So if Ms. De La Torre, if you'd like to do that, we're happy to review it, but I don't know if I have the resources to then have my team and I know Phil, if you want to respond to that.

MR. LAIRD: I suppose, yeah, I mean, I think Mr. Mactaggart's point fundamental here would be just to understand sort of where the difference of opinions are and give the board advice onto how we think we can proceed or if there's a problematic issue. We're not going to be able to do that today and happy to continue this conversation, but I do want to kind of remind us where we are with this rulemaking package, because what we're talking today is about potentially moving this text to a position where we would be actually building all the necessary paperwork on the text we're talking about today. So not on sort of this in the air provision. So certainly I think we can continue this conversation, but I don't anticipate we're going to get resolution in a way that'll give

staff the way to kind of proceed with preparing anything for formal rulemaking on the subject today.

MS. URBAN: So I have a suggestion and I don't think this is going to be fully satisfactory, Ms. De La Torre. I don't think it's necessarily going to be fully satisfactory to everybody. So I'll take my lumps as chair with a suggestion. But in May we do have our annual meeting again to talk about concepts. And again, I apologize Ms. De La Torre that I didn't have the whole meetingin my mind as I should have, perhaps we could devote some resources to more of an analysis that could support that discussion. And this is why I think, I'm sure it's not fully satisfactory, Ms. De La Torre because you did bring it up in May of last year for our updates that we would be working on later in the year. So we would go forward with this. But we would commit to everybody having the tools to understand the options and considering them fully. And I realize this is, I do understand the resources question here as well. So this is why I say it may not be the best approach from any one person's perspective.

MS. DE LA TORRE: Just for clarity, because at the beginning it was mentioned that this was a question of resources, but what I hear right now is that it's not a question of resources, it's just that the experts in the agency don't think that we can align our test to Colorado. That is that what we are doing.

MS. KIM: So if I could speak to that, I disagree, I fundamentally disagree with Ms. De La Torre as to whether or not our test aligns with Colorado. I believe it does, and I also believe it aligns with GDPR and if it is helpful to the rest of the board for us to provide, I believe we already had a memo that was

previously circulated to the board that explained 7002 and how it works. And if that would be useful to you know, this might, I believe this was a legal memo that we had prepared. I believe I could go back and look and make sure that that's something that we can circulate to the board again to explain how 7002 works as well as I can point to our formal rulemaking documentation that explains why we did it the way we did and why it's necessary to have it the way it is, if that would be a useful level setting for the board.

MS. DE LA TORRE: Right. So I think it's helpful for me to understand now that it's not about resources, but about a disagreement. Basically, the agency believes that my position is incorrect. I do not want to hold back this package because I don't think that that will be wise, but it will have been very helpful to have this conversation maybe a year ago. I'm stepping down, so if you want to move this to me that's fine and the board can have that consideration. But I don't see a point in further delaying the rules on this. I just want to state that it will have been really helpful for the agency to be more transparent about the reasons behind it, because it was clearly not resources.

MS. URBAN: Thank you, Ms. De La Torre. And I understand, I do think Ms. Kim, that the recirculation of the memo would I'm sure be very helpful for everyone. And so it would help level set, remind those of us who were here and maybe have some holes in our brains and the level set for the folks who weren't here. I think that would be very helpful and I really appreciate that Ms. De La Torre in terms of your process point. Mr. Mactaggart?

MR. MACTAGGART: Well, and I would still just, I know it's your personal time and all the rest, but I personally would welcome even

if it's a short explanation of what the issue is from your perspective, because I think it would be useful of us to see and we may end up not agreeing, so I think it would be useful for me anyway, to see it in more granularity laid out. So.

MS. DE LA TORRE: I appreciate that. I just have to consider my personal time and the fact that I'm stepping down.

MS. URBAN: Of course. Thank you, Ms. De La Torre.

MR. LAIRD: Is there anything more from the board on this set of update regulations? Okay, so with that then what I would recommend as we move on to the next section, portions of the regulations as I mentioned earlier, staff has revised the risk assessment and automated decision making technology regulations since the December board meeting, taking into account feedback received at that meeting, as well as individually from board members following that meeting.

MS. URBAN: Actually, I apologize for interrupting. Mr. Laird, could we take a five minute break? I need to check on timing for the rest of the agenda. And I don't want to interrupt the presentation in order to do that, I'm just looking at the clock and so five minute break for everyone online, we will be back. But at 11:35, unless anybody would like more of a break, we'll get a cup of coffee or something. Okay? So we'll be back at 11:35. Thanks very much. Wonderful. Thanks everybody for allowing us a short break and welcome back. We are actually going to pause the agenda item we were discussing. I will recall it later and we will go into closed session. This is agenda item number 10 on your agenda for today, pursuant to government code section 11126, subdivision E1 and 2A. The board will meet and close session to confer and receive

advice from legal counsel regarding the following matters, California Chamber of Commerce versus California Privacy Protection Agency et al. California Privacy Protection Agency et al versus the Superior Court of the state of California for the county of Sacramento, California Chamber of Commerce. In addition, the board will meet in enclosed session pursuant to government code section 11126 A1 to discuss the executive director's annual review. And I anticipate that we will not return before 12:30, maybe 12:45. So for those of you who are joining us on Zoom and you would like to go and get lunch, we anticipate that we will be away for that long. And with that I will say thank you. See you soon and we will repair to closed session. Welcome back everyone from break and the board's closed session discussion. It is 1:43 PM on March 8th, 2024 and late in the day or it feels sort of slightly late in the day on a Friday. And we are returning to agenda item number four, discussion and possible action to advance draft regulations to formal rulemaking for automated decision making technology, risk assessments and updates to existing regulations. And when we broke for closed session we had discussed the updates to existing regulations and I believe we were about to begin some information from our staff attorneys about the next two sets. But I will turn it back over to Mr. Laird to correct me if I'm wrong and get us going.

MR. LAIRD: That's all. Let's see, can you hear me alright? Okay, that's all correct and I just have a few more things to say before I turn it over to my staff. One thing is that just to kind of orient us, many of the revisions that you're seeing since December were done with the intention of streamlining the draft,

improving overall readability as well as to implement the feedback received from board members. My excellent staff here, Kristin and Neelofer, will be going through the highlights of their revisions in the presentation momentarily and I'd ask that you allow them to explain the whole framework before we ask questions. Obviously, if we need to get into something we can, but I think getting through it, since everything is so interconnected would be helpful. And I will also remind the board that many of the changes in today's texts do reflect suggestions or preferences expressed by board members in December or individually with staff following the meeting. And so to the extent anybody questions the reason or thinking behind some of these changes, I would encourage members who made the suggestions to speak up of why they might've made certain recommendations. And so with no further ado, I will pass things off to Kristin Anderson and Neelofer Shaikh attorneys within the legal division.

MS. URBAN: Ms. Anderson and Ms. Shaikh, thank you so much. So we understand that we will hear how everything works together and then you'll be available for questions. Would you mind as with other presentations, just letting us know when you're advancing a slide so we can look at our screens and follow along? Thank you.

MS. KRISTEN ANDERSON: And [Inaudible 02:26:56], you can pull up the PowerPoint please. Thank you. Can you please switch to the next slide? Okay. So our agenda for today's presentation is first to walk you through some key definitions. Next we'll address risk assessments. We'll provide an overview of the risk assessment requirements and then summarize revisions to the thresholds that trigger a risk assessment, the substantive requirements and the

submission requirements. Finally, we'll address ADMT providing an overview of the ADMT requirements and then summarizing revisions to the thresholds that trigger the ADMT requirements and to the pre-use notice requirements. We'll then describe how businesses must comply with opt-out requests and the relevant opt-out exceptions and how they must comply with consumers' access requests. We'll then describe the additional notice requirement for access rights where businesses using ADMT to make an adverse significant decision will be required to provide additional notice and will conclude with the requirement for a business to evaluate its use of physical or biological profiling for certain purposes. Can we move to slide four please? So we'll begin with the definition of automated decision making technology. Staff revised this definition in three primary ways. First, we refine the definition to address the types of technologies that are in scope. The revisions clarify that ADMT executes the decision replaces human decision making or substantially facilitates human decision making. And we further define substantially facilitate human decision making to mean using the output of the technology as a key factor in a human's decision making. We also provide an illustrative example of this. So a business using ADMT to generate a score about a consumer that a human reviewer then uses as a primary factor to make a significant decision about that consumer. Second, we added clarifications about the types of technologies that are not in scope. For example, we've listed technologies like calculators and spreadsheets and clarified that provided that they don't execute a decision, replace human decision making or substantially facilitate human decision making, they're not subject to the ADMT requirements. We also clarify that

a business must not use technologies to circumvent the ADMT requirements and provide an illustrative example. And that example would be of a business using formulas in a spreadsheet to determine which employees it will terminate. That would be a use of ADMT subject to the ADMT requirements. Lastly, we reorganized the definition and broke it out into several sentences that was not a substantive change, but was intended to improve readability. Finally, we'll note that even if the technology is in scope as ADMT, it is not necessarily subject to the risk assessment and ADMT requirements that we'll discuss later in the presentation. As noted during previous meetings, the ADMT also must be used in certain ways such as for a significant decision concerning a consumer in order for it to be subject to the requirements. Slide five, please. For reference, this is an excerpt of the definition of ADMT, which highlights the key changes we discussed on the prior slide. The full definition is on page two of the draft regulatory text, which is provided and posted as a meeting material. Next slide please. Now we'll discuss the proposed revisions to the profiling definition, specifically to add analysis or prediction of a person's intelligence, ability or aptitude, their mental health and their predispositions. First, I'll note that the CCPA anticipated that the agency would modify the definition of profiling as part of the ADMT regulations. The statutory definition of profiling includes the phrase as further defined by regulations pursuant to 1798, 185, A16, which is the delegation of authority to the agency regarding ADMT. Staff proposes the specific additions because intelligence, ability, or aptitude is the type of profiling that may be most relevant in the job application and educational

contexts. While performance at work was already covered by the statutory definition, businesses also may seek insight into consumer's intelligence, ability or aptitude for educational or other purposes, including for behavioral advertising. Mental health is already part of the profiling definition under health, but staff recommends adding including mental health as additional guidance for businesses and to clarify that and avoid any doubt that mental health is a part of a person's health. Finally, we added predispositions because analysis of a consumer's tendencies or susceptibility also should be included in the scope of relevant profiling. The addition of these categories also is consistent with a statutory definition of personal information. CCPA specifically includes as personal information, the creation of profiles that reflect consumer psychological trends, predispositions, intelligence, abilities, and aptitudes. Adding these categories to the profiling definition ensures consistency across these statutory definitions.

MS. NEELOFER SHAIKH: Let's take a brief pause. I think the slide decks formatting just might need to quickly be updated for folks who are tuning in, I just want to make sure that they can read all the texts on the slide. No.

MS. ANDERSON: Okay. Are we ready? Great, thanks. Could we go to slide seven please? The definition of significant decision. Thank you. So the previous drafts of the risk assessment and ADMT regulations had defined quote, a decision that produces legal or similarly significant effects concerning a consumer. The revised draft instead defines a significant decision and we've revised the substance of that definition in four ways. First, we added language

to the beginning of the definition, clarifying that information subject to CCPA's, information level exceptions. For example, exceptions pertaining to CMIA, GLBA and the FCRA is not subject to this definition. In other words, significant decisions are those made with information not exempted by the CCPA. Second, we provided examples of what essential goods or services are as guidance for businesses. Third, we clarified which education or enrollment opportunity decisions are significant, including admissions or acceptance decisions, issuing educational credentials, for example, a diploma and decisions to suspend or expel a student. Finally, we clarified which employment or independent contracting opportunities are significant, including hiring, allocation or assignment of work or compensation, promotion and decisions to demote, suspend or terminate employee or independent contractor. Significant decision is also defined in context both within the risk assessment regulations and the ADMT regulations. And we did that for readability. Slide eight, please. For reference, this is an excerpt of the definition of significant decision, which highlights key changes that we made relative to the December draft. The full definition is on pages six and 20 of the draft regulatory text that's posted as a meeting material. Next slide please. The proposed revisions to the artificial intelligence definition are shown on this slide in blue and they were made intended to harmonize with OECD's updated definition of AI systems. So these revisions are shown in blue for ease of reference, we also reorganized the definition and broke it into shorter sentences just to improve readability and we included examples for clarity and as guidance for businesses. We'll also note that we've been working

closely with the agency's policy and legislation experts and the executive team to harmonize with other jurisdictions and will continue to monitor the space to continue to do so. Next slide please. Finally, staff proposes a definition of behavioral advertising. It was necessary for us to define behavioral advertising because the board supported the addition of the threshold of profiling a consumer for behavioral advertising to the risk assessment in ADMT frameworks. The definition makes clear that behavioral advertising is targeting ads to a consumer based on personal information obtained from the consumer's activity, both across businesses distinctly branded websites, applications or services, and within a business's own websites, applications or services. So it includes but is not limited to cross context behavioral advertising. It does not include non-personalized advertising, which is a term that's defined in the statute as long as the information isn't used to build a profile about the consumer or alter their experience outside of their current interaction with the business and isn't disclosed to a third party. For reference, the definition of non-personalized advertising in the statute is 1798140T. So contextual advertising and search advertising that don't involve profiles of consumers likely would not be in scope, but such determinations would involve a fact and contact specific evaluation. Next slide please.

MS. SHAIKH: We'll now turn to risk assessments. We'll first provide just a very brief overview of the risk assessment requirements and then turn to the key proposed revision staff has made to the draft. For time’s sake, this does not address every revision made in the risk assessment section, but we are happy to

address any questions about any part of the draft. Next slide please. This slide provides a simple overview of each of the sections in the risk assessment requirements. So for members of the public tuning in, we thought that this would be helpful just to understand how to navigate through the regulations. As you'll see, this covers key issues such as when a business must conduct a risk assessment, how to conduct a risk assessment, what additional requirements may apply when training automated decision making technology or artificial intelligence when processing is prohibited, which is specifically when the risks to consumers' privacy outweigh the benefits associated with that processing, as well as an important issue of how to submit risk assessments to the agency. Next slide please. We're now going to turn to proposed revisions to the risk assessment thresholds. In other words, when a business must actually conduct a risk assessment, staff's proposed revisions first include removing the separate threshold that specifically addressed the processing of the personal information of consumers known to be under 16. And this was intended to reflect the board's discussion from the December 8th meeting that the personal information of a known child is sensitive personal information because sensitive personal information has its own threshold, staff proposes removing this duplicative additional threshold. Second, staff added a new term extensive profiling to address instances when profiling would require a risk assessment, specifically worker educational profiling, profiling consumers in public and profiling consumers for behavioral advertising. Third, staff clarified that when profiling consumers in work, in educational settings or in public, the profiling must be conducted

through systematic observation to require a risk assessment. And this is a new term that is defined in the proposed text to mean methodical and regular or continuous observation. And the draft provides several examples of what technologies can be used for this type of systematic observation such as Wi-Fi trackers or location trackers. If a business is conducting this type of profiling through systematic observation in worker educational settings or in public, then the business would need to conduct a risk assessment. And lastly, the proposed revisions clarify that when a business is training automated decision-making technology or artificial intelligence using personal information when that business must conduct a risk assessment. As you'll see on the slide, this would be when that ADMT or AI is capable of being used for a significant decision to establish individual identity for physical or biological profiling, which is a term that's defined in the proposed text for generating deep fakes. The term Deep Fakes is also defined in the proposed text or for operating generative models such as large language models. Next slide please. So this slide provides an excerpt of those revised thresholds for ease of reference and it reflects the proposed revisions we've just discussed. These thresholds are in full on pages five through seven of the proposed draft text. And as you'll see under these proposed thresholds, a business would be required to conduct a risk assessment when it is selling or sharing personal information, processing the sensitive personal information of consumers, which now includes the personal information of consumers known to be under 16, apologies, known to be under 16 years of age. Using ADMT for a significant decision. And as Ms. Anderson explained earlier,

the term significant decision is defined in the proposed text or for extensive profiling, which refers to worker educational profiling, which is also defined in the proposed text. Public profiling, which is defined in the proposed text or when profiling a consumer for behavioral advertising. And lastly, when training ADMT or AI that is capable of being used for any of the uses identified on this slide, next slide please. Now turning to revisions to the risk assessment requirements. That is how a business must conduct a risk assessment. The first is clarifying which operational elements must be identified in the risk assessment. So for instance, staff added what the relationship is between the consumer and the business, as well as what disclosures a business has made to the consumer about the processing as required operational elements that must be identified as part of the risk assessment because these are elements of the processing that directly go to the nature of the risks associated with that processing. Staff also deleted duplicative language in this section to streamline it overall and improve readability. Staff also clarified which negative impacts to consumer's privacy a business may consider. So these are provided as guidance for businesses when they're conducting a risk assessment. One harm added is disclosure of a consumer's media consumption. So what types of books you've read, what videos you've watched that would chillfor instance, their exploration of ideas. This is a harm that animates other consumer privacy laws such as the Video Privacy Protection Act and staff proposes adding it here as well as guidance for businesses. Staff also clarified that reputational and psychological harms that businesses may consider are those that would negatively impact an

average consumer and provided examples of what types of processing activities would meet this type of standard. Lastly, staff proposes clarifying which safeguards a business must consider when using automated decision making technology. These are whether the business evaluated the ADMT to ensure it works as intended and does not discriminate and what policies, procedures, and training it implemented to ensure that it works as intended and does not discriminate as a shorthand or will refer to the latter as accuracy and non-discrimination safeguards during this presentation. These requirements are intended to be high level and flexible so that businesses can consider these issues across a variety of contexts and use cases. Next slide please. Lastly, turning to proposed revisions to the submission requirements. Generally, a business is required to annually submit a certification of compliance to the agency, typically signed by the highest ranking executive who is responsible for oversight of the business's risk assessment compliance, as well as an abridged form of each risk assessment. It is conducted during a submission year. Staff proposes the following revisions to this section. First, for bridge risk assessments, staff proposes streamlining this section overall to focus on what processing activities triggered the risk assessment, what the purpose of the processing is and the categories of personal information processed. Staff recommends starting with this information and submissions, and as the agency receives and reviews risk assessments, adding to the submission requirements as necessary. Second, staff recommends clarifying when a business is not required to submit their bridge risk assessment or risk assessment to the agency, there would be two relevant exemptions.

