

1 CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

2 PUBLIC MEETING

3 FRIDAY, APRIL 4, 2025

4 8:39 A.M.

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10 Report of proceedings of the California Privacy
11 Protection public meeting held at the California
12 Public Utilities Commission (CPUC) Auditorium,
13 505 Van Ness Avenue, San Francisco, California, and
14 remotely via Zoom videoconferencing on the 4th day of
15 April, 2025, commencing at the hour of 8:39 a.m.

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1 APPEARANCES:

3 MEMBERS OF THE BOARD:

4 JENNIFER M. URBAN, Chairperson

5 DREW LIEBERT, Board Member

6 ALASTAIR MACTAGGART, Board Member

7 JEFFREY WORTHE, Board Member

8 DR. BRANDIE NONNECKE, Board Member

10 LEGAL DIVISION:

11 PHILIP LAIRD, General Counsel, CPPA

12 LISA KIM, Senior Privacy Counsel and
Advisor, CPPA

13 KRISTEN ANDERSON, Attorney, CPPA

14 NEELOFER SHAIKH, Attorney, CPPA

16 ALSO PRESENT:

17 TIFFANY GARCIA, Chief Deputy Executive
18 Director

1 APPEARANCES (continued):

2
3 TESTIFIERS:

4 Julian Canete

5 Swati Chintala

6 Jose Torres

7 Edwin Lombard

8 Ben Golombek

9 Alex Torres

10 Aodhan Downey

11 Mishal Khan

12 Anthony Butler-Torrez

13 Peter Leroe-Munoz

14 Gilbert Lara

15 Fred Sotelo

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1 SAN FRANCISCO, CALIFORNIA

2 FRIDAY, APRIL 4, 2025

3 8:39 A.M.

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5
6 CHAIR URBAN: Good morning, everyone.

7 Welcome to this meeting of the California Privacy
8 Protection Agency Board.

9 It is April 4th at 8:39 a.m.

10 I'm the chairperson of the board. My name
11 is Jennifer Urban. I'm pleased to be here in person
12 with the board and some members of the public and to
13 welcome many of you on Zoom.

14 Before we get started with the substance of
15 the meeting, I will have some logistical
16 announcements, but most of those I will leave for a
17 little bit later which I'll explain in a moment.

18 For now, I'd like to ask everyone to please
19 make sure that your microphone is muted when you are
20 not speaking. And if anyone here in person has a
21 cell phone to turn it off or silence it to avoid
22 interruption. Third, and importantly, this meeting
23 is being recorded.

24 Thank you very much.

25 The meeting will follow the Bagley-Keene

1 Open Meeting Act which is required by law. We will
2 proceed with the topics on the agenda. That's
3 available as a handout here in San Francisco and also
4 on the CPPA website. Meeting materials are also
5 available, both in handouts and online.

6 Please note two things regarding the agenda
7 for today. First, we have been taking the item for
8 public comment regarding items not on the agenda
9 early in the meeting.

10 However, today we have only one major
11 agenda item on a major topic today. That is agenda
12 item Number 3, and I anticipate that most attendees
13 would want to comment on that item. Accordingly, we
14 are going to go straight into that discussion before
15 we do the general public comment item, and that will
16 be Number 4.

17 Second, today's agenda includes a closed
18 session item. It's listed as Number 6, discussion of
19 possible action -- discussion of and possible action
20 on the appointment of an executive director and chief
21 privacy auditor under authority of Government
22 Code 1126 [sic], Subdivision (a)(1).

23 We'll be taking that item first at the top
24 of the meeting. And once we finish our closed
25 session discussion, we will return to this public

1 session and continue with agenda item Number 2.

2 I will provide the usual instructions
3 regarding participating in the hybrid meeting when we
4 return rather than to ask everyone to remember those
5 details while the board is in closed session.

6 We appreciate the CPUC team for their
7 hospitality and for allowing us to use their
8 boardroom and providing AV assistance for today. So
9 thank you very much.

10 And with that, the board will go into
11 closed session and we will be back in a bit. Thank
12 you.

13 (Whereupon, a recess was held.)

14 CHAIR URBAN: Welcome back, everyone.
15 Well, welcome back to the board, and welcome back if
16 folks stepped away while we were in closed session.
17 The CPPA board is now returning to open session, and
18 we'll proceed with the agenda.

19 I promise -- and I'm sure you're thrilled
20 and excited to talk about meeting logistics at this
21 point. So let me go ahead and do that.

22 As a reminder, the agenda and meeting
23 materials are available as handouts in San Francisco
24 and also on the CPPA website. You may notice board
25 members accessing their laptops, phones, and other

1 devices during the meeting. This is -- they're
2 accessing their devices solely to access the board
3 meeting materials and what is needed for the meeting.

4 After each agenda item, there will be an
5 opportunity for questions and discussion by board
6 members. I will also ask for public comment for each
7 agenda item.

8 This meeting is taking place in a hybrid
9 format and you are welcome to comment in person here
10 at the California Public Utilities Commission or via
11 Zoom. Each speaker will be limited to three minutes
12 per agenda item. We do have a designated item for
13 general public comment on items not on the agenda,
14 and that is agenda item Number 4 today.

15 If anyone hasn't joined us for a while, we
16 have been scheduling that more at the top of the
17 meeting so -- to help people predict. But because we
18 only have the one major topic on our agenda for
19 today, Number 3, we want to be sure we have plenty of
20 time for board discussion and for public comment
21 which we anticipate will mostly relate to that agenda
22 item. So we will -- we will just take the general
23 public comment in its -- as item Number 4.

24 If you are attending via Zoom and you wish
25 to speak on an item, please wait until I call for

1 public comment on the item and allow staff to prepare
2 for Zoom public comment. Then you can use the "raise
3 your hand" function which is at the bottom of your
4 screen.

5 And if you wish to speak on an item and
6 you're joining by phone, you can press "star nine" on
7 your phone and that will show the moderator that you
8 are raising your hand. Our moderator will call your
9 name when it is your turn, request that you unmute
10 yourself for comment at that time.

11 Those using the webinar can use the unmute
12 feature and those dialing in by phone can press "star
13 six" to unmute. When your comment is completed, the
14 moderator will mute you.

15 Please also note that the board will not be
16 able to see you; we'll only be able to hear your
17 voice. So it's helpful if you identify yourself but
18 this is entirely voluntary, and you can input a
19 pseudonym when you log into the meeting via Zoom.

20 If you're attending in person and wish to
21 speak on an item, please wait for me to call for
22 public comment and then move towards the podium to my
23 left and form a line, and you will be called to the
24 podium to speak in your turn.

25 As with the Zoom attendees, it's helpful if

1 you identify yourself but it's entirely voluntary,
2 and you're free to refer to yourself with a pseudonym
3 or not give a name. Please speak into the microphone
4 so everyone participating remotely can hear you and
5 also so your remarks can be recorded for the meeting
6 record.

7 The hybrid format does make our meetings
8 much more accessible to the public. It also creates
9 technical complexities. So if we have technical
10 kinks, we will pause the meeting to address the
11 issue.

12 I'd like to again thank the CPUC team for
13 managing the technical aspects of the meeting today.
14 I know it's a complex task.

15 And, second, I will explain what to do if
16 the -- those attending remotely experience an issue
17 with the remote meeting, for example, the audio
18 dropping, the video dropping.

19 If something happens, please e-mail
20 info@coppa.ca.gov. That's i, n for Nancy, f for
21 Frank, o, at coppa.ca.gov. And this will be monitored
22 throughout the meeting. If there's an issue -- if
23 there is an issue that affects the remote meeting,
24 we'll pause it so that staff can fix it.

25 The board welcomes public comment on any

1 item on the agenda, and it is always our intent to
2 ask for public comment before we vote on an agenda
3 item. If, for some reason, I forget to ask for
4 public comment and you wish to speak on that item,
5 please let me know or let us know by using the "raise
6 your hand" function or if you're here in person, you
7 can wave at me, and you will be recognized.

8 Once again, each speaker will be limited to
9 three minutes per agenda item for public comments.
10 Related to that, I would like to remind everyone of
11 the meeting parameters -- discussion and comment
12 parameters imposed by the Bagley-Keene Open Meeting
13 Act.

14 Both board members and members of the
15 public may discuss agendized items only. And when
16 speaking on an agenda item, both board members and
17 members of the public must contain their comments to
18 that agenda item.

19 There is one exception which is that the
20 public can bring up additional topics when the board
21 gets to agenda item four today which is specifically
22 for public member -- members of the public, if they
23 would like to bring up topics not on the agenda. On
24 that item, the board members cannot respond; we can
25 only listen.

1 Today's board meeting is held at the
2 California Public Utilities Commission in San
3 Francisco and on Zoom. We appreciate the CPUC team
4 for their hospitality. We will take breaks as needed
5 today, including one for lunch. I will announce each
6 break, and if I can, when we plan to return to give
7 folks and the public the opportunity to leave and
8 come back if they wish.

9 My thanks to the board members for their
10 service and to all the people working to make the
11 meeting possible.

12 I'd like to thank the team supporting us
13 today, Mr. Francisco Hernandez and the team of
14 conference services experts here I mentioned.

15 For the CPPA, I'd like to thank Mr. Philip
16 Laird, who's acting as our meeting counsel, and for
17 all the staff who will be presenting to us today.

18 And I'd like to thank and welcome our
19 moderator, Ms. Serena Marzion, and ask her to please
20 conduct the roll call.

21 MS. MARZION: Thank you, Board Chair.

22 Board Member Liebert?

23 BOARD MEMBER LIEBERT: Here.

24 MS. MARZION: Board Member Mactaggart?

25 BOARD MEMBER MACTAGGART: Aye.

1 MS. MARZION: Board Member Nonnecke?

2 (No audible response.)

3 MS. MARZION: Board Member Worthe?

4 BOARD MEMBER WORTHE: Here.

5 MS. MARZION: Chair Urban?

6 CHAIR URBAN: Here.

7 MS. MARZION: Madam Chair, you have four
8 present members and one absence.

9 CHAIR URBAN: Thank you very much,
10 Ms. Marzion.

11 The board does have a quorum. And I would
12 like to remind board members we'll take a roll call
13 vote on any action items.

14 With that, I will move to agenda item
15 Number 2 which is an update and introduction of our
16 new executive director, Tom Kemp.

17 As far as updates, there have been --
18 there's been a public announcement of an enforcement
19 action. And I'd like to commend the enforcement team
20 for all of their -- their diligent and thoughtful
21 work to continue to build out the agency's
22 enforcement arm.

23 Our big piece of news connects to the other
24 issue, though. The board made the decision to
25 appoint Tom Kemp as the agency's new executive

1 director, and we are very pleased to welcome him
2 today.

3 Tom has extensive background in privacy
4 legislation, cybersecurity, and technology policy.
5 And we are delighted to welcome him as a leader to
6 guide the -- the agency's work implementing the
7 board's vision to protect California privacy rights.

8 The board and staff here are excited to
9 collaborate with Tom -- sorry, Executive Director
10 Kemp. I apologize. He's a friendly guy -- to
11 further the agency's mission of enforcing and
12 implementing the state's comprehensive privacy laws.

13 His leadership to implement the board's
14 vision will be instrumental, and we are -- we are
15 delighted to have him. Thank you, Tom -- Executive
16 Director Kemp.

17 On behalf of the board, I would also like
18 to express our sincere and deep gratitude to
19 Ms. Tiffany Garcia for her stellar service as interim
20 executive director during the transition period. Her
21 leadership, her dedication, and her exceptional
22 skills have been invaluable during this transitional
23 period.

24 MS. ANDERSON: Additionally, we extend our
25 appreciation to Tamara Colson, who's our CPPA 55

1 Assistant chief counsel, and Milad Dalju from the
2 Attorney General's Office for their assistance
3 throughout the executive director search process.

4 So thank you, everyone, for all the work.
5 And thank you, Executive Director Kemp, for joining
6 us.

7 Are there comments or questions from the
8 board? Yes -- yes.

9 BOARD MEMBER LIEBERT: I just want to
10 second the point that you made about staff and
11 particularly Tamara and, of course, Tiffany who
12 jumped in.

13 And, Tiffany, thank you so much for your
14 patience this last number of weeks or months or
15 years. I don't know how long it's been, but you've
16 done just an absolutely fantastic job, and I know the
17 board really appreciates all that hard work.

18 CHAIR URBAN: Thank you very much,
19 Mr. Liebert.

20 Any other questions or comments? Yes,
21 Mr. Mactaggart?

22 BOARD MEMBER MACTAGGART: Yes.

23 Well, thank you, Tiffany, so much for your
24 excellent service in the interim.

25 And congratulations to Mr. Kemp for his

1 appointment. Looking forward to working with him.

2 CHAIR URBAN: Great. Thank you.

3 Mr. Worthe?

4 BOARD MEMBER WORTHE: I have to say
5 something now; right? I just repeat and -- the
6 appreciation for what you've done and what you're
7 going to do.

8 CHAIR URBAN: Thank you, Mr. Worthe.

9 With that, we move to agenda item
10 Number 3, discussion and possible action on proposed
11 regulations regarding automated decisionmaking
12 technology, risk assessment, cybersecurity audits,
13 insurance, and updates to existing regulations
14 including possible modification of the text, which
15 will be presented by CPPA General Counsel, Mr. Philip
16 Laird, and attorneys from the legal division.

17 I will turn it straight over to Mr. Laird
18 if that's all right.

19 Oh, my goodness, I apologize. You know, I
20 say if I forget, to wave your hand. And in my
21 defense, I almost never forget.

22 So is there any public comment on item
23 Number 2 which is updates? I mentioned enforcement
24 and introduction of the agency's new executive
25 director, Mr. Tom Kemp.

1 This is for agenda item Number 2. If you'd
2 like to make a public comment at this time, please
3 raise your hand by using the "raise hand" feature or
4 by pressing "star nine" if you're joining us by
5 phone. This is for agenda item Number 2.

6 MS. MARZION: Madam Chair, I'm not seeing
7 any hands raised at this time.

8 CHAIR URBAN: Thank you very much,
9 Ms. Marzion, and to Mr. Laird for the reminder.

10 With that, please do go ahead.

11 MR. LAIRD: Thank you, Chair Urban. And
12 welcome, Mr. Kemp. We're happy to have you here from
13 staff level.

14 So today's Agenda Item 3 regarding proposed
15 regulations on automated decisionmaking technology,
16 risk assessments, cybersecurity audits, insurance,
17 and updates to existing regulations, it's really a
18 long time coming to this discussion.

19 As we know, this has been a sort of
20 multi-year effort by this board and -- and sort of
21 the formal rulemaking process commenced last year and
22 opened officially in November with a public comment
23 period that closed on February 19th.

24 So, today, we're sort of at a big crossroad
25 for this proposed regulations in terms of some

1 opportunities for the board to weigh in and provide
2 additional direction on potential modifications to
3 this text.

4 To facilitate today's discussion, staff is
5 prepared to walk the board and the public through six
6 high-priority issues that we've identified as needing
7 some directional feedback from the board. That
8 feedback then will drive potential modifications and
9 changes that staff will make as we prepare a full set
10 of proposed modifications, ideally for the next board
11 meeting.

12 We'll intend to pause after each issue is
13 introduced, and we'll ask the board to discuss and
14 decide on a path forward. I will do my best to
15 summarize the board's decision on a given issue
16 before moving on to the next one to ensure we're all
17 sort of clear on what majority consensus is.

18 The board could then send that set of
19 revised proposed regulations out for another round of
20 public comment. Again, under the Administrative
21 Procedures Act, if we make modifications that are
22 substantive at all, we do then have to open them up
23 for another round of public comment for feedback on
24 those modifications.

25 So moving on, if we can, to Slide

1 Number 2.

2 So we've included this slide to reorient --
3 reorient the public regarding the rulemaking process
4 and our current status which is circled in red on the
5 slide. So as I mentioned, comment period opened
6 November 22nd, 2024, and was open until
7 February 19th, 2025.

8 The agency received 630 comment
9 submissions. This includes over 1,664 pages of
10 written comments as well as oral comments provided
11 during the formal comment period.

12 There were a total of 626 unique
13 commenters. Approximately 430 of one of those
14 comments were part of a letter-writing campaign, we
15 believe, from consumers to support the agency's draft
16 ADMT regulations.

17 And then there were additional nine
18 comments from consumers, sort of outside of that
19 letter-writing campaign. Approximately 165 comments
20 came from industry trade groups or similar
21 organizations and 13 comments from civil society
22 organizations such as consumer advocacy groups.

23 Really, from the bottom of our heart, at
24 least at the staff level, we'd love to thank all the
25 commenters for participating in the 45-day-plus

1 public comment period. We really received super
2 thoughtful, helpful, informative comments that have
3 helped us consider ways to both strengthen and
4 streamline the proposed regulations.

5 And I just want to emphasize this is the
6 Administrative Procedures Act at work. This is
7 exactly how it was intended to operate, and we really
8 appreciate those that are engaged in this process
9 along with this agency.

10 We're at the stage that's circled in red on
11 the slide. Staff are proposing -- or processing and
12 considering comments received and are raising issues
13 for the board.

14 So in terms of where we go from here, as --
15 as I think the board is aware, we have until
16 November 2025 to finalize regulations for submission
17 to the Office of Administrative Law. "Finalizing the
18 regulations" means submitting the final rulemaking
19 package along with all the required accompanying
20 materials that the agency must prepare, such as a
21 final statement of reason as well as responses to all
22 the public comments received in this last public
23 comment period as well as any other future public
24 comment periods that we engage in over the coming
25 months.

1 In order to meet our November deadline, we
2 at staff level are recommending that the board
3 provide staff with feedback on its preferred approach
4 for each of the issues teed up for discussion today.
5 And with that, then we would intend to implement that
6 feedback from today's meeting and propose additional
7 revisions to the text based on public comments
8 received for the board's upcoming meeting in May.

9 At that point, the board would have another
10 opportunity to review sort of all of those proposed
11 modifications. And then, again, we would begin a --
12 an additional public comment period for the public to
13 engage in.

14 One point of clarification here on this
15 slide. I know for those looking at the sort of
16 buckets of possibilities, there's this
17 differentiation between major changes or substantial
18 and sufficiently related changes. To make this
19 perfectly clear, everything we're discussing today
20 would fall into that latter bucket of substantial and
21 sufficiently related.

22 Major changes is a bit of a misnomer.
23 Essentially, it's only changes that were not
24 foreseeable at all based on the initial proposed
25 text. That would sort of necessitate an additional

1 45-day public comment period. We are not in that
2 world here, so we really are talking about
3 substantial -- potentially very substantial changes,
4 but still sufficiently related to the topics in the
5 original notice of these regulations.

6 With that said, I just want to note, too,
7 when we encourage this timeline and to hopefully get
8 some modified text out for the public to consider and
9 give us feedback on, again, coming out of our May
10 board meeting, that would allow a few things
11 including, if we -- if the board was so inclined, an
12 additional public comment period, if necessary,
13 before November or -- you know, early submission in
14 advance of November.

15 But we still have six months to kind of
16 work through this process and to try to -- try to get
17 these regulations in the best shape possible. And so
18 the stage, again, we're at today is we're now ready
19 to kind of talk about what changes we might see from
20 those original proposed texts.

21 Okay. So enough for me. At this point,
22 I'm going to be turning things over to my esteemed
23 staff and colleagues here in Legal Division, Lisa
24 Kim, Kristen Anderson, and Neelofer Shaikh.

25 Take it away.

1 MS. ANDERSON: Thank you. Do
2 Slide 3, please. Thanks.

3 The six issues that we've teed up for the
4 Board's discussion today are modifying the definition
5 of automated decisionmaking technology, modifying the
6 definition of significant decision, the behavioral
7 advertising threshold, the work or educational
8 profiling and public profiling thresholds, the
9 training threshold, and submissions of risk
10 assessment materials to the agency.

11 As our General Counsel mentioned, the
12 intention for today's meeting is to address the
13 issues one at a time. So we'll provide a brief
14 introduction to each and then pause for the board's
15 discussion before proceeding to the next.

16 As a general note, the potential
17 alternatives in the presentation are just based upon
18 public comments and intended to facilitate the
19 board's discussion, but they're not exhaustive.

20 Next slide, please.

21 Before we dive into the specific issues,
22 we're providing this chart as a refresher which
23 provides a summary of the requirements for
24 businesses' uses of ADMT under the currently proposed
25 regulations.

1 Many of the items on the slide are issues
2 for discussion today. That includes the definitions
3 of ADMT and significant decision, the extensive
4 profiling thresholds, and the training uses of ADMT;
5 these are all at issue.

6 So we're displaying the slides to do three
7 things. First, to remind everyone of the ADMT
8 framework in the currently proposed regs. Second, to
9 highlight the issues before the board today. And,
10 third, to illustrate how certain decisions the board
11 makes today would impact businesses' obligations, and
12 consumers' rights.

13 Next slide, please.

14 So, first, we're turning to the definition
15 of "ADMT." This slide presents a shortened version
16 of the definition from the proposed regulations.

17 As you all know, CCPA directs the agency to
18 issue regulations governing access and opt-out rights
19 with respect to businesses' use of ADMT. But CCPA
20 does not define ADMT so the agency has to define the
21 term to clarify for businesses and consumers the
22 types of technologies that are subject to regulation.

23 I'll note here again that the definition on
24 its own does not mean that the business has any
25 obligations with respect to its use of ADMT. Rather,

1 it's the business's use of ADMT in one of the ways
2 set forth in the thresholds that triggers the
3 obligations.

4 We received many public comments about the
5 definition of ADMT, but there was no clear consensus
6 on how we should modify the definition. Public
7 comments ranged from requests to broaden it to
8 support for the existing regulations to narrowing the
9 definition.

10 Civil society organizations recommend using
11 the definition of "automated decision systems" from
12 the California State Administrative Manual which is
13 also in the Government Code. That would broaden the
14 definition to reach technology that assists
15 decisionmaking.

16 Industry commenters, on the other hand,
17 commonly recommend narrowing to solely automated
18 technology used to make significant decisions or
19 decisions with legal or similarly significant
20 effects.

21 And then finally, many comments, especially
22 as part of the letter-writing campaign from
23 consumers, generally support the proposed ADMT
24 regulations as currently drafted.

25 Next slide, please.

1 Based upon the comments, we prepared three
2 alternatives to facilitate support -- to facilitate
3 the board's discussion.

4 Alternative 1 would reflect feedback we
5 received from comments to broaden the definition to
6 cover decisionmaking that even just assists human
7 decisionmaking without a qualifier to the extent that
8 is -- that the decision materially impacts consumers.
9 It would also align with how the California
10 Government Code has defined the automated decision
11 system.

12 We made minor modifications to the
13 Government Code definition just to conform to what
14 CCPA covers. Specifically, we added the concept of
15 processing personal information and we replaced the
16 term "natural persons" with "consumers."

17 For Alternative 1, we will note that our
18 regulations would have to clarify what, quote,
19 "materially impacts consumers" would mean. And
20 that's, again, because our regulations need to meet
21 APA clarity requirements. Therefore, if the board
22 prefers Alternative 1, staff would need directional
23 feedback on which, quote, "material impacts" the
24 board would want to regulate.

25 Alternative 2 would reflect feedback we've

1 received from comments to narrow the definition to
2 more closely align with other privacy regimes such as
3 GDPR and Colorado. This alternative definition
4 leverages concepts from both while providing
5 additional clarity to meet APA clarity requirements.

6 The alternative would also delete the
7 concept of executing a decision, but this wouldn't be
8 a substantive narrowing because replacing human
9 decisionmaking would also cover the concept of
10 technology that both makes and executes a decision.

11 Finally, Alternative 3 would reflect
12 comments we've received from businesses and trade
13 groups to narrow the definition so that it applies to
14 solely automated significant decisions made without
15 human oversight.

16 Now, with that, we've provided the overview
17 of the alternative definitions for the board and
18 we'll pause for the board's discussion of these
19 alternatives.

20 CHAIR URBAN: Thank you very much.

21 First, I just want to thank the staff for
22 their incredible work on -- on this throughout and in
23 digesting 16-something-hundred pages of comments for
24 us. I may need to pause from time to time because I
25 have to find something in a comment. And I apologize

1 in advance if that's the case because it is such a
2 substantial record.

3 And the -- the -- the practicality and the
4 care with which the Legal Division team has
5 approached this process and has approached the
6 comments and advising the board or giving the board
7 alternatives is simply extraordinary. It is some of
8 the best, I'm learning, I've ever seen. And I've
9 been a lawyer a long time, and I really greatly
10 appreciate it.

11 I also want to express my gratitude for the
12 public comments as well. I know staff are very
13 grateful. I -- I'm extremely grateful.

14 I -- you know, I do want to be clear that
15 I'm not sure counting them is -- is always the best
16 picture. I -- because one of the things I
17 appreciated, and I -- when I've talked to groups of
18 interested parties and lawyers, et cetera, I always
19 ask for a couple things and -- in comments.

20 And one of them is to be quite specific,
21 please, about what -- actually, how something would
22 affect you. And then if you can give us language to
23 consider, please do it; and there are a number of
24 comments that did that. And I know it was a lot of
25 work, and I -- I greatly appreciate it.

1 And the second thing is, you know, we don't
2 need 50 comments if you're able to align. And so,
3 for example, there's a comment from 56 labor and --
4 labor and consumer groups or labor and civil
5 liberties groups. And they -- you know, they took
6 the time to align and then to send in a comment and
7 that is very appreciated as well.

8 None of that is to say other -- that I
9 would have liked all the consumers to do that because
10 consumer comments have a -- have a different kind of
11 value, which is telling us about the real world as
12 experienced by people. And this is obviously
13 crucially important; it needs to underpin everything
14 we do.

15 And I greatly appreciate the time that
16 everybody took to write in. So thank you to the
17 staff and to the public, frankly, for all the work to
18 help us get this right.

19 I had a question about the three
20 modifications which is -- well, actually, you know
21 what? I will hold my question because it's really
22 actually related to a next step as opposed to the
23 ADMT technology.

24 So I will ask if the board have other
25 questions or comments.

1 Yes, please, Mr. Worthe?

2 BOARD MEMBER WORTHE: Yeah. I echo what
3 you said, Chair, about all the effort you all made.

4 I think if you go back to when we voted to
5 take this step, I think one of the things that the
6 prior board member, Lei (phonetic), and I both
7 discuss is we need to get this out to the public. We
8 need to get -- I have a binder here of the 626 unique
9 comments. So we appreciate it.

10 I want to say there was a period where I
11 think I got the same exact e-mail every day for about
12 60 days. That's probably not the most effective way
13 to communicate concerns. I think that, you know,
14 anytime someone can show up here in public so we can
15 engage in a conversation, it's going to be so much
16 more fruitful. But I really appreciate the effort
17 that we all took.

18 I'm -- I'm, you know, ready to jump -- one
19 of the things I'd love to do in the future is put
20 page numbers on so I can remember where we are. But,
21 you know, I have a question regarding -- unless
22 someone wants to talk more general, first, we'll jump
23 into this after that.

24 CHAIR URBAN: Okay. Mr. Mactaggart?

25 BOARD MEMBER MACTAGGART: Thanks. Yeah, I

1 do have a general comment.

2 First of all, yeah, thank you all for the
3 tremendous amount of work going through all these
4 documents. It just was a mountain of work but also
5 amazing outpouring of feedback from all -- all
6 viewpoints on these regulations which is obviously
7 what we wanted to do.

8 And so, you know, before we get into the
9 minutiae and attempt, again, towards (indiscernible)
10 real-time, various regulations, I'd like us to step
11 back a bit and remind ourselves of where we are, how
12 we got here.

13 And, ultimately, I want to make a motion.
14 So I'm against us getting right back into the weeds
15 of specific language rewrites when I think we're
16 ignoring the big picture around these proposed
17 regulations.

18 So for well over a year, an inordinate
19 amount of staff time, just an enormous amount, has
20 been spent on two relatively tiny clauses in a
21 56-page bill. Yes, they're important. They seek to
22 regulate the areas of cybersecurity, risk assessment,
23 and automated decisionmaking -- decisionmaking
24 technology. But they're also three paragraphs in a
25 56-page bill.

1 And every time I've objected -- and as
2 regular listeners will know, I've been objecting for
3 well over a year -- staff and other -- some other
4 board members have assured me that we just need to
5 clear the next hurdle because of the urgency to get
6 these regulations done but that once comments are in,
7 we can amend as necessary and live happily ever after
8 and fix any areas that went too far.

9 Well, I went through these hundreds and
10 hundreds of pages of documents and comments, and I'm
11 shocked that the situation is worse than I thought it
12 was when I was lodging my objections. We are now on
13 notice that if we pass these regulations, we'll be
14 sued repeatedly and by many parties.

15 The complaints are many and varied,
16 including one that in cybersecurity, we've exceeded
17 our statutory authority by being too prescriptive
18 about exactly how the business must perform the
19 audit, not simply defining its scope.

20 Two, that the risk assessments compel
21 speech and will be a target for a First Amendment
22 challenge.

23 Three, that the inclusion of the new term,
24 "behavioral advertising," invented in the
25 regulations, which is not defined anywhere in the

1 statute, is another example critics give of our
2 overstepping our statutory authority.

3 Four -- this is something I pointed out in
4 a previous meeting -- critics are saying that the
5 ADMT regulations will largely destroy -- well,
6 actually will destroy first-party advertising, i.e.,
7 from a business to its own customers.

8 Not only was that not the intention of
9 CPRA, we wrote CPRA in 2020 specifically to allow
10 first-party advertising since it was clear at the
11 time from the Supreme Court case "IMS versus Sorrell"
12 that that would require all regulations to permit
13 that. CPRA allows a consumer to tell a business not
14 to sell or share that consumer's information to
15 another business which is very different than the
16 ADMT approach here.

17 Five, the assertion that the ADMT pre-use
18 notification requirement is compelled speech.

19 And, six, the extent that the extensive
20 ADMT regulations present an unconstitutional
21 delegation of power, given the very brief and
22 undefined mention of ADMT in the statute.

23 These are just some of the legal challenges
24 we know will unfold if we move forward with these
25 regulations. We will be tied up in litigation for

1 years. It will drain our young agency of resources.

2 And what's frustrating to me is I've been
3 sitting in this seat for I don't know how many
4 meetings saying this exact thing would happen. And,
5 frankly, the chart we're looking at doesn't begin to
6 explain just how much and how deep the constitutional
7 challenges are raised by -- by critics.

8 This looks like it's going to be an
9 egregious waste of taxpayer money. We're going to be
10 squandering scarce taxpayer funds that we have no
11 moral right to waste on this effort.

12 What's particularly galling to me is that I
13 agree with many of the critics that the ADMT
14 regulations go far beyond what is justified in
15 statute. I will say for the record that we took the
16 language that's in CRP -- in CPRA around ADMT
17 directly from GDPR.

18 And the only thing -- the difference we did
19 is in GDPR, the ADMT is constrained by the word
20 "solely," as in solely-automated processing. We left
21 "solely" out because we didn't want that huge
22 loophole in the law.

23 But, frankly, I wish we hadn't because the
24 ADMT language that's in these regulations seeks to
25 regulate much more than privacy. It seeks to

1 basically regulate all use of AI with respect to
2 humans much more stringently than any law that passed
3 out of the legislature last year.

4 In addition, since we've last met, the
5 governor's task force on AI regulation, which our
6 fellow board member Ms. Nonnecke participated in, has
7 issued guidelines for AI regulation. And the
8 legislature is currently considering, I think it's
9 safe to say, dozens of bills aimed at AI regulation.

10 There's a robust effort in California to
11 regulate AI now. And yet here we are, trying to
12 regulate AI through the back door of privacy.

13 Let me repeat again, this is a privacy
14 statute, not an AI regulation statute. If we enact
15 these regulations, this will be a complete gift to
16 those seeking federal preemption of our entire bill
17 and agency. This action will play right into the
18 hands of those seeking to get rid of our agency
19 permanently and provide concrete evidence to the
20 critics out there that we're off course and need to
21 be reined in.

22 And, finally, I'm nowhere near over the
23 cost of these regulations which many, many critics
24 point out vastly understates the total cost since
25 we're merely considering the impact on California

1 businesses, not total cost.

2 But even just in California, our own
3 estimate is three and a half billion of cost,
4 98,000 jobs lost, 31 billion of investment loss in
5 the state. This is in the early years when a lot of
6 that cost is due to things like reinventing the
7 cybersecurity wheel and adopting -- when adopting
8 other standards, industry standards, might be good
9 enough.

10 So for these reasons, I would like to
11 propose a motion which is as follows:

12 "Resolved, that in light of
13 the extensive comments received
14 from the public, the new
15 executive director and staff
16 produce a report for the board on
17 the cybersecurity risk assessment
18 and ADMT regulations with respect
19 to the potential for legal
20 challenges raised in those
21 comments, specifically around
22 First Amendment issues like
23 compelled speech, other
24 constitutional challenges, and
25 that the regulations exceed

1 statutory authority. The report
2 should address, at a minimum, the
3 list of six possible legal
4 challenges I just referenced
5 earlier in my comments.
6 I can reread, but I won't, in the interest
7 of time.

8 "The report should make
9 recommendations to ensure that
10 any regulations can withstand
11 legal challenges. The report
12 should also examine the potential
13 cost savings available in the
14 cybersecurity regulations if we
15 accept other jurisdictional
16 standards or technological
17 standards like NIST, et cetera.
18 Is there a way to achieve our
19 cybersecurity functionality at a
20 vastly lower cost? In the
21 interim, agency efforts to
22 promulgate and enforce
23 regulations around cybersecurity,
24 risk assessments, and ADMT should
25 be paused. The director and

1 staff should be given appropriate
2 times to do the analysis to
3 ensure that any proposed
4 regulations could withstand legal
5 challenges. The new executive
6 director has only been in his job
7 for two days so he should be
8 given an opportunity to get up to
9 speed on these matters."

10 Thank you.

11 CHAIR URBAN: Thank you, Mr. Mactaggart.

12 Our legal division have been considering these issues
13 from the very beginning, and they have crafted these
14 regulations in ways that match up with a statute that
15 isn't always clear and isn't always very easy to work
16 with.

17 And in line with all of our legal
18 obligations and with all of the -- all of the sort of
19 legal risks -- and we know this -- we know this, and
20 we can't talk about legal risks in detail in a public
21 meeting, of course, but you know these -- these
22 regulations have been through and have been developed
23 in light of those concerns.

24 Now, you know, I understand your concerns,
25 absolutely, but it is completely unclear to me why in

1 the world you would suggest that staff haven't
2 actually been keeping all of this in mind as they
3 have crafted these regulations when we all know that
4 they absolutely have. And they have been, in my
5 view, extremely careful and creative in creating a
6 set of regulations that have a very limited universe
7 compared to what the statute says.

8 And we -- you know, our job is policy
9 decisions. Our job is to say whether we think it's
10 too broad. It's clear you think some things about it
11 are too broad. That's absolutely the appropriate --
12 appropriate intervention for us to make. That's our
13 job.

14 And this is -- you know, what you're
15 requesting here is something that is, like, not just
16 off piece, it's -- you know, it -- it -- it is asking
17 for work that they've already done in some other
18 form, and I just don't understand it.

19 Yes, Mr. Liebert?

20 BOARD MEMBER LIEBERT: I actually just have
21 a couple questions for my esteemed board member,
22 Mr. Mactaggart. I just want to make sure I
23 understand.

24 So the alternatives that have been
25 presented on these various categories, I'm just

1 curious whether you're feeling like if the more
2 dramatic changes in those, the various alternatives,
3 that substantially cut back a lot of these issues, to
4 what extent, in your judgment, do they somewhat or
5 largely address the overarching concerns that you've
6 raised or --

7 CHAIR URBAN: Can I add to that with a
8 specific question --

9 BOARD MEMBER LIEBERT: Sure.

10 CHAIR URBAN: -- which is if we were to
11 remove behavioral advertising which is first-party
12 advertising, you know, that's a big ticket item.
13 That's something that we could absolutely discuss.

14 Like, what would that -- what would that
15 do?

16 And I apologize, Mr. Liebert, I just wanted
17 to have, like, a concrete --

18 BOARD MEMBER LIEBERT: No problem.

19 CHAIR URBAN: Yeah.

20 BOARD MEMBER MACTAGGART: Thanks. Well, I
21 think what I'd like to do is avoid sort of us going
22 through this item by item right now and in light of
23 the fact that there is a robust body of evidence that
24 suggests that some of the more well-funded and larger
25 law firms in the country will be coming after us with

1 these current regulations.

2 And I think what we're doing here is not
3 seeing a legal analysis, okay, like this is how we
4 are going to address these issues. And what I'd like
5 to see is more comprehensive analysis and to give the
6 new executive director time to get up to speed on
7 these issues of looking at, kind of globally, these
8 three areas which are so controversial right now and
9 saying, yeah, here's how we think we can address
10 them.

11 And it may involve scaling back. It may
12 involve a different approach. It may involve --
13 rather than us sort of sitting here saying, well,
14 Alternative 3 we think is better. And, frankly, I
15 think there's a lot of work to be done, more than
16 just kind of "here are the four or five issues that
17 staff identified."

18 And, again, I don't want to take anything
19 away from staff, but --

20 MR. LAIRD: Sure.

21 BOARD MEMBER MACTAGGART: -- but I don't
22 know that this necessarily is the global approach I'm
23 looking for.

24 BOARD MEMBER LIEBERT: Okay. And then my
25 second --

1 CHAIR URBAN: Mr. Liebert and then
2 Mr. Worthe.

3 BOARD MEMBER LIEBERT: Sorry. Just the
4 second part was -- just so I understand what that
5 motion that you had made was, does it anticipate,
6 then, putting some sort of a pause on the rulemaking
7 process now in anticipation of that -- that report
8 that you are seeking?

9 BOARD MEMBER MACTAGGART: Well, I don't
10 want to get that prescriptive in the sense -- I don't
11 think we -- I think it's -- it's -- what I said
12 was -- and I don't know if it's appropriate, but
13 saying pause in the promulgation of these -- of these
14 regulations right now. I mean, they're not being
15 promulgated today anyway.

16 I mean, we're in this process. If it turns
17 out that it takes a week and they can come back with
18 a report, maybe there's no issue and delay. I just
19 don't want to put a constraint on, hey, we -- you
20 must get this done in the next X number of weeks.

21 You know, we're talking billions and
22 billions -- the cost of these regulations -- of these
23 three regulations vastly outweighs the cost of the
24 entire bill by, like, an order of magnitude, you
25 know. And it's just -- so I think we got to get this

1 right.

2 And this is the first time that we've had
3 this many comments this detailed saying you are
4 making a mistake and you will lose in court. The ADC
5 lost in court being very prescriptive.

6 You know, I take great pride in the fact
7 that our original approach was -- was -- was crafted
8 in such a way that we granted rights. We were very
9 careful about not wanting to step on a -- over a
10 line. We respected IMS versus Sorrell.

11 That's the approach that CPRA took, and I
12 feel like we're dramatically, you know, veering from
13 that course now. And so I want to give the board --
14 and why don't we give the new executive director and
15 the staff time to evaluate these in a more global
16 way, because I think we are -- this kind of
17 adjustment here is the proverbial, you know,
18 rearranging deck chairs. And I don't think that
19 that's a global approach, you know, to revisit this
20 that we need.

21 CHAIR URBAN: Okay. Thank you,
22 Mr. Mactaggart. We're all here. And what would you
23 think -- so we're all here and we -- you know, we
24 have a lot of substance to discuss, including from
25 the comments.

1 We don't have to decide to move these to a
2 15-day comment which is the next thing in the
3 rulemaking process today. We certainly can have a
4 discussion.

5 I'm uncomfortable with shutting down any
6 discussion of what the rules actually say, but we can
7 certainly have a discussion about what the draft
8 rules actually say and not move it into the 15-day
9 period.

10 We'll have another chance to discuss things
11 at a higher level, at a lower level, in May.

12 So does that -- does that respond to your
13 concern?

14 BOARD MEMBER MACTAGGART: You know, I have
15 no problem going through the discussion.

16 But, no, I have a motion that I'd like to
17 make about getting a report back from the staff and
18 executive director to deal with the fact that we have
19 very explicit blueprints for how the critics are
20 going to come after these regulations from what
21 appear to me, at first blush, to be very credible
22 methods of attacking us on First Amendment-compelled
23 speech, overstepping statutory authority. And I'm --
24 I --

25 CHAIR URBAN: Are you asking for a

1 privileged memo? Because we can't have a discussion
2 with legal counsel in public session.

3 BOARD MEMBER MACTAGGART: I am asking for a
4 report that could be public.

5 CHAIR URBAN: Would it be privileged? You
6 want a public report? Okay.

7 BOARD MEMBER MACTAGGART: Yeah. And that
8 could be -- could be -- it could include a
9 recommendation about what the regulations would look
10 like in a way that would withstand legal challenges.

11 CHAIR URBAN: Thank you.

12 Mr. Worthe.

13 BOARD MEMBER WORTHE: So a couple
14 questions. But I don't forget that we had this
15 conversation, that just because we're moving it
16 forward didn't mean we were going to keep moving it
17 forward if we weren't happy. So I appreciate what
18 you're saying.

19 But as an example, the topic of AI. So
20 this bill was written in November of 2020; right?
21 The average consumer's knowledge of AI at that
22 time -- I know what mine was which was nothing.
23 Okay?

24 So how could we possibly infer that this
25 bill intended for us to be regulating AI when AI

1 wasn't a topic at that time?

2 So if we start to take things like that out
3 before we take the time to analyze the risks, would
4 that be a better process that we could do?

5 Could we -- I mean, there -- I was going
6 to -- at the end, I was going to go through my --
7 my -- my bigger picture, but you got there first.
8 And I appreciate it. We do need to get this right.

9 You know, this just came out yesterday. In
10 the last five years, we created 81 percent less jobs
11 in California to the prior five years. Was there a
12 pandemic? Absolutely. Was that a big cause of it?
13 For sure.

14 But we need to do this. And,
15 unfortunately, I hate to say this, but if we need to
16 take more time to get it right, it might take less
17 time overall because of the risk that you're laying
18 out.

19 I would -- you know, I would -- we're here.
20 I'd love to take the time just to get input on the
21 things that you've already prepared to give you back
22 and forth some comments and then step back and say,
23 okay, maybe we made enough changes. You have a --
24 you have a smaller bucket to go analyze.

25 Would that be a friendly amendment to your

1 motion?

2 BOARD MEMBER MACTAGGART: Sure. As I said
3 earlier, I'm happy to go through these and give
4 feedback on where we're going. I don't think that
5 this is the be-all and end-all, although I think --
6 and I'm very supportive.

7 If what you're saying is to take the AI
8 ADMT out for now, I think you're right. You're spot
9 on that -- that the ADMT originally was -- was really
10 envisaged as a much, much narrower thing, if you're
11 solely -- if, you know, it's 100 percent you know,
12 automated decision that had -- that had real legal
13 effects on you, and it's now morphed into something
14 that's basically regulating AI.

15 So I'm concerned about that. Sure, we
16 could put the motion on hold, but I'd like to bring
17 it back.

18 BOARD MEMBER WORTHE: Well, I wasn't
19 suggesting that we put it on hold. I was suggesting
20 that we -- we may be analyzing a smaller deck after
21 we have a discussion through that deck, or maybe a
22 tighter deck by -- by curing some definition
23 problems.

24 And I'm talking about removing a entire
25 subject matter from the deck. So not to have staff,

1 and maybe its outside counsel, analyze AI, for
2 example, because I'm proposing it doesn't exist.

3 BOARD MEMBER MACTAGGART: So are you
4 proposing removing ADMT, then, from the regulations?

5 BOARD MEMBER WORTHE: Mm-hmm.

6 BOARD MEMBER MACTAGGART: And -- okay.
7 What -- in conversation, I'd like to have a dialog to
8 get the answer. I just think that -- I don't
9 believe -- and I wasn't there -- I don't believe we
10 were intended to be regulating AI with this -- in
11 this organization, and I think plenty other people
12 are.

13 And my view is it's a lot easier to dial
14 things up a year or two or three from now than it is
15 to dial them back down. And I think -- you know,
16 personally, I think we've got to look at this as to
17 the impacts.

18 You threw out some numbers. But, you know,
19 Mr. Laird, there was a letter that you shared with --
20 with us from the Department of Finance,
21 September 30th. It talks about revenue decline of
22 \$2.7 billion initially. And then it says, "But by
23 2036, it'll be positive 6.1 billion."

24 Like, I want to get into what those
25 numbers -- you can't have a range that wide. I think

1 the estimate of gross state product was negative
2 30 billion to positive 280 billion. Like, what does
3 that mean?

4 So I want to get into that stuff and say,
5 how are we really impacting people financially? So
6 there's -- there's more work to do.

7 But I didn't -- I don't think we -- I'd
8 like to, you know, try to make some progress on the
9 regulations. I'm not talking about passing them.
10 I'm talking about then analyzing the risk that we
11 have. That would be my proposal.

12 CHAIR URBAN: That seems much more sensible
13 to me. We don't even know what we have at this
14 point.

15 BOARD MEMBER MACTAGGART: Well, and then I
16 want to ask staff about somebody's view on the motion
17 and get your feedback on it.

18 MR. LAIRD: Thank you, members of the
19 board. I guess, yeah, I agree with the sentiment
20 that we're here today, we have materials prepared.
21 Staffers feels prepared to discuss these issues with
22 board members.

23 We have done the legal research and, I
24 think over the course of this rulemaking process,
25 have on multiple occasions provided confidential

1 legal advice to this board on these issues. So to
2 say the work's not been done is a little bit
3 frustrating to hear and I don't think quite accurate,
4 from staff's perspective.

5 So in terms of today, I agree. I think
6 there's immense progress that could be made on these
7 regulations if we start talking about the items we
8 prepared.

9 And then, at that point, I agree with
10 Mr. Worthe. If there is still concern about some
11 issue that the board doesn't feel adequately advised
12 on, staff can take that back and we can come back
13 with that advice.

14 CHAIR URBAN: Thank you.

15 BOARD MEMBER MACTAGGART: I'm happy to go
16 through these. I think what I'm trying to say with
17 respect to the approach in general is I feel like
18 there have been confidential legal memos provided,
19 but I feel like, at a larger scale, the approach has
20 been incremental and not kind of stepping back to say
21 what is our general approach.

22 And it's been frustrating to me because we
23 have been basically keeping on, I think, trying to
24 say what's the most expansive, possible definition we
25 can put in and -- for a year and a half now. And

1 now, finally, when we get these comments, we're --
2 we're giving some options here. I'm happy to go
3 through the options.

4 I do think, actually, Mr. Worthe, I'd
5 actually support the notion of removing them -- you
6 know, the subject matter entirely right now because I
7 think it's -- it's extraordinary, the -- the steps
8 we're about to take.

9 And I -- but I also -- I'm very concerned
10 about the -- all the concerns that were raised with
11 cybersecurity, both the extent of the audit and the
12 sort of legal aspect of have we overstepped our bound
13 by -- by prescribing?

14 And I think it's -- I hear what staff is
15 saying, oh, we have looked at the legal
16 repercussions, but when you look at what -- just a
17 wall of comments from industry that seem actually
18 very credible, then it strikes me either we didn't
19 consider it or we maybe didn't consider it correctly
20 because some of those comments were so -- and they
21 were so repeated from so many different sources, not
22 all in the same language, all bespoke, all sort of
23 top firms, all pointing out precedent, all saying
24 "this is where you're going to lose."

25 And I was sort of after, you know, hundreds

1 and hundreds and hundreds of pages, which we've not
2 seen before in any of this sort of, you know,
3 regulation. I -- I'm like, yeah, we -- we -- we went
4 too far on this, so.

5 CHAIR URBAN: Mr. Worthe?

6 BOARD MEMBER WORTHE: So I don't think
7 there's anything wrong with this. What we did is we
8 went out, we specifically said we're going to open
9 this up to get public comment. Someone's from
10 industry, someone's from legal firms.

11 Now our job is to digest that, respond
12 internally, discuss it, maybe respond externally.
13 That's exactly what we said we were going to do. So
14 I'm totally fine with the place we're at.

15 I do think if there's, we think, credible
16 risk, we need to address it whether it's internal or
17 external. I don't care how we do it. We -- I think
18 this is totally fine. This is exactly what I wanted
19 to have happen.

20 And I appreciate where you were concerned
21 then and you're still concerned now is that we're --
22 this car is moving. It's not, in my mind. We --
23 we've stopped it. We're analyzing where we were. I
24 think we went too far in some places.

25 I prefer to go -- take a step now and

1 decide we want to take a bigger step later. That's
2 fine, but this is what we're supposed to do. This
3 was our job. And, you know, fortunately for me,
4 you're doing most of it, but this is exactly where
5 we're supposed to be right now.

6 So let's do our job and let's address this.
7 And let's -- I would like to vote on that motion. I
8 only tried to amend it to say, let's -- let's look at
9 the risk after we adjust this today and see where we
10 stand. But we'd be -- we'd be foolish not to -- to
11 look at that. So I totally agree.

12 CHAIR URBAN: Thank you, Mr. Worthe. I
13 certainly don't disagree with that. I agree
14 entirely.

15 I just want to point out that staff would
16 do that for us at the end of today regardless of
17 whether we have a motion to force them to do it.
18 And -- and -- and, yeah, I -- you know, I -- I think
19 today is the day that we have an opportunity to have
20 a pretty big conversation and staff has teed up a lot
21 of really important points for us.

22 Certainly, you know, Mr. Mactaggart, the
23 sort of thematic elements of your comments, you know,
24 have definitely been noted. And the only thing that
25 I would ask of you in return is that -- to recognize

1 that we do have some process constraints. They're
2 legal constraints.

3 And part of that, you know, need to have
4 the conversation at this point related to the legal
5 constraints about when we have to do certain things.
6 And, you know, we are directed by the statute. It is
7 mandatory for us to do regulations on some of -- on
8 these topics.

9 So, you know, staff have been very, you
10 know, diligently working to do that. So I just --
11 you know, I want us to keep in mind that if we were
12 to make the decision, for example, to take out ADMT
13 entirely, that would be an entirely new form of risk
14 that, heretofore, we haven't discussed exactly.

15 Mr. Liebert?

16 BOARD MEMBER LIEBERT: I first want to just
17 note that our staff has done exactly what we've asked
18 them to do all of these months and have done really
19 extraordinary work.

20 And as you noted, Board Member Mactaggart,
21 the language in the statute was very brief. And from
22 your experience, you specifically, along with others,
23 did not use the term "solely" for good reason.

24 And so it left open a lot of questions
25 about so what does this mean?

1 And as you noted, Board Member Worthe,
2 that -- that's our job now to try to find that
3 balance. We want to maintain that innovation sector
4 in this state that is remarkable, and we want them to
5 be successful in those jobs that you noted as well.

6 And we don't want to forget the consumers
7 who are out there that you were worried about when
8 you helped create this thing and to make sure that as
9 AI is expanding and changing, that we're doing the
10 best we can following our mandate to try to protect
11 those privacy interests.

12 So I think this process is actually a good
13 one right now and that all the work that the staff
14 has done on this will not be a waste, that it's
15 helping to inform us in the most profound ways what
16 those potential decision points are going to be. And
17 so I think it will be useful for us to go through
18 this analysis and then kind of catch our breath and
19 see where we're at. So thank you.

20 CHAIR URBAN: Thank you, Mr. Liebert.

21 What I'm going to suggest, from a process
22 perspective, is -- well, what I'm going to suggest is
23 essentially that the board follow the path that
24 Mr. Worthe suggested which is that we have the
25 conversation and we see where we are in term -- at

1 the end of that, in terms of sort of what the
2 assessment might look like.

3 BOARD MEMBER MACTAGGART: Sure. Let's --
4 let's -- let's do that, and we'll talk about it
5 afterwards. Yeah.

6 Page three.

7 CHAIR URBAN: I'm going to view --
8 everybody's going to hate me. I'm sorry. I need a
9 short break.

10 Could we take maybe less than ten? If
11 people can -- can -- can handle less than ten and
12 come back at 10:50. Thank you.

13 (Whereupon, a recess was held.)

14 CHAIR URBAN: Jacob, you can put on the
15 slide for the agenda item three, please.

16 Wonderful. Welcome back, everyone. We
17 will get started on our discussion again.

18 So, you know, where we are is we're going
19 to talk about some of the work that the public did
20 and the staff did in thinking through some of the
21 alternatives. And then we will consider more general
22 things after we have a chance to discuss.

23 I'm going to suggest that we -- we actually
24 move to the training thresholds and -- issue
25 Number 5 because that's something that has come up

1 topic-wise in the discussion so far. But, of course,
2 I will defer to staff as to what you would prefer to
3 do.

4 But this is where sort of first-party
5 advertising which Mr. Mactaggart has brought up a few
6 times and brought up again -- and I believe is the
7 only place that artificial intelligence is mentioned
8 in the -- in the draft regulations. And so it seems
9 like maybe a good place to start -- a good,
10 substantive place to start.

11 So this is -- sorry, it's Slide 14. No,
12 we're just starting with --

13 MS. MARZION: Jacob (phonetic), can you
14 please advance us to Slide 14.

15 CHAIR URBAN: Does that -- does that
16 work --

17 MR. LAIRD: Yeah. We'll be happy to do
18 that.

19 CHAIR URBAN: -- Ms. Anderson. Okay.

20 MR. LAIRD: I'm happy to -- if we can tee
21 it up a little bit. I think we have just a few
22 remarks on that.

23 CHAIR URBAN: Okay. Wonderful.

24 MS. SHAIKH: Absolutely. So this slide is
25 really just to reorient everyone to what we're

1 talking about when we talk about the training
2 thresholds.

3 And so when we talk about the training
4 thresholds, they appear in two sections of the
5 proposed regulations, in the risk assessment section
6 where if a business, under the current draft,
7 processes a consumer's personal information to train
8 artificial intelligence or automated decisionmaking
9 technology that can be used for certain purposes in
10 the regulation -- so, for instance, generating a deep
11 fake about a consumer, it would need to conduct a
12 risk assessment.

13 The second place this language about
14 training generally appears is in the ADMT framework.
15 If a business is processing a consumer's personal
16 information to train automated decisionmaking
17 technology that can be used for certain purposes, it
18 would be required under the current draft to provide
19 consumers with the pre-use notice and the ability to
20 opt out.

21 On this topic, we did receive several
22 comments from the public, including suggested
23 modifications. So besides comments that were just
24 generally supportive of the regulations, we also
25 received several comments requesting that we delete

1 the threshold entirely, that we replace the language
2 capable of being used in the threshold with a
3 different knowledge, likelihood, or intent-based
4 standard.

5 And those -- those feed -- the feedback
6 that we received in the public set into the proposed
7 alternative which are presented for the board on the
8 next slide.

9 If -- if we could turn to the next slide,
10 please. Thank you.

11 And so the three alternatives -- or the
12 three options currently before the board -- though,
13 as my colleague Ms. Anderson mentioned earlier, these
14 are absolutely not exhaustive -- is to leave the
15 thresholds as they are, to narrow the threshold by
16 adding a knowledge standard, and to remove the
17 threshold from the risk assessment framework or the
18 ADMT framework or both.

19 And, of course, if -- for instance, the
20 board could always do some combination of these
21 things, so keep it in one framework and not the other
22 and change it to a knowledge standard. So there are,
23 again, a variety of options beyond just what is
24 currently presented on the slide.

25 And so I'll pause here for the board to

1 discuss. And, of course, staff is available for any
2 questions that the board may have.

3 CHAIR URBAN: Thank you very much. We've
4 heard a little bit today about, you know, the
5 legislature's activity on AI as a topic. I've done
6 this also in many public talks, but I will again tout
7 the governor's EO as well. And, certainly, there's
8 quite a lot of work on the broad topic of AI in -- in
9 the state at the moment.

10 And I think that I am safe in saying nobody
11 on the board wants to -- wants to conflict with or,
12 you know, cause issues with -- with the broad work
13 that -- that is going on. It's -- you know, it's a
14 complex topic.

15 We've heard about the -- we've heard about,
16 you know, the wonderful innovation market for which
17 California is known. And we -- and we know that
18 there's a lot of interest because it's an important
19 societal topic.

20 So this is one of the reasons why I thought
21 it might be helpful to start here. There isn't --
22 there is a challenge, and I think that it would be
23 remiss of me not to state it. Like, we can't just
24 say "AI" because AI is defined in, like, a million
25 different ways, and there are arguments about it.

1 I was at a conference two weeks ago, and a
2 computer science professor who works on AI models and
3 was, you know, addressing us about AI models said, in
4 my classroom, a regression on a spreadsheet is AI.
5 So, you know, I think we want to be careful about the
6 terms here because we -- again, we are bound by the
7 statute to do something.

8 But, that said, to the extent that we're
9 wandering into territory that we don't need to wander
10 into, I think it would be great for the board to have
11 a discussion about these alternatives for a couple of
12 reasons.

13 One is that for the risk assessments
14 only -- that's why it's in green language --
15 specifically, the draft regulations mention
16 artificial intelligence.

17 And then, secondly, sort of -- and related
18 to -- related to that, but really related to the
19 other -- another big ticket item, as I saw in the
20 comments, is something Mr. Mactaggart mentioned
21 earlier which isn't -- which is to do with
22 first-party advertising.

23 So while I disagree with the comments, you
24 know, that say that we don't have the authority to do
25 this, that's not really the question before us.

1 The question before us is what is the --
2 you know, what -- to what extent should we exercise
3 our authority as a policy matter to protect the
4 fundamental privacy rights of Californians and pay
5 attention to the effects on innovation and business?

6 Like, that's the job before us. Staff have
7 worked out very carefully the authority question.
8 You know, that's -- that's not -- you know, whether I
9 agree or disagree with some of the comments on that,
10 that's by the by.

11 But AI, kind of as a topic, and the
12 first-party advertising, those were things that were
13 very sort of passionately and repeatedly discussed in
14 the comments. And so this is the reason why I think
15 I really value and appreciate the alternatives that
16 we've been given here, and I think it would be a good
17 thing for us to discuss at this moment.

18 BOARD MEMBER MACTAGGART: Yeah. I think,
19 in general, this is going to get back to what I was
20 saying. This, again, feels like we are focusing on a
21 technology to the training of the ADM and -- and how
22 it's going to be used.

23 And, again, I think the language in the
24 statute is where the processing presents significant
25 risk in 185(a)(15) for the risk assessments and

1 the -- the cybersecurity. It's whether the
2 processing presents significant risk to consumers'
3 privacy or security.

4 And I have this hard time always because
5 it's like saying if you use this technology, we say
6 that that's risky. But, again, I can make the
7 argument that artificial -- that ADM is more privacy
8 protective because I don't have, you know, Jeff
9 looking at my information when he makes a decision.

10 So I'm -- I'm concerned about that and --
11 and I think with respect to -- that's my general
12 point. And, again, this is where I'd like to have a
13 more holistic view of all the regs from this
14 perspective, but -- but, in general, I think I'm --
15 less is more here.

16 CHAIR URBAN: Thank you.

17 Mr. Worthe?

18 BOARD MEMBER WORTHE: So a couple things
19 I'd love to get your feedback on. I think, you know,
20 we went from "capable of" to -- I should note --
21 "would be used" or "will be used."

22 I kind of feel like -- you know, you can't
23 give me a speeding ticket for driving a fast car
24 unless I'm speeding. So I'm totally comfortable
25 saying, if you are doing it, not could you -- do you

1 have the capability of doing it or you should know
2 that it might be done later. When you're doing it is
3 when it's an issue.

4 I think there was -- you know,
5 unfortunately, I was actually trying to find it.
6 It's not easy, but there was a letter from a Rebecca
7 Prozan (phonetic) who gave an example on the
8 first-party issue.

9 If you run an ad on a restaurant in Los
10 Angeles to residents in Los Angeles that you need to
11 do a risk assessment for that action, I'd love to get
12 feedback as that's accurate or -- and if we agree
13 with it.

14 Meaning, do we really want to put people in
15 that position if it is accurate?

16 I tried to find the letter and I can't, but
17 you might be able to -- to -- you may remember that.

18 CHAIR URBAN: Can I ask a clarifying
19 question real quick?

20 BOARD MEMBER WORTHE: Sure.

21 CHAIR URBAN: So the information that is
22 being used, the target is all of Los Angeles and the
23 information being used is, like, you're in Los
24 Angeles?

25 BOARD MEMBER WORTHE: Yeah. I mean,

1 basically the entire sentence, I think, said that the
2 example that was given was -- I wrote it here --
3 showing an ad for a restaurant in Los Angeles to
4 residents of Los Angeles. That was the "would
5 require a risk assessment." That was the quote in
6 the letter.

7 CHAIR URBAN: Thank you.

8 BOARD MEMBER WORTHE: I didn't get the date
9 of the letter, unfortunately.

10 And then the third -- maybe it's, I don't
11 know, number one, but the final input I'd love from
12 staff is because when I see the Alternative 2 -- and
13 this has happened in a couple examples here -- we
14 completely remove it. I go, "Whoa"; right? Tell me
15 more about that. Like, what does that do? Because I
16 don't have the ability to see the whole document and
17 how that impacts us.

18 I understand making some small changes but
19 when you take the whole thing out, do I feel better
20 or worse about that? I would love to get your
21 feedback on that.

22 MR. LAIRD: I'm going to let my colleagues
23 take the first question, and then I'm happy to help
24 answer the second question in terms of taking it all
25 out.

1 MS. SHAIKH: Okay. So first -- first with
2 the -- with respect to the -- not -- with respect to
3 your first question, is it about the Alternative 1
4 that's currently here, the -- the use of the
5 knowledge standard? I just want to make sure
6 we're --

7 BOARD MEMBER WORTHE: Yeah. I think you
8 made progress from the original to Alternative 1. I
9 think there should be an Alternative 1.1 which just
10 says "if you are actually using."

11 MS. SHAIKH: So that is helpful feedback
12 for us. And we did receive comments that talk about,
13 you know, if you designed it for these uses, if
14 you're using it for this, if you intend to use it.

15 And so there's a spectrum of different
16 standards that could be used for this threshold. And
17 that would get to, I think, one of the concerns that
18 appears in both the comments, but it also appears
19 prevalent in the discussion today which is about just
20 like the breadth of what would be covered.

21 And so the -- again, in terms of changing
22 this standard and making it a bit more precise, that
23 is absolutely something staff can do, and it would
24 basically just continue to narrow what -- and provide
25 clarity about what is and is not in scope when you're

1 processing consumers' personal information to train,
2 for instance, a facial recognition technology.

3 And so, of course, I'm happy to go deeper
4 into this issue.

5 Turning to your second question about, you
6 know, is an advertisement to Los Angeles residents
7 by -- let's just, for the purpose of this example, by
8 a business, is it subject to the risk assessment
9 requirements?

10 So under the current draft, there's a
11 couple ways it could happen. So, first, if the way
12 the advertisement is displayed is through selling or
13 sharing the consumer's personal information -- so for
14 instance, if it's done through cross-contact
15 behavioral advertising, then it would fall under the
16 first proposed threshold.

17 The second way it could happen -- I don't
18 think this is necessarily, though, what your
19 hypothetical goes to, but say, for instance, they're
20 using sensitive personal information, so precise
21 geolocation information, not just that they're in Los
22 Angeles, but that they're specifically being tracked
23 with their precise geolocation. So the second way it
24 could be is through the processing of sensitive
25 personal information.

1 On these first two thresholds, I will say
2 that these two -- first two thresholds are very
3 common in state privacy laws in the United States
4 that require risk assessments, or they're often
5 referred to as data privacy impact assessments.

6 So, for instance, under those first two
7 thresholds, you would see them under Colorado's law,
8 under various other state laws. I believe there's
9 over a dozen, actually, like much higher than that at
10 this point.

11 And then the third way -- and this, I
12 believe, is a topic that I think the board is very
13 interested in discussing, and we've tagged -- we've
14 tapped in as issue three, is if the business is
15 engaging in profiling for behavioral advertising.

16 So that threshold had been originally
17 recommended by our new rule subcommittee and had been
18 approved by the board for inclusion in the framework
19 in December 2023. So it's been quite -- it's been
20 quite a bit of time since that original discussion
21 happened.

22 And that had been due to concerns at the
23 time about consumers' ability to control their
24 information in the context of behavioral advertising.
25 So that could be the third way that a business would

1 be required to conduct a risk assessment.

2 And, again, that threshold is something
3 that we've teed up for discussion because of the
4 breadth of comments that we've gotten on that. And
5 so those are essentially three potential ways that a
6 business could conduct a risk assessment, depending
7 on the nature of how they're conducting the
8 advertising.

9 CHAIR URBAN: I apologize. Can I piggyback
10 on that comment for just -- or that question for just
11 a moment?

12 If behavioral -- if profiling for
13 behavioral targeting were removed, would we be
14 covering profiling? I'm, again, thinking of the
15 statute which says "including profiling."

16 MS. SHAIKH: Absolutely. So I'm going to
17 address this in two --

18 CHAIR URBAN: Sorry. One more thing which
19 is that because as I understand the way this
20 operates, the statute says "including profiling." We
21 have a very small set of possible -- of what
22 profiling is.

23 We have a small subset of profiling
24 that's -- that's right that would be covered by these
25 regulations, only extensive profiling, only these

1 very, very certain things. And I just want to
2 understand if we would suddenly not be covering
3 profiling and then we have to think about that.

4 BOARD MEMBER MACTAGGART: Could you repeat
5 the first part of your question? Because I didn't
6 get it all.

7 CHAIR URBAN: Oh, so the statute says --
8 the statute says "opt-out rights for automated
9 decisionmaking technology, including profiling."
10 Profiling has a definition that is significantly
11 broader than anything that's covered by these
12 regulations.

13 Staff have dealt with this in a couple
14 ways. One is through the concept of extensive
15 profiling only; right?

16 And then there's -- and -- and so I'm just
17 trying to get my head around -- because as -- as
18 Mr. Worthe, like, I don't -- like, I can't move
19 around mentally in the regulations like you can, what
20 with that -- what the sort of ramifications would be.

21 MS. SHAIKH: Absolutely. And I think your
22 question, Chair Urban, will also help me speak to
23 Board Member Worthe's third question which is just,
24 you know, how do -- the discuss -- how do the
25 potential options before the board affect the larger

1 framework and the bigger picture?

2 And so I think one thing that could just be
3 helpful is, again, where do these thresholds show up?

4 So profiling for behavioral advertising and
5 training -- the training threshold that's currently
6 on the slide. So they show up in the risk assessment
7 framework, and they show up in the ADMT framework.

8 And in this case, inclusion of both of
9 these frameworks is within the agency's authority for
10 risk assessments and ADMT because -- as Chair Urban
11 with the ADT framework mentioned, ADMT under the
12 statute explicitly includes profiling.

13 Now, (indiscernible) is ultimately a policy
14 question for the board of whether or not you want to
15 exercise that authority to address these two types of
16 processing now.

17 And so this -- in terms of, like, what --
18 your question, Chair Urban, of, like, what happens to
19 the profiling threshold, it would just mean that in
20 terms of exercising the agency's authority here, it's
21 just choosing not to in this specific context.

22 And then Board Member Worthe, in terms of
23 your question about how does this affect the bigger
24 picture, of course, it depends on, ultimately, what
25 version of this the board is interested in pursuing.

1 But let's say, hypothetically, the board wants to
2 remove profiling for behavioral advertising from the
3 framework.

4 That means that a business would not be
5 required to conduct a risk assessment if it's
6 engaging in profiling for behavioral advertising,
7 though I will -- again, disclaimer here, if a
8 business is engaging in cross-context behavioral
9 advertising, that would be covered under the first
10 threshold which I don't believe -- we didn't really
11 receive as many -- nearly as many comments on that
12 and it is consistent with how other privacy laws
13 require similar risk assessments.

14 And then similarly with the ADMT framework,
15 if you remove profiling for behavioral advertising,
16 then for first-party advertising, not cross context,
17 businesses would not need to provide a pre-use
18 notice, opt out, or access rights. So we're simply
19 just lifting it out of the framework and narrowing
20 the scope of the universe of what ADMT profiling the
21 board wants to regulate right now.

22 Similarly for training, that's exactly what
23 would happen as well, where if the business -- if the
24 board, for instance, decides to narrow the width --
25 let's -- I'm just going to -- again, hypothetically,

1 for Alternative 1, if you narrow it to a knowledge
2 intent, design-based standard, you're just narrowing
3 the universe of what -- how many businesses are
4 conducting risk assessments.

5 And similarly -- or for training ADMT, if
6 you are -- you narrow how many businesses would be
7 subject to the pre-use notice and opt-out
8 requirements and as with profiling for behavioral
9 advertising, if the board simply wishes to just lift
10 these out of the framework entirely, you would
11 essentially have businesses -- they would not conduct
12 a risk assessment for training and they would not be
13 required to provide notice or opt-out abilities for
14 training.

15 And so that's the bigger picture of how
16 these thresholds interact with the framework overall.

17 CHAIR URBAN: Mr. Mactaggart?

18 BOARD MEMBER MACTAGGART: Thanks.

19 Mr. Worthe, I thought I would just add a
20 little more clarity. So for me, the problem with
21 having this in here with respect to both risk
22 assessment and ADMT is it does end up, I think, if
23 you work -- walk through how this impacts because of
24 the inclusion of significant decision, and then you
25 walk through the definition of "significant decision"

1 which includes the access to and denial of, you end
2 up in a world where, basically, I think contextual
3 ads don't work.