First, if the business did not ever initiate the processing subject to the risk assessment, they would not be required to conduct that annual submission of that abridge risk assessment. Second, if the business previously submitted a risk assessment to the agency and there were no material changes made to that processing since submission, in that scenario, the business would not be required to provide an updated risk as updated abridged risk assessment to the agency, but it would still need to provide a certification of compliance. Next slide, please.

MS. ANDERSON: Okay. We'll now turn to the ADMT draft regulations. Next slide please. This slide provides an overview of the revised ADMT regulations sections. The regulations begin with the uses of ADMT that require a business to comply with the ADMT articles requirements. They then set forth a standalone evaluation and safeguarding requirement for businesses using physical or biological identification or profiling for a significant decision or for extensive profiling. They then set forth the pre-use notice requirements, then move on to the opt-out requirements and exceptions there too. And they conclude with the access requirements. Our presentation will mostly cover these in order with the exception that will cover the standalone evaluation requirement last. Next slide, please. The revised thresholds to the ADMT requirements are consistent with the revisions to the risk assessment threshold, which we just discussed a little earlier. So I'll note simply that the pre-use notice opt out and access rate requirements apply when a business is using ADMT in the ways that are outlined on this slide, specifically for a significant decision for extensive profiling or for processing personal information to

train ADMT that's capable of being used for any of the purposes set forth on this slide. Next slide please. The proposed framework continues to set forth three main components of the ADMT framework for as between a business and a consumer. The pre-use notice, the opt out right and the access right. Before a business can use its ADMT with respect to a consumer, it must provide that consumer with a pre-use notice. That notice gives the consumer information about the business's proposed use of the ADMT and about the consumer's rights, so that the consumer can decide whether to opt out or to proceed, and whether to access more information about the business's use of the ADMT. The consumer can then choose whether to opt out or proceed. If the consumer proceeds with the business's use of the ADMT, then once the business used it with respect to the consumer, the consumer can request access to information about how the business used it with respect to the consumer. And when a business receives a consumer's access request, it must provide certain information to help the consumer understand the decision or evaluation that the business made about them and how the business made that decision or evaluation. Next slide, please. Staff proposes several revisions to the pre-use notice requirements. First, the proposed revisions tailor the pre-use notice requirements to the business's specific use of the ADMT. For example, a business that wants to use a consumer's personal information to train ADMT that's capable of being used for one of the four purposes we discussed, it must disclose to the consumer what specifically the ADMT is capable of being used for. So, for example, if the ADMT is capable of being used to generate a deep fake, that level of granularity, and also the categories of

personal information, including any SPI that it wants to use to train the ADMT. If the business proposes to use an ADMT solely for these training uses, it also is not required to describe the consumer's right to access. As another example of this tailoring by use case, a business relying upon the human appeal exception, which we'll cover a little bit later, must provide information about the consumer's ability to appeal the decision and how they can submit their appeal rather than providing information about how the consumer can exercise their right to opt out. Second, the proposed revisions at a requirement that the business is prohibited from retaliating against consumers for exercising their CCPA rights. It's important that consumers feel free to exercise their rights without fear of suffering a negative consequence as a result. Third, the proposed revisions add flexibility for businesses in how they provide additional information about how their ADMT works. For example, the revised draft regulations permit, rather than require businesses to provide additional information via a simple and easy to use method, like a layered notice or hyperlink. As another example, the revised draft gives businesses an option to provide consolidated pre-use notices as long as the consolidated notice includes the information required for each of the business' proposed uses of the ADMT. Fourth, the proposed revisions add an in context definition of output, as well as illustrative examples of a business explaining the intended output of its ADMT and how it plans to use it. And we did that to provide clarity and guidance for businesses. For example, if a business proposes to use ADMT to make a significant decision, the intended output of its ADMT may be a numerical score, which a human may use as a key factor to make a

hiring decision. Another example would be a business proposing to use ADMT for profiling for behavioral advertising. The intended output of that ADMT may be the placement of a consumer into a profile segment or category, which the business may use to determine which ads to display to the consumer. Finally, the proposed revisions streamline the information that a business must provide in its pre-use notice, for example, they no longer require a business to state in the pre-use notice whether the ADMT has been evaluated for validity, reliability, or fairness, and the outcome of any such evaluation. We'll note, however, that businesses are required to conduct an evaluation of their use of ADMT under certain circumstances. But this slide is just highlighting the revisions to what's required to be in the pre-use notices to consumers. Next slide, please. We'll now turn to how businesses would comply with the revised pre-use notice requirements. Before a business can use ADMT in any of the ways that we've discussed, it must provide a pre-use notice to the consumer so that the consumer can decide whether to opt out or to proceed, and whether to access more information about the business's use of the ADMT. The pre-use notice must include the specific purpose for which the business proposes to use the ADMT and not in generic terms such as to improve our services. It must include the description of the consumer's right to opt out and how they exercise that right, or if the business is relying upon the human appeal exception, which we'll explain later. The consumer's ability to appeal the decision and how they would submit their appeal. The previous notice must also include the description of the consumer's right to access information about how the business uses the ADMT with respect to

the consumer and how they can submit their access request that they proceed with the business's use of the ADMT at this phase. Note that for solely training uses of ADMT, the business is not required to provide that notice of their ability to access information. An addition here is that the business is prohibited from retaliating against consumers for exercising their CCPA rights. Businesses also must provide additional information about how the ADMT works and may provide that via the simple and easy to use method like the layered notice or hyperlink. The additional information that's required to be provided is the logic that's used in the ADMT, including the key parameters that affect the ADMT's output and the intended output of the ADMT and how the business plans to use it, including the role of human involvement. Next slide, please. This slide covers the practical requirements of a business. When a consumer requests to opt out of the business's use of the ADMT. If the consumer submits their opt-out before the business uses the ADMT with respect to the consumer, the business is not permitted to process the consumer's personal information using that ADMT. If a consumer does not initially opt out, but later decides to do so, then once the consumer submits their opt-out request, the business must cease processing their personal information using the ADMT and must notify relevant service providers, contractors, or other persons of the consumer's opt-out and instruct them to comply. The business has to cease processing as soon as these will be possible, but no later than 15 business days from when it receives their request. Next slide, please. The revised draft outlines several instances in which a business would not be required to provide consumers with the ability to opt out. The first is not new. It's

an exception to the use of ADMT solely for security, fraud prevention and safety. The second is new, the human appeal exception. A business must provide consumers with the ability to opt out from its use of the ADMT unless it provides a method for the consumer to appeal the decision to a qualified human reviewer. The third category, which we're calling the evaluation exception in this presentation, is also new. A business using ADMT for admission acceptance or hiring decisions, for allocation or assignment of work and compensation decisions or for work or educational profiling, may not have to provide an opt-out under certain circumstances. This category addresses instances in which the scale of decision making using ADMT may make providing an opt-out infeasible, for example, an employer relying upon ADMT to screen thousands of resumes for a same day job opportunity or an employer relying upon ADMT to allocate work to hundreds of employees or independent contractors almost instantaneously based upon their performance. Note that even if a business can rely upon one of these exceptions to providing the ability to opt out, it would still need to provide a pre-use notice to the consumer and explain that it's relying upon an exception and that the consumer can still exercise their access right. In addition, none of these exceptions would apply to profiling for behavioral advertising, nor to processing the personal information to train automated decision making technology. A business would be required to provide consumers with the ability to opt out for those purposes.

MS. SHAIKH: Next slide please. Turning now to the security fraud prevention and safety exception. Businesses who are using automated decision making technology for these purposes are not

required to provide an ability to opt out to qualify for this exception, the use of ADMT must be both necessary to achieve and solely used for security, fraud prevention and safety. Next slide, please. Turning to the human appeal decision, this exception is, human appeal exception. This exception is relevant when a business is using ADMT for a significant decision. In that case, they are not required to provide the ability to opt out if they provide a method for the consumer to appeal the decision to a qualified human reviewer. To qualify for this exception, a business must designate a qualified human reviewer with authority to overturn the decision. In addition, the business must clearly describe to the consumer how they can submit their appeal and enable them to provide information for the human to consider as part of the appeal. Additional detail is provided in the proposed regulatory text about what qualifications the human reviewer must have, what the method of appeal must entail, for instance, that it must be easy for consumers to use and not use dark patterns, as well as how disclosures about the method to appeal must comply with section 7003 of the existing CCPA regulations. Next slide please. Now, turning lastly to the evaluation exception to the opt-out requirement. This, as Ms. Anderson noted, only applies for admission, acceptance, or hiring decisions for allocation or assignment of work or compensation or for work or educational profiling. In these scenarios, a business would not be required to provide the ability to opt out if it has evaluated its use of ADMT to ensure it works as intended for the proposed use and does not discriminate and implemented appropriate accuracy and non-discrimination safeguards. One thing I will note here is if a

business has obtained its ADMT from another person, it would still be able to rely on its exception if it has reviewed that person's evaluation of the ADMT and implemented appropriate accuracy and non-discrimination safeguards. Next slide, please. Now I'll turn to the access right requirements. If a consumer chooses to proceed with the business's use of the ADMT, the business must provide the consumer with access to information about how it used the ADMT with respect to the consumer. So the required information would include the specific purpose for which the business used the ADMT with respect to the consumer, what the output of the ADMT was with respect to the consumer. So if the technology generates scores for consumers, the business would provide the consumer with their specific score. The business would also provide information about how it used the output with respect to the consumer, as well as how the ADMT worked with respect to the consumer, including how the logic as well as the key parameters that affected the consumer applied to the consumer. Lastly, the business would explain that it is prohibited from retaliating against consumers for exercising their CCPA rights and provide instructions for how the consumer can exercise their other CCPA rights, such as the right to correct. Next slide, please. Turning now to additional notice requirements relevant to the access right. When a business is using ADMT to make an adverse significant decision, it would comply with these requirements. As you'll see on the slide, adverse significant decisions are defined as being denied an education credential, having compensation decreased, being suspended, demoted, terminated, or expelled, being denied financial or lending services, housing, insurance, criminal justice, healthcare

services, or essential goods or services. In these scenarios, when a business has used ADMT to make an adverse significant decision, it must notify the consumer that the business used ADMT to make the decision that the business cannot retaliate against the consumer for exercising their CCPA rights. That the consumer has the right to access information about the business's use of ADMT and how they can exercise that right. And if the business is relying on upon the human appeal exception, that the consumer can appeal the decision and how they can submit that appeal. The reason behind these additional notice requirements is to ensure that when an adverse significant decision is made with respect to a consumer, that they are aware that they have that access. Right? This can be particularly valuable when there has been a significant amount of time between when the consumer received that first pre-use notice and when the actual adverse decision was made. Next slide please. Lastly, we're going to turn to a requirement for physical or biological identification or profiling. This is when a business is using this type of profiling for a significant decision or for extensive profiling for a consumer. Staff proposes a requirement where a business would be required to conduct an evaluation of that technology to ensure it works as intended for the business's proposed use and does not discriminate, and that it has implemented appropriate accuracy and non-discrimination safeguards. So, for example, oh, actually one additional nuance here. If a business has obtained that profiling technology from another person, it would not have to conduct an evaluation itself, but it would have to review that person's evaluation, including any relevant requirements or limitations on that technology that are relevant

for the business's use. So, for example, if a business obtained its facial recognition technology from another person, and that person identified the need for high quality enrollment photographs, as in an effort to ensure that there are less false positive matches, the business must review that information and implement appropriate safeguards. That concludes staff's presentation. We thank you for bearing with us. We welcome for discussion and of course, are available for any questions for staff.

MS. URBAN: Thank you for a very efficient presentation of a complex and carefully constructed revisions to the regulations. Fellow board members, do you have comments or questions? And I apologize, I had to put on my collar, so I'm going to turn my chair.

MR. LE: I guess how.

MS. URBAN: Yes, Mr. Le.

MR. LE: Yeah, I'm questioning how should we go about this? I mean, I have comments on a couple areas.

MS. URBAN: I still would suggest we follow their lead and start from the top with the definitions and then the risk assessments, and then the ADMT. But of course, everything's pretty interconnected. So if something is interconnected, maybe pick it up where it first appears. Okay.

MR. LE: Yeah, I mean, overall, I think you all did a great job in synthesizing a lot of the board feedback from last time into this new draft. You know, I think I'm a little unhappy with some of the changes, but I think that that shows compromise and your efforts to coordinate with everyone else. With that said, I think, well, starting with definitions this substantially facilitate a

decision, right? So I think that is a potential loophole. I know you put in language around key factor and maybe some of examples, but I think if this advances to formal rulemaking, this is an area that we really should focus on making sure that this doesn't become a big loophole. Because Companies can just claim that their ADMT didn't substantially facilitate. So whether that's providing more examples maybe thinking through some thresholds rule of thumb, maybe if like four fifths of the decision, kind of comport with the output that's like a signal that this ADMT is being substantially facilitating decisions or perhaps other ways of fleshing out that language is an area of focus. But I don't think that should stop us from you know, maybe pushing this forward for other folks to give comment informal rulemaking.

MS. URBAN: Thank you, Mr. Le. Shall I come back to you when we get to another section?

MR. LE: Yes.

MS. URBAN: Okay. Other comments on the definitions? Yes, Mr. Mactaggart?

MR. MACTAGGART: Well, thank you all. I know you put a tremendous amount of work into this. I don't know where to start because I actually, I brought this up in December, and I don't feel like we've made much progress in scoping. And so let's just step back a little bit. I want to talk about both risk and ADMT and stepping back, the early section 7002, 03, 04 are primary safeguards with respect to personal information. If we're talking about, I guess we could talk about risk assessments first for me anyway, I have some notes on this. You know, 185, A15 clearly states that the regulations are aimed at businesses whose

processing of consumers PI presents a significant risk to the privacy or security of the consumers. And I think what we're going to do here with our broad definition of ADM the way that, and I don't want to take everybody's time and walk through how I think by using ADM for significant decisions concerning the consumer, which is a significant risk. And then 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. And I mean, literally, it's the exact opposite in my, when I look at it at the Colorado, Colorado says, hey, you have the right to opt out, but if the human's reviewing it and they're using this as an input, then you don't have the right to opt out of the automated decision making process. We see the opposite. If the human's using it as a substantial facilitation device, then you have the right to opt out. And look, I think I don't need to tell anybody how pro privacy I am, but what I am not, also, I'm a little worried about the first do no harm thing. And I think what we are going to do here is just the scope is dramatic. I mean, look at the ADM, ADM has taken the definition of profiling and the wording in 185, A16 is taken directly from recital 71 and Article 22 of GDPR. Now you could say, okay, well that gives the right to consumers to opt out and GDPR when ADM is used when it's

based solely on ADM. And you could say, well, that's a loophole. We don't want to say based solely. So then Colorado comes along and says, well, we have this two part test, and we're going to say, if there's a, if you're using that solely kind of to get out of ADM, the net, then you shouldn't be able to do that. But if you are a human being using software to come up with an answer, you, the consumer do not get the right to opt out, we're going way, way further. 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.