4 And that's what I think people are
5 objecting to so much. You know, it doesn't -- first
6 party doesn't work. Contextual doesn't work because
7 people can just say -- because you're going to need,
8 clearly, some kind of automated system to show people
9 ads. You know, that's -- that's just the way it
10 works in life.

11 CHAIR URBAN: Carved out, though. It's
12 carved out of the definition of ADMT which is the
13 absolute threshold for the whole thing.

14 BOARD MEMBER MACTAGGART: Not for the --
15 not for the -- not for the provision of or denial
16 because the definition of "significant decision" is
17 so --

18 CHAIR URBAN: But you don't have a
19 significant decision until you have ADMT. You have
20 to have ADMT first or --

21 BOARD MEMBER MACTAGGART: But the Internet
22 said all ads --

23 CHAIR URBAN: Please tell me if I'm wrong.
24 So you -- if there's no regulation of something
25 that's not ADMT --

1 BOARD MEMBER MACTAGGART: That is --
2 that --

3 CHAIR URBAN: -- ADMT doesn't include
4 contextual advertising. It specifically says that.
5 It has said that.

6 BOARD MEMBER MACTAGGART: But it couldn't
7 include first party.

8 CHAIR URBAN: So there's a question
9 behavioral advertising for first party which is the
10 slide that we were just looking at. But it is not --
11 it does not --

12 BOARD MEMBER MACTAGGART: I mean,
13 behavioral -- just advertising, the first party.

14 CHAIR URBAN: -- it does not cover
15 contextual ads, as I understand it. Please correct
16 me if I'm wrong?

17 MS. ANDERSON: And that's correct, it does
18 not cover --

19 CHAIR URBAN: Yeah.

20 MS. ANDERSON: -- contextual --

21 CHAIR URBAN: It has not covered contextual
22 advertising, as far as I know, from the get-go. And
23 certainly since the revision after December 2023, it
24 simply does not cover that.

25 BOARD MEMBER MACTAGGART: Well, I think it

1 covers first-party advertising for --

2 CHAIR URBAN: Behavioral targeting. Not
3 context --

4 BOARD MEMBER MACTAGGART: Any -- any way
5 you want to cut it with -- with first party which,
6 really, the statute doesn't support.

7 CHAIR URBAN: It doesn't cover contextual
8 advertising.

9 BOARD MEMBER MACTAGGART: First-party
10 advertising it does. It does.

11 CHAIR URBAN: It does not. It does not.
12 I -- I will -- I have to find the page, but it's in
13 the definition of ADMT which, remember, the
14 regulation then applies only to something that falls
15 within the bucket of what is ADMT.

16 You do not get to the sort of the rest of
17 the requirements unless you have an ADMT. You do not
18 get to a significant decision unless you have an
19 ADMT. If you don't have an ADMT, it doesn't matter
20 what kind of decision you're making with it.

21 In the ADMT definition, I think it has an A
22 and a B, and B explicitly carves out contextual
23 advertising.

24 MS. ANDERSON: You look at the definition
25 of "behavioral advertising" in the draft regulations,

1 it's 7001(g)(2), where it says behavior --

2 CHAIR URBAN: Sorry. I got the wrong --

3 MS. ANDERSON: That's okay. There are too
4 many definitions -- not too many, just there are a
5 lot to look at.

6 But (g)(2) specifically says:

7 "Behavioral advertising does
8 not include nonpersonalized
9 advertising as defined by civil
10 code 140 subdivision (t),
11 provided that the information
12 isn't used to build a profile
13 about a consumer or otherwise
14 alter their experience outside
15 the current interaction with the
16 business and is not disclosed to
17 a third party."

18 So that -- that is the carve out to make
19 clear that it does not cover contextual advertising.

20 CHAIR URBAN: Apologies. I set the carveout
21 in the wrong place, but it's still at the top of the
22 concern.

23 MS. SHAIKH: Just one thing I'll add here,
24 though, is -- I think, Board Member Mactaggart, what
25 I'm hearing from your comment is just, like, you want

1 to ensure that it's clear to businesses that
2 contextual advertising is not covered.

3 And the regulations can always do that much
4 even more explicitly, to the extent that the board is
5 concerned that there's ambiguity still, is just
6 making even clearer or removing language that you
7 think is introducing this controversy or clarifying
8 it further.

9 That's also an option before the board, is
10 if there's specific language that you're like, this
11 needs to be removed or it needs to be made way more
12 precise or we just need a very explicit carveout that
13 it does not apply to this and provide examples of
14 what it does not apply to, those are things that the
15 regulations can also do in a targeted and surgical
16 manner.

17 BOARD MEMBER MACTAGGART: To be clear, the
18 statute absolutely permits behavioral advertising
19 based on first-party data for a first-party customer.

20 CHAIR URBAN: That's the second question.

21 BOARD MEMBER MACTAGGART: It's clear it
22 permits it. It's designed that way.

23 CHAIR URBAN: I mean, contextual
24 advertising is the first question, and it says:

25 "Behavioral advertising does

1 not include nonpersonalized
2 advertising as defined in
3 1798.140."

4 And then they have to have, like, you know,
5 a caveat because of the profiling language in the
6 statute.

7 And then the second question, absolutely,
8 I'm just trying to -- just to be clear, I'm just
9 trying to tee up the policy question we're discussing
10 here is -- is the question for -- for behavioral
11 advertising which is targeted? So targeted
12 advertising based on personal information.

13 So you know that -- that -- that's a
14 question that's before us separately.

15 MS. KIM: And -- and just to be clear,
16 whether or not the statute allows for contextual
17 advertising, that's not the question at -- in front
18 of the board right now. The question is whether or
19 not you need to conduct a risk assessment about that
20 processing of information.

21 So just because the statute allows it, the
22 question before the board now is, well, it allows it,
23 but should I do a risk assessment? Should I require
24 a business do a risk assessment regarding that
25 processing?

1 BOARD MEMBER MACTAGGART: My answer is
2 this. When you -- when you -- when you look at the
3 language in 185(a)(15), the governing language
4 presents a significant risk to consumers' privacy,
5 and I don't feel it presents a significant risk to
6 consumers' privacy. I'm dealing with my business
7 that I know I'm dealing with. They have my
8 information, they show me an ad.

9 CHAIR URBAN: So are you -- so contextual
10 advertising, I 100 percent agree with you. And so
11 you're talking about targeting -- first-party
12 targeted.

13 BOARD MEMBER MACTAGGART: I know I'm
14 dealing with whatever the firm is, and so I've given
15 them my information. They show me an ad. Generally,
16 I can opt out of that if I don't want to get it.

17 This -- nothing was ever intended to stop
18 that. In fact, we overtly meant to allow businesses
19 to continue to advertise to their customers.

20 CHAIR URBAN: So I think we have at least a
21 couple of options here. So we have the -- we have
22 the really thoughtful options you've given us and a
23 couple -- well, we have one additional option that
24 occurred to me on the three alternatives that we have
25 here on Slide 15.

1 One is to remove the green language from
2 the risk assessment so that we are not referring to
3 artificial intelligence.

4 And another that I'm hearing, I think -- we
5 haven't heard from Mr. Liebert yet, but -- and,
6 Mr. Mactaggart and Mr. Worthe, please tell me if I
7 get this wrong -- is some support for Alternative 2.
8 Is there -- maybe? Okay.

9 Mr. Worthe, you want to comment on that?

10 BOARD MEMBER WORTHE: 2.1.

11 CHAIR URBAN: 2.1. Go for it.

12 BOARD MEMBER WORTHE: Yeah. Which is, we
13 discussed it already. It's just tighten that up to
14 actual --

15 CHAIR URBAN: Actual knowledge standard.
16 Okay. Great. And what do you --

17 BOARD MEMBER WORTHE: Sorry. Just to
18 finish up. We should know that it will be used.
19 What I wrote is simply "is using." I'm trying to --
20 I am trying to shrink the universe.

21 CHAIR URBAN: I see what you're saying.

22 BOARD MEMBER WORTHE: Those that are
23 actually doing it versus "could," "might," "will."

24 CHAIR URBAN: Would "knows" be helpful
25 here? So just deleting the "or should know," would

1 that get to it? Or would you prefer just saying "is
2 using"?

3 BOARD MEMBER WORTHE: I would, but I'm only
4 one of four.

5 CHAIR URBAN: And just --

6 BOARD MEMBER WORTHE: And, really, it
7 came -- sorry, Chair -- it came from when I looked at
8 the original language; right? So I just moved it all
9 the way to the other side of the -- of the chart.

10 CHAIR URBAN: I just went into why I had
11 Mr. Worthe to ask him what he thought about the
12 artificial intelligence.

13 BOARD MEMBER WORTHE: I think I was --
14 yeah, I think I was, hopefully, pretty clear about
15 that. I think it comes up -- that term, I believe,
16 is used 17 times, and I think we need to make sure we
17 get rid of all 18 of them. So I hope that makes it
18 clear.

19 CHAIR URBAN: Okay. Thank you. That --
20 that makes it very clear.

21 BOARD MEMBER MACTAGGART: Again, I want to
22 push back on this. This has got nothing to do with
23 behavioral advertising. If you go through risk
24 assessments, significant decision is a decision that
25 results in access to a provision of denial or denial

1 of this whole list of things.

2 If you go to Number 4, it's processing the
3 PI of consumers to train ADM that's capably being
4 used for significant decision. It's got nothing to
5 do with behavioral advertising.

6 If you show ads, you're going to have to do
7 a risk assessment. It's got nothing to do with --
8 leave aside the whole definition of -- behavioral
9 advertising doesn't even come into it.

10 The way this is written, if you show an ad
11 to your own customer, you have to do a risk
12 assessment. And that, to me, is crazy. It's
13 Article 1071.53(a) that's -- that defines
14 "significant decision."

15 And then, and then four -- or just three --
16 I mean, so I -- this is the kind of thing where I
17 think we need to take a step back because it can't
18 possibly be the right outcome that you're showing ads
19 and that means you're doing something risky.

20 And so I -- and I think that the -- you
21 know, we -- there were a lot of comments about the
22 (indiscernible) access to. This is -- was my comment
23 at an earlier meeting, if I don't see an ad about a
24 hospital or I don't see an ad about a -- a grocery
25 store coupon, have I been denied a opportunity?

1 And that got back to my comment some
2 meetings ago, like, you're going to take 75 percent
3 of the economy and just basically say you can't show
4 ads anymore. Because if I show an ad to Mr. Liebert
5 but I don't show it to Mr. Worthe, have I -- have
6 I -- have I denied Mr. Worthe the opportunity because
7 I didn't show him the ad for the hospital?

8 It's -- it's -- I think it's nuts.

9 CHAIR URBAN: I think you're simply
10 misapprehending the way this works mechanistically.
11 But, again, I could absolutely be wrong. I could
12 have read it differently. And so I'll ask if the
13 Legal Division can -- can clarify.

14 MS. ANDERSON: Sure, I think there are
15 several issues at play here, and a lot of them go
16 back to the definitions. So the reason that we teed
17 up the definitions first is that they're -- they're
18 at the heart of a lot of the regulations. A lot of
19 the thresholds refer back to them.

20 And to Board Member Mactaggart's point when
21 we were talking about the definition of "significant
22 decision," removing the term "access to," which seems
23 to be kind of core to many of your concerns, is one
24 of the issues that's teed up for the board's
25 discussion today.

1 So -- and similarly, the deletion of the
2 term "essential goods or services" with a few
3 examples that we provided for clarity sake, that also
4 has been teed up for the board's consideration. And
5 significantly narrowing the definitions then slows
6 down to significantly narrow the thresholds and,
7 therefore, the requirements upon businesses and the
8 rights for consumers.

9 So it's kind of hard to talk about a
10 particular concern in isolation when it does relate
11 to definitional issues.

12 BOARD MEMBER MACTAGGART: I get it, but the
13 problem with showing an ad -- and the way we have not
14 defined "provision" or "denial of" -- and so the
15 question is, if I don't see the ad for the grocery
16 store coupon, have I been denied the opportunity that
17 Mr. Liebert did?

18 And I think we're just vagueness and I
19 think we're opening the door to really massive
20 ramifications with respect to advertising.

21 And, again, I -- I'm the person who decided
22 to, like, try to start this whole thing off to try to
23 constrain the untrafficked, untrammelled kind of
24 trafficking in our personal information. And at the
25 same time, I'm very aware that advertising supports

1 the Internet.

2 So, you know, we got to -- we got to have
3 some kind of reasonable balance here. And this, to
4 me, is taking a blowtorch to, you know, something
5 that is really going to have a massive impact. And I
6 think this did and does continue to call into
7 question the basic provision of ads in a huge amount
8 of the economy.

9 CHAIR URBAN: Thank you, Mr. Mactaggart.

10 Mr. Liebert and then Mr. Worthe.

11 BOARD MEMBER LIEBERT: For me personally,
12 it would actually have been helpful if we started
13 from the beginning of this presentation because some
14 of these things that we're talking about will, I
15 think, as you pointed out, Madam Chair, might be
16 addressed by the fact that we've all said, yes, let's
17 take out behavioral advertising. Let's --

18 CHAIR URBAN: Yes. I think I was trying to
19 be too --

20 BOARD MEMBER LIEBERT: Yes.

21 CHAIR URBAN: -- over -- I was being over
22 efficient.

23 BOARD MEMBER LIEBERT: Yes, yes, yes. So
24 I'd like to urge us to go -- go -- allow the staff to
25 start with these definitions as planned, and I think

1 that will address some of these questions.

2 CHAIR URBAN: Yeah. Apologies to
3 everybody. I thought it was worth a try because it
4 does, like, make -- knock a lot of stuff out if we
5 make a decision. But, yeah, it's clearly -- clearly
6 challenging.

7 Thank you, Mr. Liebert, for that
8 intervention.

9 Mr. Worthe?

10 BOARD MEMBER WORTHE: Yeah. I mean, I just
11 want to be clear. If there's any ambiguity that this
12 language would do what you're saying regarding -- if
13 I'm providing my information to somebody and they
14 want to send me an ad, we have to be super clear
15 that's not regulated here.

16 So just whether it is or it isn't, let's
17 just at some point -- it doesn't have to be now --
18 follow back up with that so we're all clear that --
19 and maybe -- maybe add some words that you don't
20 think we need so that we feel better about it. But
21 let's just close the loop on that because that we
22 cannot have open, that door.

23 CHAIR URBAN: And I'm sorry. I'm sorry to
24 bang the -- I'm sorry to, like, you know, bring this
25 up again.

1 But to be clear, Mr. Worthe, are you
2 referring to contextual ads which are things that
3 relate to sort of whatever you're doing in that
4 moment? You know, what you're reading, et cetera.

5 Are you also referring to -- Mr. Mactaggart
6 described, you know, the first-party business that
7 you know. You're referring to the second as well?
8 Yeah? I just want to be sure staff --

9 BOARD MEMBER WORTHE: Exactly. First
10 party, yeah.

11 UNIDENTIFIED SPEAKER: All right, team.
12 Shall we take it from the top? My experiments --

13 CHAIR URBAN: Sure. I think we --
14 actually, I think this has been -- I think this has
15 been -- I think this has been an illuminating
16 conversation, actually.

17 And maybe -- maybe it will be more helpful
18 for the board, because, again, like, we're doing our
19 best step here, and we are not like -- you really
20 have the understanding of how these things fit
21 together. So -- so let's take it from the top.

22 MR. LAIRD: Well, and I'll just jump in to
23 say I think we have kind of presented at least the
24 definition of ADMT issue already. We can restate
25 what we said earlier. Again, sort of a

1 non-exhaustive list of alternatives.

2 Alternative 1 being a more expansive scope
3 of that term as advocated by some commenters.

4 Alternative 2 being sort of a more precise
5 articulation, maybe, of what was originally there,
6 essentially saying ADMT is only -- only that
7 technology using -- being used or decisionmaking
8 technology that doesn't have a human involved that
9 fits those certain criteria in 1, 2, 3.

10 If a human's involved in that regard, it
11 means that ADMT is not in scope of these regulations
12 at all. So that -- that's another option for the
13 board to consider.

14 And then Alternative 3, of course, being
15 the solely -- using kind of the confinement of solely
16 automated decisionmaking. But I think even as Board
17 Member Mr. Mactaggart noted earlier, that was
18 intentionally left out of the language in our
19 underlying law.

20 CHAIR URBAN: Thank you. I have a
21 question. I mean, I realize that -- and I really
22 appreciate that the Legal Division, as you know,
23 mainly they're giving us -- you're giving us legal
24 advice and you're -- you know, you're analyzing
25 the -- the -- oh, legally-based advice -- you're

1 analyzing the comments and sort of teeing things up
2 from that.

3 So please tell me if this is not something
4 that the -- that you think this is just in the board,
5 but I feel like I don't have quite enough information
6 which is with regards to Alternative 1.

7 I did notice in the comments, you know,
8 from -- from some parties a desire for us to align
9 with the government code, that it's already in there.
10 And you've mentioned that that would be a broader
11 definition of ADMT than we have now which would,
12 practically speaking, mean the regulations capture
13 more activities, perhaps by more businesses, sort of
14 depending on what they're doing.

15 What -- if you can say something about
16 this, like, what effect would it have, just
17 generally, on how sort of our law, our regulations,
18 interact with existing state law, existing
19 regulations?

20 You know, we've been trying really hard
21 to -- where we can, you know, to harmonize, you know,
22 generally, and like, it seems important to do that in
23 the state of California. But that -- if that's not,
24 you know, a big concern, then I think we can just
25 discuss only -- only the question of the broadening.

1 MS. ANDERSON: Thank you. May we please
2 switch to Slide 6, just to bring those definitions
3 back up?

4 Okay. Thank you. So I think with respect
5 to Alternative 1 to the Chair's question, the --
6 there's a benefit to harmonizing with existing --
7 existing language that's being used in the state.

8 The Government Code and the State
9 Administrative Manual applies to how the California
10 government uses these automated decision systems.
11 That's kind of what Alternative 1 is based upon. We
12 would have to deviate in certain respects from that
13 definition because for alignment with CCPA, we need
14 to use certain different terms.

15 And in addition, as I flagged earlier, we
16 would have to define, for clarity purposes, to meet
17 our APA clarity requirements. We would have to
18 define what it means to materially impact consumers.

19 But to your point, using the Alternative 1
20 definition would broaden beyond what's in the
21 currently proposed regulations so that it would cover
22 automated decisionmaking technology that assists
23 human decisionmaking as opposed to just replaces or
24 substantially facilitates -- or substantially
25 replaces human decisionmaking.

1 So Alternative 2, on the other hand, does
2 reflect kind of that -- that more -- the close
3 alignment with Colorado and GDPR. It also -- it
4 recognizes and draws directly from GDPR, specifically
5 EDPB guidance about when automated decisionmaking
6 technology is, quote, "solely automated" as opposed
7 to human involved, and with the Colorado regulations
8 that talk about what human -- or that discuss
9 meaningful human involvement.

10 And so each of the provisions that are
11 included in Alternative 2 are drawn directly from
12 those other privacy jurisdictions and those concepts,
13 but also made clear for APA purposes.

14 So Alternative 2 most closely aligns with
15 the recommendations that we received to draw more
16 closely from -- from GDPR and Colorado.

17 CHAIR URBAN: Thank you. And if we were to
18 go with, let's say, for argument's sake,
19 Alternative 2, do we get crosswise somehow -- yeah,
20 with the state or with something else?

21 MS. ANDERSON: No. There's not -- there's
22 not really an interaction between, like, the
23 California State Administrative Manual or Government
24 Code because that's talking about how the state
25 government uses these types of technologies.

1 And we, on the other hand, because of
2 CCPA's exceptions and its scope of jurisdiction does
3 not apply to state uses. What we would be doing
4 would be regulating businesses' uses of these
5 technologies when they're using them in the ways
6 they're set forth in the thresholds.

7 CHAIR URBAN: Wonderful. Thank you.

8 Yes, Mr. Liebert?

9 BOARD MEMBER LIEBERT: And just to follow
10 up to what you asked in terms of existing state law,
11 we are appropriately watching carefully what is
12 happening in the California legislature, as well we
13 should, and how does this definition in
14 Alternative 2 comport with -- essentially with what
15 the legislature is focusing on in this regard as
16 well.

17 MR. LAIRD: I think I would say again, sort
18 of to date, what we've seen in the Leg. proposals,
19 even this session, do align more with that
20 Alternative 1, automated decision systems, but at the
21 same time, it, in my opinion, does not create a
22 conflict for us to proceed with a more restrictive
23 Alternative 2.

24 And, in fact, what it does is then provide
25 some deference to the legislature to sort of fill

1 those gaps and sort of expand -- you know, consider
2 more expansive technologies. We would be taking a
3 more narrowed approach and focusing just on, again,
4 issues that focus on privacy issues and align with
5 our other states.

6 CHAIR URBAN: Wonderful. Thank you.

7 Mr. Worthe?

8 BOARD MEMBER WORTHE: Just a question.

9 Well, in general, I think that is what I'd love to
10 hear, that we're going to be a little tighter, let
11 someone else -- and if we want to adjust it later, we
12 always can.

13 But when -- when you mentioned -- this is
14 such an important definition, right -- when you
15 mentioned it draws on GDPR and Colorado, just a
16 really dumb question.

17 Why don't we just use those definitions?
18 What do we find the fault --

19 CHAIR URBAN: Great question.

20 MS. ANDERSON: It's such a good question
21 because I looked at Colo -- and I was like, oh, I
22 think they have -- they --

23 BOARD MEMBER WORTHE: I mean, don't -- if
24 it's a long answer, you can get to me later.

25 MS. ANDERSON: No. The issue really comes

1 down to APA clarity requirements which are -- we are
2 subject to these for our regulations. They need to
3 meet certain requirements within that law. And so
4 for us to use things -- like meaningful information
5 about the logic involved doesn't quite meet that; we
6 need to provide more -- more guidance on that.

7 So that's exactly what Alternative 2 does
8 is take the -- the concepts from Colorado and GDPR
9 and flesh them out in a way that meets our APA
10 clarity requirements.

11 BOARD MEMBER WORTHE: That's helpful.

12 CHAIR URBAN: This is probably unhelpful
13 but I will say that, you know, the APA requirements
14 in California are really valuable, again, because
15 they have, like, these strict requirements of
16 clarity.

17 But it -- I -- it is so frustrating that we
18 can't do things like, say, give a standard to a
19 business and say, please do this reasonably. You
20 know your business, like, you know your customers,
21 you know what's going on. And we simply can't do it.
22 And so, you know, Colorado has this very sensible
23 kind of, you know, approach.

24 So thank you for the explanation.

25 And, Mr. Worthe, I think I interrupted you.

1 BOARD MEMBER WORTHE: No, that's okay. I
2 just -- I'm now stepping back a bit.

3 Is -- is the goal for us -- and I want to
4 see us four on the same page -- is your goal for us
5 to take this and say "We like Alternative 2" or "We'd
6 like you to adjust it for these reasons," -- and then
7 go to the next page.

8 MR. LAIRD: That is my goal.

9 BOARD MEMBER WORTHE: Yeah. I figured
10 that. I probably was stating the obvious.

11 But are we -- does anybody have any
12 discussions about Alternative 2?

13 CHAIR URBAN: I'm good with it.

14 Let me just ask Mr. Liebert if he --

15 BOARD MEMBER LIEBERT: Well, I'm going to
16 reserve because I want to hear --

17 CHAIR URBAN: Okay.

18 BOARD MEMBER LIEBERT: -- Board Member
19 Mactaggart and then --

20 CHAIR URBAN: Okay. Sorry.

21 BOARD MEMBER MACTAGGART: So, you know, I
22 hear this, that, okay, we can't use Colorado because
23 it's too vague. And so, I guess kind of what I
24 would -- I would like to see is a red line of
25 Colorado where we amend it and just say, okay, we

1 need to add this to make it less vague.

2 Because, again, this is us just kind of
3 reinventing the wheel here. And I -- when I look at
4 this, I -- I see vagueness.

5 Does this mean -- you know, I think
6 number one is, okay, I'm a -- I'm a clerk in a hotel.
7 The person calls me up says, I'd like to book a room.
8 I know how to interpret that so that can't be used.

9 And, you know, I -- I kind of wonder what
10 one through three adds -- you know, in Colorado, it
11 says:

12 "Human-involved automated
13 processing is automated
14 processing of personal data where
15 a human engages in a meaningful
16 consideration of available data
17 using the processing or any
18 output of the processing; and
19 two, has the authority to change
20 or influence the outcome of the
21 processing."

22 And so I kind of actually prefer the
23 "meaningful consideration." Now you -- maybe you're
24 saying that's -- that's too vague here.

25 But, again, I want to consider the -- I'm

1 looking at -- I kind of know where you're headed.

2 I -- one and two don't actually seem super clear to
3 me. And so --

4 CHAIR URBAN: I'm sorry. By one, you mean
5 Alternative 1 to state --

6 BOARD MEMBER MACTAGGART: No. Little
7 sub one.

8 CHAIR URBAN: Oh, sub one.

9 BOARD MEMBER MACTAGGART: Sub one and sub
10 two in Alternative 2.

11 I don't see -- you know, I don't know that
12 number one is any clear -- clearer than the Colorado
13 language of a meaningful consideration of available,
14 you know -- what is it -- you know, be able to use in
15 the processing.

16 But I think we're trying to get to the same
17 place where you have this distinction between people
18 being involved and people not being involved

19 CHAIR URBAN: Mm-hmm.

20 BOARD MEMBER MACTAGGART: And then you have
21 to turn it on its head and just say, if people
22 aren't -- the other thing is I think the architecture
23 is completely backwards from Colorado to us is -- I
24 think you should say, if humans are involved, there's
25 no opt-out required.

1 You know, we have this backwards thing
2 where you say you can opt out and you can come back
3 in, but business doesn't have to offer the opt out if
4 there -- if people are involved. I think it's what I
5 would start with.

6 CHAIR URBAN: Well, I --

7 MR. LAIRD: I -- well, okay. Go ahead.

8 CHAIR URBAN: Go ahead (indiscernible) if
9 there's something you'd like to add.

10 MR. LAIRD: Well, I would -- again, I think
11 you hit the nail on the head that "meaningful
12 information" is not clear enough. And so I think
13 what we're seeking to do is articulate that sub one
14 describes -- that essentially -- that human -- the
15 meaningful information they need to know is they need
16 to know how to use the technology, how to interpret
17 it, and how it makes a decision.

18 Essentially, I guess what I'm trying to say
19 is we are -- when you say, if a human is involved,
20 it's not subject to this, but I guess I would push
21 back and say, what is your standard for human
22 involvement? And that's what we're trying to
23 articulate by this definition.

24 CHAIR URBAN: Yeah. And can I just give an
25 example that is outside of our regulation because of

1 1798.145 so that I'm not, like, commenting on any
2 particular business practice that we regulate?

3 I recently read an article about a major
4 health insurance company's process for considering
5 medical claims. And they had a law -- the relevant
6 insurance law, I think in some other state, requires
7 a doctor to review a denial of a claim and make a
8 decision.

9 And one doctor they uncovered made 60,000
10 such decisions in a month because what was really
11 happening was an automated process was teeing up
12 dozens of these things at a time and the doctor was
13 just checking the box.

14 And so, I'm sorry, that is not meaningful
15 human involvement. And this is my concern with just
16 saying "solely" because it isn't just a loophole, it
17 just obviates the entire point.

18 So, you know, we can, like, certainly talk
19 about, like, what we're comfortable with. And I
20 think they're -- you know, they're real questions.

21 For example, you know, at what point do we
22 need a human? At what point do we need a human? I
23 would say, probably, before it's actioned, before a
24 decision is actioned that affects the consumer.

25 But you know, there -- there are some sort

1 of fundamental -- sort of, you know, challenges that
2 we might need to think about. Or maybe, you know, we
3 need to be, again, like a little more narrow, maybe
4 like Alternative 2 and -- and receive more comments,
5 of course. And you know, see -- you know, see if
6 we've gotten it right.

7 BOARD MEMBER MACTAGGART: One thing, I
8 might be happy to get comments on Alternative 2, and
9 I think we all are trying to figure out where the --
10 where the -- where the right line is.

11 The interesting thing is, when you look at
12 the GDPR construct, and I'm -- that's why we left out
13 the "solely" because you don't want someone just
14 hitting that thing.

15 GDPR -- GDPR has a very different -- kind
16 of turns it on its head a little bit. And it says
17 the data subject shall have the right not to be
18 subject to a decision based solely on automated
19 processing.

20 Our -- in Alternative 3, our definition of
21 "automated processing" includes the purpose of making
22 a solely automated decision. That's kind of --
23 that's a slight distinction.

24 You know, you could -- "ADM" you could
25 define separately, and then if it's used in a certain

1 way -- and that's what I find in this whole -- our
2 whole approach, we've defined "ADM" as the enemy,
3 whereas GDPR, I think, more correctly defines how
4 it's used because this Alternative 3 defines "ADM"
5 when it's used for solely automated decision, you
6 know. So anyway, that's just a slight difference
7 there.

8 CHAIR URBAN: Thank you. Is our guidance
9 here that we would like staff to work with
10 Alternative 2?

11 And if I -- if I'm conveying this properly,
12 Mr. Mactaggart, let me know -- otherwise, correct
13 me -- that part of what we would like to see is the
14 Alternative 2 and, like, a red line of the Colorado
15 equivalent, Colorado -- Colorado language that
16 could -- that could be more doable in California.

17 MS. ANDERSON: If it's helpful, I can kind
18 of walk you through where these provisions came from
19 with respect -- it's effectively an oral red line
20 between Colorado, GDPR, and Alternative 2.

21 BOARD MEMBER MACTAGGART: I think, you
22 know, to the extent that we're going to put this out
23 there and get more comments back, I'm happy with it.

24 But what I wanted to do -- to do -- the
25 reason I wanted to talk about the ADM, though, and

1 I'm not sure this is the right area, but the
2 7221(e)(2), again, what -- I'm talking about the
3 architecture of the substantially replaced human
4 decisionmaking, we say, you know, you don't have to
5 offer the opt-out if you have a reviewer who can
6 review.

7 And I think that's completely backwards.
8 We should be saying if no -- if a human's involved,
9 you don't have to offer the opt-out at all, period.

10 MS. ANDERSON: Well, that's if you -- if
11 the board chooses to go with Alternative 2, then
12 things that have the human involvement that's
13 described in Alternative 2 would be out of scope for
14 everything for the ADMT requirements in that section.

15 So that's why we wanted to start with the
16 definitions because, as mentioned before, when you
17 significantly narrow the definitions, that
18 significantly narrows everything else that flows from
19 those definitions.

20 BOARD MEMBER MACTAGGART: Okay. So I
21 haven't actually worked through all the thing, but if
22 we did this, then as a company you would not have to
23 offer an opt-out at all as long as the person was
24 this. Okay. That's -- that's better.

25 CHAIR URBAN: Yeah. It obviates the

1 opt-out part, or that the human involved -- or the
2 human decisionmaker opt out.

3 MR. LAIRD: Having this qualified human
4 involved that meets these criteria gets you out of
5 this entire regulatory scheme.

6 MS. ANDERSON: Correct. Would -- would it
7 be helpful to do that kind of quick oral walkthrough
8 of GDPR in Colorado with respect to Alternative 2? I
9 don't want to belabor the point, but I'm happy to go
10 through that.

11 UNIDENTIFIED SPEAKER: I don't think we
12 need it now.

13 BOARD MEMBER MACTAGGART: Yeah. I don't
14 think we need -- I do think it's --

15 CHAIR URBAN: Okay.

16 BOARD MEMBER MACTAGGART: Yeah, if you're
17 going to follow up with it in writing anyway.

18 CHAIR URBAN: Yeah, presumably with some
19 info about the next round. And -- yeah. Okay.

20 Okay. Mr. Liebert, you didn't have a
21 chance to weigh in. Are we sort of -- we have a
22 consensus about this? Okay. As long as we -- okay,
23 we've got a consensus. Wonderful.

24 So that gets us to issue two, I believe,
25 which is Slide 7.

1 MS. ANDERSON: Yes. Slide 7, please.

2 Okay. So the second issue is the
3 definition of "significant decision." This term is
4 defined within the risk assessment and ADMT articles.

5 This slide displays a simplified version of
6 the definition in the currently proposed regulations.
7 Public comments make various recommendations with
8 respect to this definition.

9 Some recommend leaving it as is. Others
10 recommend using GDPR's language of, quote, "legal or
11 similarly significant effects." Some recommend
12 deleting the terms "access to" and deleting or
13 clarifying the terms "essential goods or services."

14 While the agency can conceptually harmonize
15 its "significant decision" definition as much as
16 possible with GDPR and other state laws, it can do so
17 only to the extent that doing -- doing so would be
18 consistent with CCPA and the APA.

19 The proposed definition does already
20 leverage concepts from GDPR and other states' privacy
21 laws in this way.

22 If we can move to the next slide, please.

23 The board has discretion about how to
24 define "significant decision" which includes how to
25 modify it at this stage. We do need the board's

1 guidance on each of the five alternatives that's
2 included on the slide.

3 The alternatives reflect feedback from
4 public comments. So the first is deleting "access
5 to" as unnecessary or replacing it with "selection of
6 consumers for."

7 The second is deleting "insurance."

8 The third is deleting "criminal justice."

9 And the fourth is deleting "allocation or
10 assignment of work."

11 And, finally, number five is deleting
12 "essential goods or services" or narrowing it as
13 appropriate.

14 So now that we've provided the overview of
15 the alternatives for the board, we'll pause for the
16 board to discuss.

17 CHAIR URBAN: Thank you so much. And I
18 hate to do this, so just feel free to tell me that
19 you decided that this wasn't worth our time today,
20 but one of the things I noticed in the comments was
21 a -- somewhat of a confusion over what's exempted
22 entirely from the statute and, thus, from these
23 regulations.

24 Again, you know, reading just bits and
25 pieces without understanding the entire whole -- how

1 it operates and how it lives within the statute,
2 which is it, like, that is the extent of what is
3 covered and what is -- falls within our jurisdiction.

4 I saw some real confusion about certain
5 kinds of personal information, certain kinds of data
6 that I think didn't seem to, you know, be aware or
7 wasn't -- weren't putting together correctly
8 everything else with 1798.145 and 146 which just
9 exempted stuff, like a bunch of stuff, like straight
10 out of the statute.

11 And I noticed that you've put that into the
12 definition. I would -- I was expecting to provide
13 clear -- I expect that was to provide clarity and
14 help people with this, you know, really difficult
15 mental task to put it all together.

16 I know it doesn't make a difference legally
17 at all, like that stuff is just exempted. And so
18 this isn't about, like, what would happen in terms of
19 the effect of the regulations because it legally
20 doesn't matter.