MS. URBAN: Thanks, Mr. Mactaggart. Mr. Le?

MR. LE: Yeah. I guess Mactaggart's point, what is your thought on, I mean, yeah, the definition could be read as broad, but it is narrowed by significant decision. But also for me one of the issues I had was if you have a human in the loop appealing you can appeal, then that opt-out goes away, right? If you have a human reviewing any automated decision, all of a sudden the company doesn't have to process your opt-out. So I thought that we went too far, but I think that addresses kind of your concern about providing consumers

or I guess businesses a way out. And that kind of gets at the same thing that Colorado does. And I think to some extent that addresses your concern. Even though I would like just a straight off that, but…

MS. DE LA TORRE: Yeah, for clarity in the chart that the staff created for us, human appeal only applies to two out of the 1, 2, 5, 6 situations where there's an opt-out, right? Just for clarity.

MR. MACTAGGART: I think the only one, yeah. So to me, I think the exceptions swallow a lot of the opt-outs, right? If you've tested it for bias or anything like that, all of a sudden you lose your opt-out, or if you have a human appeal then you get to not process the opt-out. So the only two areas where what I think is very accessible exceptions we don't have is, yeah, behavioral advertising, which I think we all agreed on, and then the training uses of ADMT.

MS. URBAN: Which has also been limited.

MR. MACTAGGART: Yeah. So to me, and I come to it saying like, this opt out may be large, but these exceptions are equally large. And to me, if you're making a decision, a significant decision, right? That determines whether I can get a job or I get fired, you should have a human in appeal or you should have at least tested this for does it actually work? So to some extent, I think the exceptions are quite, quite broad and alleviate. I don't see any business being like, okay, well I don't want to have a human appeal so I'll just allow opt-outs, right? They'll probably put humans in if that's, I think that's something we should encourage, right? In general.

MS. URBAN: Human appeals or opt-outs.

MR. MACTAGGART: Human appeals, but I mean, opt-outs generally. But yeah, human appeals and I think this draft has kind of threaded that line pretty well in making sure that this isn't very disruptive. As far as I know, most significant decisions you can have a human appeal. Those processes are already in place. So yeah, just curious if your thoughts on that.

MS. URBAN: You know, I think the staff are threading, it's not one needle, its multiple needles trying to come up with an approach that is privacy protective, that doesn't have too many big loopholes that one could drive a truck through as we've talked about earlier today. But that also is reasonable, and I think you can construct this in a number of different ways. I am not as concerned as you Mr. Mactaggart. So first of all, let me just back up and say, I think it is devilishly difficult to try to define like what technologies we are talking about here. And staff have dealt with that by first defining what even is the kind of decision that would be covered. And I think that they've been very thoughtful about that. So there are the thresholds of what business is covered by the CCPA. There are thresholds of the definition of the relevant technology, which Mr. Mactaggart, I take your point. I'm just, I'm not sure how you find the right thing without losing technologies that are absolutely being used to make significant decisions about people or are key components of a decision about people that affect them deeply. And then, it's only then that you get, you have all of these nested requirements, which I read as an attempt to create a safety net for consumers, but that also leaves out a lot, we could have debates, Mr. Le and I could have debates about like which ones we think should be covered, which kind of

decisions, what kinds of activities, what kinds of technologies. But what staff have done have created like an entire system that in my view, this also tends to feel like it has more loopholes than it did last time. And some of them I am somewhat skeptical about. But I would like to see what kinds of comments we get about this because it's very carefully constructed. And I don't mean that it can't be revised, of course it can be revised. But I think that every time you focus on one definition, you are missing part of the picture and you have to look at the entire system together.

MR. MACTAGGART: Well, I think I've been focusing on the same definition since December, and I didn't like it then. I don't like it now. I really…

MS. URBAN: My point is just that other things changed around it as well, so that how these regulations apply and what they apply to, and when you get an opt out to Mr. Le's point, like what the actual requirement that attaches is, if it applies to you have changed and they have been reduced sort of as a whole. I think the definition also has been narrowed, although I recognize, not narrowed in the way that you are proposing, but I think what's really important is all of the other things that were revised around it, if that makes sense.

MR. MACTAGGART: Yeah. I just, I mean, when I look at it, I think you've got two standards out there, GDPR at Colorado for the one which we talked about in December. And I feel like ours are in a dramatic different direction. And even just the fact that our legal effects include access to, as opposed to denial or provision and what's access to the stuff. Is it, you see an ad? Is it if there's a bank on your corner? I mean, these things are, I think

that this is overbroad and I dislike the concept of saying that we're everything, and then we have a large bunch of exceptions here, as opposed to saying, let's tailor this to the issue and which I don't think we've done. So I don't want, I can go through every…

MS. URBAN: What would be your?

MR. MACTAGGART: I think that Colorado approach is actually much simpler.

MR. LE: I mean, our approach with the human appeal exception is essentially very close to the Colorado approach. I don't know if staff could.

MS. DE LA TORRE: I cannot believe that Colorado addresses training uses of ADMT, profiling for behavioral advertising, public profiling, and definitely not work or education. Where I do agree that we need protections for workers, but that's outside of the scope for Colorado.

MR. LE: I think the definition of profiling is, well, should I just kind a give to Neelofer or Kristen, you…

MS. SHAIKH: Oh, sure. Yeah. So Colorado's statute, it does not actually address automated decision making technology. It only is focusing on profiling in furtherance of legal or similarly significant effects. The CCPA delegation specifically says, access and opt-out rights to ADMT, including profiling without necessarily that limitation. That is why we had addressed those additional thresholds in December. And apologies that there was confusion on our part. We had thought that there had been board support for things like profiling, for behavioral advertising, being in scope or in the training uses being in scope. But if there's a board

consensus, please let us know that I apologize if we've misheard what the board was saying in December.

MS. DE LA TORRE: And to be honest, I was not going to whether we should include them or not, but to the point that aligning with Colorado will not include a lining on those items that Colorado has not ruledon.

MR. LE: Sure. But you know, how Colorado's defined profiling encompasses all these significant decisions. So that’s the big one that captures your concern Mr. Mactaggart and then their way of doing the opt out, as far as I understand it is, yeah, if you have a human in the loop, then you don't have to listen to the opt out, essentially ours is the same thing. If you have a human appeal, then you don't have to do the opt out. So I don't think it's that different, but maybe if you talk about the other stuff work in educational public perhaps, but this human appeal exception, plus the significant effects to me reads very similar to Colorado. Because that covers ADM, well processing that includes profiling that implicates legal or sign decisions. So I see them as actually quite similar. I think our difference is you need to have an appeal option versus just having a human in that process somewhere.

MR. MACTAGGART: And to your point, I think profiling Colorado does cover ADM because it covers it in the context of profiling. And so that's where when you look at the wording in 185, A16, and the definition of profiling, which is taken from GDPR and then this definition of profiling, which is actually larger in these regulations, then either the GDPR or the Colorado definition of profiling. And I think there is a difference in architecture between saying, you know because at the outset of Colorado says

there's only this much information, and we say it's this, but then there's this appeal process. And I think that does make a difference. So I think, look, I understand it's a difficult process we're going at, but I think what you're going to end up on the risk assessments is every business is going to have to do a risk assessment. And I think…

MR. LE: Every business over $25 million and using ADMT to make decisions. So I guess that is the question.

MS. DE LA TORRE: But it's not only significant decisions.

MR. LE: Significant decision.

MS. DE LA TORRE: I think that the threshold to be fair, is not only on the revenue of the business, but there is also another threshold based on number of records, right? Like even if you don't have that revenue of 25, so long as you have a certain number of records that will trigger the obligation.

MR. LE: Yeah. My view is most of these significant decisions, right? Insurers, banks, I don't know too much about specific housing decisions. They do have risk management. They have governance teams already doing risk assessments. And I think the use of my data to make a decision about me if that is incorrect or an accurate or biased, that is a risk of my privacy. And these harms should be addressed in a risk assessment. And I think that is how I read the statute. And I think that these draft regulations do get at that. I don't think we should be letting companies process data to make really important decisions about us, and they don't have any obligation to make sure those decisions are accurate. So, I think despite the fact that there's large exceptions here, I think requiring the risk assessment and some form of opt out, even

if it really just means you get that human to review that decision is what Californians deserve in the context of significant decisions. And to your point, that access to essential opportunities may be too broad. And that could be an item that we address in the next draft or ask for comment on. Because I do think, yeah, maybe whether or not you see an ad, does there have to be an opt-out there? So I do think maybe there's some tweaking we could do, but in general, I think the structure that staff have created is not too far from what Colorado has and generally encourages human appeal and that responsible use of these technologies.

MR. MACTAGGART: Well, I think because ADM is basically any, it includes substantially facilitating human decision making, which means using the output of a technology, a key factor in a human's decision making. That means every time a human is looking at software output, we're talking about human, we're talking about significant decision.

MS. URBAN: Significant decision, not every decision.

MR. MACTAGGART: But a significant, so owes only the housing financial, education, criminal justice, employment, compensation, healthcare, essential goods and services. You're talking about the economy. So I feel like what we're going to end up doing with the risk assessments is saying everybody who's involved in it, and by the way we're talking for the risk assessments is what's the nexus is privacy and what's the threat to the privacy? And now we're all focused on the fact this ADM, but ADM actually might be more privacy concern, preserving. We just don't know what we're really worried about in A15, in 15 is the privacy and how does this impact

on the privacy?

MR. LE: I see the use of data to make a decision about me as a privacy harm to that extent. But those decisions, those significant things that you've all mentioned are the economy and isn't that where we need to have considering the racial wealth gap in California considering bias in these systems? Isn't that where we should have stronger rights as Californians to know how these decisions are made and to make sure at least there's some requirement that these decisions are accurate? So that's why I think, yes, it is covered a lot of the areas that are important to, especially folks that are trying to move up the ladder and have felt, kept out of the conversation, have felt that these systems have been biased against them. I think California being like, alright, we'll make sure these systems work for you or there's some process in place actually helps businesses in a way because it allows them to identify problems and hopefully leads to better decisions.

MR. MACTAGGART: Well, I think we're getting very far appeal from privacy. I, look, no one's going to argue that we need to have a more just and equitable society, but we're talking about privacy. That's what the statute says here. So with respect to risk assessments is are you doing something, are you processing information in a way that is going to hurt consumers' privacy? We already have in the regulation 702, 703, 704, the requirement that the, I get to see my information, I get to see what you're basing it on. I get to correct it if it's wrong, I will be able to get information here about the logic. But the question really is, especially for small businesses, the question is, is the software

that you're using, what if you're buying software off the shelf for some business how is that hurting the privacy of the consumer that you're talking about? And so…

MS. URBAN: The [Inaudible 03:25:21] of what you're doing depends on the person's personal information, which is the center of the statute. I think we could certainly, and I'm sure we do have a range of views as to what constitutes a privacy harm. But the statute is focused on personal information, and the use of personal information, personal information by itself presumably has no valence whatsoever. It's when something happens with that information that we have the risk of a privacy harm. So I'm not sure we're going to be able to reconstruct what exactly is a privacy harm here. I completely take your point, Mr. Mactaggart, that you think this reaches too far. I take Mr. Le's point that if this is the way the economy is working in these really important areas, and it all turns on personal information, we need to be able to apply this to those kinds of harms because you see them as privacy harms. I think those are both reasonable positions. I think the statute does direct us to create an opt out. It directs us to include profiling, the staff have defined profiling just as it was already declined in the statute with some additions to help the whole entire framework comport with the plan. I do understand that not everybody likes a construction that has exceptions. But again, I think they're trying to balance all of these different questions and interests in a way that will not end up in either something that reads on every technology. And I would look for input from those who are deploying these technologies when we get to public rulemaking to hear exactly about implementation. And that does not

leave, does not, do not become a dead letter because they don't actually apply to the kind of technology and the kind of decisions that affect people's lives. Yes. Mr. Worth?

MR. WORTH: I'd just like to hear staff's reaction to this conversation.

MS. SHAIKH: Yes. On the risk assessment obligations, I think one point of clarification that might be helpful of what Colorado does, and again, we're the, agency's delegation is a bit broader, but under Colorado's risk assessment requirements, at least my understanding is that a risk assessment in Colorado would be required regardless of the level of human involvement for profiling and furtherance of legal or similarly significant decisions. And so their, although their opt-out framework has an exemption, I believe their risk assessment requirements, they call it, I believe, a data protection assessment. But generally the same type of concept would apply regardless of the level of human involvement. And I'm sure if I'm incorrect about that, we will get a public comment.

MR. MACTAGGART: But it's caveated with a much a higher standard in Colorado for the highly, I can't remember the word, but they have a higher standard for that risk assessment.

MR. LE: Isn't it using profiling or semi legal, semi significant effects?

MS. DE LA TORRE: I think the threshold, I think Mactaggart is talking about the threshold. So I think the organizations are subject to the obligation.

MR. LE: As far as I understand it, and please correct me if I'm wrong, it’s processing with profiling with legal standing effects that attaches a risk assessment, right? No?

MS. DE LA TORRE: No. I think that you have to have some form of high risk, like fear and…

MR.LE: Oh, they have something defined. Oh, yeah. Have higher, they have a higher risk.

MS.SHAIKH: So theirs is, sorry, I have it up in front of me. So rule 9.06, and I'm sure this is very boring for everyone who's listening, but, so yes, processing of personal data for profiling, if the profiling presents a reasonably foreseeable risk of unfair deceptive treatment or unlawful disparate impact, financial or physical injury, a physical or other intrusion upon the solitude or seclusion or private affairs or concerns of consumers, if the intrusion would be offensive to a reasonable person or other substantial injury. So it's actually a bit broader in some ways. One thing I'll flag is rule 9.06B specifically says profiling under CRS6113092A and covered by the required data protection assessment obligations includes profiling using solely automated human reviewed and human involved automated processing. So at least my reading of that was that regardless of the level of human involvement, if you are using it in furtherance of illegal or similarly significant decision as defined under the Colorado law, you would be conducting a risk assessment. Again, if I'm wrong, the public will likely jump in and let me know.

MS. DE LA TORRE: We appreciate all of the work that you have done, and we know we are kind of putting you on the spot here, but what I'm referring to is not the rules, but the statute, the Colorado of the statute says that these only are trigger where there is, I think unfair or deceptive practice. I mean, there is a list. It's not the list that you have. Could you help us by finding

that? Because that's a limitation that's in their statute, not in their rules.

MS.SHAIKH: Oh, yes. I'm reading the rules that clarify the statutory obligation.

MS. DE LA TORRE: But let's read the statute.

MS.SHAIKH: Absolutely. I will pull that up and I'm happy to refer to it, if the board wants to continue the discussion and then when we have—

MS. DE LA TORRE: I appreciate it.

MR. LE: Yeah, Miss, isn't the effect, even if those are the clarification, the effect is if you know that their obligations are substantially similar to these obligations here. No? Of that language, there seems to imply that businesses in Colorado who profile to make some like legal or semi significant effects have to do a risk assessment. I don't think Californians should have lesser rights and obligations.

MS. DE LA TORRE: I do. Oh, 100%. That Californian shouldn't have less rights than Colorado. But I think that the discussion is kind of where that possible.

MR. LE: Sure.

MR. WORTH: But Mr. Mactaggart, so your point though is the way you read it's too broad. Let's put Colorado aside for it. If we determine that theirs is the same as ours, is that going to, I mean, isn't the question I was really asking staff is, can you respond to your concern? That's too broad. Some people here think it isn't. I'd like to hear what staff's view is on that point.

MR. MACTAGGART: My point for Colorado is more on the ADM side of things. I think our…

MR. WORTH: I'm going back to your software con. You made that back in December.

MR. MACTAGGART: Yes.

MR. WORTH: So, and this came up when I went through all my questions with staff before the meeting and that, I triggered that conversation from December in my head. But can you respond to that? Why do you, or do you disagree with the that reading? Because I like to hear your point.