21 But I wonder if it would be helpful to
22 folks if this, like, carveout was restated kind of in
23 a more general way at the beginning of the
24 regulations. Or I mean -- I don't know, if we put it
25 at the beginning of one section, I think we run into

1 the same challenge that I'm going to mention which is
2 that sometimes I think it can be -- I've written a
3 number of contracts and I've written some -- you
4 know, it can be -- actually become a little more
5 confusing if you repeat it in some places but not
6 others.

7 So I'm just -- you know, I'm just wondering
8 your thoughts about that. We can also just table it,
9 if you want to think about it. It's a minor thing
10 because, again, it doesn't change the effect of the
11 regulations at all, but I thought I would mention it.

12 MR. LAIRD: Certainly. I think staff could
13 propose sort of an alternative placement for that.
14 And to your point, you're absolutely correct. I
15 think the goals originally were just to remind sort
16 of anybody looking at these regulations that there
17 are important exemptions in the CCPA when you look at
18 this list of significant decisions.

19 Just going to give a few examples. For
20 instance, financial services. Obviously, we can
21 think of a lot of things, credit card applications,
22 bank accounts, things of that nature. But that's
23 almost entirely information subject to the
24 Gramm-Leach-Bliley Act which our law says is exempt
25 from -- from -- from our jurisdiction.

1 So I make that example simply because we
2 felt it was important for people, when looking at
3 these big categories of information, to understand
4 it's a nuanced analysis that has to occur to make --
5 to understand whether or not it's actually a decision
6 that's covered by this provision.

7 CHAIR URBAN: Thank you. And that's not a
8 function of the provision as a function of the
9 statute.

10 MR. LAIRD: Of the law.

11 CHAIR URBAN: Yeah. Yeah. Okay. So
12 comments on this one? Mr. Worthe? Mr. Mac --

13 BOARD MEMBER WORTHE: Yeah. That was
14 helpful.

15 I was going to -- whether on this page or
16 the prior one of -- two of the things that are
17 remaining on your proposed -- I'll call it
18 Alternative 1 -- when you say the word "housing,"
19 what exactly are we trying to get at?

20 I stayed in a hotel last night. Is that
21 housing?

22 MR. LAIRD: So that's a great question.
23 And I would note that --

24 BOARD MEMBER WORTHE: Sorry, just to add
25 on.

1 MR. LAIRD: Yeah.

2 BOARD MEMBER WORTHE: If there's some other
3 regulation or law out there that further defines it,
4 like you just explained for financial lending
5 services, let me know.

6 MR. LAIRD: So I'd say the biggest
7 exemption to keep in mind is the Fair Credit
8 Reporting Act information subject to that and
9 lawfully complying with the fair -- Fair Credit
10 Reporting Act. It is exempt from our law, again,
11 when it's in compliance with FCRA.

12 So, for instance, a housing decision being
13 made based on a consumer report subject to that law
14 would actually not be covered by this.

15 I'm going to look to my colleagues to make
16 sure they're not going to shake their heads no, "you
17 got that wrong." Okay.

18 Would you -- do you want to clarify that
19 any further?

20 MS. ANDERSON: That's correct. I mean,
21 there are certain things -- certain aspects of
22 housing that would be carved out from the reach of
23 CCPA.

24 The other thing that I want to mention is
25 that to the extent that there are certain use cases

1 that are not specifically clear within the
2 regulations as they are that you as the board would
3 like to specifically ensure are not covered by the
4 regulations, we would take that direction and draft
5 some language for you all to consider at the next
6 meeting, just in case there are issues like this
7 where a lot of these things involve a
8 fact-and-context-specific analysis where we cannot
9 literally articulate every decision that we're going
10 to be in versus out.

11 It's very much dependent upon those things.
12 But if there are entire use cases that you all have
13 specific concerns about, we can take direction on
14 that.

15 MR. LAIRD: And to that point, Mr. Worthe,
16 for instance, on housing. If you said, actually, we
17 don't want hotel in scope, we could explicitly exempt
18 that out from that definition of housing.

19 BOARD MEMBER WORTHE: I think a good step
20 would be, for housing and healthcare services, if you
21 could provide us, you know, the broader exclusions so
22 we know what is already excluded. And then if
23 there's something that stands out, we could offer
24 direction on adding more to it.

25 Does that work?

1 MR. LAIRD: Absolutely. In fact, what I
2 would offer up, in fact, is that I think financial
3 and lending services, housing, and health care --
4 health care services are three categories where
5 there's sort of exemptions blended --

6 BOARD MEMBER WORTHE: Just put them all
7 together.

8 MR. LAIRD: -- and I think we could add
9 color to all three.

10 CHAIR URBAN: Thank you.

11 Yes? I apologize, Mr. Liebert. You move,
12 and I always think you want to talk.

13 BOARD MEMBER LIEBERT: No. No --

14 (Simultaneous cross-talk.)

15 CHAIR URBAN: Mr. Mactaggart, go ahead.

16 BOARD MEMBER MACTAGGART: Okay. Thanks.
17 You know, this is back where it gets into both, you
18 know, do you need to conduct a risk assessment? Do
19 you get the right to opt out?

20 And kind of going back to what Mr. Worthe
21 just said, this one's really concerning for me,
22 because the way -- and you've dealt with it with a
23 little bit in the beginning when you talk about the
24 access to.

25 The way it's worded, I feel like this is

1 where it gets back to the advertising which has got
2 nothing to do with behavioral advertising. But if
3 you use ADM, which you have to, because that's the
4 way the ads work to show a hotel ad, to show an
5 airline ad, to show an education, you know,
6 opportunity, this gets into you're going to need to
7 show a -- do a risk assessment just because of the
8 nature of the business you're in. And you're going
9 to need to offer the opt-out of the actual ads.

10 That, I don't think can work because, you
11 know, you're going to be using ADM in -- because even
12 if we change the definition of ADM to have the human
13 involvement, still somebody's going to buy an ad on
14 Google or whatever and say, I want to place it next
15 to these keywords or whatever. That's kind of the
16 way these things work.

17 And then that -- that -- that won't -- that
18 won't fly here. So I think we really need to -- of
19 course, can we all -- we all know where we want to
20 get to.

21 We want to just say, like, if you're -- to
22 your point, 60,000 denials a day from some doctor
23 who's just -- a month, whatever -- sitting there
24 hitting delete -- you know, deny -- that's clearly
25 got to be covered. And so I -- so I have a big issue

1 around advertising.

2 Things like maps. You know, I -- my -- my
3 mapping function tells me which direction to go, and
4 it real-time routes me around traffic and stuff like
5 that. And that's -- is that my access to the
6 hospital, you know, where I'm going?

7 So I think things like that are -- you
8 know, that shouldn't result in a risk assessment just
9 because I'm -- I'm -- I'm telling you where to go,
10 and it shouldn't result in me being able to opt out
11 of that.

12 So most of these things, I -- for the
13 deletion, you know, they -- I thought there was a
14 really good comment from one firm that said, you
15 know, look, we had 660 million work assignments last
16 year in California. And not only would this mean
17 that every person's assignment of work would be a
18 significant decision, but everybody who didn't get
19 the job, it's a significant decision.

20 So you have 660 million times however many
21 people working at any given hour, and that can't be a
22 significant decision. I kind of agree.

23 Like if -- if someone's close to the
24 grocery store and they get the job because they're
25 close to it, and then the firm has to go through and

1 say that -- you know, how it wasn't a discriminatory
2 situation.

3 So I think narrowing this really should be
4 around those significant legal decisions which
5 there's a big difference between not getting a job
6 and not getting the, you know, pickup from -- from
7 DoorDash to go into the next place.

8 And I think one of my general comments is a
9 lot of the comments, while well-intentioned, are
10 seeking to use privacy to regulate, like, workforce
11 law, employment law, and, you know, other areas of
12 law that people are concerned about, all of which are
13 very valid.

14 I mean, no one wants to be in a, you know,
15 unfairly surveilled workplace, but this is a privacy
16 statute so I -- I think this definition of
17 "significant decision" absolutely needs to be scaled
18 back.

19 And, especially, I think it needs to be
20 really tied to the actual denial of, you know, the
21 job that you were looking for, the loan you were
22 looking for, and I think we need to spend a lot of
23 time on -- on Mr. Worthe's comment so that when you
24 call the hotel and it's full, that's not a
25 significant decision.

1 CHAIR URBAN: Thank you.

2 Mr. Liebert?

3 BOARD MEMBER LIEBERT: All good points. So
4 I'm -- I'm convinced that these approaches that
5 you're giving us these options for of deleting
6 various things like insurance, et cetera, makes
7 sense. I'm not sure yet about the employment or
8 independent contracting opportunities category; so
9 I'd like to kind of learn more about that.

10 And then I also think what Board
11 Member Worthe said in terms of getting more
12 information regarding those other categories makes
13 sense.

14 But the big picture here is thank you for
15 bringing these ways to constrain the number of use
16 cases that would be having to deal with these issues.
17 So I think that's a good development, and I hope
18 we've given you some good direction.

19 CHAIR URBAN: Thank you, Mr. Liebert.

20 So if I -- in listening, I -- I don't want
21 to miss anything -- so I think I've heard certainly
22 from Mr. Mactaggart, delete "access to" and delete
23 "insurance," and -- maybe? And from Mr. Worthe,
24 specificity on some of these other categories.

25 And what am I missing?

1 BOARD MEMBER LIEBERT: I actually didn't
2 make one point that I should for all of us, and that
3 is but the Alternative 5, deleting or narrowing
4 essential goods or services is a huge one; right?

5 CHAIR URBAN: Yeah.

6 BOARD MEMBER LIEBERT: I think firms,
7 perhaps like Amazon and others, had some legitimate
8 concerns about what that might mean for their --
9 their business models and should be quite pleased at
10 the concept that we would be deleting or narrowing
11 that as well.

12 BOARD MEMBER WORTHE: Yeah. I think I just
13 want to confirm what you just said, that we're going
14 to take this page, so those that are deleted or
15 removed, and we're going to take those three other
16 categories and get better information about what's
17 really already excluded in those buckets, and then
18 decide if there's more work to do on those.

19 CHAIR URBAN: Thank you, Mr. Worthe.

20 When you say "these," do you mean the ones
21 we've discussed or do you include all the ones that
22 have been marked for (indiscernible)? Just because I
23 would need to understand Mr. Liebert's comment about
24 work allocation. Were you saying we should just go
25 ahead and delete it? I thought you were saying --

1 BOARD MEMBER WORTHE: Yes. I don't think
2 we should do that one. I -- I see that in the same
3 category of needing more information, if that's okay
4 with you, because I just don't know the implications
5 of that. I know that -- that -- that labor groups
6 might have some important input on that as well.

7 CHAIR URBAN: Thank you.

8 Mr. Mactaggart?

9 BOARD MEMBER MACTAGGART: Yeah. My point
10 would be I would delete everything you have here that
11 you mark "Delete."

12 I would add something to really clarify
13 about the advertising side of things that just
14 advertising doesn't create a risk assessment or an
15 opt-out as long as it's done, you know, first party.

16 And to Mr. Liebert's point, I agree kind of
17 conceptually. It's a question of where the line is.

18 Clearly, I don't get the job because they
19 didn't even look at my resume. They just said, you
20 know, oh, he's got the wrong-sounding name.
21 That's -- everybody agrees that's egregious.

22 And we can't kill the gig economy. I mean,
23 it's one of those things, that ship has sailed. And
24 we got to be able to not pretend that we're going to,
25 through a privacy statute, come address how the

1 delivery person or the Uber or Lyft driver gets
2 assigned to the closest task, or, you know, use that
3 algorithm.

4 I think that's -- there's a lot of
5 employment law that can govern it. And, frankly,
6 this is where the legislature should get involved, if
7 it's not. But we -- you know, we're talking about
8 risks to privacy, not unemployment law.

9 CHAIR URBAN: Thank you. Thank you,
10 Mr. Mactaggart.

11 Broadly, I certainly agree that this just
12 requires a little bit more attention from the board,
13 absolutely.

14 One of the things that I heard in public
15 comment when I attended the info session, for
16 example, and I read in the transcript from gig
17 workers is, you know, being dropped entirely from the
18 platform with no notice and no understanding of,
19 like, what information might have been involved in
20 that decision.

21 And that's something that, for me, I'll
22 just say right here I haven't thought about this, I
23 probably shouldn't say it in a public meeting, I
24 haven't thought it through myself, but that -- that
25 we -- they don't even know if that decision relied on

1 personal information. And so that, to me, seems like
2 the kind of use case that we might want to consider
3 more closely, but I'm unsure.

4 I do want to say a little bit of work -- a
5 little word about what is a privacy issue. It is
6 something that also is just throughout the comments.
7 People would say that's not a privacy issue, that's a
8 privacy issue. And -- and probably because it just
9 seemed obvious to them, one way or the other.

10 Let's be really clear. You know, privacy
11 is definitely about creepy which is something that's
12 come up in the board before, but it's about much,
13 much more serious things, too. And the creepy
14 doesn't really matter. Who cares if something's
15 creepy?

16 What we care about is the effects on
17 people, the interaction with privacy, with personal
18 information to make decisions that violate civil
19 rights. That is very much a privacy issue, and that
20 is not me saying that. That is a lot of courts
21 saying that.

22 Discrimination in various forms based on
23 characteristics of a person, those are privacy
24 issues. And discrimination is reflected in almost
25 every other privacy statute -- comprehensive privacy

1 statute, if not -- location, for example.

2 I think Mr. Mactaggart's example of, you
3 know, your -- the tracking of the location is a
4 really good one and a rich one for us to consider,
5 depending on the circumstances.

6 Depending on the circumstances, if you're
7 tracking somebody to a reproductive health center and
8 you are an abusive partner of the person going to the
9 reproductive health center or you are a member of a
10 community that doesn't want that person to gain
11 critical information about their body or about their
12 sexuality, that is a privacy issue. That relates to
13 deeply intimate personal information about a person
14 being used to make some kind of -- you know, some
15 action against them.

16 Why do we care about what books you read?
17 Why do we even care about what books you read?

18 We care about what books you read or other
19 things that you read because the Supreme Court has
20 reflected the societal value that one of the most
21 foundational First Amendment rights is to be able to
22 receive information in a private fashion so that
23 people can consider information and consider ideas.

24 And the court has been very clear that this
25 First Amendment protection is undergirded by the

1 privacy. So I just want us to be clear that privacy
2 is not necessarily just what, you know, somebody
3 thinks it is in the moment.

4 And, in my view, we need to go by our
5 statute which is really centered on personal
6 information.

7 And we absolutely need to be, you know,
8 judicious in how we extend -- how we sort of use our
9 authority and to recognize that because privacy is
10 what privacy is and it's -- you know, it has these
11 many dimensions that, of course, our partners in the
12 legislature, of course our partners and other
13 agencies, they will have work -- for example, labor;
14 right?

15 There are going to be issues that -- that
16 will touch on our -- on privacy as well, and we have
17 to be really clear-eyed and thoughtful about that.
18 But it doesn't mean that something isn't a privacy
19 issue because it doesn't say the word "privacy."

20 BOARD MEMBER MACTAGGART: Yeah. Thank you
21 for that comment.

22 I've oftentimes said in the journey that
23 privacy is the wrong word for privacy because I
24 think, you know, in so many respects, how your
25 information is used is a really fundamental question

1 for democracy, for the survival of democracy. And so
2 I couldn't agree more.

3 I think my issue here is that, you know,
4 your example, which is a great one, really depends on
5 the information going somewhere that you the user
6 didn't want it to go.

7 I'm using the mapping function. I kind of
8 know that the mapping company needs to know where I'm
9 going. The question is, once I've gotten to the
10 reproductive clinic, I don't expect them to sell it.

11 And that's why the whole architecture of
12 CPRA, CCPA was aimed at giving the users control over
13 their own information. Consumers get control of
14 their own information. The abusive partner should
15 not get that.

16 You should be absolutely sure that when
17 you're dealing with a particular service, a dating
18 service, whatever, religious service, that that
19 information stays between you and the service. And
20 that's why that whole approach is here.

21 What's concerning about -- about this is
22 suddenly we're seeing that the firm that's providing
23 you that service, that you know is providing you the
24 service, that you know is getting you around the
25 traffic somehow, that's a -- that's -- that I should

1 either have the right to opt out because it's a
2 significant decision or they have to do a risk
3 assessment. And that I don't -- I don't agree with.

4 It's what they do with the information.
5 And that's -- that's, I think, what we're all kind
6 of, I think, triangulating on. But that's -- I think
7 it's -- really, it's what happens to the information.
8 It's not the fact that it got processed.

9 CHAIR URBAN: Thank you, Mr. Mactaggart.

10 How are people feeling about lunch? Let me
11 back up first. I -- you know, boy, have I messed up
12 because I've now, like, mentioned lunch, and my
13 intent was to first ask staff if they felt like they
14 had enough information about these alternatives.

15 MR. LAIRD: Yeah. I'd like to take the
16 opportunity to just try to summarize back to what I
17 think.

18 CHAIR URBAN: Everybody's going to think
19 about lunch.

20 MR. LAIRD: And then we can talk about
21 lunch.

22 CHAIR URBAN: I apologize. I'm making all
23 kinds of bad decisions today.

24 MR. LAIRD: Okay, very good. So what I've
25 heard from the discussion and what I think we're

1 prepared to come back with text of would be a version
2 of the "significant decision" definition that removes
3 the words "access to," that removes potentially all
4 of the alternatives that were presented here, all
5 five of those.

6 I recognize there's been discussion,
7 though, and a little bit of debate around allocation
8 or assignment of work.

9 I guess I just want to point one thing out.
10 When folks are asking for additional information,
11 technically, when we -- if we leave it in here and
12 then we go out for public comment again, at least
13 under the APA, comments are supposed to be
14 constrained to things that are changing from the last
15 version and not necessarily staying the same from
16 before.

17 It's not to say we wouldn't get comments on
18 these if we're asking for them, and we could. At the
19 same time, another way to approach it would be to
20 eliminate it, see what the comments are to that
21 elimination. And so I guess I just want clarity.

22 Are we eliminating it and asking for more
23 comments, or are we keeping it in and asking for more
24 comments?

25 CHAIR URBAN: So my understanding was that

1 we would be looking at use cases which may result in
2 deletion or may result in edits to the language which
3 would then provoke comments.

4 But I could -- am I misunderstanding you,
5 Mr. Liebert or Mr. Worthe, because these were --
6 okay.

7 BOARD MEMBER WORTHE: I think -- I think
8 we -- what I was -- what I heard from you on
9 financial or lending service -- I'm trying to read
10 sideways -- but there's a broader set of restrictions
11 around that that we don't have here.

12 And then we talked about -- because I
13 mentioned housing and healthcare services, and you
14 previously mentioned that first one, and then I think
15 board member brought up adding that fourth category
16 on the employment to a set of -- a set of terms that
17 you're going to give us more information about how
18 they really play out because there's other rules that
19 impact how broad those words look to me. That's what
20 I was asking for.

21 So -- and by the way, you're going to get
22 comments. A number of people want to comment, so.

23 CHAIR URBAN: Yeah. Mr. Liebert?

24 BOARD MEMBER LIEBERT: I just want to make
25 sure -- I want to keep it in for now, the employment

1 or independent contracting opportunities to get those
2 comments, but also to get information from staff
3 about use cases that would help us understand that
4 next time we visit this, whether or not we think it
5 should be taken out.

6 CHAIR URBAN: I think the process point was
7 just that we have to make some kind of a change to
8 get -- to get a comment. But I think we -- I think
9 we can work with that. I really do.

10 Mr. Mactaggart? Yeah, go ahead.

11 BOARD MEMBER MACTAGGART: Mr. Laird, can I
12 suggest that we bifurcate and we sort of have -- one
13 is like the more permanent job situation and then one
14 is the temporary, like, little, you know, DoorDash,
15 you know, Uber, Lyft kind of situation.

16 And I feel like if we do -- and we can play
17 with that -- that to me, I think might get more at
18 what Mr. Liebert's talking about, I think.

19 MR. LAIRD: Let's see. Okay. So, you
20 know, the provision that we called out from what is a
21 list of sort of employment decisions is allocation or
22 assignment of work. My understanding was that was
23 what we were kind of focused on, not necessarily
24 compensation, promotion, demotion, suspension, or
25 termination.

1 So if I'm hearing correctly -- I just want
2 to make sure I'm clear on what we should be doing
3 from the staff level -- we could, for instance, try
4 to go through comments and surface to you all at the
5 next meeting sort of where comments have raised
6 issues and examples around allocation of assign -- or
7 assignment of work if that would be helpful.

8 BOARD MEMBER MACTAGGART: When I hear "use
9 cases," I mean, we could try to do further research
10 for you all but I just want to make sure we're --

11 Can I suggest, I think some of the comments
12 felt different. Some of the labor comments were
13 like, our staff are getting -- are feeling terrible
14 because they have to be on one side of town then on
15 the other, and they -- the -- they don't have enough
16 travel time, or the nurses are -- were not assigned
17 properly to the workforce. That feels like one set
18 of issues with kind of permanent labor.

19 And then the other is sort of the gig
20 economy of the drivers who are showing up somewhere.
21 And so I don't -- I just -- I'll throw that out
22 there. There may be a -- there may be a "there"
23 there.

24 CHAIR URBAN: Mr. Worthe?

25 BOARD MEMBER WORTHE: Yeah. If it helps,

1 be really clear on housing and healthcare services.
2 I just think those are way too broad.

3 MR. LAIRD: Yeah.

4 BOARD MEMBER WORTHE: Right?

5 MR. LAIRD: Yeah.

6 BOARD MEMBER WORTHE: So however we need
7 to -- if you can show me it's just not as broad as
8 you think for these reasons or let's come up with
9 language that tightens them up if there's --

10 MR. LAIRD: Yeah. For those three I
11 mentioned before that would remain, we would -- we
12 would certainly offer clarifying definitions.

13 CHAIR URBAN: Thank you.

14 Mr. Liebert, are you happy with that?

15 BOARD MEMBER LIEBERT: I'm just confused
16 with that.

17 CHAIR URBAN: Okay. Well, yeah.

18 BOARD MEMBER LIEBERT: Yeah. So how are
19 we -- I understand the point that you made. And then
20 the point that you made, Madam Chair, is -- is that
21 if we alter that, that will create a commentary
22 process?

23 CHAIR URBAN: As I understood by Mr. Laird,
24 it's just that --

25 BOARD MEMBER LIEBERT: Okay.

1 CHAIR URBAN: Yeah. Alter it, and that
2 could be by adding examples. That could be by --
3 that could be by us having a chance to talk about it
4 and revising the language to some degree. Or it
5 could be by deleting it.

6 BOARD MEMBER LIEBERT: Yeah. What would
7 you recommend?

8 MR. LAIRD: Oh, actually, one thing I'm
9 going to recommend, although I was going to force you
10 all to figure this out before lunch is if we could
11 come back, perhaps from a staff level, sort of a
12 quick (indiscernible).

13 BOARD MEMBER LIEBERT: Sure.

14 MR. LAIRD: And then the last thing I just
15 want to acknowledge, though, before we break is the
16 issue Mr. Mactaggart raised around at the beginning
17 of the definition still adding clarity to provision
18 or denial of to potentially scope out advertising or
19 make clear sort of whether that threshold is, and
20 it's not necessarily the use of a map or an
21 advertisement leading up to a decision. So trying
22 to -- trying to add some clarity and confining the
23 definition further there as well.

24 CHAIR URBAN: Okay. Okay. Wonderful.

25 BOARD MEMBER WORTHE: Addressing the

1 advertising thing, too.

2 MR. LAIRD: That's exactly what I meant.
3 Yep.

4 CHAIR URBAN: All right. Thank you. This
5 has been incredibly helpful. Our advisors have been
6 incredibly helpful. I think that we have made some
7 real, substantive progress. I hope that it's been
8 helpful to you for us to talk to these issues and
9 give us -- give you our -- what we would like to see
10 next.

11 With that, let's take a break for lunch,
12 and I suggest that we plan to come back at
13 one o'clock. That would be 45 minutes, or we can --
14 does that work?

15 Okay. Fantastic. Thanks, everybody. The
16 Zoom will remain open if you're on the Zoom, but we
17 won't come back before one o'clock. Thank you.

18 (Whereupon, a lunch recess was held.)

19 CHAIR URBAN: Wonderful. Welcome back,
20 everyone.

21 Now that we are all fed and hydrated, let's
22 go ahead and dive back in. If you are joining us for
23 the first time now, we are working through agenda
24 item Number 3 on draft regulations. And we are on,
25 as I believe, Slide Number 9 on the modification to

1 proposed rule regulations PowerPoint and the
2 materials for today.

3 And with that, I'd like to turn it over --
4 back over to the Legal Division team.

5 MR. LAIRD: And before we proceed to Issue
6 Number 3, the slide currently prepared, just as I
7 committed earlier, I just want to restate one more
8 time to make sure with -- we align with the board's
9 direction in terms of Issue 2, significant decision,
10 what our plan is from the staff level.

11 So three things we're looking to do,
12 essentially, accept the Alternatives 1, 2, 3, and 5
13 in a proposed modified text; add further definitions
14 explanation to financial lending services, housing,
15 and health care services; further explore
16 alternatives with allocation or assignment of work,
17 including exploring potentially a division between
18 sort of permanent employee allocation or assignment
19 of work versus the example of gig workers or
20 independent contractors as well as back supporting
21 that with potential examples and use cases to add
22 some color to that issue for the board to consider
23 when they see this text again.

24 And then, finally, to further revise the
25 opening of the definition to make clear that

1 advertising would not be included as part of the
2 provision or denial of one of these significant
3 decisions.

4 CHAIR URBAN: Thank you. That sounds
5 correct, and like a clear summary to me.

6 Yeah, Mr. Mactaggart?

7 BOARD MEMBER MACTAGGART: I would say it
8 sounded correct to me. The only thing I would say is
9 there were a number of insurance submissions which,
10 frankly, were quite long in the comments, and I went
11 through them but I can't say that I'm an expert in
12 insurance law. So sometimes they raise stuff saying,
13 this is, you know, just the intersection between
14 the -- whatever the insurance act is, and our act.

15 And so maybe there needs to be some, I
16 don't know, clarification if there weren't insurance,
17 but I don't -- I'm just throwing that out there.

18 MR. LAIRD: I will note that's the one that
19 actually proposes until deletion --

20 BOARD MEMBER MACTAGGART: Oh, sorry.

21 MR. LAIRD: -- and if we delete, to your
22 point, that would actually, I think, resolve that
23 issue in this context.

24 CHAIR URBAN: Thank you, Mr. Laird.

25 BOARD MEMBER WORTHE: We're deleting

1 everything that you mark as delete?

2 MR. LAIRD: Yes, with the exception of
3 allocation or assignment of work. We're going to
4 explore an alternative. Yeah.

5 CHAIR URBAN: Wonderful. Thank you.

6 MR. LAIRD: All right. Very good. So
7 moving on to Issue Number 3, behavioral advertising
8 threshold, I am going to once again pass it along to
9 my esteemed colleagues.

10 MS. ANDERSON: Okay. My colleague Neel
11 Shaikh already covered some of this in the context of
12 discussing other issues among the board, but just to
13 refresh the -- when we say behavioral advertising
14 threshold, we're talking about the language in both
15 the risk assessment article and the ADMT article.

16 The regulations, as currently drafted,
17 would require a business that profiled the consumer
18 for behavioral advertising. That includes first
19 party and cross contact; it does not include
20 contextual advertising but it would require
21 businesses engaged in that kind of profiling to both
22 conduct a risk assessment and to comply with ADMT
23 requirements.

24 The inclusion of the threshold was based on
25 direction from the board and had been recommended by

1 the sub -- the new rule subcommittee. And as you all
2 know, the threshold has drawn significant feedback
3 from the public.

4 Consumer advocacy groups have supported it,
5 particularly the opt-out requirement to address
6 first-party advertising by businesses. However,
7 small businesses and industry groups have strongly
8 objected to it, in part because of concerns that the
9 threshold would negatively impact their ability to
10 advertise to their own customers.

11 Next slide, please.

12 The options on this slide are leave the
13 threshold as is for risk assessments and automated
14 decisionmaking technology or remove the threshold for
15 risk assessments and automated decisionmaking
16 technology.

17 So we'll pause here for the board's
18 discussion of those alternatives.

19 UNIDENTIFIED SPEAKER: Thank you. Did you
20 have -- did you have any explication of the choice
21 here for us beyond the --

22 CHAIR URBAN: I mean, I guess it's very
23 simple. It's in or out.

24 Okay. Wonderful. Thank you. Mr. Worthe?
25 Mr. Mactaggart? Okay.

1 BOARD MEMBER WORTHE: Yeah. I mean, this
2 kind of goes back to earlier discussion. Walk me
3 through what happens if you remove this. It just
4 seems hard for me to wrap my head around it, like we
5 can just take something out and we're good with it.

6 And I would like to -- I do appreciate,
7 though, hearing from staff what your -- your
8 preferences, too. There's only two choices.

9 MS. ANDERSON: Sure. So staff's
10 recommendation would be to simplify implementation at
11 this time, deleting the profiling for behavioral
12 advertising threshold from both articles.

13 This would mean that businesses no longer
14 have the requirements that they're engaging in this
15 particular kind of profiling. They would not have to
16 conduct a risk assessment for this particular kind of
17 profiling, nor would they have the ADMT obligations
18 of providing a pre-use notice, providing an opt-out
19 right or providing access to ADMT upon request.

20 MS. SHAIKH: Oh, one thing to clarify is,
21 of course, the concept of selling or sharing would
22 still be in the law. So, like, it would still be in
23 the risk assessment requirements.

24 And, of course, the CCPA provides consumers
25 with the ability to opt out of selling or sharing.

1 So that would stay the same and potentially still
2 remain in risk assessments.

3 CHAIR URBAN: Thank you. Before we move
4 on, did you have comments on Mr. Worthe -- the second
5 part of Mr. Worthe's question as to what would be the
6 effect of the removal on the -- on the regulatory
7 framework?

8 MR. LAIRD: Yeah. But I think in terms of
9 the framework, if you don't mind, sorry, essentially,
10 this is one of multiple categories of automated
11 decisionmaking technology and then also triggers for
12 risk assessments that was included.

13 And so when -- if you think about it, I
14 look at it as a list of topics we included. This
15 would just remove one of those items from the list,
16 and so the rest remains intact. But this essentially
17 would come out of this regulatory scheme.

18 The other thing I just want to emphasize at
19 this point that really goes for all of these
20 proposals and anything we're potentially walking
21 back, that doesn't eliminate this board's ability to
22 revisit these issues, to reconsider adding these at a
23 future date, to further research and observe what's
24 happening in the marketplace.

25 And so certainly anything that the board

1 decides to scale back at this time, I would recommend
2 we continue to monitor as an agency.

3 CHAIR URBAN: Thank you, Mr. Laird.

4 Mr. Mactaggart -- Mr. Liebert, are you --

5 BOARD MEMBER LIEBERT: I think this is a
6 big deal and that all of those folks who wrote in
7 should recognize this as a really big deal and that
8 the agency is listening and paying real attention to
9 these concerns. And so I ultimately am supportive of
10 removing it and applaud the staff for the work that
11 they did in this regard as well. Thanks.

12 CHAIR URBAN: Thank you. Are you ready,
13 Mr. Mactaggart?

14 BOARD MEMBER MACTAGGART: Thanks. And I
15 want to apologize to you. I think I did support this
16 a couple of, you know, meetings ago, and I -- at the
17 time, but I realized I was just conflating behavioral
18 advertising with cross-context behavioral
19 advertising. And so -- which maybe many of us did,
20 but it is a new term, so I understand the comments.

21 And I think you just answered it, but I
22 just -- one question is so if we just stuck -- if we
23 just change it to cross-context behavioral
24 advertising but the consumer already has the right to
25 opt out of that under CCPA, and so, theoretically, if

1 they've exercised their rights, none of that's going
2 on. So I think that's fine.

3 And then the other question. I saw one
4 comment in the comments about the B2 for the risk
5 assessment profiling a consumer through systematic
6 observation of a public, accessible place. And I
7 think my answer is going to be you're -- you're going
8 to tell me that it's in profiling. But I think the
9 comment that I read from one of the -- one of the
10 commenters was, look, if we're just basically
11 security cameras, you know, we're not doing stuff
12 with people, but that's not -- that -- then that
13 wouldn't fall into the profiling, right?

14 MS. ANDERSON: That's actually a separate
15 threshold, and my colleague Neel Shaikh will be
16 addressing the public profiling threshold next.

17 CHAIR URBAN: Can I ask Mr. Mactaggart,
18 with regards to the cross -- well, actually, I
19 apologize, Mr. Mactaggart. I think this is a
20 question for staff. This hadn't occurred to me.
21 Thank you, Mr. Mactaggart, for pulling that out of
22 the comments.

23 So if we were to strike the whole thing,
24 including cross-context behavioral advertising, that
25 would mean that cross-context behavioral advertising

1 also wouldn't trigger a risk assessment?

2 MS. ANDERSON: No. Actually, when -- if --
3 when we're talking about the profiling for behavioral
4 advertising threshold, we also added a separate
5 definition of behavioral advertising to the
6 definition -- to the definition section.

7 CHAIR URBAN: Got it.

8 MS. ANDERSON: So if we take out the
9 profiling for behavioral advertising threshold, we
10 would also take out that definition of behavioral
11 advertising. The rest of the existing framework
12 within CCPA and the existing regulations about opting
13 out of cross-context behavioral advertising, the --
14 that would still remain as is.

15 CHAIR URBAN: Okay. Wonderful. Thank you
16 very much. Thank -- thank you for clarifying that.

17 I'd like to echo Mr. Liebert's comment
18 that -- very much appreciating staff's careful
19 attention to the comments and to -- you know, we've
20 gotten lots of comments on this in our board meetings
21 as well. We've had a lot of public engagement.

22 I feel bound to say, again, you know, this
23 isn't a question of authority. This is a question of
24 how far we want to extend this authority at this
25 time.

1 And I would -- you know, I -- and I
2 absolutely agree with Mr. Liebert that this is a --
3 this is a big deal that the board has consensus to
4 remove this now. It's a big deal, and it is a sign
5 that staff and the board have been very responsive
6 to -- to the comments, and I would hope that that
7 would be recognized.

8 So thank you very much for that.

9 Mr. Worthe, did you -- did anybody else
10 want to opine on this? Or are we on -- do we have
11 consensus to go ahead with alternative -- the
12 alternative?