MS. SHAIKH: Absolutely. I think for us, it was really balancing, again, like what is meaningful consumer privacy in this space with respect to automated decision making technology and profiling? And one of the things that we've heard, of course, is the concern about the use of ADMT for these types of significant decisions. We did consider how GDPR approaches this issue. We also heard concerns about limiting it to solely automated. We also saw how Colorado approached the issue. And we think that what we have now balances these different approaches, essentially ensuring meaningful opt-out options for consumers with meaningful exemptions. We don't think that the exemptions are too broad or too narrow. We think, as you'll see, one of the pieces of feedback that we had gotten in December was to tailor the exceptions to each use case. And so that's what we've tried to do here. And so we don't think it's necessarily too broad, but if there are specific concerns about the breadth, so for instance, the use of the word access to, that's something that is some, it's something we can either resolve before formal rulemaking or resolve as part of the formal rulemaking process. If there are specific concerns or recommendations like that to help tailor it a little bit more, we

are more than happy to take that feedback if there's board consensus on that issue. I will acknowledge we've heard that the definition of ADMT is too broad. We've also heard that it's too narrow. And so we've really tried to balance it. And one of the things that we tried to do to address the concern that this is in capturing all software, is to include that exemption that we have seen in similar frameworks of this does not include spreadsheets or calculators. You can't use those technologies to circumvent the requirements. So don't build a formula in a spreadsheet that determines automatically who gets terminated. But if you're using a spreadsheet to organize information, that should not get captured by this definition. And we think that exception is meaningful, and it does respond, I think, to a lot of the public comments that we got, which was we don't want calculators, we don't want spell check as part of this. And that's why we added that exception to really help sure, make sure that these very basic data processing tools that businesses are using are not inadvertently swept in, I think, the formal rulemaking. To the extent that there should be more types of tools that we just have not seen yet added, we can hear from businesses who are using them to potentially expand that. The other thing that I will say is it's not necessarily that any software is captured. It has to be used in three instances. It has to have replaced human decision making. It has to have executed a decision itself, or it must have substantially facilitated it. And we define that for now as a key factor. And so it's not that you just happen to use any technology to help you make the decision. It really should have played a very meaningful role as part of the decision. That's how we were trying to balance this concern of

there are these technologies that consumers are very concerned about with respect to their privacy. At the same time, there are technologies that businesses are using in ways that enable efficiency and benefits for consumers. And we would try to have the ADMT definition kind of address these two, what we don't necessarily think of as rival concerns, but really to harmonize and bridge that gap to make sure that really the technologies that consumers are most concerned about, when they're used, again, only in these limited instances of significant decisions, extensive profiling, that's when they're subject to the risk assessment. That's when there are meaningful pre-use access and opt-out requirements. And again, to the extent that there's specific concerns about breadth, if there's a board consensus on that issue, that really helps us, because we really don't want to swing too hard in one direction and then swing too hard in the other. We're really trying to figure out what is an appropriate middle ground, and this is where we would really appreciate board consensus on these issues.

MR. MACTAGGART: But that definition would include a comp, a credit report. I got a credit report. That's a key factor in me making a decision about whether to grant a loan. And all of a sudden that's ADM.

MS. SHAIKH: One thing I'll actually acknowledge here, and this is why we included this, is the CCPA does have an exemption for the fair credit for processing, sorry, for information subject to the Fair Credit Reporting Act, because we know that there could be confusion about how these exemptions apply. That's why we included that specific exemption in.

MR. LE: And I'll just note, there's already a regulation SR 11-9 from the federal, which agency. But that requires quality control standards, essentially a risk assessment in for financial institutions, right? So they're already doing risk assessments even if there may be exceptions for those institutions in our, I don't know actually, but yeah, those risk assessments are already happening. I think California is putting in with this draft was putting in this requirement that financial institutions are already doing, but now maybe fintechs that aren't regulated should be doing that. So everyone's competing on a fair playing field. And again, most regulated businesses that are making over $25 million, making these types of decisions, as far as I understand it, are doing risk assessments. And if they're not, they're opening themselves up to some harm potential risks.

MS. DE LA TORRE: I just wanted to go back to the definition at the end where we have that automatization technology does not include the following technologies. And that's where web browsing, no web posting, domain registration, networking, caching websites, it's listed like calculators, databases, spreadsheets are not included. But I was really confused about the example that comes after, because it says, a business must not use these technologies to circumvent the requirement for automated decision making technologies for in these regulations. I understand that, but the example is a business use of formulas without qualification formulas in a spreadsheet to determine which employees it will terminate, constitutes automated decision making. I use a spreadsheet just to figure out how to grade my students. Because it’s like 70% the grade and then 30% the participation. Am I using

the spreadsheet because it's a formula? I mean, it, I'm adding and I'm calculating the percent, I mean, I'm a lawyer, I'm not a mathematician, so I need that help. Could you talk about maybe whether this example could be made more clear? I don't think you met any formula in a spreadsheet. Like it has to be a fairly complicated formula to constitute automated decision making technology.

MS. URBAN: I think the key is how I would interact with your decision.

MS. DE LA TORRE: But if you drive my decision, it literally drives my decision on how to give the student an A or a B, I think, I mean, that's how I go by.

MS. URBAN: I think your decision is driven by the standard that you're applying, and the spreadsheet is just doing the math.

MS. DE LA TORRE: But it says here, if I use it to calculate, I mean—

MR. LE: Well, I've worked on legislation with a similar set of exceptions. And to your specific situation I don't think you would meet the threshold. So you wouldn't have to do any of those things first off. But, secondly I've worked on this list of exceptions and different legislation and some of that has passed. And the idea is you can build an entire automated decision system within Excel, right? You can take thousands of data points, put it into a formula, you can uphold machine learning techniques all run through Excel. So I do think that this is a very tricky, tricky situation. But the spread, I understand the example of being like, you can't get around this by building an entire machine learning system within a spreadsheet and then instead of just purchasing one, which

would be regulated and just laundering it through.

MS. DE LA TORRE: Yeah. I think we're saying the same thing. I'm just saying here should, let's say the use of a formula, because it's not just a formula, what you're describing is a very complex formula. Not my adding 70%, but 30%, right? So maybe we can help with clarify that.

MR. LE: Yeah. Like, not calculations, but actually that's a…

MR. MACTAGGART: Yeah. I think this discussion right here is the crux of it. The way the world works is today people get input from software and then they make decisions. And what we're really concerned about is where the machine is doing it all without any human input or anything human review. And you want to know if that's happened. Did I not get a loan because the machine decided, the algorithm decided that I wasn't loan worthy? And then you want to be able to go appeal it. But right now, our definition is if you're a human, even if you're spending a lot of time deciding on whether this person should get the loan, you're looking at all these outputs. That's ADM. And I just think it's crazy that we would architect it that way and then have an exception to this hugely all-encompassing rule. Well, it's, I can't possibly support that.

MR. LE: I guess the issue is how do we narrow the rule? And I think that really points to, we've been working on this for years and narrowing the rule isn't easy. And I think that kind of points to the need to get public comment from businesses on, okay, fine, like, this is capturing too much. What are your suggestions, California businesses, consumers, on how do we properly draw the line between innocuous use or substantially facilitation? And that

isn't easy. I don't think us turning our wheels here is going to be able to solve that. I've been seeking input on this from industry for three years on this exact issue. And you know, haven't I rarely get language when I do get language, it's stuff around mean as long as there's a human meaningfully making this decision or it's a controlling factor. And those raise up similar questions. But I think this whole debate kind of points to the fact that, hey, let's put this draft out there. Let's get the feedback. And if people come in with a better way to properly draw that line, I'd be happy to change the language. But I don't see how delaying this for longer and just having it between us is going to help us get to that ideal language.

MS. URBAN: I think I had two themes in my comments in December and possibly in September. One, again, was to look at the risk versus the cost. And the second was to go as far as staff reasonably can with research and input that they have received. And I think they've gone quite far. And then to find ways to get the specific input from the stakeholders who are using this variety of systems. I fully agree that I just don't feel equipped to try to parse this definition. I do think it is contained, it's sort of caged within all of the other requirements for this to apply. And we've gotten feedback that now it's too contained and it is actually going to leave out very significant effects on Californian. So my feeling about this is we have a range of views as a group, as a board, probably about how extensive we would like these regulations to be. We have a range of views about the risk of overprotection or under protection that we see in the rules, and we read the language accordingly. And in my view, that means that this

is in a place where we need to get formal public input to help us work through those things.

MR. MACTAGGART: I agree.

MS. URBAN: De La Torre?

MS. DE LA TORRE: No, go ahead.

MR. MACTAGGART: Well, I actually think I'm, again, I come back to the fact that I think for the automated processing, I think that you may say that even though all the language in that section is taken from GDPR and GDPR's focuses on, given the supers the right to opt out of solely automated processing, and that maybe is too far for people who they, well, they want to not have, make sure that the people, that businesses are not using the word solely in GDPR to get around some of this aspect. I do think Colorado's done a better job at trying to draw that line as to where that the line should be with respect to this, the use of the automation. And so I, again, I think this is a massive definition here that is too encompassing. And I think I don't think we should try to go out there and say, okay, this is our first draft. I think we should, I'm still the same opinion that I was in December. I think we should cut this back to being in terms of risk assessments more when keeping what the actual statute says. And I think notwithstanding the fact that what Mr. Le's saying is important for society, I just think we need to be careful that we're making sure that that's what the statute says here. And then I think with respect to ADM I would like to, my 2 cents would be to go back and sort of say, look, what's a more a limited definition of ADM? Because right now I think we're going to, I mean, we're basically saying all software.

MR. LE: I think from a strategic perspective, and this is just maybe rephrasing what you just said chair Urban, but it's easier to put out a draft that maybe you think is too broad and then cut, right? Because that lowers costs then to start with a narrow one, get comments on how it should be expanded and not having, and that balloons the costs. So I just think from a strategic perspective, who participates more in public comment, its industry, right? So they're going to tell us all the ways that this goes too far and that will help us narrow if needed versus if we keep it too narrow, we're not going to get as many comments. There's not, it's not many resources on this, on groups that would like to expand it. So I just think in terms of like a fairness and strategic perspective, I think its okay to start broad. And this is already narrowed significantly from the last draft. And then we'll get plenty of comments on how to narrow.

MS. URBAN: I find that persuasive from a process perspective, but I just wanted to point out Mr. Mactaggart, what I heard Mr. Le saying, and from my own, less extensive. But some involvement in these discussions. And over the recent past years, I don't think we are going to get to a platonic ideal, that is that much better. And so, as a matter of trying to figure out where, I agree with you that if this is operating the way that you're concerned that it is operating, then we should revisit it. I don't think that we have the information to be able to do that right now. I think staff have worked on this for months, and I think Ms. De La Torre and Mr. Le worked on it with staff for years, two years.

MS. DE LA TORRE: I just want to point out that this didn't come out of subcommittee with subcommittee approval. This is a

staff draft. I never, this is not a subcommittee draft. We worked on it, but actually what was presented didn't have my—

MR. LE: I think I just go through show—

MS. URBAN: I have just a more general viewpoint about it, which is that we could debate and tweak this for a very long time. And we have and I hear what you're saying, Mr. Mactaggart, I have my own like fault points in the way this operates. But there is a question of timing and process and getting feedback from the people who would be implementing it. And I just, I think we're there.

MR. MACTAGGART: Well, I don’t and…

MS. URBAN: Yeah, I understand.

MR. MACTAGGART: And for me and I just to address something that Mr. Le said about this is—

MS. URBAN: I'm sorry, can I ask you, how would you change it?

MR. MACTAGGART: So Mr. Le said, oh, aren't we fundamentally the same as Colorado? Because as long as we have the human appeal process, then you get to the same place. But no, Colorado says you're not even covered. If people are involved in the decision, we say you're totally covered, then someone has to, but you have to have this process for, so we cover the universe, and then you have to have this exception. They don't even have to worry about it. And simplicity to me is much more important. And so I was—

MR. LE: You are covered. If there's a human involved, then they opt out right. Means you deny the opt out, but you have to provide all this access information in Colorado.

MR. MACTAGGART: You're already covered. And then in California, you have to provide this method for the person to appeal.

MS. DE LA TORRE: I have a comment that connect here…

MS. URBAN: Colorado has…

MS. DE LA TORRE: Which is the pre-use notice, right? Like, we have a requirement for a pre-use notice. And to Mr. Mactaggart's point, if our initial scope is really broad, we are going to trigger a lot of pre-use notices. And my concern is, are they going to become wallpaper? You're constantly notifying individuals of any kind of system. It kind of loses value in terms of them even identifying what's risky. So that's one of the thoughts that I had. I know I'm moving it into a different piece of what is in the regulations, but I think it's so interconnected to the conversation that we were having that I thought it will be worth mentioning, right? If you go too broad and you require, it's like, it's those labels of this which might be contained elements that are known to be considered or…

MR. MACTAGGART: 65, 65—

MS. DE LA TORRE: Like that's everywhere now. I don't read them because it doesn't, it comes to a point where it just loses its value if you go over broad on that.

MS. URBAN: Yeah. And Mr. Mactaggart, I didn't mean to put you on the spot. I'm just honestly think that again, we could sort of, if you have a magic way to fix it or you know, a way to fix it that the staff and others haven't thought of. I am all ears. It's just that we have collectively worked on it for a long time, and I feel like input from those who are implementing it would be critical.

MR. MACTAGGART: So, I don't know the process, but for example, I haven't talked to anybody since December. So there may be a you know, I sort of expressed my concerns there. I see a draft in March

that's, in my mind, materially the same. I haven't seen anything in between. So I know that we have Bagley Keene, we can't hash this out, but we have to do it in public. But I do feel like this is an extraordinary breadth, keep on saying,

MS. DE LA TORRE: May have another, not this topic that connects to the regulations. And maybe we should talk about it before we kind of decide how we solve for it. Will that be helpful?

MS. URBAN: I think so. Yeah.

MS. DE LA TORRE: Okay. Because I think that we already have expressed, you know.

MR. LE: All our points on the, yeah.

MS. DE LA TORRE: Okay. So this one is about the training uses for ADMT, the opt-out of the use of data basically for training AI systems. And it connects with the overarching structure. But to me, there's a very clear difference between thinking with data and acting with data. And if we do not build systems that are enough data, and then we might actually be building systems that are defacto bias, right? And this is a rule that is, doesn't exist really in Colorado, or I think there's a version of it now with GDPR, but that distinction is really, really important when we're thinking about California as a state where we have innovation. And so my question was we received some email from Mr. Laird who keeps us informed of things that the agency receives as comments. And one of those emails contain something that I thought was really important. And it was making the statement that our rules are actually misaligned with Newsom’s executive order on AI. And I would like to hear from the staff what analysis has been done on that, because I definitely wouldn't want to issue rules that are

misaligned with our own executive branch.

MR. LAIRD: I can take that one. We, can you hear me?

MR. LE: Yeah, please.

MR. LAIRD: Alright. Okay. We certainly are aware of in keeping tabs on Governor Newsom's executive order, we've reviewed it, reviewed it in comparison with our regulations. I'll just say from a high level, I don't think there is any inconsistency. And…

MS. DE LA TORRE: But I mean, could you stare at the analysis, just not your comments, but did you do any analysis that you can share with the board that's more concrete than just your statement?

MR. LAIRD: Are you asking for legal analysis?

MS. DE LA TORRE: Well, some form of analysis, right?

MR. LE: I've worked on the, with the governor's office on the implementation of the executive order, but perhaps if you want to answer, I can answer after.

MR. LAIRD: Sure, sure. No, I would welcome, welcome that.

MR. LE: Yeah. So the governor's executive order, I think you're talking about, let's promote innovation. That's one of the parts of the order. But for the most part, the order is focused on government and agencies and how the best our California agencies can use generative AI. I do think there is a call to not harm innovation but to the extent that in a technical sense, this doesn't cover government, right? So that inconsistency isn't as much of an issue, but the spirit, right? Are these rules harming innovation? And I think that is a good question. I supported putting in that ADMT threshold, I'm not wedded to it, but I would like to see comment on whether or not letting people opt out of ADMT is going to really harm innovation. I think there's a lot of

dignitary reasons why you wouldn't want your information in generative AI system. We've seen text leaked out from generative AI systems that they were trained on. So there are reasons that you don't want your data in there. But the flip side is sure, you take out one person from a dataset for gen AI, it's not going to really change the dataset. If you had millions and millions of people opting out, perhaps that would make it less accurate, especially if there's one demographic that's all opting out. But I think this is perfect thing to get comment on. But that to your original question on a technical sense. No, they're not, they're not.

MS. DE LA TORRE: I just want to, I mean, I haven't read, I'm sorry, I haven't read the revolution, so I don't know, it says, but I have read the Biden executive order and I understand that those executive orders are only directed to the government, but that's because that's within the scope of what that administration can do. However, they talked about the spirit of how the Biden administration is looking at regulating AI in general. And it most likely, we saw a law on AI that went beyond the government, that administration will pursue similar goals, right. With that law. So to me, the orders, even though technically they might not be overlapping, they are very, very indicative of where the executive branch wants to go. So what you are saying is that you don't see a necessarily a conflict—

MR. LE: Not a direct conflict, right. Just in terms of the language. This is talking about government, ours is talking about private, basic.

MS. DE LA TORRE: Yeah. But I will forget that...

MR. LE: But yeah, in the spirit of, yeah, like how does this

impact innovation? I think that is a perfect thing that we should get comment on. I know the actual impact of taking yourself out of a dataset maybe isn't that much to the dataset, but it may mean a lot to you. But is that worth potential innovation harms?

MS. DE LA TORRE: Let me ask this Mr. Laird, did we have a many or any conversations with the GO office or was this just analysis done individually by the agency around the idea of any conflict?

MR. LAIRD: I mean, we've spoken with the governor's office as well as with some of the state agencies implementing the executive order.

MS. DE LA TORRE: Specifically on the executive order and how it will align with our rules. When did that conversation happen?

MR. LAIRD: Yeah, maybe three. It's hard for us to pinpoint on them, in the moment, but within the last two or three months, yes.

MS. DE LA TORRE: But these rules were not out.

MR. SOLTANI: So we have spoken in, just given our role as the expert agency and given a direction by statute, we have engaged with gov ops who were initially implementing and ODI, who were initially implementing kind of the framework of the governor's order. And then once that, we also spoke to the governor's office prior to the release of that order, and then we've brought follow up conversations, have had conversations with Gov ops who are actually administering the order across state agencies. So we've had multiple conversations about our approach, had multiple conversations with CRD and other agencies as you were actually involved in some of those conversations as how they're thinking of ADM generally. And I just want to kind of go back to some of the conversation we've had that I just want to just highlight with

respect to, we've had conversations with Colorado and how they've implemented their law, and what they think of our framework. And ultimately I think the conversations we've had have repeatedly pointed to the kind of strength and progressiveness of the California initiative, which is our guiding light, essentially the purpose and intent of the act, which is to protect consumer privacy. And so, while I recognize that it has a harmonization directive to make sure that we harmonize and that we give consideration to the impact on innovation, the kind of the act is the California Privacy, the California Consumer Privacy Act, right? And it directs us to first and foremost look at how California can be a leader in innovating both around technology, but also around consumer protection. And so that's a lot of the conversations we've had with other stakeholders have been around how we are in this privileged position, and I just don't want to, I want to make sure we don't loss that.

MS. DE LA TORRE: I appreciate the additional information, but I am just unclear. So we have had conversations with the GO office when they had the advantage of actually reading our test, and what they have said to our test is that it's not aligned or is aligned with this or were they conversations before they could actually read our rules.

MR. LAIRD: We have had opportunities to brief them on even this new version of these regulations. They have not commented on what are—

MS. DE LA TORRE: Okay. So we don't have comments from, okay, thank you. So I'm concerned about not having that conversation before moving this forward, because it will be really unfortunate

if we had to reshape this based on any misalignment. I haven't read the executive order as I said, but to me it's really, really crucial that when we vote on this, we, both with the awareness, that kind of internal input from other stakeholders and the governor office been top of the list since, given the information that we have besides, and the other thing that I wanted to say, this has been said by others, the staff has done a tremendous job in trying to get us where we are. I want to acknowledge two staff members that are here, Mr. Laird working with subcommittee, working with me, and everybody knows that sometimes I can be fiery. So I just want to start by acknowledging that tremendous job that the staff has done and regardless of the outcome of this board meeting, kind of reassure them that we appreciate all of the work that has been done. That said, there's two things that are in my mind. The first one is scope. I appreciate everybody's comments on scope, but I don't think that we see it in this board in the same position, in the sense that there's one board member here who was the person behind Californians for consumer privacy, who actually drafted the law. So I will find it really, really hard to support any findings of scope that don't have full support from Member Mactaggart, number one, because he literally wrote the law. And number two, because we are potentially facing litigation, and I think it will be very, very challenging to successfully defend from litigation if we don't come out as a board with five votes, one of them being Mr. Mactaggart's voting. So I just want to be mindful that I'm listening to everybody's idea what the scope will be or should be of our delegation. But at the same time, for me, the words of Mr. Mactaggart have a different weight because of him having not only a

role in the board, but also a role in drafting the law that we are now trying to interpret. Go ahead.

MS. URBAN: Yes, Mr. Worth?

MR. WORTH: I mean, to start, I don't agree we need to be unanimous at this stage. The whole purpose here is we're sending this out to get, alright, we've been at this longer than I've been here, okay? And we're not there. This proves. There's two people here that are both experts in this field, and they are not agreeing that the language, one says it works, one says it doesn't. We've proven with working with staff, we're not going to get there. What we can't do is just make a comment and say it doesn't work, and then wait for the next meeting to say, oh, it still doesn't work. So what I did is I went to staff to understand things. I got to catch up here in between meetings, but I just don't believe we're going to get there. This conversation I've heard on the limited time I've been here, frankly too many times, I think it's time to get out and get more expert opinions and then we can debate, okay, I heard this, I heard that. What's the right answer? But we're not getting there and it's time to move this to a wider audience, in my view.

MS. DE LA TORRE: I hear you. But I am also concerned about duplicating work for the staff, right? Like, if we move this forward, we have heard that there's a lot of paperwork that has to be based on this version. So if we were to choose to modify the version two months from now, I'm assuming that we're going to have to ask a staff to kind of redo the paperwork. So what's the wisdom of getting the paperwork done when we might actually want to make changes that will do…

MR. WORTH: But if you're talking about, that's a great example. So let's, I don't know if that's accurate, but let's assume it's, if we have two months of added time, it's a lot shorter than the two years that we've been at this and not getting to a place where we can finalize it. So I would take the two months over another year of sitting and debating language.

MS. URBAN: I would also, may I just add a process point, I mean, I think I've made myself clear in terms of how I'm thinking about how staff have asked us to balance the chicken and egg issue of the paperwork and hashing out the regulations more. Which is, sorry, I've lost my point. Oh dear. Alright. Its 3:25. And I apologize for that, but what, remember that board that the regulations are in the hands of staff, meaning that board members can, as Mr. Worth did, as I did as well give feedback to staff as they, in between board meetings, we just cannot talk to one another and staff cannot reveal conversations that they've had with us, with them. And now I remembered my point, remembering what is put before us today. It is to give staff permission to start putting this into a formal package and doing that paperwork. It is not to stop conversations with staff on feedback, nor is it to stop staff from coming back and saying, you know what, this actually, we actually realize that there does need to be a change, whether that is input from Mr. Mactaggart or Mr. Le or from the stakeholders they will be hearing from. This is a timing question in my view. And I worry that we are beginning to, at this point risk both the timing just extending, I don't know, indefinitely, and us not actually having a guarantee that we will improve the text because we don't have enough information. Which is not to say that that's

not the case. I'm just thinking that the better process for that would be for Mr. Mactaggart and others to talk to staff individually. Nothing stopped that happening by us releasing this before.

MS. DE LA TORRE: I have a little bit of a concern about that because I have been talking individually to staff for two years and a half over one provision that I thought should be corrected. I have been told multiple times that this is a problem of resources, and I just found out in this meeting that the reason that has never changed is because staff's opinion is different from mine. I wouldn't want other board members to have to go through that. And particularly on scope, I think it's really, really, really unwise to approve anything as a board that doesn't have the full support of the person that's sitting in this board who is behind Californians for consumer privacy. Because if it gets litigated, Californians for consumer privacy is likely to be one of the parties that will be implicated in that litigation. So I'm really concerned about whether we are placing ourselves in the best situation to navigate that potential for litigation. And again on the Newson executive order, I will be much more confident about our alignment with it if we could say that the governor's office has had an opportunity to provide feedback looking at the draft, because we have to be mindful of other institutions. In Sacramento, they're thinking about regulating AI. The governor's office has had an interest on it. And I really think that to build our relationships with those other agencies and institutions, it's important to get that concrete feedback. And it might be go ahead, but it could be also like you have to completely redraft this. And

if it's redraft, then why are we getting our staff to prepare a set of paperwork that is really intense, I think from today until the next board meeting, there could be opportunities. And I'm going to advance one that I have been proposing for many years. So this is to member Le and to chair Urban, this is going to sound like I'm harping on my own. How about we create a subcommittee of the board and allow that subcommittee to, from this meeting to the next meeting, kind of work into this more concrete steps, which will be make sure that we get feedback from the governor's office and then maybe allow Mr. Mactaggart, I think should be a member of subcommittee to have a more detailed conversation with the staff on scopes that he can be satisfied that we are within the scope. Because if we are outside of the scope, I think that we risk dedicating months of work of the agency to an outcome that will not sustain litigation.

MS. URBAN: So…

MR. MACTAGGART: I just want to say I don't think I'm that special.

MR. LE: I was going to say, I think all our votes are equal here.

MS. DE LA TORRE: All of the votes are equal, but I don't think that we can ignore a fact.

MR. LE: But if you change the scope, then maybe I don't vote for it. So it's…

MR. WORTH: One vote's not enough.

MR. LE: Yeah.

MS. DE LA TORRE: Right. But it's not this thing in terms of…

MS. URBAN: And I will say I like this creative idea, but I

think we are at the point where all board members should have an equal voice, and that includes in between meetings. Mr. Mactaggart is welcome to talk to staff, has been welcome to talk to staff. And it seems that we have some fairly strong views about where we are in the process on sort of both sides of that divide. Whether we are ready to release it to staff to prepare for formal rulemaking, knowing that it could change. I mean, I think we have a difference in relative what we see as relative likeliness of big, big changes probably. I just don't think any of us conflicted. But that's my view. And I'm not going to impose my view in my sort of laying this out. So I think we have, it seems like we have three people who view the process as at a place for that step. And we have two people who view it as not at that step. And I actually need to take a break for five minutes. And I will, for five or 10 minutes?

MR. LE: Five minutes is fine.

MS. URBAN: Five minutes. But I think that's where we are, and I think that's, I actually think that's a good place to be. I think we've aired some useful substance and we've also figured out sort of where we are on process. And now we need to figure out where we go from here. Alright. Five minutes. We'll be back at about 3:35. Thank you. Okay. Welcome back everyone. Its 3:42. Welcome back to the March 8th, 2024, California Privacy Protection Agency Board meeting. We are discussing agenda item number four, discussion and possible action to advance draft regulations to formal rulemaking for automated decision making technology, risk assessments and updates to existing regulations. We have been having a spirited discussion, and my job as chair, I view generally to, of course I have my own vote, but also to balance folks' view and balance how

we handle the process and listen to staff and so forth. And this is a tough one because I think that we have quite settled views on process, and we also have differing views on some of the substance. And as I think this through and think through where we are and how we got here and where we might be going, my view is that we don't have sort of a substantive directional change for staff right now. We could possibly have a substantive directional change in the future, but as Mr. Le pointed out that might mean that his viewpoint changes such that the regulation, we have a disagreement over the regulations a new. I think this is just a function of the fact that this is a challenging area. It's an important area. And once again, we are five very dedicated people with a staff that is very dedicated and very expert, and yet we don't have all of the information. So with all respect to everybody's viewpoints on both of those topics, I am going to request, go ahead and request a motion that we advance these rules as needed so the staff can prepare the rulemaking package if they run into issues where they think that it is a waste of time or resources to be working on those, working on that paperwork, it will be, the ball will be in their court. They're welcome to come back to us for a discussion prior to a formal rulemaking package. We're not forcing it on them, right. Mr. Laird, if we did this. Okay. Or at least I guess you'll help me formulate a motion to that effect. But I'm just not really seeing a way where I can completely kind of balance all of this out. Other than giving the opportunity for things to move forward like this and we have another discussion when the rules come back. So I realize this is probably a situation where you know no one's completely satisfied with my viewpoint, but that is my attempt. Mr.

Worth?

MR. WORTH: Chair, can I ask a question of staff, though to help inform my vote. The issue of the G.O. office, can you respond to me about whether that should be done before or could be done during the draft process?

MR. LAIRD: Well, and maybe to begin, I guess I'm curious what the expectation is because I just want to make clear I can't control the governor's office, and if they don't wish to provide further feedback or tell us one way or the other formally how they feel about these regulations…

MR. WORTH: A hundred percent.

MR. LAIRD: I can't commit to anything in that.

MR. WORTH: And you either have or will reach out again.

MR. LAIRD: Absolutely. Absolutely.

MR. WORTH: Okay. That's fine. Thanks.

MS. URBAN: And Mr. Le?

MR. LE: Yeah, so I like the idea of just getting these out there. I don't think more time is going to change any of our minds, but I actually do think getting formal comment on improved language could definitely change my mind, right? I have been wrestling with scope for years and the opportunity to get a lot of stakeholder feedback that isn't just folks that are popping into the legislator's office would be very valuable to me in changing my mind and perhaps aligning closer with Mr. Mactaggart's perspective. I think we both want to make sure that the scoping is appropriate. I'm not trying to, hurt businesses and I think one other thing is, I have a couple other thoughts on the regulations. It's not going to stop me from advancing them, but is now the good time to do it

in front of everyone or should I just talk to staff? I mean, I already have shared those with staff, but.

MS. URBAN: Yeah, I mean, I guess in the spirit of the conversation that we've had and the thinking about where we are, I would probably, I mean, it's up to you, but I would probably encourage you to share those with staff, now if you think that it's something that as a group we could provide direction to staff here efficiently, I will leave that up to your discretion, because of course, you know what it is that you…

MR. LAIRD: Yes. I think there's just one thing and I would like to get the thoughts of the board that I want to talk about now.

MS. URBAN: Let me check this end of the table.

MS. DE LA TORRE: About.

MS. URBAN: Well, reactions to my, I mean, I know—

MS. DE LA TORRE: Include the thoughts that Mr. Le and if it's helpful to…

MS. URBAN: Okay.

MR. LE: It's a small thing, one of my concerns is, we need outside parties to be looking at these risk assessment abridged versions. And my one thing is I understand not taking out some of the language in the abridged version of the risk assessment because it's maybe speculative on the basis of the company. One thing I think that should be in the abridged version is at least companies should list some of the safeguards that they put in place so that folks will know that, alright, this company has tested their system and these are the ways that it's protected. And I think that's beneficial to consumers and maybe something that companies can brag

about. So I think that's just one thought that I would like to see at least comment on, when we advance their formal rulemaking or to include it and get comment on it.

MS. URBAN: Okay. Thank you Mr. Le, immediate reactions to that. Do we?

MS. DE LA TORRE: Sounds reasonable to me. It sounds reasonable to me.

MS. URBAN: It sounds reasonable to me as well, and Mr. Worth is nodding. Mr. Mactaggart.

MR. MACTAGGART: Sure. I mean, sounds like these are all going to change a lot anyway, so.

MS. URBAN: Again, I think our predictive meters are imperfect and lack perhaps perfect accuracy, and we have slightly different weights set on them.

MS. DE LA TORRE: I do have a request before we move into the motion.

MS. URBAN: Yeah.

MS. DE LA TORRE: My poll is dependent on what I believe other members might or might not do. And I'm the D, so I'm going to be called to vote first. Can we have an indication of how other members are leaning towards, of course, of their vote before we call the vote?

MS. URBAN: Of course. Absolutely. But before we do that, I just wanted to know if staff had any response, comments to Mr. Le's proposed addendum?

MS. ANDERSON: Yes, considering there seems to be board consensus on that issue, we can add the language in the bridge risk assessment to include safeguards implemented. We would recommend

that any such language include a limited carve out for security fraud prevention and safety consistent with how the ADMT and risk assessment framework already take those into account, just so that the information that they're providing would not compromise their ability to control for those things. Sure.

MS. URBAN: Thank you. Great. Yes. Alright. Ms. De La Torre wanted to just get a sense of the room.