13 Okay. Let's move on to Issue Number 4.

14 MS. SHAIKH: Thank you. So turning now to
15 Issue 4, if we could go to the next slide, please.

16 Thank you.

17 So this Issue 4 addresses the other
18 extensive profiling thresholds that are in the
19 framework. So we'll start on this slide with work or
20 educational profiling, and that generally addresses
21 profiling of job or educational program applicants,
22 students, employees, or independent contractors
23 through systematic observation in workplace or
24 educational settings.

25 If a business is engaged in this type of

1 profiling, under the proposed regulations it would be
2 required to conduct a risk assessment and to provide
3 pre-use notice opt-out and access mechanisms to
4 affected consumers.

5 Next slide, please.

6 Thank you.

7 With respect to public profiling, this
8 threshold addresses profiling of the consumer through
9 systematic observation of a publicly accessible place
10 and, similarly, to worker educational profiling. A
11 business conducting this would be subject to risk
12 assessment and the notice ADMT -- notice opt-out and
13 access requirements in the ADT framework.

14 Next slide, please.

15 Thank you.

16 And so during the comment period, we did
17 receive comments on these thresholds. Consumer
18 advocacy organizations supported the inclusion of the
19 worker educational profiling threshold to protect
20 consumers in these contexts. We also, of course, had
21 industry commenters who were concerned about the
22 worker educational profiling threshold stifling their
23 ability to manage their workers, implement
24 efficiencies, and chill innovations.

25 Those commenters also raised concerns that

1 the public profiling threshold could capture everyday
2 activities such as tools to map fitness routes, and
3 they recommended either removing the threshold or
4 clarifying that it does not encompass services that
5 consumers enable to record their own movements.

6 So, essentially, a consumer is turning on
7 the mapping function or narrowing the types of
8 publicly available places that are in scope of the
9 definition. So we received a variety of comments on
10 this threshold.

11 Now, turning to the actual slide, again,
12 it's similar to what was presented on the prior
13 issues. The board, of course, can always leave these
14 thresholds as they are. They could also remove
15 the -- remove these thresholds from the risk
16 assessment framework, from the ADMT framework, or
17 from both.

18 And, again, as we've said throughout this
19 presentation, these are just a couple options before
20 the board. Of course, to the extent that there's
21 words missing that you prefer or anything like that,
22 staff is absolutely open to that type of feedback and
23 is here for questions.

24 I'll pause here.

25 CHAIR URBAN: Thank you. As a quick --

1 well, I have a question; I don't know if it's
2 quick -- which is I was just wondering, based on
3 how -- the comments and how they sort of -- how they
4 landed, we -- why we only have the two options here,
5 the yes or the no, as opposed to, for example, as
6 Mr. Worthe pointed out for the earlier conversation,
7 more -- more information about or more understanding
8 of what some of these would mean.

9 MS. SHAIKH: Absolutely. Some of it is
10 the -- just the nature of the slide. We didn't want
11 to provide like many, many formulations on one slide.
12 So we were trying to simplify it just on the slide
13 itself.

14 But, again, like other options that were
15 provided in comments, we're narrowing definitions or
16 narrowing the scope of the threshold which is always
17 available. And to the extent the board is interested
18 in exploring those options, we can provide a bit more
19 tailored feedback on that.

20 And then about the comment kind of taking
21 the, like, bird's-eye view of where we are with these
22 comments on these thresholds is -- you know, we
23 really got a variety of comments here. We have
24 consumers and consumer advocacy groups who are
25 talking about the concerns they have about this type

1 of program, particularly in the workplace setting.
2 And then, of course, you have businesses and industry
3 commenters saying, you know, but these technologies
4 also have very beneficial uses to businesses, to the
5 public.

6 And so we have a wide variety of comments
7 that are really saying there are risks to these uses,
8 there are benefits to these uses. And so that's why
9 one of the kind of foundational questions to the
10 board right now is, you know, given this context from
11 across the comments, is this -- and considering
12 these -- the balance of the benefits and risks
13 presented in the comments, is this something that the
14 board is interested in pursuing or holding back for
15 now?

16 CHAIR URBAN: Wonderful. Thank you. You
17 know, I find work and educational profiling to be
18 potentially very profoundly important depending on
19 what's happening, you know?

20 And I read the -- I read the comments when
21 I, you know, I absolutely was sympathetic to
22 businesses' concerns here about, you know, basic --
23 some of the basic sort of functions that they need
24 to -- they need to undertake and things that are
25 rightly within the prerogative of the employer.

1 And I'm also -- I was also very sensitive
2 to some of the concerns from workers, you know, where
3 things just may be going way -- well outside of that
4 and directly becoming a concern about privacy,
5 dignity, autonomy, et cetera.

6 So, from my part, I think this is one of
7 those situations where -- sorry, I would
8 appreciate -- I would appreciate a little more
9 information on use cases, I think.

10 But let me -- okay. So we've got
11 Mr. Worthe, we have Mr. Mactaggart, and we have
12 Mr. Liebert. No?

13 UNIDENTIFIED SPEAKER: I liked what you
14 just --

15 CHAIR URBAN: Okay. Thank you.

16 BOARD MEMBER WORTHE: Well, actually, I was
17 going to use a use case to understand this better,
18 and this could be a really bad example; so don't
19 laugh out loud if it is.

20 If I'm applying to, like, a large
21 transportation company to be a truck driver and I
22 check -- on my application, I check a box that says I
23 have a previous DUI and their system kicks my
24 application out without anybody seeing it because I
25 checked that box, is that profiling in this

1 definition?

2 MS. ANDERSON: Sorry. We're both working
3 on this together.

4 I think in that context, we're thinking
5 about the overlap -- the potential overlap, between
6 profiling and significant decisions. So, obviously,
7 the concerns about workplace and educational
8 profiling and significant decisions that impact
9 hiring decisions and allocation and assignment of
10 work and compensation and those sorts of things are
11 covered by this broader framework.

12 I think this specific question that you
13 were asking about would be covered by the significant
14 decision threshold.

15 CHAIR URBAN: All right. Mr. Mactaggart?

16 BOARD MEMBER MACTAGGART: Yeah. I had a
17 question. So going back to the comment of walking by
18 the, you know, billboard and it flashes and it takes
19 a picture of you, whatever. So profiling versus the
20 security camera in the airport which may have a
21 function where it could search for a faceprint if it
22 turns out the cops are like, well, we got a bad guy
23 here.

24 How does -- how does the -- that
25 profiling -- the public profiling -- where do you

1 think the line sits there because of the definition
2 of profiling?

3 MS. SHAIKH: Absolutely. So it would
4 have -- thank you. There would have to actually be
5 some sort of -- the definition of "profiling" in the
6 statute means there actually has to be an evaluation
7 of the consumer that's happening via the automated
8 processing.

9 And so, for instance, a CCTV, like a video
10 camera, it depends on -- this is going to be a
11 frustrating lawyerly answer -- but it really depends
12 on how the business is attempting to use it. Like,
13 are they using it with potentially even like a mix of
14 facial recognition to determine, you know, is this
15 someone who's a safety threat? Because that's an
16 evaluation of the consumer.

17 But if there are -- and I know I've said
18 this in -- with other thresholds, but if there are
19 things that board members are concerned or -- you
20 know, this is not the type of use case that we are
21 trying to get to.

22 We can always draft a more tailored
23 carveout within the definition or within the
24 threshold to make sure that, for instance, if you do
25 not want just the general use of a security camera in

1 a retail store to be covered, we can always carve
2 that out.

3 MR. LAIRD: Can I maybe ask my colleague,
4 would it be fair to say the billboard that takes your
5 picture but then determines on -- based on something
6 about your picture that it wants to advertise
7 something to you specifically, right, that would be
8 profiling at that point; that would be covered here.

9 But then the point I want to make is there
10 are the exceptions as well. So then the -- part of
11 the concept is that would have been -- that would be
12 covered.

13 But then if the same camera is being used,
14 to your point, to -- to, you know, alert for known
15 terrorists or something of that nature, that would
16 fall under our safety and fraud exception if that was
17 the sole use of it.

18 So it would actually -- again, to my
19 colleague's point, it's all use dependent. It
20 depends on how that technology is actually --

21 CHAIR URBAN: You're advertising to
22 terrorists. We don't know what to do.

23 BOARD MEMBER WORTHE: You know, I'd like to
24 echo the Chair's comments. I think we should get a
25 little more, you know, information on this. And I

1 said many times and I think this is in the
2 significant decision part but, you know, we all
3 actually have an interest in knowing whether the
4 delivery driver is being monitored.

5 I mean, you all kind of want that at some
6 level to make sure that the person's not speeding,
7 not going crazy, not blowing through stop signs. So
8 that's kind of a good -- societal good. But, of
9 course, the delivery driver deserves to know what's
10 happening but I'm not sure that we need to create a
11 situation where the delivery driver can opt out of
12 it.

13 And this is where I get really nervous that
14 we're a privacy statute and we're all of a sudden
15 getting into sort of employment, you know, work --
16 work -- work rules which I feel like they're super
17 important. It's just maybe not the thing you hear.

18 So I think when you come back with a more
19 granular sort of -- between this work and public
20 profiling, maybe we could just keep that kind of
21 approach -- those questions in mind.

22 CHAIR URBAN: Thank you. So --
23 Mr. Mactaggart, so your comment applies to both
24 worker educational profiling trigger and the public
25 profiling trigger. We're talking about those

1 together.

2 I thought that was me.

3 MR. LAIRD: I think that's an air --
4 aircraft.

5 CHAIR URBAN: Very low aircraft.

6 I thought that was my microphone. Oh,
7 gosh. I made a joke about a terrorist. Bad idea.

8 So do we -- does the board have consensus
9 around that request?

10 Okay. Mr. Liebert?

11 BOARD MEMBER LIEBERT: Mm-hmm.

12 CHAIR URBAN: Okay. Wonderful.

13 And is that -- does that provide the staff
14 guidance for us?

15 MS. SHAIKH: I just want to make sure we
16 understand the guidance. Is it to think through
17 these thresholds based on the public comments, based
18 on the feedback today, with potential use cases, and
19 for the board to consider in terms of determining the
20 scope of what's in and out?

21 CHAIR URBAN: Precisely. Wonderful. Thank
22 you.

23 I think that brings us back to training and
24 maybe we are in a better place to talk about it in
25 terms of our understanding.

1 MS. ANDERSON: Can we just ask one -- one
2 clarifying question of the board which is if -- if
3 you all have certain use cases that you want to make
4 clear would be in or would be out -- because we can
5 also modify what these thresholds actually mean -- so
6 if there are certain things that you want to be clear
7 should not be included because you all kind of agree
8 that they shouldn't or you want to be clear that
9 certain things are included, we would love to have
10 that direction, too, so that we can kind of target
11 our assessment about use cases that would then be in
12 or out as well.

13 CHAIR URBAN: Thank you. Mr. Mactaggart?

14 BOARD MEMBER MACTAGGART: My quick reaction
15 to that says, in terms of workplace, there's a ton of
16 software, I think, that is just what I would call --
17 has come at this point to be sort of normal.

18 So it might be your card key getting into
19 the building tells you what time you showed up. You
20 know, it might be the monitor in the car that -- or
21 the truck -- truck that shows how fast you're
22 driving. It might be, you know, some kind of an
23 attendance sort of situation.

24 And I know these are very hot topics for
25 labor and I'm not trying to, again, diminish them,

1 but I don't know that they -- we want to make
2 transparent, but I feel like they're not particularly
3 risky, and they're not -- it's going to be very
4 difficult to create a situation where the employee
5 gets to opt out of the use of these things in this
6 day and age.

7 However, there should be transparency, that
8 employees should know they're being surveilled, like,
9 if that's -- that's really important, you know? And
10 that feels very different than -- you know, let's
11 figure out which woman's about to get pregnant and
12 fire her before she's even gotten pregnant. That's
13 obviously super creepy.

14 And then with a public -- same sort of
15 thing, you know, the CCTV that doesn't do anything in
16 an airport, no big deal. And then the -- you walk
17 into the store and then facial matches you to -- to,
18 you know, some database and says you're a customer
19 that we should really pay attention to versus you're
20 not, that -- that also -- that feels really creepy.

21 So those types of things, for me, are my
22 first reaction.

23 CHAIR URBAN: Thank you.

24 MS. ANDERSON: Just to clarify that just
25 what I'm hearing back from you. So if we're talking

1 about defining the threshold, it sounds like what you
2 want to do is something a little bit different which
3 is, well, that you would want things like car key
4 access, checking in, clocking in and out, speed of
5 driving, things like that. All of those technologies
6 would be in as a threshold of profiling -- worker
7 educational profiling.

8 But what your proposal would do would
9 actually not be to modify -- further modify the
10 definition under the threshold but it would be to
11 carve out the opt-out requirements for work or
12 educational profiling.

13 So it seems to me like you would be in --
14 it would be kind of a between, not leave as is, not
15 an alternative, but saying for those types of
16 technologies, those would be in as work or
17 educational profiling but you wouldn't provide an
18 opt-out from them. You would just have the notice
19 and access.

20 BOARD MEMBER MACTAGGART: This is sort of
21 like I can describe the destination and how you get
22 there is sort of how you guys get there. But I think
23 that what I'm trying to say is I don't feel like it's
24 tenable to have these things be -- you know, opt out,
25 even though I know it's going to be contentious to

1 say that.

2 But that doesn't mean that the employee or
3 the worker, that whoever does it shouldn't know that,
4 you know, this stuff's being -- being monitored, you
5 know, about their behavior work.

6 MS. KIM: What about with regard to a risk
7 assessment?

8 So if a business is using this kind of, you
9 know, technology to do those things as described, do
10 you think that it warrants a business conducting a
11 risk assessment?

12 BOARD MEMBER MACTAGGART: Well, again, for
13 me, I come back to the language.

14 Is it a fundamental risk to the privacy and
15 security of consumers; right?

16 And consumers are employees, obviously.
17 But, again, I don't think swiping into the office or
18 to the place to show, you know, I used my card key, I
19 went out three times, I came back in three times.

20 That -- to me, it's just -- it's hard to
21 know that's a -- that's a -- that's a privacy risk.
22 And, again, they're making sure I don't speed on the
23 freeway or that I take my break. That doesn't feel
24 like that's a privacy risk.

25 It depends what they're doing with it. If

1 they're then selling it to some insurance company to
2 make sure I can't go get a job somewhere else because
3 I sped three times, maybe I want to know about that.
4 So it's not so much the activity, it's what's done
5 with the data.

6 Sorry. I'm not being very clear, but
7 that's kind of where I'm coming at it.

8 CHAIR URBAN: Yeah. I think, I think the
9 picture you're drawing is quite -- quite clear,
10 Mr. Mactaggart, but I'm not sure if staff need more
11 indication to help think about it. Yeah.

12 BOARD MEMBER MACTAGGART: I'm going to give
13 you an example. My computer has a faceprint to open
14 it. That, I don't think necessarily means they got
15 to do a risk assessment.

16 But, yeah, if they're selling my faceprint,
17 for sure. You know, if Lenovo is selling it, then
18 yeah.

19 So it's really -- again, for me, it's not
20 so much the activity, it's what happens to the data
21 which is actually the whole way CCPA and CPRA is
22 structured.

23 MR. LAIRD: And maybe that was the point I
24 was going to make is -- I mean, some of the things I
25 think you're suggesting are covered by other aspects

1 of the CCPA already and -- and/or -- and other
2 components of this draft regulations.

3 So anyway, that -- I don't necessarily have
4 an answer to that besides to point out that if we're
5 not going to do opt out or access or pre-use notice
6 for those things, then that does start to lean
7 towards removing --

8 BOARD MEMBER MACTAGGART: Mr. Laird,
9 maybe -- maybe what could happen when you bring it
10 back is you could say, well, the reason we're
11 recommending removing -- because it kind of looks
12 big --

13 MR. LAIRD: Yeah.

14 BOARD MEMBER MACTAGGART: -- is because
15 it's covered here, here, here, and here.

16 MR. LAIRD: Okay.

17 BOARD MEMBER MACTAGGART: You know? And
18 then -- and then, that'd be helpful. And then, you
19 know, it's already done. So there's -- really, we're
20 solving for nothing here.

21 MS. ANDERSON: One thing I just wanted to
22 point out just because you were mentioning, you know,
23 maybe not having a risk assessment associated with
24 the use of clocking in or out or security-related
25 things, if you're processing a biometric, if you're

1 processing SPI, that is a trigger for a risk
2 assessment out -- like regardless of these particular
3 profiling thresholds.

4 So I just want to be clear about that.
5 Just like we were talking about before with the
6 profiling for behavioral advertising, that's entirely
7 separate from the threshold of having to conduct a
8 risk assessment if you're selling or sharing personal
9 information. So just to be clear about how that
10 works together.

11 BOARD MEMBER MACTAGGART: You're right.
12 The computer companies should say this is why I'm not
13 selling you -- you know, you should know that they're
14 not.

15 MS. ANDERSON: Mm-hmm.

16 BOARD MEMBER MACTAGGART: So, yes. I'm
17 sorry. You're right.

18 CHAIR URBAN: Okay. Thank you,
19 Mr. Mactaggart. Other comments? No?

20 Mr. Liebert? No.

21 Staff, do you feel -- or Legal Division
22 team, do you feel like you have a sense of this one?

23 MR. LAIRD: Yeah. I think so. I think
24 we'll come back with a proposal and/or supplemental
25 explanation of --

1 CHAIR URBAN: Great.

2 MR. LAIRD: -- options.

3 CHAIR URBAN: Wonderful. Thank you. I
4 believe that brings us to Issue Number 5 which is
5 actually where we started.

6 And, yeah. Okay. Thank you. Please take
7 it away.

8 MS. SHAIKH: Thank you. And just to spare
9 everyone because I -- I know that we -- we've already
10 provided a background on the training threshold, why
11 don't we skip ahead to two slides of the alternative
12 presented for training.

13 Thank you. Yes.

14 All right. Just -- again, just to refresh
15 for members of the public who might be tuning in now,
16 there are a few options before the board -- and,
17 again, non-exhaustive options -- the -- with how to
18 handle the training threshold.

19 Of course, the board can always leave
20 things as is. They could narrow the threshold by
21 adding some sort of limiting standard so it's not
22 tech -- technologies that are capable of being used
23 for certain purposes but narrowing the actual to
24 potentially just uses. And then there's also, of
25 course, the option of just removing it from the ADMT

1 framework, removing it from the risk assessment
2 framework, or removing it from both.

3 And so we're happy to discuss how the board
4 could approach this and answer any questions, but
5 we'll pause here for now.

6 CHAIR URBAN: Thank you. If you're
7 prepared to talk about this, I would be grateful to
8 hear a little bit more about the range of viewpoints
9 in the comments on these issues. Again, you know, I
10 read through them and I feel like I have a sense of
11 it, but I don't have the deep attention to it.

12 MS. SHAIKH: Absolutely. And, again, with
13 the -- obviously, there was the letter-writing
14 campaign that was generally supportive of the
15 regulations. Then we have industry commenters who
16 had a variety of feedback on the threshold.

17 Commenters requested removing the
18 threshold, and some of the reasoning was that they
19 think that the processing to train AI or ADMT is low
20 risk.

21 Alternatively, commenters also recommended
22 narrowing it so that it only applies to training
23 systems that the business actually intends to be used
24 for any of the purpose out -- purposes outlined in
25 the threshold or that are reasonably likely to be

1 used for those purposes.

2 And so that's really like at a high level.
3 What we've seen in the comments is just general
4 support for the concept. And then from industry
5 commenters, we've seen a request to either remove it
6 or to narrow the threshold away from the "capable of
7 being used" standard.

8 CHAIR URBAN: Thank you. One more
9 question -- sorry -- is that these would apply
10 prospectively; is that correct?

11 MS. SHAIKH: Yes. For both sets of
12 requirements, it would be prospective.

13 So risk assessments, prospect -- oh, sorry.
14 Risk assessments is a bit of a nuance. But when
15 we're talking about the pre-use notice of providing
16 the notice in the opt-out, that would be on a
17 go-forward basis.

18 CHAIR URBAN: A go-forward basis.

19 MS. SHAIKH: Yeah.

20 CHAIR URBAN: Okay. Thank you.
21 Yeah. Mr. Mactaggart?

22 BOARD MEMBER MACTAGGART: Okay. And so
23 we've removed the large language models from the
24 opt-out but it's still in there for the risk
25 assessment?

1 MS. SHAIKH: Actually, large language
2 models are not subject to the opt-out.

3 BOARD MEMBER MACTAGGART: I thought they
4 removed it.

5 MS. SHAIKH: Oh, I'm sorry. I misheard.

6 Yes. So they're not subject to the
7 opt-out. There would only be a risk assessment
8 required on the proposed regulations and that could
9 always be removed.

10 BOARD MEMBER MACTAGGART: Until a
11 significant decision has been scaled back, that is a
12 huge impact on the opt-out, obviously. So then -- so
13 then you're saying I get to opt out for anything that
14 establishes my identity. And I guess I'm thinking
15 about my phone opening up when I look at it, and that
16 I guess I can opt out by using it, you know?

17 MR. LAIRD: Well, importantly, this is
18 about training those -- the ADMT that's doing these
19 functions. So it's your ability to opt out of your
20 phone, using your image to further train its model to
21 then do one of these things. Or -- yeah.

22 BOARD MEMBER MACTAGGART: Isn't the -- I'm
23 just seeing that the line between training and use is
24 kind of blurry because they'll be using it to train
25 it to kind of make it better the whole time.

1 MR. LAIRD: Yeah. Go ahead.

2 MS. SHAIKH: Oh, yes. So, yes, the concept
3 here is for consumers who are potentially comfortable
4 with using their face to open their phone or for a
5 variety of purposes who may not be actually
6 comfortable with the use of it for training those
7 models because of the risk of re-identification if
8 it's being used to train other models. That's how
9 this is supposed to work is you could opt out of the
10 additional training use of your information.

11 BOARD MEMBER MACTAGGART: So that could be
12 like a "Do I want to send feedback to Apple?" "No, I
13 don't." Okay. I'm just trying to think of how this
14 works.

15 CHAIR URBAN: I think it comes up pretty
16 frequently today. It comes up pretty frequently when
17 people use, for example, social media sites and they
18 may -- they -- they are very aware of and happy with
19 the service that the social media site is giving
20 them.

21 And maybe the ads are being served, but if
22 everything is going into a big bucket to train AI and
23 they haven't had notice of that, then that may be
24 a -- that's a use of a different color, as I
25 understand it, for some people.

1 So I think -- I think that is how I
2 understood this to -- to operate. And then the
3 policy question is whether we would want to do that?

4 BOARD MEMBER MACTAGGART: And can you -- I
5 read a lot of the comments on -- on the automated
6 decision, I mean, on the training.

7 And so can you refresh me what their main
8 concerns were?

9 MS. SHAIKH: Absolutely. I mean, again,
10 trying to summarize a variety of commenters, I -- I
11 will do a lawyerly caveat here, saying, you know, I
12 may -- I don't want to misspeak or try to overstate
13 what people are saying.

14 But at a high level, you have a few kind of
15 underlying considerations for the request to narrow
16 the threshold or remove it. And one of the kind of
17 most common themes that we've seen is just the
18 concern about stifling the development of innovative
19 technologies that could benefit consumers, could
20 benefit businesses, and the potential burden on
21 businesses.

22 With respect to the opt-out, there also was
23 a concern about how it could be applied, like how it
24 could actually be implemented. I think on a
25 go-forward basis, it makes sense retroactively it

1 would be difficult, and there are just technical
2 limitations that are apparent to that. And we could
3 address that if the board decides to keep -- keep
4 that in.

5 BOARD MEMBER MACTAGGART: One of the
6 comments talked about a cardiac -- like a pacemaker
7 that wants to keep on giving back feedback to the
8 manufacturer, you know, to update it, and the
9 difficulty if the consumer wanted to opt out of that.

10 So, you know, how do we think about that?

11 MS. SHAIKH: Ultimately, that -- so under
12 the proposed regulations, I guess it would first come
13 down to whether or not that counts as one of the
14 purposes that's actually outlined, and when you have
15 to provide an opt-out.

16 And assume -- for the -- for the purposes
17 of just analysis, like, let's just assume it is, then
18 yes, under the proposed regulations, the consumer
19 would be able to opt out. They would get notice that
20 their information would be used for training in this
21 way and then they would have the ability to opt out
22 of that, the use of their personal information for
23 training if they did not want it to be used for that.

24 CHAIR URBAN: Thank you. Mr. Worthe?

25 BOARD MEMBER WORTHE: Yeah. I think when

1 we were on this earlier, my proposal was we remove
2 all the green writing and the blue is replaced
3 with -- and there's one black word, but the blue is
4 replaced with "is using." That was a proposal I had
5 made if -- as opposed to taking the whole thing out.

6 MS. ANDERSON: We --

7 MS. SHAIKH: Oh. No, you go.

8 MS. ANDERSON: Okay. With respect to the
9 narrowing of the -- the kind of knowledge standards
10 that we were talking about, there is an issue with --
11 with narrowing it to "is currently using." That
12 would create a bit of a conflict between the
13 definition of the threshold and the requirements that
14 attach to that threshold.

15 So, specifically, with respect to risk
16 assessment, businesses are required to conduct risk
17 assessments before they initiate the processing
18 that's subject to the risk assessment. That's the
19 whole point, is you think through the risks and
20 benefits and mitigate them so that the balances are
21 appropriate before you engage in it.

22 So to have the knowledge standard be that
23 you all are already using, that you are already
24 training in this way, that -- sorry -- that the
25 business is using the AI or ADMT for one of these

1 purposes, creates a kind of conflict with the risk
2 assessment.

3 The other thing that I would point out is
4 that when we're thinking about -- when you think
5 about knowledge standards, just having a full
6 awareness of what the board's preference would be in
7 terms of what would be covered, some criteria that
8 one might think about with a knowledge standard to
9 narrow it from capable of being used to something
10 that is more -- that is more easily kind of assessed
11 about whether a business already is -- not only
12 already is engaged in a processing, but if they have,
13 you know, definite plans to use, or they're --
14 they're permitting or they plan to permit somebody to
15 use, then that could be something that would be in
16 scope.

17 Similarly, if they advertise or market for
18 these purposes or plan to advertise or market for
19 these purposes, those are also kind of indicators of
20 not just are they already doing it, but do they have
21 plans to do it in the future which is more concrete
22 than capable of being used. And I don't know whether
23 that's something that you would be amenable to.

24 I think the biggest thing is just saying,
25 if they're already doing it, and that's the only

1 threshold. If does create a bit of attention with
2 the risk --

3 BOARD MEMBER WORTHE: What if we did prior
4 to intending to, meaning if I have the capability,
5 but I have no intention of doing it, I don't be
6 bothered with this. But if I --

7 BOARD MEMBER MACTAGGART: Sorry. Could I
8 just suggest "plans to use or is using"?

9 BOARD MEMBER WORTHE: Yeah, you know -- but
10 if you need -- if you -- I think what I'm hearing,
11 though, is you don't want that second part. You
12 don't want to give me the ability to say --

13 CHAIR URBAN: I don't think it hurts if
14 it's an "or" --

15 BOARD MEMBER WORTHE: Okay. That's fine.

16 CHAIR URBAN: Because you have to do it
17 before, no matter what. If you're planning, you've
18 got to do it.

19 And if you happen to be using it already
20 when these regulations become final, then you are
21 using it and you need to do risk assessment.

22 MR. LAIRD: We could write the threshold
23 differently in the risk assessment versus the ADMT
24 portion of these regulations. My point being, for
25 risk assessments, it could be exactly the "plans to

1 use" versus in the ADMT. It could be "is using"
2 or -- or the "or" articulation.

3 BOARD MEMBER WORTHE: Could you just put in
4 both?

5 MR. LAIRD: Yeah.

6 BOARD MEMBER WORTHE: Thank you.

7 MS. ANDERSON: The only other thing we'll
8 fly is that because there's kind of the
9 developer-deployer issue, oftentimes it may be
10 that -- that the entity that's developing it, they
11 may not use it themselves but they may permit others
12 to use it. So I think that's also a concept that we
13 want to incorporate into the knowledge standard.

14 BOARD MEMBER WORTHE: And then my only
15 other -- sorry.

16 CHAIR URBAN: Sorry. I just wanted to
17 record Mr. Liebert's nod on this conversation.

18 BOARD MEMBER WORTHE: And then my only
19 other question goes back to the inclusion of the
20 green E in the risk assessment.

21 And, again, this gets back to me -- like,
22 the notion is we're saying it's privacy and security.
23 This is -- why are we seeing suddenly the large
24 language model is necessarily --

25 MR. LAIRD: I had the green removed.

1 BOARD MEMBER WORTHE: Yeah, but I think
2 she -- you're saying for both for the risk assessment
3 as well? Okay.

4 CHAIR URBAN: And we did -- we mentioned
5 this earlier in the meeting, at the top of the
6 meeting, and that is not something that would
7 structurally change the regulations enormously.
8 Okay?

9 MS. ANDERSON: And we could take out the
10 definition of "artificial intelligence," take out
11 every reference to it.

12 CHAIR URBAN: Okay. Are our other board
13 members amenable to that?

14 Yes. Yes. Yes. Okay. All right. Thank
15 you.

16 MS. ANDERSON: Sorry. I just need to
17 correct myself very briefly. I wouldn't -- we
18 wouldn't take out every reference to "artificial
19 intelligence" only because the definition of ADMT
20 also includes technology that can be derived from
21 artificial intelligence. But that's a different --
22 that's a different issue than the thresholds related
23 to training.

24 CHAIR URBAN: Got it. Okay.

25 MS. SHAIKH: Just to summarize to make sure

1 staff understands the direction here, remove the
2 green language that's currently on the slide when in
3 -- in the risk assessment context and it doesn't
4 appear in the ADMT context. So that would just be
5 removing it.

6 Change "knows or should know" to some
7 version that captures the concept of "plans to use or
8 is using or permitting others to use in some capacity
9 in the risk assessment and ADMT framework."

10 And I just want to make sure that there
11 was -- if there was anything else on this topic
12 before we move forward. Other -- those are the two
13 that I've taken away.

14 CHAIR URBAN: I think that's it. Thank
15 you.

16 MS. SHAIKH: All right. Okay. Turning now
17 to the last issue that staff has teed up for board
18 discussion is risk assessment submissions to the
19 agency.

20 If we could move to the next slide? Thank
21 you.

22 To -- as a refresher for members of the
23 public, the CCPA requires that the agency issue
24 regulations requiring businesses to submit a risk
25 assessment on a regular basis to the agency when

1 their processing of personal information presents
2 significant risks to consumers' privacy.

3 The proposed regulations as currently
4 drafted require that a business annually submit to
5 the agency, one, a certification by the business's
6 highest ranking executive responsible for risk
7 assessment compliance that identifies the months
8 covered by the submission and an attestation by that
9 individual that they've reviewed, understood, and
10 approved the risk assessment and that the business
11 conducted and documented a risk assessment before
12 initiating any of the processing set forth in the
13 article as well as an abridged form of each risk
14 assessment that the business has conducted or updated
15 during the submission period with certain information
16 about what needs to be in that abridged form.

17 Lastly, the business would be required to
18 provide an unabridged risk assessment to the agency
19 or California attorney general upon request. So not
20 on an annual basis, but rather upon request.

21 Now, we did get a lot of comments from
22 industry on this topic that generally requested
23 limiting it to an annual certification requirement or
24 simply removing the annual submission requirement.

25 And turning now to the -- oh, actually,

1 this is the current slide -- to really streamline the
2 submission process, particularly for the first set of
3 submissions that the agency would receive, staff,
4 based on these comments, is proposing a higher level
5 version of a risk assessment submission for the
6 board's consideration that would only require a
7 business at the time of submission to only provide
8 the following six items in their risk assessment.

9 So it would be their name and contact
10 information; what time period is covered by the
11 submission; how many risk assessments they conducted
12 or updated during the relevant submission period, in
13 total as well as by the final processing thresholds
14 that the board decides upon; what categories of
15 personal information that they processed were subject
16 to the risk assessments; the attestation that the
17 business actually completed the risk assessment by
18 the highest-ranking executive responsible for risk
19 assessment compliance; and lastly, a signature and
20 certification that the information provided is true
21 and correct under penalty of perjury and with the
22 additional information on the slide.

23 One thing I do want to make clear, and this
24 is also on the slide, is, again, as with the current
25 draft, separate from this annual submission of these

1 six categories, the agency and the California
2 attorney general could still request the full risk
3 assessment upon request, and a business would provide
4 that.

5 So there would be essentially an annual
6 submission of these six type -- categories of
7 information and then, upon request, a submission of
8 the full risk assessment.

9 CHAIR URBAN: Thank you.

10 Yes, Mr. Worthe?

11 BOARD MEMBER WORTHE: Is this something you
12 think you'd need to hire somebody to do or is this
13 something you think the business would just be able
14 to do on their own?

15 MS. SHAIKH: I think with this very
16 streamlined version, it should be something that a
17 business could do on their own.

18 Going through the -- like the information
19 here, of course, like business name and contact
20 information, they'll be able to provide relatively
21 easily. The time period they should be aware of,
22 especially if it's on an annual basis. They should
23 be able to provide that information of the month and
24 years that they were doing -- of their submission
25 period.

1 The number of risk assessments, I would
2 think that the business would have to know, just like
3 how many that they've done, and so they shouldn't
4 necessarily need to outsource it.

5 BOARD MEMBER WORTHE: Yeah. It's actual
6 risk assessment itself I'm really getting at.

7 MS. SHAIKH: Oh, I'm so sorry.

8 BOARD MEMBER WORTHE: It's not here, so you
9 shouldn't -- don't apologize because it's not in
10 here. But that's what I'm thinking about, like
11 recreating a new industry.

12 I'm just trying to anticipate what's the --
13 you know, I have 125-person firm. What's the cost
14 I'm going to incur to do this? Any sense?

15 MR. LAIRD: Yeah. Well, I think we're
16 aware that there's different models across
17 industries. You know, some people have this done
18 completely in-house. I think the regulations are
19 clear enough that any person with familiar --
20 familiarity with the business could complete these
21 risk assessments on their own.

22 But we also know for a fact that plenty of
23 businesses also do bring in outside counsel or some
24 sort of consultant to help them with risk
25 assessments.

1 But, importantly, you know, this is
2 actually the one part of our proposal that is not
3 sort of pretty new in concept. As mentioned earlier,
4 businesses already operating in Colorado and Europe
5 are doing what are called data privacy impact
6 assessments that largely mirror some of the
7 requirements and the scope of the types of activities
8 we're concerned about here.

9 So it's something that -- yeah, I just want
10 to kind of make that point that there -- that
11 activity is already underway. So I don't think we'd
12 actually be inventing an industry. I think that
13 industry is already out there to the extent.