MR. LE: I think we need to advance this. I don't think, as I've already said, I don't think extra time is, without external input is going to really change much.

MR. WORTH: I agree.

MS. URBAN: Okay. Thank you. I agree. I think extra time is not as valuable as extra information. And Mr. Mactaggart?

MR. MACTAGGART: Well, yeah, I think we have the information we need, which is in the statute and looking around the world, and I'm nervous about going out with a very broad that I think is overly broad set of rules here. So I'm not going to support it. It doesn't mean I don't support the people who've done lot of the hard work, so thank you. And I will make a point now of trying to make some appointments to talk to you all about this in the next little while, but I'm concerned that the scope of this is overly broad and I feel like we are straying from what the text says, but that’s the point.

MS. URBAN: Thank you. Mr. Mactaggart. Understood. Ms. De La Torre, is that helpful?

MS. DE LA TORRE: Yes. I mean, give, should I express my…

MS. URBAN: Of course.

MS. DE LA TORRE: Okay. So given what I just heard from Mr.

Mactaggart, my inclination is to not support in terms of the vote right now. And I think it's extremely unwise to try to move this forward with two votes against and potentially duplicate the work of the agency. I'm going to propose again, what I mentioned before, which is this, delay this by two months, create a subcommittee that includes member Mactaggart and maybe another member. It cannot be me because I'm hoping to step down between now and then it, but perhaps member Worth who has that connection with the G.O. office and maybe can secure some kind of essential feedback on how they see us as we are right now. I think that it says at two monthly that in reality can save a lot of work for the agency and maybe a proposition that we can have five votes to support as opposed to trying to move this forward on a three to two vote. We are likely facing the litigation on the scope. We have had comments every time we discuss this on your out of scope. Last time we were here, there were at least three law firms that got on. Well, maybe I'm exaggerated, but I remember law firm saying, you are out of scope. So I'm not comfortable with moving a package forward that we have so much feedback saying is out of scope and where, member Mactaggart is voting against because in his opinion, we are out of scope. Does that change the opinion of anybody else in terms of where they're leaning with their vote?

MS. URBAN: I really appreciate it. I think we just have different viewpoints on what would actually help us get to the best answer in terms of a process. I will comment on the subcommittee thought which is an attractive one, but again, I do think that we should have the ability for each board member to talk to staff and we put it back in a subcommittee. We don't have that. And

currently, Mr. Mactaggart, Mr. Worth, Mr. Le, you and I could talk to staff individually, so I think that's the better place to be there. You know, I think staff have let us know what they think about their need to start working on the package. Again it doesn't mean anything's decided. So I think we just have a different sense of the relative like, risk of getting this right as a process matter. This is in no way to diminish the viewpoint. I think it's just we've got to figure out how to move forward on this problem, and we have slightly different viewpoints on how to do that.

MS. DE LA TORRE: Are there other reactions for the program?

MR. WORTH: Yeah, I just think the way I think you're viewing moving this forward, I know it's a term we keep using. In my view, all we're doing is getting more feedback, and I'm at a place as the youngest member here, not the youngest. Sorry about that.

MS. URBAN: You might be.

MR. WORTH: The oldest member. Oldest member. I just don't feel comfortable that we're going to make any progress because we haven't, and this is not going to be effective to wait two more months because what about two months ago? It was December when this was brought up, and now we're here and it's March and people aren't happy, some people are, some people aren't. So let's get some more feedback. Let's have somebody else give us input as to why that scope's too broad and then we can all understand a different viewpoint than the ones that we're working with now, I think staffs, I don't know how staff could react to two different views on the same language. I don't know what you would do. And so let's get a third or a fourth or a 30th. So I don't think moving forward, that to me sounds like we're making a decision to bless something.

I'm asking for feedback from stakeholders. I'm asking for people that are concerned about these regulations to give us their input in a very formal process. That's what I'm looking for.

MS. DE LA TORRE: So I just want to say that we have received feedback multiple times in the past, and the consistency in the feedback around scope is something that I have been very aware of. And so I don't think that that's going to go, that's going to go away. I think that we are going to get the same feedback that we have been getting, which is your regulations are out of scope. I think it's highly likely that these regulations will be litigated whether we tailor them better or not. And I will prepare from the perspective of having to face litigation to come out of these with five votes from the board. And plus there is the issue of starting paperwork. I mean, the whole thing with voting the forward is to enable the agency to start doing paperwork, right? So why about we could do allow the proposed revision to move forward, which will enable the agency to do all the paperwork for it, and hold back on the risk assessments for two months so that we can hopefully come back with a draft that gets the support of all of the members and actually has for sure the impact of having heard the opinion of the G.O.. I just think that it's a reasonable delay to get the possible much better outcome for us moving down the road on litigation.

MR. WORTH: Is the, again, I think its California, you just said it. I agree with you. It's going to get litigated regardless of what the language says, right? Somewhere, some amount. The vote three, two today isn't the meaningful vote, the vote 5-0, once we are ready to adopt is the meaningful vote. That's where I would be concerned.

MS. DE LA TORRE: Right. But I…

MR. WORTH: And listen and sorry, but just to finish. There's a lot of other people in the G.O. office only, there's a lot of other feedback we need, so we can't start to get that until we get this out. I'll make sure if I have any ability to do that, to support you trying to get response from them. But they may not, and maybe other board members have views in this, they may not want to jump into this. They may just be so focused on their own process and implementation that they don't need another place to be worried about. I mean, that's a pretty common and realistic potentially outcome of their view on this. But we will make sure we reach out and get that in, but why not have that come out with everybody else's feedback over the next number of months, you know?

MS. DE LA TORRE: Well, what I'm saying is you can save is staff time.

MS. URBAN: I think staff has told us though…

MR. WORTH: This is what they want.

MS. URBAN: What their preference is and as a matter of process. And so you know, all things being equal and we do have different views. I weigh what their request is and trust them on that. And again, like if things change a lot, I'm sure as long as we formulate it properly, the motion, they can set aside the paperwork, right? So I think though it sounds as though we do have some consensus on the update rules at this point. Is that right?

MR. LE: Yeah, just quick point and just saying this because if this comes up into a court transcript later, I think this is within scope of the institute. And I also think a lot of the organizations that say it's not, they have a vested interest in finding that it's

not in scope. And that's just one side of the story. And I think when we do the statement of reasons and we get that paperwork done, that'll help us guide our thoughts on whether or not this is within the scope and justified by the statute.

MR. LAIRD: I'd like to second Mr. Le's assessment.

MS. URBAN: Thank you. I would also just like to be very clear that I'm valuing everyone's input here. And looking forward to further substantive discussions in my view backed up by information from outside the sources we've had already as well as more thinking by the board. So the motion that I propose, we usually say to direct staff would it be better, Mr. Laird to say authorize staff given the potential that Ms. De La Torre, for example, pointed out that things could change authorize instead of direct?

MR. LAIRD: I think that's fine. I think either term will give us the ability to.

MS. URBAN: Okay. Authorize staff to advance the proposed risk assessment, automated decision making technology and updates to existing regulations to formal rulemaking up to the commencement of the 45 day public comment period, and otherwise authorize staff to make additional changes where necessary to improve the text clarity, including the change proposed by Mr. Le a few minutes ago with regards to the abridged risk assessments upon which the board had consensus or to otherwise ensure compliance with the administrative procedures act. Excuse me. That was a long sentence. I made it almost to the end and I do want to say that advancing again, it means preparing the package, it means receiving more information. Would anyone like to propose that motion?

MR. LE: I so move.

MS. URBAN: And do I have a second?

MR. WORTH: I'll second.

MS. URBAN: Thank you. Mr. Mactaggart, do you have a comment before we go to public comment?

MR. MACTAGGART: Yeah, good question. Are you separating out, because I do support the main package? Are you separating that out?

MS. URBAN: Oh, the updates, we can do that. We can separate them out.

MR. MACTAGGART: Yeah, you might want to separate that out.

MS. URBAN: Okay, sure. Okay, perfect. Thank you. We will do that. We have the intention to do that and we will take public comments and I will work on separating those out and try to recreate what I said more or less or enough for our purposes so we all know what everybody is authorized to do. So is there public comments?

MS. ALLEN: Yeah, public comment first.

MS. URBAN: Okay. Thank you.

MS. ALLEN: Yes. So we are on agenda number, item number four which is updates to the rulemaking packages. If you would like to make a comment at this time, please raise your hand using the raise hand feature or by pressing star nine if you're joining us by phone. Again, this is for agenda item number four. Okay. First commenter is Robbie. Robbie, we are going to unmute you. You have three minutes to make your public comment. You may begin when you're ready.

MR. ROBBIE ABELON: My name is Robbie Abelon here on behalf of the California Asian Chamber of Commerce, representing businesses across the state, at the scope of the draft risk assessment

regulations is far beyond that of other state privacy laws and beyond the bounds of the underlying California privacy law as well. The scope would create extensive compliance obligations across a broad array of processing activities that go far beyond the contours of what is commonly understood to be privacy regulation and strain to other areas, including substantive regulation of AI. The definitions of AI and automated decision making are overly broad, that they could effectively encompass even simple algorithms and uses that AI may be capable of, but is not being contemplated by the business. In addition, the detailed requirements in the automated decision making sections are not appropriate to privacy law and go far beyond the mandate of the CPRA. The CPRA differs from other state privacy laws in ways that will be counterproductive to California consumers. The inclusion of profiling and behavioral advertising in the scope is what is considered automated decision making would have far reaching negative effects. It would create opt-out requirements for situations in which AI is not making decisions, this would restrict and burden companies in unnecessary ways that will hurt innovation for consumers, and in some cases could mandate a poorer customer experience by limiting personalization. Small businesses also have limited resources as much as these regulations would be burdensome for businesses generally, for small businesses, these regulations could result in diverting sorely needed resources from business operations to compliance. Also small businesses already struggle to find qualified talent. These opt out requirements can significantly complicate small businesses talent retention and acquisition efforts. Draft language is under consideration for automated

decision making to allow consumers to opt out from their data being used for the purposes of training AI models. Our using data for AI training purposes, it's actually a low risk activity. If you're regulating the use of the AI. By allowing consumers to opt out of having their data used for training, the model will actually become worse as a result, hurting consumers by reducing the potential for innovation and increasing risk of bias. This is particularly concerning for small businesses who may have smaller subsets of data for AI modeling, making the impact of such a regulation more acute. And the lack of opt-out would not affect the privacy of any consumer because the data would just be used generically for model modeling. And modeling relies on trends and patterns and data overall, not anyone's individual data. In fact, the best way to mitigate biases, not less data, but more and more complete data. The board's decision to remove the requirements to submit risk assessments to businesses, board of directors is a significant improvement to the draft regulations as released in December. Given the board has recognized that such a requirement prescribes an inappropriate role of business board...

MS. URBAN: You are at time. Thank you so much for your comment.

MS. ALLEN: You're really out of time. Okay. We are going to go, we have a public commenter here in the room, so we are going to call the public commenter. If you'd like to state your name ahead of time. You may, you don't need to. You have three minutes, you may begin.

MS. BRUNO O'NEAL: Thank you. Hi, my name is Bruno O'Neal. I'm here with the California Nurses Association and I'm a regulatory

policy specialist with them. We appreciate the work of agency staff and the board in developing these draft regulations, and we've signed on to a couple letters you've already gotten with some feedback on this. If you don't catch everything I say today, I don't get to it all, but we really see regulation in this area as urgent. Automated decision making technology has been rapidly deployed in healthcare settings, and nurses have seen this technology endanger their patients and reduce their ability to use their professional judgment. However, the latest draft of these regulations unduly narrows the coverage of key protections for the rights of workers such as nurses and our patients. CNA urges the board to revise the definition of automated decision-making technology and to remove exceptions for employment decisions from notice and opt-out requirements. So the latest draft narrows the ADMT tech that is subject to risk assessment and other requirements to those that substantially facilitate human decision making as you have discussed. Unfortunately we can see employers taking advantage of this language to exclude themselves from the regulation, and there's going to be no way for the people who are affected to challenge that exclusion, that determination, both the risk assessment requirements and customer opt out rights are essential for all ADMT. This substantially facilitates language and the exception for opt-out rights where there's human review of appeals, limit these rights and put workers and patients at risk. When challenged on workplace or patient safety issues, frequently developers and hospital employers claim these algorithms are just advisory to healthcare professionals. However, there are several widely deployed commercial healthcare algorithms that have been

found to have serious racial biases and validity problems that wouldn't have been identifiable to the human who's using that or to a human reviewer. While the safe provision of healthcare does require that healthcare professionals are free to use their judgment to treat individual patients. In practice, we've surveyed nurses, many nurses risk being disciplined by their employer if they don't follow algorithmic recommendations. And even if management doesn't explicitly instruct workers that they can't override ADMT recs, time pressure and the fear of liability, strongly incentivize compliance with these automated recommendations and these same factors will…

MS. URBAN: You have 15 seconds left.

MS. O'NEAL: Influence human reviewers. Workers should also have the same right to notice an opt out as consumers in other context. We use that notice to organize, to bargain over the impacts of these technologies workplace.

MS. URBAN: You're at time.

MS. O'NEAL: Thank you.

MS. ALLEN: Okay. Next speaker will be Grace. Grace, we are going to unmute you and you have three minutes. You may begin when you're ready. Grace, you are unmuted. You may begin when you're ready.

MS. GRACE GEDYE: My apologies. I didn't see how to press a button. Good afternoon. I'm Grace Gedye and I'm with Consumer Reports where I work on artificial intelligence policy. Consumer reports represents more than 6 million members across the country. I want to thank the agency and staff for their hard work on these draft rules. My comments will focus on the proposed automated

decision making technology regulations. I'll start up with something we really liked. We commend the board for adopting or the agency for proposing a broad definition of behavioral advertising, making clear that consumers have the right to opt out of first party targeting. In addition to cross context ad targeting, however, we are concerned to see that some of the other changes in the December draft weakened consumer's rights. First, the narrowed definition of automated decision making technology creates a new and easy way for businesses to sidestep these rules. Companies can and often do say that they're just using automated decision tools to assist or contribute in their decision making. Even if that's not an accurate description of how they use the tools in practice, it's not clear how or how often that faulty assertion would come to light. Recent research from Cornell Data and Society and Consumer Reports found that similar legislative drafting issues has hampered compliance with New York City's AI bias law. Second, we noticed that some of the disclosure requirements in the pre-use notice were removed in this draft. Specifically, it seems like companies would no longer have to disclose whether their use of algorithm decision making tools has been evaluated for validity, reliability, and fairness along with the outcomes of those evaluations. Greater transparency is one of the most important benefits of these rules, and we'd urge the board to restore this disclosure. This is not a heavy compliance lift for companies. Lastly, we'd urge the board to make the notice process after what has been defined as adverse significant decisions more consumer friendly. This is not a change as far as I can tell, but under the current draft, it seems like it would take two steps and potentially months for a consumer to fully

understand one of these life-changing decisions. Here's my understanding of how it might work in practice. If I'm looking for an apartment and a renter screening tool confuses me with someone else who has the same name, but who has a criminal record, 15 days later I might get a notice saying I've been denied an apartment, thanks in part to an algorithm with no other substantive information about the decision. However, the notice will explain that I can request more information. If I have time, I might take the steps to make that request and then wait potentially another 45 days to learn why I was denied. Only after two months would I have the information I need to pursue an appeal. The appeal process itself could easily take weeks. In the meantime, I might have come to the end of my current lease and missed out on a bunch of apartments. This is not a consumer friendly process. For these life-changing decisions, consumers should get all the information they need to understand what's happened quickly and without multiple steps. Thank you so much for your work. That's it for me.

MS. ALLEN: Okay, next up we have Matt. Matt, we are going to unmute you. You may begin when you're ready.