14 BOARD MEMBER WORTHE: Yeah. I mean -- I
15 mean in the state of California I was referring to.
16 I'm sorry.

17 But do we have a sense of what the cost is?

18 If it's happening in Colorado, do we know
19 what businesses are paying to do these risk
20 assessments? If not, can we just find -- you know,
21 do research and come back?

22 MR. LAIRD: Do you guys remember?

23 It's in the economic impact assessment.

24 BOARD MEMBER WORTHE: Oh, good.

25 MR. LAIRD: We have that at our fingertips,

1 but that was -- the cost of this was certainly
2 considered as par for the course.

3 BOARD MEMBER WORTHE: I should have thought
4 of -- thank you.

5 CHAIR URBAN: Thank you.

6 Mr. Mactaggart?

7 BOARD MEMBER MACTAGGART: Just following
8 up. I still think it would be great if Mr. Worthe's
9 question -- if we could get that answered just
10 because what the SRIA assumed may be different than
11 what Colorado is actually experiencing. So I think
12 that would be useful if someone could just, you know,
13 call around and find out.

14 And notwithstanding my earlier and future
15 issues with risk assessments in general, a couple of
16 points about this slide. I'm hoping we get to a
17 world where if you've done a GDPR risk assessment or
18 another assessment for another jurisdiction, you
19 don't have to do it again.

20 So, you know -- so part of this number one
21 through six could be a seven. You know, we're
22 substituting the French one -- you know, whatever --
23 the European one for us.

24 And then just a couple questions. What's
25 number three? What do we -- what do we hope to get

1 out of that? Why is it important that we know how
2 many they've done?

3 MS. SHAIKH: So I'm happy to provide my
4 thinking on -- and, of course, my colleagues can jump
5 in.

6 I think for us, it's helpful, especially
7 with the first set of submissions, to understand, you
8 know, how voluminous this is for businesses, like,
9 how -- how many are they conducting?

10 What are the thresholds that are -- you
11 know, that are triggering the most risk assessments?

12 I think one that's an important data point
13 for the agency to understand, you know, are -- is one
14 threshold really triggering the majority of these
15 risk assessments? Do we need to think about that?

16 And there's actually the second thing which
17 is about our own requirements as an agency. We
18 are -- based on the risk assessment submissions, we
19 have to provide an annual report to the public
20 summarizing them, and this is one data point that we
21 think would be very helpful to the public as a
22 mechanism for transparency of just how many risk
23 assessments are being conducted.

24 But, again, these things are for the board.
25 This is absolutely a policy question.

1 BOARD MEMBER MACTAGGART: What do you --
2 when you -- what's your -- what do you envision when
3 you say "in total" and by "processing activity
4 thresholds"?

5 I did four; and what's the second part?

6 MS. SHAIKH: Sure. So say you're Business
7 A and you've done five risk assessments in total. So
8 that would be the first part of it.

9 How many did you do in total? That would
10 be giving us that number.

11 And then it would be saying, okay, we did
12 one for selling or sharing. We did three for
13 sensitive PI, for different processing activities.
14 But they wouldn't tell us what they were; they just
15 tell us how many. And then potentially one for
16 whichever -- you know, say, use of ADMT for a
17 significant decision or worker educational profiling.

18 So, again, it gives us visibility into what
19 thresholds are triggering the most risk assessments.
20 That allows the agency to continue to refine the
21 regulations as necessary to address risks and burdens
22 on businesses. And as a -- as a responsibility to
23 the public under the law, it allows us to give
24 additional transparency to members of the public
25 about what types of activities are occurring, again,

1 at a metrics level.

2 CHAIR URBAN: Thank you.

3 Mr. Worthe?

4 BOARD MEMBER WORTHE: Staff, that
5 Item 7, does that sound reasonable that somebody's in
6 Colorado and already providing the assessment
7 information there, that we would accept that?

8 MR. LAIRD: So we actually have a provision
9 in the current draft that essentially says if you've
10 already done everything that's in our requirements
11 for another risk assessment, you're good. That risk
12 assessment will carry the day.

13 Our concern would be somebody using a
14 lesser risk assessment that doesn't include certain
15 categories and trying to have that still meet the
16 requirements. These requirements were included for
17 reasons that are stated in the record.

18 And so, certainly, we want to make this as
19 easy on everybody as possible but at the same time,
20 we don't want to do it compromising sort of our own
21 values here in this agency in terms of what we think
22 is an important component.

23 BOARD MEMBER WORTHE: Yeah. I mean, it'd
24 be a flood to -- to Delaware if they came up with it,
25 right?

1 But do you know now that GDPR and/or
2 Colorado would satisfy our conditions? Or if you
3 don't, can you just let me know later?

4 MS. ANDERSON: While -- while they're
5 discussing that final point -- I'll come back in a
6 minute -- I was able to find the page in the SRIA
7 that addresses the first-year costs that the
8 economists assessed for risk assessments.

9 And they do say that the average across the
10 scenarios that they were considering was
11 207 million -- they say:

12 "207 million as our primary
13 point estimate for the first-year
14 directs costs of risk assessment
15 requirements."

16 And that's on page 58 of the SRIA if you
17 want to take a closer look.

18 BOARD MEMBER WORTHE: Yeah. I just --

19 CHAIR URBAN: That sounds like
20 that change -- yeah, that would change dramatically
21 if we went with this option; is that right?

22 MS. ANDERSON: Well, I think this -- this
23 pertains to the overall structure of the -- the risk
24 assessment framework as proposed in the 45 -- in
25 the -- in the version of the proposed regulations

1 that went out for the 45-day comment -- Phil, correct
2 me if I'm wrong here -- but modifications that the
3 board proposes to make before the regulations are
4 finalized.

5 There would be an updated Form 399 with
6 the -- with the economist's revised assessments of
7 what the cost of the regulations in their kind of
8 final proposed form would be.

9 CHAIR URBAN: Okay.

10 BOARD MEMBER WORTHE: I think it would be
11 helpful, if it's not in there, is when they do that
12 revised study, they talk about cost per business.

13 Yeah. What they -- I mean, they're
14 obviously making an estimation of how many
15 assessments we're going to get in that number.

16 CHAIR URBAN: Yeah. They would also need
17 to consider at least categories of businesses because
18 categories of businesses -- there are multinationals
19 that have been compliant with GDPR for years. And,
20 you know, that's a different category of business and
21 a different cost structure than a business for him
22 this is -- for which this is completely new.

23 I'm curious about the APA here. So when we
24 say "comparable risk assessment," which I really
25 support and that's been in there a long time, you

1 know, I see no reason to double up your work or for
2 us to, like -- you know, would that mean that they
3 would submit or have ready to submit upon request,
4 like, the one that's labeled Colorado or that they
5 would put into the California form the same
6 information they'd already collected?

7 Or am I just missing the boat on how this
8 would work?

9 MR. LAIRD: I say this at the risk of not
10 actually looking at the text which I always like to
11 do to make sure I'm right on this, but I'm pretty
12 sure the understanding would be, at least if the
13 information is there, it doesn't need to say
14 "California." It's that the substance of the risk
15 assessment is complete.

16 CHAIR URBAN: Yeah. It says:

17 "A business may conduct a
18 single risk assessment for a
19 comparable set of processing
20 activities. A comparable set of
21 processing activities that can be
22 addressed by a single risk
23 assessment is a set of similar
24 processing activities that
25 present similar risks to

1 consumers' privacy."

2 And then there's an example about a toy
3 store.

4 BOARD MEMBER WORTHE: Sure. I think the
5 issue that when I read it was this is not -- this is
6 sort of wolf in sheep's clothing. You think it's a
7 savings, but it's not because you have to then go
8 through the other risk assessments, go through the
9 California requirements, and then only the California
10 had an excerpt you have to solve. It's like you did
11 the California risk requirement in first place.

12 CHAIR URBAN: Well, you don't have to
13 gather the information again which, at least in my
14 experience, is a large part of that cost. But --

15 BOARD MEMBER WORTHE: You know what I'd
16 love to do is to have you later come back and tell us
17 if Colorado and Europe qualifies, and if not, why.

18 And then what we can do in this document is
19 say, currently, these other jurisdictions, until they
20 change -- we can always amend it -- these other
21 jurisdictions would qualify as a submission.

22 MR. LAIRD: Okay. So certainly appreciate
23 that concern. There's a bit of an issue, though, in
24 terms of, like, breadth of actually what we'd be
25 doing in terms of staff sort of evaluating the

1 current sort of risk assessment requirements across,
2 you know, quite a few jurisdictions at this point, to
3 do that sort of crosswalk for --

4 BOARD MEMBER WORTHE: (Indiscernible).

5 MR. LAIRD: Okay. So we could do that.
6 The only concern, though, is twofold.

7 If we were to put that into the regulation
8 itself, it would be static. And so if GDPR or
9 Colorado next year changes their requirements, we
10 would then have to go through a full rule -- we'd
11 have to monitor, go through a full rulemaking process
12 to then update the fact that now, actually, Colorado
13 no longer meets sort of the criteria we wanted.

14 So there's a little bit of a -- our concern
15 has always been -- what we should probably decide on
16 as an agency is what are we concerned about being in
17 these risk assessments?

18 We will try to line up as much as possible.
19 But we don't -- we would encourage, basically, the
20 board not to necessarily compromise purely for that,
21 if we think there's value in what we're asking for.
22 I -- so --

23 CHAIR URBAN: That's -- that's really the
24 APA question that I was getting at. Like it -- you
25 know, we have to be really careful about pointing to

1 other things.

2 If we point to other things, they -- OAL
3 will only approve it for that moment in time, and
4 it's something that's very counterintuitive. It was
5 counterintuitive to me. You know, again, like in my
6 own practice, like over the years, it's always like,
7 these things will qualify, or this reasonable -- you
8 know, the standard that's reasonable will qualify.

9 And in California, that's very, very
10 difficult to do. That said, if the question is --
11 from Mr. Worthe is that we've picked a couple of the
12 jurisdictions that have more information about the
13 comparable info -- how comparable the information is
14 so that we had a sense of how many things businesses
15 had to independently gather, would that help?

16 BOARD MEMBER WORTHE: Yeah. The punchline
17 is I'm trying to figure out are we being a lot more
18 onerous than two jurisdictions people point to as
19 successful?

20 That's -- I don't have that language. I'd
21 just like to see what are we adding to our list that
22 they don't -- they think they don't need, if
23 anything. And we can do that.

24 MS. SHAIKH: Absolutely. I think -- oh,
25 sorry.

1 BOARD MEMBER WORTHE: No. No, no, no.

2 MS. SHAIKH: On this, I do think with
3 where -- I think with Colorado, it would be a little
4 more straightforward because they use a similar
5 regulations-based model as California even though
6 ours do have specific clarity requirements.

7 GDPR might be a little bit more difficult
8 because it's more guidance based. And so different
9 data protection authorities within Europe, we've seen
10 different templates, for instance, that the UK ICO
11 uses, and CNIL has its own.

12 And so if it's helpful, we -- I think like
13 lining up Colorado and ours might be a little bit
14 more straightforward and a little -- it enables a bit
15 more of that comparison.

16 BOARD MEMBER WORTHE: Just do that. Sorry.

17 BOARD MEMBER MACTAGGART: Just if I
18 could -- look, I think that the risk assessments got
19 a lot of commentary about the compelled speech part.

20 So I think we may say what we're ask -- we
21 may end up, once you've taken a look at it, if that's
22 where -- the way the board goes, we -- the same stuff
23 that's in the risk assessments is not going to end up
24 surviving. That's one thing.

25 And, two, I don't actually think -- I mean,

1 I think -- look, the GDPR is -- they started this
2 whole process. They're the big dog.

3 I think it's -- I would urge us to do the
4 two things Mr. Worthe suggested. One, look at
5 Colorado and figure out if it can work and what has
6 to be given up if it's going to be -- work.

7 And then, two, look at GDPR and pick a
8 country. Just pick a country. I mean, pick the one
9 that's the most similar to us. Say if it's the UK
10 or, you know, France, that'll at least be something
11 that is very familiar to businesses out there.

12 And in terms of APA, okay, if you don't
13 want to refer to actual law, you could just put the
14 section from -- just take the language and cut and
15 paste it. I mean, honestly, we can get there, and
16 that can change over time.

17 And nothing says that if, suddenly, you
18 know, we did take Colorado and next year they, you
19 know, changed dramatically to make their regulations
20 weaker, we could -- we couldn't keep an eye on that.
21 But I do think it's really a useful thing for us to
22 do.

23 We want -- to be user friendly here is to
24 say is there something that other places are already
25 doing that we can solve a lot of effort with? And

1 that'll bring down the cost of this as well.

2 MR. LAIRD: One more thing I'll note,
3 though, is a few of our requirements in these risk
4 assessments are born from the statute; right?

5 So the -- the statutory language we're
6 implementing requires risk assessments, for instance,
7 define -- describe the --

8 UNIDENTIFIED SPEAKER: SPI.

9 MR. LAIRD: -- the sensitive personal
10 information being processed, also assessing benefits
11 and potential harms. So those are things that the
12 statute says the risk assessment has to include. So
13 if Colorado didn't include that, that would be a
14 deviation.

15 We didn't -- our hands are tied. So I just
16 want to give that example right now that -- yeah.

17 BOARD MEMBER WORTHE: That's exactly,
18 though, what I want to hear.

19 MR. LAIRD: Yeah, right. All right.

20 CHAIR URBAN: Wonderful. Thank you.

21 Nothing from Mr. Liebert beyond what we've
22 talked about.

23 So I think if -- if Legal Division folks
24 are -- feel clear, then we can go ahead and move on,
25 and I believe we've reached the end of your

1 presentation.

2 And so are there any other issues you'd
3 like to tee up for us?

4 MS. SHAIKH: Actually, before we proceed, I
5 just want to make sure that we understand the board's
6 direction.

7 So at least with the information on the
8 slide as far as submissions, I did not hear concerns
9 about what's on this slide. Okay.

10 CHAIR URBAN: I actually have a question
11 about -- I'm sorry. I lost it in the -- in the
12 conversation. I just -- I'm just trying to
13 understand, like, how all this would work together.

14 So this very light touch, six-item initial
15 requirement would be one thing.

16 The full risk assessments would still need
17 to be done when the triggers were triggered?

18 And then rather than submitting to the
19 agency, they would be available if the agency
20 requests them, those full risk assessments? Am I
21 understanding this okay?

22 Could there still be two years to do this
23 light-touch deal?

24 MR. LAIRD: Yes. And to complete those
25 risk assessments under --

1 CHAIR URBAN: Right. That they need to
2 have. Okay. I understand. Thank you.

3 All right. I apologize, Ms. Shaikh, please
4 go ahead.

5 MS. SHAIKH: Oh no. Thank you. Thank you
6 for the question.

7 So, yes, we'll basically, it seems like the
8 board is comfortable with the submission requirements
9 being streamlined to what's on the slide.

10 And then what I'm hearing from the board
11 right now is, in terms of the actual information in
12 the full-risk assessment so what actually must be in
13 it, you're asking us to look to Colorado and
14 understand where we can line things up. And then,
15 with respect to GDPR, we will do our best to pick a
16 country and see, again, where we can find
17 harmonization.

18 On that, I do want to provide a bit of
19 background. We did look to these jurisdictions when
20 it came to drafting the current language in 7152
21 which is the risk assessment requirements. So we
22 have tried to harmonize as much as possible.

23 I will also flag where you will see
24 departures. It tends to be when we have to meet
25 certain statutory or APA clarity requirements. And

1 so when it comes to the, like -- you know, I
2 understand for a lot of commenters, they're like,
3 just use Colorado.

4 And there are -- there's just certain
5 language, like the context of the processing activity
6 is one of the items in Colorado's regulations, and
7 that's a term that we would have to clarify. And
8 we've tried to actually do that, essentially give
9 businesses guidance on how to get to that information
10 with just clearer language.

11 And so even though it doesn't appear to
12 line up the same way, it tends to be because we have
13 to provide additional clarity on some of this
14 language. But we're happy to provide that
15 information.

16 MR. LAIRD: So, thank you, members of the
17 board, for bearing with us through this presentation.
18 Two things I just wanted to say.

19 First and foremost, in addition to these
20 items obviously included with the materials for today
21 was then an actual red line, or strikethrough and
22 underline of the text that includes additional
23 proposals that we thought were just slightly more
24 minor than sort of the bigger issues discussed today.
25 But they're still here for the board's consideration

1 and we can discuss any of those at this point.

2 But I do want to just reflect on what I see
3 as actually immense progress we've made already, just
4 through these subjects. Really, if you look at it,
5 we've sort of specified -- slightly narrowed the
6 definition of ADMT. We've cut down on the elements
7 of significant decision. We've removed first-person
8 behavioral advertising entirely. We are refining the
9 training of ADMT threshold.

10 And so, to me, this is, to a certain
11 extent, a success today that we've narrowed as far as
12 we have and that we've sort of progressed on these
13 issues at a policy level. And we appreciate your
14 feedback so far.

15 And so with that said, you know, we're
16 happy to engage further on other aspects that may be
17 still concerning to the board or -- or up for
18 discussion.

19 CHAIR URBAN: Thank you very much,
20 Mr. Laird.

21 Mr. Liebert?

22 BOARD MEMBER LIEBERT: Well, that was a
23 great segue because I, too, think we've done great
24 work today.

25 And thank you, Alistair, for getting the

1 engine going today.

2 I want to thank the staff for -- you know,
3 for the six hours or whatever we spend on this, we
4 have to multiply at least times 20 for the amount of
5 time that you're all putting into it, and we really,
6 really respect that. And, of course, the public and
7 business community and consumer groups and everybody
8 who put in all those comments.

9 Really substantial narrowing today that --
10 that is certainly, I hope, going to reassure a lot of
11 folks who have been expressing so much concern about
12 how far the project was going.

13 And I also want to reiterate that we're
14 paying close attention to the legislature and what's
15 happening there. And I hope staff will continue to
16 update us about that and give us a sense of those
17 things as issues of definitions and other things that
18 are happening there should always be helpful to us in
19 thinking about this, not just what's happening in
20 Colorado and GDPR, but, of course, what's happening
21 in our own backyard, for sure.

22 I think this is excellent work in progress
23 as we continue to progress. And really excited I
24 know the whole board is to now have our new ED who
25 will be able to weigh in on a lot of this. And I'm

1 absolutely certain that he's been incredibly
2 impressed with the staff today and the great work
3 that's happening here. So thank you for that.

4 CHAIR URBAN: Thank you.

5 Mr. Worthe?

6 BOARD MEMBER WORTHE: Yeah. No. I can't
7 say -- I mean, you're like the most polite legal
8 department I've ever been in front of. "No, you go."
9 "No, you go." So I really appreciate --

10 CHAIR URBAN: That may be a you.

11 BOARD MEMBER WORTHE: That's -- and the
12 depth of your understanding of all this stuff is very
13 comforting.

14 Well, before we leave this agenda item, I
15 had four quick points, some which came from comments.

16 One of the comments I saw, maybe more than
17 once, was there was a lack of transparency or a lack
18 of access to board members which I totally disagree
19 with.

20 I think that I was contacted by two groups.
21 One was Uber which I brought Mr. Laird with me on
22 that Zoom, and we had that conversation.

23 The other was CalChamber who is suing us,
24 so I wasn't about ready to take a meeting with them.
25 So if people want to meet with me, and I'm allowed to

1 do that, they should just reach out.

2 So I don't believe that comment's accurate
3 because we've responded to the -- at least I
4 responded to the only two outside parties that asked
5 for access.

6 I'd love somebody to raise their hand, not
7 now, just to dig in deeper to that September 30th
8 Department of Finance letter that that you received
9 because there's just those massive numbers in there.

10 And I got to -- we got to get -- I want to
11 get a better understanding of what, you know -- and
12 this is not our work; this was someone else's. But
13 you can't give me a range of minus 30 billion to
14 positive 280 billion. Just say "we don't know," if
15 that's the answer.

16 But I'd like to understand it better
17 because that has a lot to do with our competitiveness
18 as a state.

19 Some -- I couldn't find it. Somewhere I
20 thought I read that our regulations are regulating
21 business-to-business activity versus
22 business-to-consumer. And if that's the case, I have
23 a question as to why. I thought the purpose of this
24 statute was to regulate activity with a consumer, not
25 from business to business. So that's a question you

1 can answer now or later.

2 And then I think we're going to get back --
3 you know, it was Jeff Bond that wrote the op-ed
4 piece. The gentleman has the inspection business.
5 By the way, I went on his website. It's a very good
6 website.

7 He was talking about the cost of these
8 audits. I think when we get these numbers back, we
9 really need to dive into an example of a small
10 business, what their individual cost is, not this
11 \$217 million number but the individual business.
12 I've got some sense of it.

13 MR. LAIRD: Maybe to that point last I
14 should really emphasize -- and we -- you know, I'll
15 be happy to kind of work through further how we could
16 sort of better brief you all on that economic
17 assessment and sort of what went into it. But there
18 is limited data available and part of publishing the
19 assessment is we put it out there in terms of what
20 data sets we -- our economists relied on when
21 performing this review.

22 And I make that point because cybersecurity
23 audits are a great example of there's only so much we
24 can do and to the extent of -- you know, I believe we
25 included interviews with certain audit firms and

1 things like that to inform our assessment. But in
2 terms of the actual cost, there just isn't
3 necessarily robust research in this area already that
4 that our economists could rely on.

5 So it was a bit of -- the agency had to
6 basically look at what was available and reach those
7 determinations based on that information. And so I
8 say that because we were hoping if people had better
9 data sets that we should be relying on or looking to,
10 we would get that in public comment.

11 BOARD MEMBER WORTHE: Can we have -- well,
12 I think it's hard for our public, right, to have a
13 lot of experience with something that they're not
14 doing now. But can we have the consultant do some
15 surveying in Colorado and come back with some
16 examples?

17 MR. LAIRD: So for the cybersecurity
18 audits, that's actually not currently a requirement.

19 BOARD MEMBER WORTHE: This is the risk
20 assessments I'm talking about.

21 MR. LAIRD: Oh, for the risk assessments.

22 BOARD MEMBER WORTHE: Or put differently,
23 I'm just not comfortable passing something if I don't
24 know what the cost is going to be on the businesses
25 in California.

1 MR. LAIRD: Mm-hmm.

2 BOARD MEMBER WORTHE: So somehow we got to
3 get some information.

4 MR. LAIRD: Mm-hmm.

5 BOARD MEMBER WORTHE: And I don't know how
6 to do it, but I'm certain a consultant can figure out
7 how to get to Colorado and interview a 10-person
8 firm, a 100-person firm, and a 1,000-person firm and
9 find out what they're paying, I would think.

10 Go ahead.

11 MS. KIM: With regard to the B2B, the
12 business to business, I just want to note that that's
13 what's included in the statute.

14 Initially, there was a provision that kind
15 of broke out and restricted that -- restricted or
16 limited business-to-business activity, but those
17 provisions sunsetted and the legislator did not
18 extend them. And so that is why the statute now
19 regulates business-to-business interaction as it
20 relates to personal information.

21 CHAIR URBAN: And can I just -- because
22 this is something I thought about as well when I was
23 going through the draft regulations again for this
24 time. Again, 7153 which is when processing personal
25 information to train -- actually, where are we on

1 training? I've lost that all to you all to record
2 for posterity.

3 But just to give an example, provide all
4 the facts necessary. So if you make automated
5 decisionmaking technology, artificial intelligence,
6 available to another business or recipient business,
7 you have to make all the facts necessary to the
8 recipient business for that recipient business to
9 conduct its own risk assessment. Like that seems
10 reasonable and also possibly a little challenging to
11 administer.

12 Is this a concern? Or is there a concern
13 sort of beyond that?

14 I mean, if we didn't have this, then we
15 would have, like, a massive loophole. But I was --
16 I'm just trying to drill down on -- on what the --
17 what the -- what the concern is.

18 MS. SHAIKH: Chair Urban, on this one, I
19 think it might be helpful for us to actually revisit
20 the public comments on --

21 CHAIR URBAN: Okay.

22 MS. SHAIKH: -- the specific provision just
23 because I don't want to misstate what commenters are
24 saying --

25 CHAIR URBAN: Sure.

1 MS. SHAIKH: -- about --

2 CHAIR URBAN: Fair enough. Fair enough.
3 Thank you very much. Yeah. Okay.

4 MR. LAIRD: And, apologies, not to popcorn
5 us on issues but sort of back to the economic
6 assessment, my staff did remind me, Colorado actually
7 reached the same determination. They were unable to
8 assess the cost of their risk assessments when
9 their -- their provisions came out.

10 We certainly could sort of attempt what
11 you've described in terms of having our consultants
12 try to interview some representative samples. And --
13 and I want to assure you an element of that did
14 occur. So I do want to revisit those consultants,
15 and we'll try to get you just additional information.

16 BOARD MEMBER WORTHE: Thank you.

17 CHAIR URBAN: Thank you. I'd like to
18 underscore what Mr. Worthe said about the
19 responsiveness of the board, and there's another
20 example that I wanted to clarify. I think it could
21 be just genuinely something that was not understood.

22 And that is that for the hearing, the
23 board -- or all the board were not present. And that
24 is not because the board is not listening, not paying
25 attention, didn't read the transcripts of the

1 hearings.

2 It is because any time enough members of
3 the board are present, it has to be a noticed meeting
4 under Bagley-Keene and so forth. And so the board
5 was very aware the hearings were happening and we
6 have the transcripts and so forth. But it wasn't a
7 matter of not listening in any way, shape, or form.

8 I'd also like to -- because it wasn't part
9 of the issues that were teed up, I'd like to say a
10 word about the cybersecurity audits and respond to
11 Mr. Worthe -- well, Mr. Mactaggart. I think that
12 Mr. Worthe's given an overall cost -- set of cost
13 questions, I think.

14 You know, in the SRIA, that is by far the
15 bulk of the cost. And I've explored this a little
16 bit in terms of, like, is it the -- like, is it the
17 requirements? Are the requirements too broke? Could
18 we bring the cost down of the requirements?

19 And as I -- as far as I can tell -- and I
20 think this is something where there is some economic
21 information, although I could be wrong, it is the
22 fact of the audit. It is the fact of the audit, and
23 maybe partly that it's an annual audit. And I will
24 say I wouldn't put "annual" in the statute myself
25 because I think that is really onerous, but that's

1 what the statute says.

2 And so that's something I also wanted to be
3 sure that commenters were aware that I've really
4 looked at this quite closely, and it's something
5 that -- you know, that at least I've paid attention
6 to. I'm sure we could always have more information
7 about it.

8 But the statute requires audits --
9 cybersecurity audits annually. The fact of the
10 audit, the fact that it's annually, that is the bulk
11 of the cost of all these regulations. Thank you.

12 Mr. Liebert?

13 BOARD MEMBER LIEBERT: I think that's such
14 an excellent point and would really raise the
15 question, obviously, whether that's something we
16 should consider working with the legislature on.

17 It seems to me that one of our
18 requirements, of course, is that legislation be
19 consistent with the statute. But that very well may
20 be -- and it could have a very beneficial effect,
21 Mr. Worthe, in terms of the cost dynamics, if we have
22 a -- perhaps a consideration that maybe that annual
23 approach is -- is a bit rigorous.

24 Anyway, something to think about and maybe
25 staff could give us some thoughts about that. That's

1 certainly something we could consider as a board to
2 try to accomplish.

3 CHAIR URBAN: Thank you, Mr. Liebert.

4 And so we have a -- sorry, Mr. Mactaggart,
5 please go ahead.

6 BOARD MEMBER MACTAGGART: Yeah. Just on
7 that last comment. And there are lots of things that
8 I wish I had done differently. But you know,
9 nothing --

10 CHAIR URBAN: That was not -- that was not
11 a criticism.

12 BOARD MEMBER MACTAGGART: No, no. But --
13 but if you think about the -- the -- you know, the --
14 the costs -- and you're right, the largest cost is
15 associated with cybersecurity.

16 But nothing stops us. When you look at the
17 language in the statute, it specifically says -- you
18 know, it focuses on the size and complexity of the
19 business and the nature and scope of the processing
20 activities. And nothing says you couldn't have a
21 very different regime for small businesses and for
22 large businesses. You know?

23 And so I look at this -- I think there's a
24 ton of low-hanging fruit. If you look at this three
25 point -- and it gets back to my motion which is still

1 out there -- but when you look at a
2 three-and-a-half-billion dollar Year One cost, I
3 think there is a ton that we can do that brings that
4 cost down to a -- you know, by an order of magnitude,
5 potentially, and doesn't hurt privacy. That's --
6 that's -- that's what I'm really focused on right
7 now.

8 So because, yes, you're right, having a
9 small firm have to do an annual audit may not make a
10 lot of sense. It might be expensive, and it might
11 not help privacy.

12 CHAIR URBAN: Thank you. So -- so that I
13 understand the process here, we'll circle back to
14 Mr. Mactaggart's comment from the beginning of the
15 discussion. I would think that we would need a
16 motion -- well, maybe we don't, but let me know.

17 I would assume we would need a motion to
18 prepare draft modifications that -- in light of the
19 conversation today, that reflects the decisions made
20 by the board today. And in this case, that would
21 also include sort of more information on some things,
22 and that they'll be brought back to the review for
23 the board before we enter into a 15-day period,
24 something along those lines.

25 Would that be necessary? I just want to be

1 sure I have these in place before -- maybe not
2 necessary?

3 MR. LAIRD: The motion is a little bit
4 discretionary in the sense of staff's here, we're
5 going to do it.

6 CHAIR URBAN: Okay. Yeah. Yeah. I just
7 want to be sure I have a sense of everything before
8 we go to the public and ask for public comment, and
9 the public has a sense of what -- the same as that.

10 And then in terms of, you know,
11 Mr. Mactaggart's request at the top of the meeting,
12 again, like, I think staff is going to do that no
13 matter what, so -- but I'll turn the floor over to
14 him.

15 BOARD MEMBER MACTAGGART: Yeah. I mean, I
16 think I have a -- I have a motion on the table. I'm
17 happy to reread it and amend it slightly in light of
18 what's happened here. So potentially that would be
19 useful.

20 Should I do that? Because it's -- I don't
21 have a second, but I do have a motion on the table,
22 so.

23 BOARD MEMBER WORTHE: Yeah. I think my
24 amendment goes away now because we just did what I --
25 what my amendment was doing which was let's have this

1 conversation, modify the language.

2 I have a question. Sorry to not second in
3 motion yet. I'm going to, but had a question on the
4 15 days.

5 You said in life, that's really a short
6 period of time. So, you know, I know we don't -- we
7 have some flexibility, I believe.

8 Could we go 30 and not put you in under
9 the -- you know, in a difficult position with timing?

10 CHAIR URBAN: I think -- I think -- I think
11 that's a really fair point, and I would be in favor
12 generally providing that flexibility. But maybe
13 would probably be in favor of us discussing that when
14 we come back rather than pre-determining what the
15 length of review time would be since we're not going
16 to review them yet.

17 BOARD MEMBER WORTHE: Oh. So you're --
18 okay. So we're going to get the language first?

19 CHAIR URBAN: Yes. We're not going to do
20 anything more with the formal rulemaking today, I
21 think. I think everybody was in agreement.

22 BOARD MEMBER WORTHE: And -- and on to the
23 motion now. I -- I agree we've had updates through
24 this process. I can't -- I don't know how long I've
25 been here, but I've gotten a lot of them.

1 But it's now, like, go time, like we are
2 getting ready to put these things out. This is the
3 one chance we have to really analyze our risk; right?
4 Because all the work you've done, we want to get
5 these things in place as soon as possible.

6 So let's just -- you know, regardless of
7 what we've done in the past, let's do whatever we
8 need -- you feel you need to do to analyze this stuff
9 now, once we've signed off on the revisions before we
10 go -- we go public with them.

11 But I'll second the motion.

12 BOARD MEMBER MACTAGGART: Could I restate
13 it a little bit in light of what's happened here?

14 BOARD MEMBER WORTHE: You want to take away
15 my second?

16 BOARD MEMBER MACTAGGART: Okay.

17 BOARD MEMBER WORTHE: No, that's fine.
18 Please do.

19 CHAIR URBAN: I think -- I think it would
20 be a good idea. Actually, I think it's a good idea.
21 I would like to hear the restated version.

22 BOARD MEMBER MACTAGGART: So I said,

23 "Resolved, that in light of
24 the extensive comments received
25 from the public, that the new

1 executive director and staff
2 produce a report for the board"
3 based on the cyber -- not "based
4 on" -- "report for the board on
5 the cybersecurity risk assessment
6 and ADMT regulations, including
7 the revisions discussed by the
8 board today, with respect to the
9 potential for legal challenges
10 raised in the comments,
11 specifically around First
12 Amendment issues like compelled
13 speech, other constitutional
14 challenges, and that the
15 regulations exceed statutory
16 authority. The report should
17 address, at a minimum, the list
18 of six possible legal challenges
19 I referenced earlier" -- which I
20 can reread into the record if
21 necessary -- "The report should
22 make recommendations to ensure
23 that any regulations can
24 withstand legal challenges."
25 And that would obviously be in the best --

1 you know, guess or the best opinion of the staff.

2 "The report should also
3 examine the potential cost
4 savings available in both the
5 risk assessment and cybersecurity
6 regulations if we accept other
7 jurisdictional standards or
8 technological standards like
9 NIST, et cetera. Is there a way
10 to achieve our cybersecurity
11 functionality at a vastly lower
12 cost? In the interim, agency
13 efforts to promulgate and enforce
14 regulations around cybersecurity,
15 risk assessments, and ADMT should
16 be paused. The director and
17 staff should be given appropriate
18 time to do the analysis to ensure
19 that any proposed regulations can
20 withstand legal challenges."

21 And then I said, you know, the new
22 executive -- that's my motion. And I pointed out the
23 new executive director has been on the job for two
24 days.

25 CHAIR URBAN: Thank you, Mr. Mactaggart.

1 Mr. Liebert?

2 BOARD MEMBER LIEBERT: Completely
3 understand your desire for this information. What
4 I'm concerned about is the creation of a document --
5 of a public document that can be misused for purposes
6 of litigation in the future.

7 And I would love to get the information,
8 but I think it's the kind of information that our
9 staff can actually prepare for us if it's pursuant to
10 potential litigation, potentially in closed session
11 to get that information.

12 I don't really want to give a blueprint to
13 those folks who might do whatever they can to try to
14 impede the work that we're all so committed to doing.
15 So I'm totally getting where you're coming from, but
16 I'm concerned about this potential mechanism as a way
17 to do it because I think there might be other ways to
18 get exactly the information that you want without
19 doing it in that sort of function.

20 CHAIR URBAN: Thank you, Mr. Liebert. I
21 just want to underscore that and say that I would be
22 slightly firmer in my statement of that which is I
23 could not agree to this unless we were receiving the
24 legal advice as privileged legal advice. I just -- I
25 cannot be -- I would not be fulfilling my duty to

1 this agency or to this board if I voted in favor of
2 extremely sensitive legal advice being discussed in
3 the public of the board.