MR. MATT SCHWARTZ: Good afternoon. My name is Matt Schwartz. I'm a policy analyst at Consumer Reports and I'll be discussing the draft rules on risk assessments. Thank you to the board for the opportunity to comment and thanks for all the hard work on these draft rules thus far. As I shared last time, consumer reports supports the agency's mission to create strong risk assessments requirements, noting that the CCPA is the only state privacy law that includes as an element of this provision, a requirement that businesses cease any processing that's determined to present more

risk than benefit. However, we are concerned about several ways that the risk assessment requirements have been weakened since the previous draft. For example, we're concerned that businesses will no longer have to share their understanding of the context of their processing activities, consumers' reasonable expectations, and how the businesses are complying with the statutes underlying data minimization provisions. Though of course, these are merely self-attestations, they would provide enforcers vital insights into how a business conceptualizes its own processing activities, which could be a crucial input into any future enforcement action. We urge the agency to reintroduce these elements back into the risk assessment. We also continue to believe that businesses should be required to share in their risk assessment when they're processing sensitive personal information for the purposes of making inferences about consumers, as is evidenced by the underlying statutes. Extra protections like limiting the use of sensitive information, lawmakers sought to provide consumers enhanced protections when sensitive information was being used for inferences. Accordingly, businesses should be able to explain to regulators and consumers why their processing of data in this manner does not present an unacceptable level of risk. Finally, we're concerned with the ways that the agency has proposed limiting the abridged version of the risk assessment, which we already believed was under inclusive of core elements likely to be useful by consumers and other interested stakeholders. For example, the new draft eliminates the requirement that businesses share their plain language explanation of why the risks of their processing are or are not outweighed by the benefits, which is essentially the

central element of what the risk assessment attempts to reveal. We also note that still not clear as written, that businesses must provide a publicly available version of the abridged risk assessment as the draft rule seemingly only contemplate the optional publishing of a public link when the unabridged version is sent to regulators. The rule should be clear that the public link to the abridged risk assessment should always be available. Thank you for the time and I'm happy to answer any follow-up questions you may have.

MS. ALLEN: Thank you. Next up is Ronak. Ronak, we're going to unmute you. You have three minutes. You may begin when you're ready. Ronak from Cal Chamber, you have been unmuted. You have three minutes. You may begin when you're ready.

MS. RONAK DAYLAMI: Oh, sorry. Can you hear me now?

MS. ALLEN: We can hear you.

MS. DAYLAMI: Okay, perfect. Thank you. Ronak Daylami for Cal Chamber. On behalf of over 14,000 members, we thank the board for removing the requirement to submit risk assessments to a business's board of directors and believe it would be prudent to remove the same requirement from the cybersecurity draft regs as well. Unfortunately, we continue to find these regulations to be over burdensome, insufficiently risk-based, and out of sync with other state's privacy laws, as well as with the agency's directive from voters. Indeed, the regs go beyond the contours of privacy regulation, veering into rewriting the law at times. For example, the only advertising that voters contemplated in the CCPA specifically relates to cross context behavioral advertising. Yet the draft regulations unilaterally scope in profiling a consumer

for behavioral advertising, which is so overly broad. It captures even first party ads where businesses advertised to their own customers. The inclusion of profiling and behavioral advertising and the regs will have far reaching negative effects, creating opt-out requirements for situations in which AI is not making decisions. They're unnecessarily burdensome, hurt innovation, and in some cases mandate a more frustrating customer experience by limiting personalization, by including requirements of detailed disclosures and assessments related to model testing, model logic, outputs, testing for fairness and validity, and alternative technologies that a business considered. The draft regulations enter the realm of general regulations of ADMT as opposed to privacy regulations. The proposed definitions of AI and ADMT remains so overly broad that they encompass even simple algorithms and commonplace tools such as spreadsheet software, they even cover uses that AI may be capable of, but that the business is not even contemplating. As we stated in December, the use of ADMT and employment raises unique considerations as existing laws already protect against the use of AI tools that directly or indirectly discriminate against job applicants and employees. It's incredibly problematic to require employers to provide an opt out of ADMT or it's unrelated to significant employment decision or where the use is shown to be job related. Inconsistent with business necessity. Also problematic regulating the PI used for the training of ADMT, which is not a high risk activity, allowing an opt-out of training will only result in inferior models to the detriment of consumers and innovation and increase the risk of bias. To be clear, requiring an opt-out here does not actually protect consumer

privacy and would require additional processing of their data since developers do not technically, do not typically identify individuals during the training process. Consumer data is generally, is used generically in modeling, which relies on trends and patterns not individualized data. And last, the regs should only require businesses to provide risk assessments to the agency if relevant to an investigation not annually. As drafted the rules result in the disclosure of substantial amounts of confidential proprietary information, if not trade secrets yet fail to include protections from public disclosure or to ensure that all applicable legal privileges are retained, something that's available under other state privacy laws, at a minimum such protection should be added. Thank you.

MS. ALLEN: Thank you, Edwin. You have been unmuted. You have three minutes. Go ahead when you're ready.

MR. LOMBARD: Thank you. Once again, it's Edwin Lombard with ELM strategies. On December 7th, 2023, the organizations I work with, such as the California African American Chamber of Commerce and the Greater Los Angeles African American Chamber of Commerce submitted a letter to the CPPA raising the following points. First, CPPA's premature AI regulations contravene governor Newsom's AI executive order and bypass legislature. Recently, the legislature introduced 20 plus AI related regulations, and it would be helpful to know from CPPA today, what efforts has CPPA done or planning to do to collaborate with the legislators on AI? Let me reiterate. Small businesses are concerned that multiple and potentially conflicting AI regulations are likely to end their businesses in 2024, and I agree with Mr. Mactaggart that what I heard today was a

gross overreach that can potentially wipe out the ability for businesses that have transitioned from brick and mortar to online services to no longer exist. Secondly, thank you to the staff for laying out the timeline today, but as a matter of fairness, we ask that CPPA provide and publish regulatory timelines for its proposed AI regulations in writing in a way that ethnic communities and small businesses can receive it. As far as your roadshows are concern, I would ask that you would please include statewide and local ethnic chambers of commerce and business associations so that they can hear from you just exactly what this regulation will do to them, and then you can get feedback from them on how they're going to be affected by this. In closing, I would like to emphasize the need for small businesses to thrive in light of California's $73 billion budget deficit, which is astronomical, and I have no idea how we're going to overcome this, so thank you very much and I appreciate the opportunity to be heard.

MS. ALLEN: Thank you. Next up is Peter. Peter, you have been unmuted. You may, when you're ready, you may begin your three minutes.

MR. PETER LEROE-MUNOZ: Good afternoon. This is Peter Leroe-Munoz with the Silicon Valley Leadership Group. We are a business association representing innovation economy companies. We echo many of the comments raised earlier by speakers. In particular, those raised by Mr. Robbie Abelon concerning the over expansive scope of the draft risk regulations. The overly broad AI and ADM definitions challenges that regulations will pose for employers for purposes of compliance as well as consumer opt-outs, which would reduce comprehensive training data for more accurate and representative

information. Further, the rules require the disclosure of risk assessments to the agency and other submissions that would result in the disclosure of a substantial amount of confidential and proprietary information. The regulations do not include any protections from public disclosure, nor do they note that all applicable legal privileges are retained. These requirements should be eliminated or the proper protections added to the regulations to protect them from state FOIA requests and other disclosures and for privileges to be retained. Thank you very much.

MS. ALLEN: Thank you. Annette, you have been unmuted. You have three minutes to begin your public comment. You can start when you're ready.

MS. ANNETTE BERNHARDT: Good afternoon, and thank you for the opportunity to comment. My name is Annette Bernhardt and I direct the technology and work program at the UC, Berkeley Labor Center. We recently joined two letters addressed to the board, and I would like to highlight several themes and initial concerns, in part because a number of other signers were not able to stay for the public comment period. California is the first and only place in the US where workers are starting to gain basic rights over their data and how employers use that data to make critical decisions about them. That's why labor groups and other advocates are paying such close attention to the CPPA rulemaking process because the stakes are high. Specifically, here are several priorities from worker advocates. First, the scale and scope of data-driven workplace technologies necessitate broad protections for workers, and here we are concerned about the narrowing of coverage only to algorithmic systems that substantially facilitate an employer's

decision. But employers often use algorithms as one of, among several factors when making decisions about workers and important harms like discrimination can still occur under this narrow definition, though those harms would not be regulated. We also worry that employers might exploit this new definition by essentially self-certifying themselves out of regulatory oversight. Second, full transparency and disclosure are absolutely critical rights for workers given the often hidden nature of algorithmic systems in the workplace. Importantly, we do not believe that the notice and access requirements and the draft regulations will be owners on employer's notices can be automated and routinized, and in the case of risk assessments, the draft regulations already include an exemption for routine administrative data processing. Third, and finally, workers deserve the same agency over the processing of their data as consumers under the CCPA and here we are concerned about recent changes that would add quite significant exceptions to opt-out rights for workers. We are aware and share the idea that common sense and feasibility will need to be important considerations in detailing any opt-out regime, but the new vague and broad exceptions threaten to deprive workers of any agency over algorithmic tools that can have significant impacts on their livelihoods. In closing, I want to thank executive director Soltani, agency staff and board members for what is clearly very hard and committed work on these draft regulations. By covering workers in the CCPA. California has a historic opportunity to lead the US in establishing workers as key stakeholders in governing data-driven technologies, but it will be vital that the rulemaking process be informed by researchers and worker organizations who

have concrete knowledge about how AI is actually playing out in the workplace. I thank you for the opportunity to comment.

MS. ALLEN: Daniel, you have been unmuted. You have three minutes to make your comment, begin when you're ready.

MR. DANIEL GELLER: Good afternoon, and thank you for the opportunity to provide public comment to the board. My name is Daniel Geller, and I'm speaking on behalf of Tech Equity Collaborative. Our organization shares the concerns raised just now by Dr. Bernhardt of the UC, Berkeley Labor Center, as well as the concerns raised in previous letters to the board dated February 26th and March 7th respectively. In addition to reiterating those concerns, we would like to expand on them as follows. Specifically, we are concerned about the currently narrow set of circumstances where regulation of these systems is set to be required in the workplace under the draft regulations, the necessity of fully vetting these models before they enter the workplace and the need to protect against overzealous worker data collection without their involvement and subsequent misuse of that data. Algorithmic systems have taken shape in many workplaces across our state. The growth of more advanced models and systems will continue to impact all aspects of work and working conditions. As such, it is paramount that the regulation of these models in the workplace apply to more than just uses that quote, substantially facilitate employer decisions. The current narrow definition creates a potential gray area where a model could contribute to an adverse employment decision, but do so in a way that is both impactful and able to avoid regulation under the current draft language. Furthermore, risk assessments must provide transparency to ensure that the tool

has adequately considered and addressed human and social factors involved. In the December draft regulations, there was a requirement for risk assessments to include plain language descriptions of the processing purpose and the balancing of benefits versus negative impacts of the system. We think retaining these requirements is crucial because harm in algorithmic systems can result from a variety of sources that should be considered. These include training data, model design, misalignment with intended purpose contact, as well as human errors and judgment when utilizing the recommendation or outputs of the decision. A risk assessment tool cannot be only a matter of considering the math behind an algorithm. It must also take these factors into consideration. Lastly, it is crucial that workers be involved in determining how AI is utilized in the workplace through inclusion and risk assessments, disclosure of the nature and quantity of personal data collected and the right to opt out of being subject to algorithmic systems where necessary. The board is capable of facilitating innovation in the workplace while protecting individuals from foreseeable harms. Thank you for the opportunity to share public comment as well as for taking into consideration the concerns raised here today.

MS. URBAN: Thank you, and thanks to everybody for public comment. I know we have some more people in the queue. I need to take a one minute break. I'm just going to ask everybody to keep their seats so that I can consult with staff about timing, because as I understand it, this building closes at five, so we are going to have to make some choices. I will be back as soon as I get clarity and everybody who's waiting to comment. Thank you so much

for your patience. We'll be back in a moment. Thank you so much everyone for your patience. We are going to complete public comment on this item and see where we are. We think that we could probably stay a little bit after five and we do have some business that we need to of course go back to the motions after public comment. But we will probably be holding over some agenda items for the next meeting, so with that update for, and we'll talk about that on the board as to the choices there. So with that please we'd love to hear from the next commenter.

MS. ALLEN: Yeah. Caroline, we have unmuted you. You have three minutes to make your comment, begin when you're ready.

MS. CAROLINE KRACZON: Thank you so much. Hello, my name is Caroline Kraczon and I'm a fellow at the Electronic Privacy Information Center, also known as epic. We are an independent research and advocacy center focused on protecting privacy in the digital age. Throughout the rulemaking comment, EPIC or Process, Epic has submitted several comments and provided testimony. EPIC commends the agency's work to protect the privacy of Californians and limit harms from automated decision making technology. Today, I will address two points, the public availability of automated decision making technology risk assessments collected by the agency and the information that should be included in risk assessments. First, epic advocates for the public disclosure of abridged risk assessments to provide much needed transparency related to the use of automated decision making technology. Under the current draft regulations, the CPPA would have access to annual abridged risk assessments, but as far as the current draft regulations reflect, the public would only be assured access to risk assessments if a

company chooses to post them. The agency should ensure that the abridged risk assessments are available to the public by creating and maintaining a central public repository of risk assessment content. Second, we encourage the agency to require companies to disclose more information within the abridged risk assessments. The regulation should require abridged risk assessments to include the following information, a plain language explanation of the processing subject to the risk assessment, and a plain language explanation of why the negative impacts of the processing do or do not outweigh the benefits of the processing. These requirements were included on previous regulation drafts, but are not included on the most recent version of the draft regulation. Further abridged risk assessments should also include an identification of the developer and deployer of the mechanisms for processing, along with contact information for these actors. The contact, the context of the processing activity, including the relationship between the business and consumers, whose information is to be processed and how the processing complies with data minimization requirements. In conclusion, epic supports the agency's work to protect the privacy of Californians by regulating harmful automated decision making technology uses and expanding transparency around its use. Thank you.

MS. ALLEN: Hayley. You have been unmuted. You have three minutes. Begin your comment when you're ready.

MS. HAYLEY TSUKAYAMA: Thank you. Good afternoon and thank you for the opportunity to comment. My name is Hayley Tsukayama and I'm associate director of legislative activism at the Electronic Frontier Foundation. EFF has joined two letters to the agency

outlining some priorities for what we'd like to see in regulations. I just want to particularly highlight two concerns with the latest draft. First is the change to the definition of ADMT that says a tool must substantially facilitate human decisions. This gives, or sorry. Well, yes, this gives companies an easy mechanism decide step accountability. As it would be easy for anyone using an ADMT to claim it is not a key factor in decision making. No one would be able to challenge such a claim. In fact, because a company would not have to disclose an ADMT if it doesn't meet this essentially self-defined standard, no one would even know that the tool is in use. I also have concern about a new provision that says businesses that allow for a human appeal do not have to offer an opt out. This is unlikely to result in better outcomes for consumers. There is extensive research that people are likely to accept outcomes produced by systems even when there is clear evidence that these conclusions are wrong. Face recognition technology, for example, obviously misidentifying someone. At a basic level it also replaces a mechanism that simply allows consumers to express a preference with one in which they must advocate to an employee of a business that likely does not want to grant their case. This tips the balance too far away from respecting the individual choices of consumers. These are difficult issues and I recognize that California is leading the way in crafting regulations to address them, and I sincerely want to thank everyone involved in these draft regulations for your work and for the opportunity to speak. Thank you.

MS. ALLEN: Minsu, you have been unmuted. You have three minutes. You may begin when you're ready.

MS. MINSU LONGIARU: Thank you to all the board members and staff for the opportunity to comment. My name is Minsu Longiaru and I'm here on behalf of Power Switch Action, a national network of 21 grassroots community-based groups, including seven affiliates here in California. We share in the concerns raised in the public comments given by Dr. Bernhardt from the UC Berkeley Labor Center, and more generally in the concerns laid out in two letters that a group of unions, privacy advocates, and other worker organizations recently sent to the board dated February 26th and March 7th. In my comments today, I would like to expand on these concerns as follows. First, I would like to emphasize that the draft regulations should include workers as key stakeholders that have the right to be involved when their employers conduct a risk assessment. As others have highlighted, data rights are not just about promoting workers access to disembodied bits of information. For data rights to be real they must promote workers meaningful understanding of data and data systems. Regulation that focus on increasing worker agency and participation are key for achieving this goal. Second, I would like to emphasize that like consumers workers should have a meaningful right to opt out of algorithmic systems. The current language does not sufficiently protect workers. For example, the robo firings of app-based and gig economy drivers have sparked global outrage and a growing body of research documents how algorithmic systems can put workers health and safety at risk. These dangers occur when algorithmic systems increase the pace of work to unsustainable levels, which result in increasing the likelihood of accidents, as well as intensifying job stress with harmful mental and physical consequences. Under the CPA data

rights are worker rights. We thank you for the opportunity to provide this feedback.

MS. ALLEN: Julian, you have been unmuted. You have three minutes. You may begin when you're ready.

MR. JULIAN CANETE: Thank you and good afternoon and thank you Chair Urban and CPPA board members for the opportunity to address you this afternoon. Julian Canete with the California Hispanic Chambers of Commerce, the California Hispanic Chambers of Commerce, of course, is a and are over 125 Hispanic and diverse chambers collectively represent the interest of over 800,000 Hispanic owned enterprises throughout our great state. I've weighed in at the agency public comment sessions before, and we continue. We would like to continue to express our concerns on the impact of regulations on diverse small business communitythis afternoon. Our member businesses need the agency to be transparent about its AI rulemaking process and more importantly, understand the potential impacts on small business. We appreciate today's staff presentation and the timeline that has also been provided. This afternoon. I would also like to command board member De La Torre on her point of the fact that the CPPA needs to coordinate with the governor's office and other stakeholders such as the legislature to ensure alignment of the regulations. The agency must actively engage, educate, and collaborate with small and diverse business owners throughout the decision making process to understand their perspectives regarding implications of these regs. As I've mentioned before, our organization would like, to and we are fully willing to collaborate with CPPA on the AI regulations. And with that, I would like today to invite the CPPA, the chair, the members

and the executive director to attend an AI policy symposium that our California diverse small business chambers are hosting on April 8th here in Sacramento. We have already set the letter, but we will follow up this week as well. Various small business groups are prepared to discuss the subject of AI with policymakers, and we also believe it would be good to have the participation of regulators such as the CPPA to hear directly from small businesses and small business groups as well. Lastly on earlier on December 7th, 23, we submitted a joint small business letter about our concerns that we have raised to AI regulations. Some of those concerns have been addressed today, but we look forward to the remaining concerns being addressed as well. Again, I appreciate the opportunity to voice our concerns and look forward to collaborating with the agency. Thank you.

MS. ALLEN: Ivan, you have been unmuted. You have three minutes. Begin when you're ready.

MR. IVAN FERNANDEZ: Hello. This is Ivan Fernandez with the California Labor Federation representing 2.2 million union members in the private, public and construction sectors. Thank you so much for the opportunity to comment. The rapid advancement of artificial intelligence, automated decision systems and other technologies have impacted workers across all sectors and industry. AI and ADT have the capability of affecting every aspect of a worker's life from their job security to the wages they receive. As the technology advances and its use becomes widespread, workers must be at the forefront of conversations surrounding privacy protections. While the CCPA has taken monumental steps to ensure workers receive first in the nation protections, we believe the regulations must be

expanded to set a strong foundation for California and the nation. The California Labor Federation shares the concerns raised in public comments given by Annetta Bernhardt from the UC Berkeley Labor Center, and would like to expand upon these comments. In non-union workplaces employers have a unilateral power and control over workers through the ability to hire, discipline, fire, and set wages. The best protection is a union contract, but strong worker protection is also necessary. The rapid deployment of AI and other technologies in the workplace creates the need for new laws and regulations to protect workers. Without strong enforceable regulations and guardrails some employers will use automated decision making technology to worsen existing exploitation and surveillance of workers. This technology can provide performance reviews on workers based on bias data, determine which workers are likely to organize and decide whether they, an employee does or does not receive certain benefits. This technology is powered through worker data taken without consent, and its use is largely hidden from workers and the public. Workers cannot be left in the dark when technology of this magnitude is impacting their jobs. The Labor Federation respectfully urges the agency to adopt strong regulations that increase transparency, notice and worker agency, and that do not exempt the workplace. Thank you.

MS. ALLEN: Karla, you have been unmuted. You have three minutes. You may begin when you're ready.

MS. KARLA ORTIZ: Hello? Hello. Can you guys hear me?

MS. ALLEN: Yes.

MS. ORTIZ: Fantastic. Hi everybody. My name is Karla Ortiz. I'm an artist and I want to speak directly to generative AI, which

is specific technology which relies wholeheartedly on vast amounts of training data acquired indiscriminately to function. This training data includes almost the entirety of my work as an artist. This was done so without our consent credit or compensations. Literally, pictures of my own face are in these data sets. Furthermore, these models trained on our works are now competing against us in our own industries. Generative AI companies have grossly ever reached and claimed all media and data on the internet as theirs. This includes personal websites, social media forums, heck, even the US government. One of the major data sets of visual media generators contained 5.8 billion text and image pairs, again, including all of my work, acquired without consent. All generative AI models rely on massive data sets to function. This is so egregious that I'm a plaintiff in a class action lawsuit called Anderson versus stability with how egregious the data practices have occurred. The creative sector, a deeply important industry to California, which contributes $261 billion in 7.7% of California's economy is reeling from the exacts. This is technology that uniquely consumes our innovation, our creativity, and is competing with us against our own market, basically. Due to the data overreach by these companies. I do want to know opt out is a ridiculous standard for this. It shifts responsibility from consumers to, from the companies to consumers. There are models, hundreds of models like this. Does that mean I have to opt out every time these update? Does that mean I have to opt out every time? Like, you know that like more models are made. What if we don't know the language? What if we don't have the time? What about if your stuff is put in third party members? It doesn't make sense.

Further, it's pivotal that companies are transparent about what exact data is utilized. Many companies hide how much data they've actually acquired, making it impossible for consumers to scrutinize if the data contain any risk or potentially violating data. Another issue affecting consumers is often companies offer commercial licenses for media that is unable to be copyrighted, that is potentially fraudulent. Alongside this generative AI relies solely on its training data, which is littered with Ill-gotten copyrighted generative content, generative AI also infringes at a higher percentage. For example, Axios reports. Open AI models responses plagiarized approximately 60% of the time. This puts consumers at risk who may be accidentally infringing and violating copyright law. No matter how this tech proceeds. Companies are not entitled to our data without our consent. And lastly, the creative industry is reeling from this, and we really need to be considered as stakeholders on equal footing to tech companies. Thank you very much.

MS. ALLEN: Deana, you have been unmuted. You have three minutes. You may begin when you're ready.

MS. IGELSRUD: Hi, Deana Igelsrud for Concept Art Association. I will be addressing the draft automated decision making technology regulations for section 7030, item B2, I like that you have included independent contractor in that section, but one thing that I did want to bring to your attention is that models that mimic human artists, like those in civic AI who offer bounties that pay you to train on another artist's work specifically to copy their techniques, absolutely seal the stylistic secrets that define an artist's identity. They then mass produce images, which then

directly compete with the original artists in their own marketplace for employment. These kinds of scenarios can create all kinds of problems for artists to continue to earn a living. In addition to being in direct competition with themselves and all their own passwords or something possibly controversial could be generated that looks like their work, but had nothing to do with them. This too might make it hard for them to get work in the future. Additionally, for section 7030 item B6, there's a great deal of discussion regarding protection for likenesses and private data. But artists are not seen as having a right to privacy when even the software they must use for work scrapes the data from the images they create for work while they are using the program. Companies like Adobe analyze data processed on their servers. Many users might not even realize that as they use the software package, in certain scenarios, the software program is analyzing their personal process, which often in times for these folks is proprietary in nature. They have to sign NDAs to even work, and then the program analyzes their content while they're using the program. Companies like this are not transparent about what they log for training. Potentially they could be logging every brush, stroke and layer manipulation, and while that scenario might be unlikely, they are likely recording and training on individual events, changing brushes, moving layers, deleting components. The thing is, we don't know that they are not recording each brush stroke because they are not being transparent with the users of their products about what information they are taking. For all we know they could be violating the California Uniform Trade Secrets Act, but we don't know. So when you're talking about giving consumers the right to

opt out of certain types of uses for automated decision making technologies and AI models, I would hope that you would add the processing of personal information of consumers to train automated decision making technology, more room for transparency to also include processing of artistic and creative works and intellectual property. And additionally, adding opt-out controls for users of both programs and applications, which profile how a consumer uses their products. Because in the specific case of artists and creators, this kind of information undermines their future employment options. Thank you very much.

MS. ALLEN: Thank you. If there's any other members of the public who would like to speak at this time, please go ahead and raise your hand, approach the podium or press star nine on your phone. Madam Chair, I'm not seeing any additional hand.

MS. URBAN: Thank you Ms. Allen. And warm and grateful thanks to all the members of the public who showed us what I assume is probably fairly small number of what was yet a very wide range of impacts and effects of automated decision making technology and related things on Californians, on California businesses of all types. This is exactly the kind of information. I think all of the board regardless of what we think about the proper process or the sort of most effective process moving forward is very eager to hear. So thank you all very much for this. I have a sort of micro process point as to the timing. This room will close at five o'clock. So with that I would like to restate the motion that we were discussing and that the public was commenting on, the two motions per Mr. Mactaggart's good guidance. Ask for the vote and then I will talk about the rest of the agenda. So may I have a

motion to…?

MS. DE LA TORRE: Briefly to the comments?

MS. URBAN: Very briefly, please. Yes.

MS. DE LA TORRE: I have been working to advance privacy for over 10 years as an advocate. I'm going to be put in a position where I have to vote against something that I have been working on for three years. I hear the advocates in the room. I hear the advocates who have called in Epic is an organization that I have a lot of respect for. I especially hear those who have called to talk about the challenges that artists face these days because of the way AI has been evolving. I have a 14-year-old daughter who wants to be an artist, and she talks to me about her fears of how her potential career can be affected by what is going on right now. I'm going to vote against advancing these rules into formal rulemaking because I am aware of the limitations that the agency has due to the scope of our delegation. If we go beyond the scope of our delegation, we're going to find ourselves in a situation where we will face extensive litigation after significant effort to enact rules through the formal process. And we could lose not only the rules, but potentially the delegation that was given to us by voters. And unfortunately, that delegation is limited. We do not have a delegation that could address all of the things that have been brought up to us. The path forward is collaboration, is collaboration is stay in our role and our scope, make it successful, and then collaborate with the governor's office, collaborate with Sacramento. If we do this successfully, we are not going to protect all of the people who need protection, but guess what? We will have a much better chance to go to Sacramento. And

ask for an additional delegation, which is going to be very difficult to fight for if we actually don't successfully enact these rules and go through litigation. I have advised this board in the past in situations that were difficult. I think I have given my best advice, I have been unfortunately correct in things that I wish I was not correct. I just hope that this one is not another one of those situations.

MS. URBAN: Thank you Ms. De La Torre for that thoughtful and eloquent comment. With that, may I have a motion to authorize staff to advance the updates to existing regulations to formal rulemaking up through commencement of the 45 day public comment period and to otherwise authorize staff to make additional changes where necessary to improve the text clarity or to otherwise ensure compliance with the Administrative Procedures Act?

MR. MACTAGGART: I so move.

MS. URBAN: Thank you Mr. Mactaggart. May I have a second?

MR. WORTH: Second.

MS. URBAN: Thank you, Mr. Worth. Ms. Allen, I have a motion and a second. Would you please call the roll call vote?

MS. ALLEN: Yep. The motion is as the chair stated concerning the existing regulations. Board Member De La Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De La Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart Aye. Board member Worth?

MR. WORTH: Aye.

MS. ALLEN: Worth aye. Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Chair Urban Aye. Madam Chair, you have five ayes and no noes.

MS. URBAN: Thank you very much, Ms. Allen. The motion carries with the vote of five-0, may I now have a motion to authorize staff to advance the proposed risk assessment and automated decision making technology regulations to formal rulemaking up through commencement of the 45 day public comment period, and to otherwise authorize staff to make additional changes where necessary to improve the text clarity to conform and to conform to Mr. Le's suggestion in our conversation today regarding the abridged risk assessments that found consensus within the board, or to otherwise ensure compliance with the Administrative Procedures Act.

MR. LE: I so move.

MS. URBAN: Thank you. Do I have a second?

MR. WORTH: Second.

MS. URBAN: Thank you, Ms. Allen. I have a motion and a second. Would you please conduct the roll call vote?

MS. ALLEN: Yep. The motion is as the chair stated concerning the automated decision making and risk assessment regulations. Board member De La Torre?

MS. DE LA TORRE: No.

MS. ALLEN: De La Torre, no. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: No.

MS. ALLEN: Mactaggart, no. Board member Worth?

MR. WORTH: Aye.

MS. ALLEN: Worth, aye. Chair Urban.

MS. URBAN: Aye.

MS. ALLEN: Urban Aye. Madam Chair, you have three ayes and two nos.

MS. URBAN: Thank you Ms. Allen, and thank you the board. The motion carries with the vote three to two. And I want to reiterate that I really valued the conversation today. I know that everyone is very intent on creating balanced and effective regulations, and that includes every member of this board, obviously the agency staff who have done such an incredible job of balancing many different interests and competing facts sometimes. In order to get us sort of where we are today, and I want to say a brief word again about where we are today. Staff now has the ability to work on these sort of surrounding materials and so forth analyses that are required for these regulations. I don't want to speak for other members of the board, but I really heard in the conversation today a commitment from individual board members to work with staff. Further, I heard a commitment from everybody to take more information from the public, from groups who have expertise to hear more. And I know I'm sure that all of us would be willing to where we need to if we need to facilitate conversations with our appointing authorities and continue to work on this package and move it forward. So thank you very much. I know we didn't come to an agreement on the process, but I think that we all have, we were able to air some differences in substance and we were able to come to a place where I feel comfortable that we will continue to improve the situation for Californians. With that, it is 4:55 and

due to security reasons the Department of Justice is very strict about closing this room at five. So I want to say a word about the remaining items that we had placed on the agenda for today. Mr. Macko, thank you for being here. I apologize. We'll need to hear from you on the annual enforcement update and priorities, next time. We also have the board handbook to come back and I know Ms. De La Torre had some thoughts that we were all hoping to hear, so that will definitely come back next time. I also would like to say, we obviously can't decide this now, but if it seems like there are items that we should bring back before our scheduled May meeting, we can look into when board members are available and whether that is something that we would like to do. I checked with staff in terms of looking into it. So everyone, please keep an eye, everyone in the public, please keep an eye on our website. Otherwise we expect to meet again in May. Mr. Laird, is there more that I need to cover?

MR. LAIRD: Not from my end.

MS. URBAN: Okay. Thank you very much to all the board members, members of the public and staff again. With that may I have a motion to adjourn the meeting?

MR. LE: I so move.

MS. URBAN: Thank you, Mr. Le. May I have a second?

MR. WORTH: Second. Thank you, Mr. Worth. I have a motion and a second to adjourn this meeting. Ms. Allen, will you please perform the roll call vote?

MS. ALLEN: Yes. The motion is to adjourn. Board member De La Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De La Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart Aye. Board member Worth?

MR. WORTH: Aye.

MS. ALLEN: Worth aye. Chair Urban?

MS. URBAN: Did we want to recall item five? I am so sorry. I completely forgot. Is it out of order to do that? I believe staff did call the vendor.

MR. LAIRD: Yeah, no, we can.

MR. SOLTANI: I'll just take a minute. If its okay, and I don't want to put pressure, we can certainly try to schedule another meeting before May, but I did miss, Ms. White and I had a chance to speak with the vendor and they did strongly discourage us from waiting until May to execute a media buy strategy for a contract that ends on June 30th. They indicated that while it's something we could do, it also puts us in a position that we're relegated primarily to digital strategy as traditional radio, TV and out of home will be are usually negotiated months in advance. They also indicated that in addition to an election cycle there's also the Olympics, which further will increase competition for inventory. So my request from the board is to work directly with maybe Mr. Board member Mactaggart and optionally board member Worth or any other two board members to kind of talk through the media strategy plan but to have some leniency to potentially execute that plan in advance of our May meeting. I don't know if that's something the board could consider.

MS. URBAN: And then there would be a more detailed report at the May meeting, but Mr. Mactaggart and Mr. Worth could give, could see the information earlier and give more feedback. Does that find consensus with the group? It's fine with me.

MS. DE LA TORRE: Yes. Sure.

MS. URBAN: Okay. Thank you. And I do apologize for neglecting to recall that item, and I now apologize. Mr. Laird. I'm going to have to ask you what to do here. We were in the middle of an adjournment post. Can I just say aye?

MR. LAIRD: I think we can return to the adjournment. I think you can say aye, and that'll close.

MS. URBAN: Okay. Aye. Ms. Allen.

MS. ALLEN: Urban, aye. After you, you have five ayes and no nos.

MS. URBAN: Okay. This meeting of the California Privacy Protection Agency Board after a very robust discussion of important issues is adjourned. Thank you very much everyone.

(End of recording)