4 And that's not -- that's not in any way an
5 attempt to reduce transparency for the public.
6 That's simply basic, absolutely basic, sort of laws
7 and duties that preserve an organization's ability to
8 get the advice it needs. So I -- there's no way that
9 I could vote in favor of it in that public forum.

10 BOARD MEMBER MACTAGGART: And so,
11 Mr. Liebert, if we received the advice in a private
12 forum but the public request was to come back with
13 regulations that they felt would withstand legal
14 challenge so you maybe get there kind of two ways,
15 that they produce revised regulations that they feel
16 will address these challenges and at the same time
17 advise us in closed session as to why they made --
18 why they're proposing the changes, that gets us to
19 the same point, no?

20 BOARD MEMBER LIEBERT: Yeah. I agree with
21 the Chair that in terms of legal advice, that's
22 something we have to always get in closed session is
23 the privileged communication from our counsel.
24 People who want to make arguments about whether or
25 not we're exceeding our lane and those types of

1 things can always be done in public, and that
2 includes you as a board member.

3 But the information in terms of potential,
4 what's going to surpass -- what's going to pass
5 potential litigation or not, that's a -- that's a
6 privileged communication that -- that we would want
7 to get in closed session.

8 BOARD MEMBER MACTAGGART: But if they came
9 back -- you know, because I can rework the language
10 here -- but if we gave them the time to understand
11 all these challenges that have been raised, or
12 these -- these criticisms that have been raised that,
13 to me, have a lot of weight, and they came back and
14 advised us sort of twofold: One, in private, here's
15 sort of the issues; and two, here's how we're going
16 to address them with revisions to the regulations,
17 and so the public would just see revised regulations
18 because I'm not sure -- in fact --

19 BOARD MEMBER LIEBERT: That's the process
20 we're going through now.

21 BOARD MEMBER MACTAGGART: Yeah, but I'm
22 100 percent sure that the -- that -- I mean, in my
23 mind, that the revisions that we've discussed today
24 do not encompass all the objections that have been
25 raised by -- by -- by the critics and, specifically,

1 those six items that I read out.

2 Like, we didn't spend any time on today
3 does the requirement to perform cybersecurity audits
4 exceed what's in the statute? Like how
5 (indiscernible) we've been which has been talked
6 about.

7 CHAIR URBAN: With respect, that's our job
8 as the board is to take in confidential, privileged
9 legal advice as well as public comment and then to
10 have a public discussion about the public components
11 of that, keeping in mind what we know about the legal
12 parameters because we have had privileged information
13 from our dedicated legal counsel. And to -- to not
14 expose the agency in a way that I'm not even sure
15 would be legal, but I don't really know, by talking
16 about that privileged information in this setting.

17 I realize, you know, Bagley-Keene is very
18 limiting in that way. It is limiting for very
19 important reasons to, like, expand transparency up to
20 the absolute point that it possibly can be expanded,
21 but it stops with legally privileged information.

22 And it stops for a really important reason
23 because that is something that organizations need to
24 be able to do in order to make good decisions. We as
25 individual board members have the responsibility to

1 take that information in and be able to analyze it
2 and discuss the appropriate things in public and not
3 the other things in public.

4 BOARD MEMBER MACTAGGART: I'm super happy
5 to receive it in private. But I think the exercise
6 needs to be done. We're on notice. We are about
7 to -- if we don't address all the -- all these issues
8 that I -- that I raised that were kind of a
9 compilation of many, many, many, you know, critics
10 that all kind of said in various ways much of the
11 same thing. And I think we're -- you want to talk
12 about fiduciarily irresponsible, because we're going
13 to be wasting taxpayer money on something that is
14 going to end badly.

15 So what I would like to do is ask the staff
16 to take into account those -- that area of six major
17 challenges -- I kind of summarized them all, and I'm
18 happy to do it again, and then they can come back
19 and, in public, we can just have a revised set of
20 regulations and, in private, we can have a risk
21 assessment, but I don't think that what we have done
22 today has addressed everything that was in the
23 criticism.

24 BOARD MEMBER WORTHE: Yeah. And I don't
25 think we intended to today, right, because we don't

1 have staff's response to that question. I think what
2 I felt like we did today is we made the regulations
3 more user friendly and probably easier to understand,
4 but now we got to make sure they stand up. So that's
5 the next step. So when we get information from you,
6 we're going to make changes to those for that
7 purpose.

8 MR. LAIRD: And that's -- I understand
9 that. I guess so there is a policy decision lurking
10 in there, and that is ultimate -- ultimately, also,
11 is the board most interested in just pursuing the
12 options that present the least amount of litigation
13 risk, no matter what the policy result is?

14 CHAIR URBAN: No. The -- I mean, we -- I
15 think I certainly agree with Mr. Mactaggart that, you
16 know, to the extent we've changed these and new legal
17 advice is -- is warranted, like, we appreciate and we
18 need -- you know, that -- that legal advice, but then
19 we need to make a policy decision about our appetite
20 for risk.

21 And I think, you know, the discussion
22 where -- I'm just being really frank -- the
23 discussion that we're having here right now is
24 inviting litigation. You know, it's basically, like,
25 come and sue us regardless of whether you have a

1 claim that is worth anything at all.

2 And, you know, so -- you know, any
3 litigation risk is not -- that is not the standard
4 that I'm worried about or that I'm going for, for
5 that reason, and also because, you know, some of this
6 is simply, you know, it was a very -- it was a very
7 innovative law and it has some innovative
8 requirements and, like, that inherently is something
9 that we're not going to find knowable, probably in
10 the end, so not no legal risk.

11 But I think if we have a sense of the
12 ranges through, again, you know, privileged
13 information, then board members can make informed
14 decisions about that.

15 BOARD MEMBER MACTAGGART: You know, all
16 I'll say is I've been consistent for a year and a
17 half, things are going to happen. So I don't at all
18 feel like it's inconsistent now to say, guys, we've
19 got to -- we've got a -- with a relatively small
20 amount of resources, we cannot be wasting taxpayer
21 money. We spent a year and a half on these
22 three areas.

23 No discussion of "do not sell." No
24 discussion of "do not buy." Like everything, do
25 not -- everything in the rest of the bill, it feels

1 like -- it feels like the entire agency is focused on
2 these three areas, risk assessment, cyber and ADMT.

3 And so, for me, yeah, I don't want to get
4 sued on this. I have low appetite for risk getting
5 sued on this. This is not the be-all and end-all of
6 privacy.

7 The vast majority of the bill is about
8 other things. These are -- these are areas that are
9 important, but they are -- they -- I feel like we
10 spent way too much time and effort and money on this
11 so far. We should get something that's -- that's
12 adequate, that -- it's strong, but let's focus on
13 enforcing the rest of the bill.

14 And so I would like to see revised
15 regulations that -- sure, they don't -- not -- they
16 don't want to give away the farm. We want -- but we
17 want to just get what the bill says, reasonable risk
18 assessments and, you know, some reasonable ADMT
19 regulations, and then just move on with enforcing the
20 rest of the bill.

21 CHAIR URBAN: I think we just -- you know,
22 we can't avoid -- we can't, like, do everything we
23 can to avoid frivolous lawsuits, basically, I think,
24 if I'm going to restate my position more simply.

25 Yeah. Obviously, you know, merit --

1 meritorious lawsuits, but -- but, you know, the
2 frivolous -- a lawsuit -- a lawsuit is a lawsuit,
3 even if it's frivolous.

4 In any case, Mr. Mactaggart, I believe it
5 sounded as though you were saying that you didn't
6 have a strong opinion as to whether we received the
7 privileged and confidential information and
8 privileged and confidential form or not, but I want
9 to be sure that I'm not just making an assumption.

10 BOARD MEMBER MACTAGGART: Yeah. I'd be
11 happy to amend the motion to say that the report we
12 get from the new executive director and the staff
13 should be -- I didn't actually say should be public
14 or not public. Maybe I did after I read my comment,
15 but I'm happy to have that received in closed
16 session.

17 But I think we would get the report and I
18 would expect us to be given options about, okay, here
19 are -- here's how we're going to amend the
20 regulations. And it's fine, we can, I guess, have
21 that discussion in closed session if you prefer.

22 Okay. Here's the, you know, strong,
23 medium, you know, weak kind of version of things in
24 terms of the lawsuit potential, but I think we are --
25 we have been put on notice that this is a threat to

1 these regulations. We should address them. It's
2 inappropriate for us not to.

3 CHAIR URBAN: Thank you, Mr. Mactaggart.

4 Mr. Worthe, did you have something to say?
5 And then I think Mr. Laird may want to clarify.

6 BOARD MEMBER WORTHE: I wanted him to
7 clarify before I second.

8 MR. LAIRD: Yeah. There's a few -- few
9 things I heard that I think we do need to clarify.

10 So first of all, unless we're in
11 litigation, have real threat of litigation, we can't
12 actually discuss this in closed session. I can
13 provide you one-way legal advice, the confidential
14 legal advice, but I don't want to put anybody under
15 the assumption that we can go into closed session to
16 debate these issues further.

17 So having said that, though, we would be
18 prepared and happy to provide legal advice to this
19 board like we have in the past on these relevant
20 issues.

21 The other point I was going to make is I
22 agree I don't want to take more time than we need to
23 on this. I think we've moved the ball significantly
24 forward today.

25 And so when I hear concerns about we're

1 still -- there's still issues. I see two hours left
2 on the clock, like, I need to hear them, frankly, if
3 I'm going to understand what needs to be resolved.
4 So it's hard for me to predict at times what the
5 concerns are if I don't have specificity.

6 BOARD MEMBER WORTHE: Yeah. I think,
7 though, you're not going to -- what we're asking for
8 now, some is work product that we don't have; right?
9 It's let's take the revised regulations, let's sign
10 off on them once we see the draft, and then have you
11 do that legal analysis for us. So that's not going
12 to occur today, unfortunately.

13 MR. LAIRD: Sure. Yeah.

14 CHAIR URBAN: Mr. Liebert?

15 BOARD MEMBER LIEBERT: Thank you for that
16 clarification. I think that should work fine for my
17 judgment. It doesn't need to be a closed session.

18 You're right, our lawyers have always given
19 us good insights about these types of issues, and
20 that's exactly the information that we're after. So
21 thank you for that.

22 CHAIR URBAN: Thank you, Mr. Liebert.

23 Okay. So -- yes. Sorry. Mr. Worthe?

24 BOARD MEMBER WORTHE: Do you change your
25 motion?

1 BOARD MEMBER MACTAGGART: Well, I'm happy
2 to, but before I was going to change, I was just
3 going to point out to Mr. Laird, you know, some of
4 the things we -- and I'm not like -- I don't think we
5 should -- I don't think we have the answer today.
6 I'm not looking for the answer today.

7 But -- but just some of the -- you know,
8 there was a lot that they brought up that -- in terms
9 of the public comments but just -- you know, we
10 didn't spend any time really on the cybersecurity
11 audit, how that interplays with the -- with the
12 prescriptiveness.

13 We didn't spend any time on the risk
14 assessments, the compelled speech. If you go through
15 the -- what's in the risk assessment, what -- you
16 know, what -- what -- what the people are supposed to
17 assess and how much of it has to do with actual risk
18 versus, like, you get into the whole world of
19 discrimination and, you know, so that -- and I've
20 raised that before.

21 We dealt with, I think, behavioral
22 advertising today. And I think we're going to be
23 dealing with the first-party advertising, the pre-use
24 notice, is that compelled speech? All these kinds of
25 things that, you know, are the ADMT regs an

1 unconstitutional delegation of power?

2 These are things that have been brought up,
3 and I think we really need to get -- we really need
4 to kind of go through -- and I'm amazed that you guys
5 had the time to go through all those, you know,
6 whatever, 600 pages of comments -- but go through
7 them all. And I'm happy to get a one-way
8 communication from you along with, you know, here's
9 how we're going to solve it, and then I guess the
10 public would just see the revised regs.

11 But I -- and maybe there's another version
12 of this where you come up with a couple of options
13 and we vote on those. But I think we -- I want to
14 pause and make sure we get it right because I feel
15 like what's frustrating to me is seeing this sort of
16 small group of stuff over here take up this much sort
17 of, you know, intellectual, emotional, and financial
18 energy. And I'd like to get it behind us, and we're
19 not going to get it behind us if we push the envelope
20 and we're sued for four years.

21 And I think when I think about the scope of
22 privacy, this is not where the rubber meets the road.
23 This is important, but the real important stuff is I
24 want to make sure that I have control over my
25 information, know where it's going, and I want to be

1 able to go to a website in California and find the
2 "do not sell" and "do not share" button.

3 I mean, look at -- we had that -- one of
4 those groups -- the privacy for cars. People, they
5 sent in -- they made, what was it? 128 requests to
6 one car manufacturer. Couldn't even get a request in
7 because the stupid portals never opened.

8 I mean, that's the kind of thing where
9 you're like, hey guys, we've got a real fundamental
10 problem with privacy here and these companies are not
11 honoring it. That's where I feel like we should be
12 spending our time right now.

13 CHAIR URBAN: Thanks, Mr. Mactaggart. So
14 as I understand it, the motion on the table has the
15 six components and it -- but it's agnostic as to the
16 confidentiality part of it. And then we don't need a
17 motion for the revisions to the regulations because
18 staff have that settled and sorted out and understand
19 the questions about the economics so much as it's
20 possible to find the answers to those.

21 Do I have that right? Do we -- we have --
22 do we need to vote on the motion? I mean, I think --

23 BOARD MEMBER MACTAGGART: That's what I --
24 I don't think even the --

25 CHAIR URBAN: -- my -- my main concern --

1 my main concern is -- my main concern is the
2 privilege part.

3 BOARD MEMBER MACTAGGART: I'll re -- I'll
4 try to, on the fly, restate it one more.

5 CHAIR URBAN: I mean, I'm not sure we need
6 to vote if there -- if the staff have understand it
7 and they plan to --

8 BOARD MEMBER WORTHE: Will you do what we
9 just asked in the motion? Yes, we don't need the
10 motion.

11 MR. LAIRD: We can carry that out,
12 absolutely, and provide legal advice.

13 CHAIR URBAN: Okay. Fantastic.

14 MR. LAIRD: Yeah.

15 CHAIR URBAN: Fantastic. Fantastic. May I
16 ask if there's any public comments?

17 UNIDENTIFIED SPEAKER: This is for Agenda
18 Item 3. If you'd like to make a comment at this
19 time, please raise your hand using the raised hand
20 feature or by pressing "star nine" if you're joining
21 us by phone.

22 I believe there are a few hands raised.

23 First, we have Julian, Julian Canete. I'm
24 going to unmute you at this time. You'll have
25 three minutes to make your comment so please begin as

1 soon as you're ready.

2
3 Julian Canete testified as follows:

4 MR. CANETE: Thank you and good afternoon,
5 members. Julian Canete, president and CEO of the
6 California Hispanic Chambers of Commerce.

7 On behalf of our membership --

8 CHAIR URBAN: Mr. Canete, you're quite in
9 and out. Can you get closer to the microphone,
10 please?

11 MR. CANETE: Sure.

12 CHAIR URBAN: Thank you.

13 MR. CANETE: Julian Canete, president and
14 CEO of the California Hispanic Chambers of Commerce.

15 On behalf of our membership (indiscernible)
16 offer some comments on the potential modifications to
17 the proposed CPPA regulations.

18 In regards to definition of ADMT, our
19 organization supports Alternative 3. We believe the
20 removal of the vague terms such as "substantially"
21 and "facilitate" is workable.

22 In regards to significant decision, we can
23 support Alternative 1, removing "access to," improve
24 the clarity, and the term "scope." The concept of
25 "access to" does not have a clear limiting principle.

1 Striking it would create firm -- firm framing for
2 businesses that will have to build and comply with
3 regulations.

4 In regards to behavioral advertising,
5 removing behavioral advertising for risk assessments
6 and ADMT requirements from the regs would leave the
7 underlying protections from Prop 24 in place and be
8 consistent with statutory text.

9 Public profiling, we support the
10 alternative. Removing public profiling from both
11 risk assessments and ADMT will help address our
12 issues. This concept has no basis in the underlying
13 law and is unnecessary to include.

14 In regards to the issue of training
15 threshold, we support Alternative 2, removing
16 training thresholds for risk assessments, and would
17 correctly limit the impact of CPPA regulations on the
18 development of AI.

19 In regards to risk assessments, the new
20 language requiring risk assessments must be provided
21 upon the request by the agency or the attorney
22 general addresses concerns we have about the security
23 around risk assessments and creates clarity of how
24 they will be shared.

25 In regards to effective date, we appreciate

1 the effective date of ADMT regulations was moved to
2 January 1, 2027, and cybersecurity to January 1,
3 2028. We'd ask that the rest of the regulations also
4 become effective on January 1, 2027, to provide
5 businesses with a date certain to prepare for
6 compliance.

7 We believe that the changes we are asking
8 for, if adopted, are steps in the right direction and
9 will help minimize the impact to businesses in
10 California. Again, I appreciate your consideration
11 of our testimony today. Thank you.

12 UNIDENTIFIED SPEAKER: Thank you for your
13 comment.

14 Swati Chintala, I'm going to unmute you at
15 this time. You'll have three minutes to make your
16 comment. Please begin as soon as you're ready.

17 ///

18 ///

19 Swati Chintala testified as follows:

20 MS. CHINTALA: Good afternoon. My name is
21 Swati Chintala, and I'm sharing these comments on
22 behalf of TechEquity.

23 California has a historic opportunity to
24 lead in establishing critical transparency,
25 disclosure, and validation requirements for (audio

1 difficulty) as noted by the joint (audio difficulty)
2 on AI (audio difficulty) instituted by Governor
3 Newsom. Transparency and risk assessment are
4 essential to align commercial incentives with public
5 welfare.

6 The arguments we've heard in public
7 hearings from industry representing some of the
8 richest and most powerful corporations in the world
9 are part of a larger effort which we also see being
10 played out in the legislature to block common sense
11 frameworks to protect Californians' right to privacy
12 as outlined in the CCPA, including how their personal
13 information is monitored, collected, and used to make
14 decisions about them.

15 In the face of unprecedented and widespread
16 attacks against federal agencies that are responsible
17 for protecting consumers, workers, and other impacted
18 groups, we urge the board to recognize the
19 significance of establishing the necessary
20 protections that Californians voted for in the CCPA.

21 This includes defining ADMT in ways that do
22 not exempt automated systems that only have cursory
23 human involvement. As Chair Urban noted, a national
24 health insurer used automated systems that used
25 personal data to analyze insurance claims, and

1 doctors are meant to review them before making the
2 final decision to deny or approve payment for patient
3 care.

4 An investigation found those doctors spent
5 an average of only 1.2 seconds to review each health
6 insurance claim. Under the alternative definition of
7 ADMT considered today, a business could point to that
8 as a kind of token human involvement to opt out of
9 CCPA requirements to provide proper notice and
10 explanation, even when that business's use of their
11 personal data creates significant risks to the
12 consumer of an inaccurate or incorrect decision.

13 The CPPA's mandate is to ensure that people
14 in California have the tools necessary to advocate
15 for their rights in our data-driven economy. The
16 board must use this rulemaking process to balance the
17 industry's immense power with the necessity of
18 privacy and data protection for Californians.

19 We agree with the CPPA's standardized
20 regulatory impact assessment that the proposed
21 regulations strike a good balance between the desire
22 to strengthen consumer privacy and recognition of the
23 importance of the information technology sector to
24 the California economy. By placing guardrails in the
25 form of these regulations, the CPPA can ensure that

1 data-driven technologies are not developed at the
2 cost of the rights of ordinary Californians.

3 We look forward to the passage and
4 implementation of these regulations. Thank you to
5 the CPPA director, staff, and board for your
6 important work.

7 UNIDENTIFIED SPEAKER: Thank you for your
8 comment.

9 Jose Torres, I'm going to unmute you at
10 this time. You'll have three minutes to make your
11 comment so please begin as soon as you're ready.

12
13 Jose Torres testified as follows:

14 MR. J. TORRES: Good afternoon. Jose
15 Torres on behalf of TechNet.

16 We represent over (audio difficulty) in the
17 technology and innovation industry. We represent
18 companies across the spectrum of the (audio
19 difficulty) economy, from companies who develop this
20 cutting-edge technology to the many more companies
21 who deploy it for consumers and business users who
22 use automated decisionmaking technology in some
23 capacity to improve their business operations.

24 I would like to thank-I would like to thank
25 the board for your efforts today and the outline of

1 draft amendments. We are encouraged by the direction
2 the draft seems to be taking.

3 However, while proposed modifications are a
4 step in the right direction, the board should
5 consider further changes to keep the regulations from
6 extending beyond our privacy concerns this rulemaking
7 is meant to address.

8 Some parts of this rulemaking seem -- still
9 seem to be trying to address broader concerns about
10 ADMT and (audio difficulty) rather than strictly
11 privacy that could arise when technology is used to
12 make important decisions. That's a topic worth
13 (audio difficulty) but it goes beyond the scope of
14 rulemaking and only makes this rulemaking complex and
15 costly to consumers and the state economy.

16 The board should ensure regulation can be
17 connected to a genuine, significant threat so that
18 the costs and burdens (audio difficulty) regulation
19 are justified.

20 With that said, I want to touch on a
21 handful of decision points. As a threshold issue,
22 definition of automated decisionmaking technology is
23 a concern because of its continued overbroad
24 inclusion of numerous low-risk forms of software. As
25 has been noted by board members during previous

1 meetings, the definition, as it is currently
2 proposed, would include far more technology than
3 intended.

4 From the three alternative options being
5 considered, we would like to see Alternative 3, ADMT
6 means any technology that (audio difficulty) personal
7 information and uses computation to replace human
8 decisionmaking for the purpose of making fully
9 automated significant decision about a consumer.
10 This alternative more appropriately focuses
11 regulations on high-risk use cases of ADMT that
12 replace human decision.

13 Accordingly, (audio difficulty) the
14 significant decision definition, we would like to see
15 the phrase "access to" deleted rather than changed to
16 "selections of the consumer form."

17 Under the same section, we would prefer the
18 Alternative Number 4 which deletes the phrase
19 "allocation or assignment of work."

20 Under behavioral advertising, I urge the
21 board to strongly consider the alternative deleting
22 that section. Keeping that language as is would
23 undermine the -- would undermine and contradict the
24 existing definition of cross-context behavioral
25 advertising in CCPA.

1 Under work or educational profiling --

2 UNIDENTIFIED SPEAKER: Thank you for your
3 comment. You are at time.

4 Edwin Lombard, at this time, I'm going to
5 unmute you. You'll have three minutes to make your
6 comment so please begin as soon as you're ready.
7

8 Edwin Lombard testified as follows:

9 MR. LOMBARD: Hi. My name is Edwin Lombard
10 with ELM Strategies today. I'm representing the
11 California African American Chamber of Commerce and
12 multiple local ethnic chambers throughout the state
13 and business associations.

14 On behalf of our members, appreciate the
15 opportunity to comment on the potential modifications
16 of the proposed CPPA regulations. Our businesses
17 remain concerned about the significant financial
18 impact of the CPPA's regulations. So we believe that
19 some of the potential modifications, if adopted, will
20 help address some of the concerns we have.

21 As far as the effective date is concerned,
22 we appreciate that the effective date of the ADMT
23 regulation is moved to January 1st of 2027 and the
24 cybersecurity to January 1st of 2028. We are
25 requesting, however, that the rest of the regulation

1 also become effective January 1 of 2027 to provide
2 businesses with a date clear and will help businesses
3 prepare for compliance.

4 On the definition of "ADMT," we support
5 Alternative 3. We believe the removal of the unclear
6 terms such as "unstability" and "facilitate" will be
7 helpful for compliance.

8 On the definition of "significant
9 decision," we support Alternative 1, removing access
10 to improve the clarity of the regulation.

11 Concept of "access to" is too broad.
12 Deleting it would create clear expectation for
13 businesses that will have the -- to develop the
14 compliance and regulation.

15 On behavioral advice -- advertising,
16 deleting behavioral advertising for risk assessment
17 and ADMT requirements for the regulations will be
18 consistent with the fundamental protections under
19 Proposition 24 and consistent with the statutory
20 language.

21 On the issue of public profiling, we
22 support the alternative of deleting the public
23 profiling from both risk assessment and ADMT as it
24 will help address our issues. We believe the concept
25 of complete -- is completely unnecessary and

1 include -- and has no basis for existing law.

2 On the issue of training threshold, we
3 support Alternative 2, removing training thresholds
4 for risk assessment, and would correctly limit the
5 impact of CPPA regulations on the development of
6 artificial intelligence.

7 On the issue of risk assessment, a new
8 language requiring risk assessment must be provided
9 upon request by the agency and attorney general's
10 address our concern about the security around risk
11 assessment and create a simplicity of how it will be
12 shared.

13 Thank you, and we look forward to continue
14 to work with CPPA so that -- so that California's
15 privacy regulations are reasonable and balanced and
16 required under Prop 24.

17 UNIDENTIFIED SPEAKER: Thank you for your
18 comment.

19 Ben Golombek, I'm going to unmute you at
20 this time. You'll have three minutes to make your
21 comment. Please begin as soon as you're ready.

22
23 Ben Golombek testified as follows:

24 MR. GOLOMBEK: Thank you, Chair Urban and
25 members. Ben Golombek on behalf of the California

1 Chamber of Commerce.

2 The business community has repeatedly
3 raised several concerns about the draft released in
4 November, including concerns that it lacks
5 calibration, privacy and security risks, departs from
6 established global frameworks, significantly
7 underestimates costs, and dramatically overreaches
8 the agency's authority.

9 And there are real consequences to these
10 concerns. Specifically when you look at the cost,
11 and the three is, in our opinion, very conservative
12 estimate which we think underestimates the true cost
13 of the economy is \$3.5 billion in the year. With
14 Californians struggling to pay their bills, this is
15 not the time for a massive tax increase.

16 Looking at the draft that was presented at
17 the beginning today, we were disappointed that it did
18 not address these concerns. We also recognize that
19 among the alternatives presented today are a few
20 options that can help, and we just want to encourage
21 you to continue to engage on those and some of the
22 other points.

23 Specifically absent significant amendments,
24 the ADMT requirements overreach the agency's
25 statutory authority and veer into general AI

1 regulations. And as was pointed out and avoiding --
2 it's important to avoid getting ahead of the
3 legislature and governor.

4 We encourage the agency to focus on the
5 narrow issue within the statute's direction,
6 clarifying how the CPPA access and opt-out rights
7 should be interpreted in the context of ADMT. On the
8 ADMT definition specifically, our comment letter
9 again reiterates and imposes language most similar to
10 Alternative 3 in your slides.

11 The current draft frustrates a number of
12 privacy and security objectives that undermines --
13 undermine harmonization across legal frameworks or
14 otherwise conflicts with the privacy interests that
15 voters endorsed in Prop 24, for example, the
16 threshold activities that require risk assessments
17 and ADMT opt-out to far exceed those required by
18 other US privacy statute.

19 Finally, on a process point, the board
20 advanced these regulations on the understanding that
21 the formal rulemaking process provided the quote,
22 "procedural opening to engage in the" quote,
23 "structural, legal, and practical revisions needed."

24 We appreciate the conversation today and
25 encourage you to implement other changes that better

1 recognize the concerns raised by the business
2 community since 2023.

3 We're asking for a 45-day comment period
4 consistent with OAL construction and a second 45-day
5 comment period to inform changes given the highly
6 technical nature of the requirements and the
7 potential to devastate our innovation economy.

8 We do want to acknowledge that the
9 conversation today, particularly around behavioral
10 advertising, was a step in the right direction. I
11 would say it's probably the first step in the right
12 direction since this process began, and we'd strongly
13 encourage the agency to continue down that path.
14 Thank you and have a good day.

15 UNIDENTIFIED SPEAKER: Thank you for your
16 comment.

17 Alex Torres, I'm going to unmute you at
18 this time. You'll have three minutes to make your
19 comment. Please begin as soon as you're ready.

20
21 Alex Torres testified as follows:

22 MR. A. TORRES: Good afternoon, everyone.
23 Alex Torres with Brownstein Hyatt on behalf of the
24 Bay Area Council, representing over 340 of the
25 largest employers in the nine-county Bay Area.

1 I want to say thank you for the opportunity
2 to provide comments on these regulations and for the
3 proposed (audio difficulty) align my comments with
4 our friends at TechNet, California Hispanic Chamber,
5 and CalChamber. And I'm going to keep working with
6 stakeholders on those alternatives.

7 I would also reiterate a point that
8 CalChamber made about the draft (audio difficulty)
9 key regulations going significantly beyond what
10 Proposition 24 (audio difficulty). And, again, would
11 also encourage this body to continue working with the
12 legislature and the governor's office and get better
13 aligned on the comprehensive frameworks to govern AI
14 and emerging technology that those folks are working
15 on.

16 These efforts include (audio difficulty)
17 privacy experts, civil rights experts, industry
18 leaders, and technologists. Stepping back at a
19 higher level on the proposed rules would impose over
20 \$14 billion in compliance across the next 10 years.

21 With affordability being such a major
22 concern from California in virtually every aspect
23 from energy, housing, and essential services, this is
24 not the time for this course of action that would
25 have such significant economic impact.

1 So, again, would encourage the CPPA to
2 support the leadership already underway in the
3 legislature and the governor's office, and would just
4 underscore we support smart, reasonable regulation
5 that protects consumers, supports innovation, and
6 sustains that economic resilience. Thank you for the
7 opportunity today.

8 UNIDENTIFIED SPEAKER: Thank you for your
9 comment.

10 Aodhan Downey, I'm going to unmute you at
11 this time. You'll have three minutes to make your
12 comment. Please begin as soon as you're ready.

13
14 Aodhan Downey testified as follows:

15 MR. DOWNEY: Good afternoon. My name is
16 Aodhan Downey, representing the Computer and
17 Communications Industry Association, CCIA, an
18 international not-for-profit tech trade association.

19 In January, CCIA provided written feedback
20 and oral testimony during the 45-day public comment
21 period on the proposed CPPA regulation updates.
22 Along with many other organizations, CCIA expressed
23 concerns that some of the draft revisions go beyond
24 CPPA's scope, particularly provisions that regulate
25 companies' back-end systems before they ever interact

1 with consumers, and those that regulate publicly
2 available information.

3 While we appreciate CPPA's (audio
4 difficulty) efforts to refine the proposed rules, we
5 feel that the revisions do not adequately address our
6 prior concerns. CIA also appreciates the board's
7 thoughtful discussion today. We welcome the
8 opportunity for more collaboration and look forward
9 to submitting more comments based on the
10 recommendations of the board. Thank you.

11 UNIDENTIFIED SPEAKER: Thank you for your
12 comment.

13 Mishal Khan, I'm going to unmute you at
14 this time. You'll have three minutes to make your
15 comment. Please begin as soon as you're ready.

16
17 Mishal Khan testified as follows:

18 MS. KHAN: Can you hear me?

19 UNIDENTIFIED SPEAKER: Yes. We can hear
20 you.

21 MS. KHAN: Okay. Good afternoon. My name
22 is Mishal Khan, and I'm giving public comment on
23 behalf of Dr. Annette Bernhardt, director of the
24 Technology and Work Program at the University of
25 California Berkeley Labor Center.

1 With the advent of big data (audio
2 difficulty) intelligence, employers in a wide range
3 of (audio difficulty) increasingly capturing (audio
4 difficulty) and analyzing worker data, electronically
5 monitoring (audio difficulty) algorithmic management
6 to make critical employment relations.

7 And yet, California is the first and the
8 only place in the US where workers are starting to
9 gain basic rights over their data and over how
10 employers (audio difficulty) that data to make
11 critical decisions about (audio difficulty).

12 That's why labor groups and other work
13 advocates are paying such close attention to the
14 rulemaking process. In January, we joined a group of
15 worker advocates (audio difficulty) formal comment
16 letter to this (audio difficulty) providing detailed
17 and (audio difficulty) based recommendations about
18 how best to protect workers, the agency's rulemaking
19 on ADMT, and risk assessments.

20 Our recommendations are (audio difficulty)
21 in the principle that the scale and (audio
22 difficulty) data-driven technologies played
23 necessitate broad protection. For ADMT (audio
24 difficulty) identifies (audio difficulty) specific
25 suggestion.

1 First, expand the definition of ADMT to
2 fully reflect the (audio difficulty) and how and to
3 what extent (audio difficulty) lie on ADMTs.

4 Second, strengthen notice and access rights
5 for workers when an employer has (audio
6 difficulty) --

7 CHAIR URBAN: Apologies for interrupting.
8 Is that clear on the electronic feed?

9 UNIDENTIFIED SPEAKER: It's choppy there as
10 well.

11 CHAIR URBAN: Okay. I just want to be sure
12 our commenter comments are recorded.

13 MS. KHAN: Should I --

14 CHAIR URBAN: So you can pause -- thank
15 you, Commenter.

16 Would -- give us one technical second here.
17 Okay.

18 UNIDENTIFIED SPEAKER: It's not on our --

19 CHAIR URBAN: But it's been every
20 commenter.

21 UNIDENTIFIED SPEAKER: Yeah. It's been
22 quite a few commenters who have been choppy.

23 CHAIR URBAN: Yeah.

24 UNIDENTIFIED SPEAKER: Maybe she could
25 speak again very closely to the mic?

1 CHAIR URBAN: Yes.

2 UNIDENTIFIED SPEAKER: Yeah. Commenter,
3 would you be able to start from about ten seconds ago
4 and just speak very closely into your telephone or
5 mic?

6 MS. KHAN: Yeah. Is that better at all?

7 CHAIR URBAN: That's definitely better.
8 Thank you.

9 UNIDENTIFIED SPEAKER: Thank you.

10 MS. KHAN: Okay, moving close to the mic.
11 Our recommendations are grounded in the
12 principle that the scale and scope of data-driven
13 technologies in the workplace necessitate broad
14 protection for workers.

15 For ADMTs, the letter identifies the three
16 main priorities with specific suggestions under each:
17 expand the definition of automated decisionmaking
18 technology to fully reflect significant variation and
19 how and to what extent employers rely on ADMTs,
20 strengthen notice and access rights for workers when
21 an employer has used an ADMT to make a decision about
22 them, store a meaningful right for workers and
23 consumers to opt out of consequential ADMT systems.

24 For risk assessments, the letter similarly
25 identifies three main priorities with six suggestions

1 under each: strengthen the required -- the required
2 elements for risk assessments to ensure that
3 potential harms to workers are identified early on;
4 clarify the role of workers and unions in risk
5 assessment because they are critical stakeholders and
6 sources of knowledge that should be involved when
7 their employer's conduct assessments; and then
8 finally, strengthen the -- strengthen the power of
9 the CPPA to act on risk assessment in order to
10 prevent the most harmful violations revealed by those
11 assessments.

12 In closing, by covering workers in the CPPA
13 and adopting strong regulations, California has an
14 historic opportunity to lead the US in ensuring that
15 data-driven technologies benefit and do not harm
16 workers. That is why we strongly urge the board and
17 the agency to adhere to the intent of California's
18 privacy law and proceed with the rulemaking process
19 as directed by the state's voters. Thank you for the
20 opportunity to comment.

21 CHAIR URBAN: Thank you, Commenter. I --
22 apologies for breaking in again. I want to check
23 with counsel for any commenters who are worried about
24 their comments cutting out.

25 Are they able to send an e-mail to maybe

1 info@cppa.ca.gov to be sure the board doesn't miss
2 anything?

3 MR. LAIRD: Absolutely.

4 CHAIR URBAN: Okay. Wonderful. I do
5 believe that the feed that we're hearing is more
6 choppy than the feed that will be on the recording.
7 But at the same time, the recording feed is also not
8 perfect.

9 So for any commenters who wanted -- this
10 was the first time I really felt like I was having
11 trouble following there in the middle, to be clear,
12 for the rest of the commenters. But if anybody wants
13 to send that in as an e-mail to be sure the board
14 doesn't miss their comment, we'd appreciate that.

15 Thank you. Please go ahead.

16 UNIDENTIFIED SPEAKER: Thank you. Anthony,
17 I'm going to unmute you at this time. You'll have
18 three minutes to make your comment so please begin as
19 soon as you're ready.

20
21 Anthony Butler-Torrez testified as follows:

22 MR. BUTLER-TORREZ: Good afternoon. My
23 name is Anthony Butler-Torrez, representing Kern
24 County Hispanic Chambers of Commerce.

25 We are encouraged by the potential

1 modifications suggested by the California Hispanic
2 Chambers of Commerce to propose the CPPA regulations.
3 Our small businesses utilize AI and other forms of
4 technology to make their business -- businesses more
5 efficient and to minimize the cost of doing business
6 in California.

7 Proposing regulations that consider the
8 potential impacts on our small businesses community
9 could -- should always be in the forefront of
10 developing these regulations. We cannot stifle
11 innovation in the growth of small businesses
12 community in California's economy.

13 We hope that the CPPA board will take into
14 consideration the impacts on small businesses in
15 finalizing the regulations. We are encouraged that
16 some of the changes that are being proposed, if the
17 right modifications are adopted, it will be step-it
18 will be the right step in the right direction, and
19 will help minimize the impact in our small businesses
20 community. Thank you for your time.

21 UNIDENTIFIED SPEAKER: Thank you for your
22 comment.

23 Peter Leroe-Munoz, I'm going to unmute you
24 at this time. You'll have three minutes to make your
25 comment so please begin as soon as you're ready.

1
2 Peter Leroe-Munoz testified as follows:

3 MR. LEROE-MUNOZ: Good afternoon. My name
4 is Peter Leroe-Munoz, and I'm speaking on behalf of
5 the Silicon Valley Leadership, a business association
6 representing companies and research institutions in
7 the innovation economy.

8 While we understand and agree that having
9 consumer protection guardrails is important as
10 technology evolves, we believe the proposed
11 regulations concerning autonomous decisionmaking
12 technology and artificial intelligence will impose
13 significant burdens on California consumers,
14 innovators, and businesses.

15 The proposed rules around ADMT pop-ups will
16 create significant burdens for those wishing to
17 conduct research or transact business over the
18 Internet. In addition to separate notifications
19 regarding consent for cookies and promotional
20 communications, users now face further pop-ups, one
21 for receiving information on ADMT, and a second
22 regarding the use of ADMT for delivering advertising
23 based on prior activity.

24 California consumers broadly should not be
25 impeded at each step of an online transaction. This

1 complexity around ADMT notifications and opt-outs
2 also harms businesses who may see frustrated
3 consumers leave their site before completing a
4 transaction or leaving before the business could
5 share important information with users.

6 This risk is especially pronounced for
7 small and local businesses who depend on online
8 commerce to supplement their limited physical
9 presence. Restrictions on the use of ADMT and AI
10 could harm small businesses by limiting their ability
11 to use digital tools to reach consumers, share
12 offerings, and conduct transactions.

13 Business costs will also grow amid our
14 current inflation as small operations will need to
15 hire additional staff to address legal and compliance
16 issues around new rules.

17 Finally, the standardized impact assessment
18 prepared in conjunction with the proposed regulations
19 reveals their true cost to California's economy. The
20 report finds a reduction in state gross product in
21 the billions of dollars and a decrease in job by
22 hundreds of thousands.

23 In this time of greater economic strain and
24 higher cost of living, especially given the
25 detrimental federal policy postured toward trading

1 partners, California workers, innovators, residents,
2 and businesses cannot afford the proposed ADMT and AI
3 rules. Thank you.

4 UNIDENTIFIED SPEAKER: Thank you for your
5 comment.

6 Gilbert Lara, I'm going to unmute you at
7 this time. You'll have three minutes to make your
8 comment. Please begin as soon as you're ready.

9
10 Gilbert Lara testified as follows:

11 MR. LARA: Hello, Board. Can you hear me?

12 UNIDENTIFIED SPEAKER: Yes.

13 MR. LARA: Great. Good afternoon. My name
14 is Gilbert Lara, representing Biocom California, the
15 largest life sciences trade association representing
16 thousands of companies across California.

17 We appreciate the board's significant
18 progress today in narrowing the ADMT definition,
19 removing references to (audio difficulty), and
20 streamlining risk assessment submission requirements.
21 These changes show responsiveness and (audio
22 difficulty).

23 However, some concerns remain for our life
24 sciences companies. First, the cybersecurity audit
25 requirements can still create duplicative compliance

1 burdens. Life science companies already (audio
2 difficulty) audits federal and international
3 regulation. We urge the agency to consider accepting
4 existing frameworks to satisfy these requirements.

5 Second, regarding ADMT use in healthcare.
6 We are encouraged by your decision for further
7 clarification on healthcare services and exemptions.
8 (Audio difficulty) that as you develop these
9 clarification, keep in mind the critical role of
10 medical research and public health application. We
11 would happy to work together on this issue.

12 And, finally, we appreciate the board's
13 recognition that risk assessment costs impact
14 business. As you gather more information on (audio
15 difficulty) costs, please consider the unique
16 position (audio difficulty) companies developing
17 life-saving treatment. Thank you.

18 UNIDENTIFIED SPEAKER: Thank you for your
19 comment.

20 If there are any other members of the
21 public who'd like to speak at this time, please go
22 ahead -- go ahead and raise your hand using Zoom's
23 "raise hand" feature or by pressing "star six" if
24 you're joining us by phone.

25 Again, this is for Agenda Item 3.

1 Fred Sotelo, I'm going to unmute you at
2 this time. You'll have three minutes to make your
3 comment. Please begin as soon as you're ready.
4

5 Fred Sotelo testified as follows:

6 MR. SOTELO: My name is Fred Sotelo. I'm
7 the owner of Cerveza XTECA based in San Diego,
8 California. We're a craft beer company.

9 And as a small business owner in
10 California, I'm pleased to see the recommended
11 modifications of the CPPA regulations. You know, I'm
12 happy to see that these potential modifications will
13 minimize the impact on business owners like me.

14 Who would think AI would be an integrated
15 part of a beer company? Well, it is with XTECA.
16 Under our current economic market conditions, we
17 utilize AI to assist to be more efficient in all
18 aspects of our business from vehicle tracking and
19 mileage, inventory, sales forecast, and, of course,
20 marketing.

21 We believe AI is critical for our success,
22 and the myth of it cutting out people is not true.
23 On the contrary, it is helping our bottom line to
24 hire more needed people.

25 In closing, we believe that the changes

1 being asked for, if adopted, are steps in the right
2 direction that will help California continue to be an
3 innovative leader and for small business like us to
4 continually compete.

5 I thank you for your time and consideration
6 today in this testimony. And once again, thank you.

7 UNIDENTIFIED SPEAKER: Thank you for your
8 comment.

9 If there are any other members of the
10 public who'd like to speak at this time, please raise
11 your hand using Zoom's "raise hand" feature or by
12 pressing "star six" if you're joining us by phone.

13 Again, this is for Agenda Item 3.

14 Madam Chair, I'm not seeing any additional
15 hands at this time.

16 CHAIR URBAN: Wonderful. Thank you very
17 much.

18 Mr. Laird, is there anything else on the
19 item?

20 MR. LAIRD: No, not at this time. Just
21 one, though, thing that's on my mind is timing about
22 sort of our remaining time with these regulations.
23 As I mentioned, November is our goal to have a final
24 package submitted to the Office of Administrative Law
25 by, if not sooner.

1 And I understand our next planned meeting
2 for this board is currently May 2nd. That's a quick
3 turnaround for us, and so staff would make every
4 effort to prepare materials we discussed today, but
5 there's a lot.

6 And so a couple thoughts I just -- or
7 issues I wanted run by the board include, first of
8 all, to the extent we can prepare things in advance,
9 just recognizing, because of the less than a month
10 timeline between today's meeting and that meeting, we
11 may not be able to give board the benefit of the
12 materials for -- as far in advance as we'd like to
13 typically. So I just want to see if that's
14 acceptable, first of all, if materials are coming to
15 the board closer to that meeting.

16 But in addition, right now, I believe the
17 only other planned quarterly meeting isn't now
18 occurring until September, based on the discussion of
19 last meeting, which really puts us in a difficult
20 spot if we were to delay modifications or hoping to
21 do more further.

22 So I bring that up now to just make two
23 points. One is we'll make every effort to bring this
24 item back at the next meeting, but it is quick
25 turnaround for staff, and I just need to make clear

1 now there's a chance we wouldn't be able to be
2 prepared in the way that you've asked us to be by
3 that date.

4 And then, even furthermore, I would -- I
5 would request, I think, given the timelines
6 associated with this rulemaking and wanting to open a
7 public comment period for potentially more than
8 15 days, respond to that public comment, process it,
9 and come back to you all for another discussion just
10 like this today, still in advance of November, I
11 think we need to have at least one more meeting in
12 advance of September.

13 CHAIR URBAN: Thank you and our -- our held
14 days. We have a held day in July; is that correct?
15 But we don't have one in June?

16 MR. LAIRD: Well, we did, but last meeting
17 this -- the board did decide to --

18 CHAIR URBAN: Apologies.

19 UNIDENTIFIED SPEAKER: Yeah. We released
20 them.

21 MR. LAIRD: -- release it.

22 CHAIR URBAN: Okay. The -- yes. And the
23 Thursday, however, I think would -- well, that would
24 be even earlier than -- than May 2nd. I mean, one
25 day, but -- but even earlier.

1 So I will say for myself, I -- you know,
2 particularly if you give us a little notice as to
3 when the materials are coming, I would certainly do,
4 you know, my utmost to absorb the materials in less
5 time.

6 I think that's only fair, given the amount
7 of homework that we've asked everybody to do. I
8 mean, we do have some questions that are fairly
9 targeted.

10 So -- and we've already had time to go
11 through the comments that we have and so forth. And
12 so for my part, that -- that makes sense.

13 And then, you know, maybe we need to talk
14 about -- we just need to talk about when we might
15 have another meeting outside of May 1st or May 2nd.

16 I do apologize, though. I -- again, I
17 really need a break. So if we could -- I don't think
18 I can think about dates until I have five minutes.

19 MR. LAIRD: And I do recognize if setting
20 dates is better at the future agendas items -- agenda
21 item coming up, we can discuss it then.

22 CHAIR URBAN: Okay.

23 MR. LAIRD: So substantively, though --

24 CHAIR URBAN: Yeah, (indiscernible) with
25 everyone else. Why don't we table it to the next

1 agenda item?

2 But we know that that's something that
3 we're going to talk about, and then we'll take --
4 we'll take a break until 3:30. Thank you very much.

5 (Whereupon, a recess was held.)

6 CHAIR URBAN: Welcome back, everyone.
7 Thank you for your attention to the agenda so far
8 today.

9 With that, we'll move to Agenda Item
10 Number 4 which is our item for public comment on
11 items not on the agenda. So as a reminder, this is
12 the opportunity today for members of the public to
13 bring to us issues that are not on the agenda for
14 today.

15 However, the board can only listen and we
16 may not discuss or act on any matter that is raised
17 during this public comment session. So please
18 understand that we are not -- we are listening and we
19 don't intend to ignore your comment. But this is
20 the -- this is the only way that we can adequately --
21 adequately attend to the interest of both the
22 commenter and to the agency.

23 So with that, is there any public comment
24 on Agenda Item Number 4?

25 UNIDENTIFIED SPEAKER: This is for Agenda

1 Item Number 4, public comment on items not on the
2 agenda.

3 If you'd like to make a comment at this
4 time, please raise your hand using the raise hand
5 feature on Zoom or by pressing "star nine" if you're
6 joining us by phone.

7 This is for Agenda Item Number 4, public
8 comment on items not on the agenda.

9 Madam Chair, I'm not seeing any hands at
10 this time.

11 CHAIR URBAN: Thank you very much. This --
12 we'll move to Agenda Item Number 5 which is
13 discussion of potential future agenda items. I'm
14 pleased to handle this item, and we'll say that we do
15 have a number of things on our regularized calendar,
16 some of which we have pushed off until a later
17 meeting -- currently in the meeting that is scheduled
18 for May.

19 So I will just mention those issues and
20 then ask Mr. Laird to help us continue the
21 conversation that we started earlier about the best
22 time frame for scheduling further consideration of
23 the -- of the draft regulatory package.

24 MR. LAIRD: Oh, sorry. Should we do that
25 now as opposed to -- did you want to run through the

1 other items or --

2 CHAIR URBAN: I wasn't planning to do the
3 whole list this time. I did it last time.

4 MR. LAIRD: Okay. Okay. Got it. Got it.

5 So, yeah, in terms of timeline, I guess I
6 just reiterate what I said before, that we will make
7 our best effort to bring sort of the issues and items
8 discussed today back to this board, assuming it's
9 going to meet still on May 2nd or May 1st on that
10 held two-day meeting.

11 But then beyond that, we do anticipate,
12 again, to -- to make sure things keep moving and then
13 we kind of timely respond to any public comment that
14 might come following that meeting. We would ask to
15 explore a mid-July meeting, if possible, but with --
16 with the caveat that we'd also have to be able to
17 check for facilities.

18 CHAIR URBAN: Excellent. Yeah.
19 Understood, understood.

20 So if we're able to give you sort of a
21 range or some, like, multiple dates, that will help.
22 Yeah?

23 MR. LAIRD: Mm-hmm.

24 CHAIR URBAN: Okay. Great. Thank you.
25 I'll say, for my part, you know, it's helpful. I'll

1 be outside of term time which provides more
2 flexibility. Of course, I know people have family
3 obligations over the summer.

4 So, Mr. Worthe, where you have your
5 microphone on, you'll start us off?

6 BOARD MEMBER WORTHE: Yeah. I think I
7 wanted -- well, I want to start with May. My
8 understanding is that one board member can't make the
9 Friday --

10 CHAIR URBAN: That's my understanding.
11 Yeah.

12 BOARD MEMBER WORTHE: -- but can make the
13 Thursday. And I think we decided we only need one
14 day since we're just -- we know what we're doing now.

15 Is everybody okay just to confirm that
16 date?

17 CHAIR URBAN: Yep.

18 BOARD MEMBER WORTHE: Then we can get into
19 the next.

20 CHAIR URBAN: Yep.

21 MR. LAIRD: So that's the Thursday in May?

22 CHAIR URBAN: Yeah.

23 BOARD MEMBER WORTHE: I believe it's May 2.

24 CHAIR URBAN: May 1st.

25 BOARD MEMBER WORTHE: Oh, sorry. May 1.

1 CHAIR URBAN: And that'll be in Sacramento.

2 BOARD MEMBER WORTHE: We're in Sacramento
3 again?

4 CHAIR URBAN: Mm-hmm.

5 BOARD MEMBER WORTHE: Okay. Oh, yeah.
6 That's right. I'm sorry.

7 Do you want -- are you looking for July
8 dates now?

9 MR. LAIRD: Well, real quick, I was just
10 going to mention, too, you know, right now to the
11 point that was made earlier, I think for the May
12 meeting, we do have three standing items on our
13 calendar: updates on legislation, enforcement, and
14 public affairs.

15 And we also did push off last time an
16 update from admin as well and then our regulations
17 discussion which I think this can be a regulations
18 discussion for now.

19 So I would recommend we continue to push
20 off maybe that one for a future discussion. But
21 understanding we'd be trying to tackle this subject
22 matter and potentially four other pretty substantive
23 updates in that time, I guess I would just want to
24 ask the board now if there's anything just for
25 staff's ability to prepare that you'd be comfortable

1 pushing off to the further -- any of those updates.
2 I think legislation, we're on a timeline in terms of
3 the legislature's active now, I don't -- I think we'd
4 have to maintain that.

5 But certainly if it would be all right --
6 and staff could come back with a recommendation, but
7 I'd want to understand now if there's anything that
8 the board was focused on maintaining in the main
9 meeting.

10 CHAIR URBAN: Yeah. So for me, I think
11 it's the legislation item is the main item because of
12 the -- because of the legislature's calendar. We
13 certainly want to be responsive to what they're doing
14 on a timeline that makes sense.

15 The discussion of future priorities for
16 rulemaking, to me that would be fine to push off to a
17 later meeting because we have before us plenty on our
18 plate right now. And I would ask if other board
19 members had views on this.

20 BOARD MEMBER WORTHE: I mean, I think just
21 put it all on and you'll give us direction on what we
22 don't get to that day in case we're lucky.

23 You know, I decide today what to drop.
24 I -- it's easy for me to say because you'll say,
25 well, because we have to prepare now for every item.

1 So if that's the case, you give us direction on what
2 you feel most comfortable pushing.

3 BOARD MEMBER LIEBERT: I'm going to defer
4 to my leadership on that.

5 MS. GARCIA: Excuse me. Well, thank you
6 for -- staff and preparing, yes. But I would say,
7 admin, we've already prepared the material so we can
8 put it on the agenda again, but we feel comfortable
9 pushing that, for example, as well as enforcement,
10 but we're happy to prepare --

11 CHAIR URBAN: The proposed regulation --
12 or, sorry, the priorities for regulation, that seems
13 to me to be something that takes significant time to
14 repair. And at least for my own part, I feel less
15 likely to be in a position to engage on that at that
16 moment.

17 But other board members may have a
18 different view. Mr. Mactaggart?

19 BOARD MEMBER MACTAGGART: So before I weigh
20 in on what I think for timing, let me just ask you a
21 question.

22 If the revisions come back and, you know,
23 go through this process and they're pretty
24 substantial, at what point do we know -- do we need
25 to do a new SRIA and -- and take a look, if you know?

1 We have some pretty massive cost swings here --
2 potential cost swings.

3 At what point do we need to do a new SRIA?

4 MR. LAIRD: So, great question. We're not
5 required to do any -- a full SRIA, standardized
6 regulatory impact analysis. We can -- we would do an
7 update of what all rulemaking packages have to do.
8 It's the Form 399 which is economic impact
9 assessment.

10 In short, it's a five-page summary document
11 that reaches conclusions about costs and first
12 year -- things of that nature. So it's not sort of
13 the robust requirements of a SRIA, but it still would
14 be providing additional information based on the
15 regulations that we agreed to.

16 CHAIR URBAN: So we can go ahead and
17 discuss the -- and we can receive information and
18 discuss the questions that, for example, Mr. Worthe
19 brought up. We don't need to do a SRIA in order to
20 talk about that, even though it's fairly meaty; is
21 that correct?

22 MR. LAIRD: That's correct.

23 CHAIR URBAN: Yeah.

24 BOARD MEMBER MACTAGGART: So literally,
25 even -- let's just say you said we're going to

1 replace the cybersecurity requirements, and we're
2 going to say, if you meet in one of these ten
3 jurisdictions, you're good to go.

4 So let's say it's a dramatic reduction
5 in -- we kind of carve way back what is required to
6 be done. We just -- you know, you need to provide
7 evidence it's done. And let's say it went from
8 whatever it was, \$2 billion down to \$200 million.

9 You would not need a new SRIA?

10 MR. LAIRD: No.

11 CHAIR URBAN: Mr. Liebert?

12 BOARD MEMBER LIEBERT: Which is a
13 conundrum; right? Because one of the things that
14 we'd like to be able to not only -- we want to have
15 accurate information in that regard, but we also want
16 to have a sense that we've dramatically reduced cost.
17 And so is there an alternative for getting
18 that information out without doing an additional
19 SRIA?

20 MR. LAIRD: Well, that absolutely is
21 included in that Form 399 I mentioned. I mean, that
22 includes estimates on number of businesses impacted,
23 estimated costs in the first year, estimated costs
24 associated with reporting requirements.

25 I mean, there's -- there is a lot of

1 substance to that. It just doesn't have the same
2 sort of --

3 BOARD MEMBER LIEBERT: Yeah.

4 MR. LAIRD: -- additional macroeconomic
5 require -- you know, assessments, and --

6 BOARD MEMBER LIEBERT: Right.

7 MR. LAIRD: -- sort of that additional --

8 BOARD MEMBER LIEBERT: So, actually, staff
9 would theoretically be able to point out that
10 starting from that big number, it's fair to bring it
11 down to this number based upon the changes that have
12 been made.

13 MR. LAIRD: Yeah, absolutely. I think
14 certainly costs in the first year, things of that
15 nature, we would assess and bring back to the board
16 that this is how that has changed as a result of the
17 proposed revisions.

18 BOARD MEMBER MACTAGGART: And to
19 Mr. Liebert's point, do you guys do that -- or you
20 guys do that, or the outside firm does that?

21 MR. LAIRD: Today, we've worked with
22 economists. Yeah, we're in contracts with economists
23 from UC Berkeley, Sacramento State, and we also have
24 a retired annuitant on -- on board who's been
25 supporting our work.

1 BOARD MEMBER MACTAGGART: So, you know,
2 without being absurd, I feel like we want to get this
3 right. And so I'm -- I'm very conscious of the fact
4 that it's, you know, maybe less than a month away.
5 I -- we can't ask people to do, you know, work around
6 the clock on this stuff. So I feel like, within
7 reason, what gets done by then gets done.

8 But because I don't feel like this is a
9 critical path for the success or failure of the bill,
10 I would -- I think we just need to, you know, spend
11 the time to do it right. And getting back to
12 something I said earlier, you know, this is the new
13 executive director's third day on the job; so -- so
14 he's going to need some time to get up to speed on
15 things as well.

16 So I'm kind of agnostic about what gets
17 discussed in May and what -- what gets discussed
18 later.

19 And you can just remind me, Mr. Laird, what
20 happens if we trip over November? So it's -- what's
21 the -- what's the process then?

22 MR. LAIRD: Very good question. So after
23 November, we would essentially start from the
24 beginning. And when I say that, I mean we would do a
25 new notice, a new initial statement of reasons, a new

1 SRIA in that instance.

2 If you were starting with the exact same
3 proposal, I would say, in general, your record --
4 rulemaking record actually looked very similar to
5 what we started with this time, but if we even start
6 after November is a significantly modified version of
7 the regulations. For instance, we would then have to
8 prepare the supporting documentation that reflects
9 that new version of the text.

10 So a new SRIA, a new initial statement of
11 reasons on that basis. And then we'd start up our --
12 then we would -- you all would decide if that was
13 sufficient. We'd have a 45-day public comment
14 period. We'd respond to all those public comments.
15 We would then prepare a final package.

16 CHAIR URBAN: Mr. Liebert?

17 BOARD MEMBER LIEBERT: Sorry we're keeping
18 you so busy here, Phil.

19 How does this impact the staff's incredible
20 work on the Delete Act implementation? Is it
21 intruding on that? Is it -- I'd love to get some
22 sort of sense on that because that's such an
23 important priority.

24 MR. LAIRD: I appreciate that. You know,
25 to date, we've been able to balance those two

1 priorities pretty well, but certainly we have a
2 limited team, where you've got a good majority of
3 them up here, either at the dais or in this room
4 today.

5 And so, I mean, our capacity is limited.
6 So at a certain extent, the more time we're spending
7 on this rulemaking is more time we're not spending on
8 other initiatives in the agency.

9 CHAIR URBAN: I'd like to just make a --
10 make an observation which is that we have expended
11 significant resources on this rulemaking. And I
12 absolutely agree with Mr. Mactaggart that we need to
13 get it right. We need to get it right in the realm
14 of reality, and we need not to waste the public's
15 resources on endless process.

16 And I would be very concerned if we had to
17 start over and do, for example, a new SRIA which is a
18 very valuable set of information but because of the
19 requirements around it, it takes months and months to
20 do and it costs a ton of money. That is the
21 taxpayers' money, and I'm just not sure how much more
22 information we're going to get after three, four
23 years of information gathering, listening attentively
24 to the public, to our partners in the legislature and
25 other agencies.

1 So I would really encourage the board not
2 to be casual about -- about kind of, you know,
3 extending things further beyond that because it is a
4 significant use of resources, and I haven't even
5 mentioned staff time.

6 I thank Mr. Liebert for bringing up, for
7 example, the DROP system which is crucially
8 important. You know, we have a lot of things to do
9 here which is not to say that these aren't crucial
10 and important regulations; they are. You know, they
11 touch a broad swath of the California economy and all
12 consumers in California.

13 But my word, you know, we do have to come
14 to terms and make a decision and comply with our
15 statute to do that so that businesses have certainty,
16 so that consumers have the protections, and so that
17 we are not just endlessly spinning and burning
18 resources on this process, remembering that this
19 is -- a lot of this is new, and we simply will not
20 have information about the details of every single
21 thing until we see them implemented.

22 And then we, of course, can implement a new
23 process to improve them. But, you know, there's --
24 there's -- there's perfection and it is not
25 attainable, and there is good and it is attainable.

1 BOARD MEMBER MACTAGGART: Chair, and my
2 rebuttal to that would be, sure, we have to be
3 conscious of the cost of a -- of a new impact report,
4 and we are --

5 CHAIR URBAN: Four -- four years of staff
6 time.

7 BOARD MEMBER MACTAGGART: Could I just
8 finish? And at the same time, we're -- our own
9 estimate is 98,000 jobs lost, you know, three and a
10 half billion dollars cost of regulations which dwarfs
11 the cost of a new impact report.

12 So I just want to make very sure that as
13 Californians and as stewards of public money here,
14 we're keeping an eye on the bigger picture. And the
15 bigger picture is, what's the impact of these
16 regulations?

17 And our -- if our own estimates show this,
18 we absolutely owe it to try to say is there a way to
19 do what we're asking for -- most of what we're asking
20 for for a lot less impact on the California economy
21 where we don't kill 100,000 jobs?

22 CHAIR URBAN: I do not think we're going to
23 get information that is going to change the needle
24 that significantly in that way, based on the fact
25 that we've been working on this for as long as we

1 have, and we have the information we have, and we
2 will have the information that we've requested again,
3 and I just don't want to prejudge the situation now
4 by not leaving the staff time to complete the
5 rulemaking because, in my view, that would be a
6 failure that we could be sued over.

7 Mr. Laird?

8 MR. LAIRD: I don't know if I have anything
9 further to add than I certainly appreciate the points
10 raised. You know, I hope also, as we've reviewed the
11 SRIA and the economic impact, I can't help but
12 mention there's also a benefits analysis that's
13 included as well that, you know, estimates job growth
14 over time and increased revenue.

15 So I recognize this is all very delicate
16 and the policy of this is certainly to the board, but
17 there's a variety of factors at play that we've had
18 to take into account, certainly at the staff level.

19 CHAIR URBAN: And also attend to, then,
20 this agenda item we should be talking about,
21 scheduling the meeting.

22 MR. LAIRD: That is fine point.

23 CHAIR URBAN: And these do go into the
24 question of scheduling the meeting, but if it's
25 talking about board resources, our own resources,

1 finding time in July, I think we need to find the
2 time, folks.

3 BOARD MEMBER WORTHE: Are we talking --

4 CHAIR URBAN: Please, yeah.

5 BOARD MEMBER WORTHE: Are we looking for
6 Fridays?

7 CHAIR URBAN: We had a held date that we
8 released, but we needed to release --

9 BOARD MEMBER WORTHE: What number was it?

10 CHAIR URBAN: I don't know. It was the
11 11th. It was the 11th. And we released it because,
12 presumably, somebody had a conflict. Or did we
13 release it because we thought we wouldn't need it?

14 BOARD MEMBER WORTHE: We didn't need it.

15 CHAIR URBAN: We wouldn't need it. Okay.
16 So how's the --

17 BOARD MEMBER WORTHE: We were wrong.

18 CHAIR URBAN: Yeah. Take it.

19 BOARD MEMBER WORTHE: Well, I will say the
20 problem is we just help -- like, help out every
21 month. I just can't have things held -- I mean, for
22 the purpose, it makes sense. But I can offer you
23 right now, we're talking Fridays only in July?

24 CHAIR URBAN: No, I'm not, because I --
25 that was -- at least I can be more flexible.

1 BOARD MEMBER WORTHE: Oh, that was schools.
2 Okay.

3 CHAIR URBAN: I don't know about other
4 folks. Yeah.

5 BOARD MEMBER WORTHE: Well, I mean, can I
6 ask the other two is there days of the week that are
7 preferred? Because, frankly, Friday is not the best.

8 BOARD MEMBER MACTAGGART: But that week,
9 the first couple weeks isn't great. So later on in
10 July I think is better for me.

11 BOARD MEMBER WORTHE: But how about 16 or
12 17?

13 We're going to have to give a few and then
14 I'll look at the next week.

15 BOARD MEMBER LIEBERT: That'll work for me.

16 BOARD MEMBER WORTHE: 16 or 17?

17 CHAIR URBAN: Yeah. That's all right for
18 me.

19 BOARD MEMBER WORTHE: We have one board
20 member not here.

21 CHAIR URBAN: And, of course, we'll need to
22 find out if we have space.

23 BOARD MEMBER WORTHE: (Indiscernible)
24 works. Then how about --

25 CHAIR URBAN: We'll need to check with

1 Board Member Nonnecke.

2 BOARD MEMBER WORTHE: How about 24 or 25?

3 BOARD MEMBER LIEBERT: Or 23, 24?

4 BOARD MEMBER WORTHE: 23, I got another
5 volunteer board meeting.

6 So 24, 25. And so remind me, the first
7 (indiscernible) says?

8 CHAIR URBAN: Do you think that's enough to
9 work with? Or I'm also -- I'm mindful that Board
10 Member Nonnecke will need to weigh in and sometimes
11 people have, you know, vacation plans.

12 MS. GARCIA: I think that's something we
13 can work with. And we are still looking for
14 alternative locations, too. So Southern
15 California --

16 BOARD MEMBER MACTAGGART: There's a decent
17 chance I'll be remote that one.

18 CHAIR URBAN: Yeah. And that works as long
19 as we have our -- we have a limited set of slots for
20 which people can be remote. I don't -- I wouldn't
21 need to be remote. And if we have more than one
22 location to work with, which I think we might have,
23 that may open up options, too, just in terms of
24 making it more likely the dates would work for a
25 venue.

1 MS. GARCIA: Sorry. Can you clarify? So
2 both board -- two board members would already need to
3 be remote with those days?

4 CHAIR URBAN: Just Mr. Mactaggart. And we
5 don't know about Ms. -- or Dr. Nonnecke. Yeah.

6 BOARD MEMBER MACTAGGART: You said the
7 17th -- 17, 23, 24?

8 BOARD MEMBER WORTHE: 17, 18, 24, 25.

9 BOARD MEMBER MACTAGGART: No. 16, 17, 18.

10 BOARD MEMBER WORTHE: 16, 17, and 24.

11 CHAIR URBAN: And 25. So, sorry, 16, 17,
12 24, 25; correct? So it's Wednesday, Thursday or
13 Thursday, Friday? Okay.

14 BOARD MEMBER LIEBERT: And once you figure
15 out where and what space, you'll let us know after
16 talking to Dr. Nonnecke.

17 CHAIR URBAN: As soon as possible. Yeah.

18 BOARD MEMBER LIEBERT: Okay. Thank you.

19 CHAIR URBAN: All right. Additional agenda
20 items? Additional agenda items from the public.

21 UNIDENTIFIED SPEAKER: Do we have any
22 additional agenda items from the public? Please use
23 the "raise hand" feature on Zoom or press "star nine"
24 if you're calling in by phone.

25 Madam Chair, I'm not seeing any hands

1 raised.

2 CHAIR URBAN: Thank you very much.

3 With that, we -- we are -- let's see. That
4 was -- that was Agenda Item Number 5.

5 I'm now going to re-call Agenda Item
6 Number 6, our closed session item on discussion and
7 possible action on the appointment and employment of
8 an -- of an Executive Director and Chief Privacy
9 auditor under authority of Government Code
10 Section 11126(a)(1).

11 The board will go into closed session now
12 to discuss that item. We will return when we are
13 finished to adjourn the meeting. Thank you very
14 much, everybody.

15 (Whereupon, a recess was held.)

16 CHAIR URBAN: Wonderful. Welcome back,
17 everyone.

18 The board is now returning from closed
19 session and we will move to Agenda Item Number 7
20 which is adjournment. It's our final item.

21 I'd like to thank everybody, the board
22 members, staff who've been absolutely brilliant and
23 incredible advisors today, and members of the public
24 for all of the helpful comments today for your
25 contributions to the meeting and to the board's and

1 the agency's work.

2 May I have a motion to adjourn the meeting?

3 BOARD MEMBER MACTAGGART: So moved.

4 BOARD MEMBER WORTHE: Second.

5 CHAIR URBAN: Thank you. I have a motion
6 from Mr. Mactaggart and a second from Mr. Worthe.
7 We'll now vote on whether to approve the motion to
8 adjourn.

9 Ms. White (phonetic), would you please
10 conduct the vote?

11 MS. WHITE: Certainly. Board Member
12 Liebert?

13 (No audible response.)

14 MS. WHITE: Board Member Mactaggart?

15 BOARD MEMBER MACTAGGART: Aye.

16 MS. WHITE: Board Member Nonnecke?

17 (No audible response.)

18 MS. WHITE: Board Member Worthe?

19 BOARD MEMBER WORTHE: Aye.

20 MS. WHITE: Chair Urban?

21 CHAIR URBAN: Aye.

22 MS. WHITE: Madam Chair, you have three
23 yeses and two non-votes.

24 CHAIR URBAN: Thank you. The motion to
25 adjourn has been approved by a vote of three to zero

1 and this meeting of the California Privacy Protection
2 Agency Board is hereby adjourned.

3 Thanks very much, everyone.

4 (End of audio recording.)