



July 19, 2021

Re: Consumer Reports' Comment on the European Union's Proposal for AI Regulation

Consumer Reports¹ applauds the European Union for putting forth a legal framework that can regulate algorithms and artificial intelligence in a systematic and comprehensive manner. While many of these algorithms and their applications are not new, they have real potential to harm the fundamental rights of EU citizens. The provisions in this proposal can help promote transparency with these emerging technologies and mitigate harmful impacts. We hope to outline the strengths of this proposal and identify potential areas of improvement.

First, the risk-based approach serves as a robust way to categorize different applications and their respective regulations and transparency requirements. We agree that AI-enabled applications like social scoring, real-time biometric identification, and applications that violate fundamental rights and exploit children should be prohibited within the Union.

However, emotion recognition technologies were specifically mentioned as being low-risk, only requiring the basic transparency measures as outlined by the lower-risk category requirements. We disagree that these types of technologies should be placed in the low-risk category because the ability for AI to recognize emotions universally is not substantiated by science and has the potential to be discriminatory based on characteristics like race or skin color. Furthermore, we urge the EU to outline stricter requirements for or prohibit the use of AI-enabled technology that is not substantiated by science. This includes applications where companies are claiming that the correlation between different phenomena is actually causal without sufficient evidence to back up those claims. Examples include companies performing physiognomy (trying to use a person's facial features or physical characteristics to determine their character or personality) and which has been widely debunked by present day scholars, as well as other kinds of sentiment analysis tools. We suggest that the EU require that companies must show their claims are backed up by science before allowing these products on the market.

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace.

Furthermore, we also advise that the EU create provisions for public interest researchers to perform audits on algorithms, particularly for those classified in the high-risk category; this can be included in the "post market monitoring" section of the regulatory proposal. Third-party testing is an important way to ensure accountability, as it will be difficult for the government to thoroughly test and identify issues with the thousands of products on the market. Some algorithms have the potential to discriminate against individuals based on race, skin color, gender, etc., and it is important that researchers are given pathways to test algorithms for these disparate impacts that might be not properly identified and mitigated by the companies that design these algorithms. Furthermore, this framework should also provide ways for researchers and end-users of AI to notify the government and the companies building the AI-enabled technology of identified faults and/or discriminatory impacts.

As algorithms and AI become more integrated in products, basic services, and our daily lives, it is important that governments around the world quickly adopt regulations that can mitigate the harmful impacts of algorithms while maximizing the benefits. Overall, this framework is a step in the right direction and an important model that other countries should look to when designing AI regulations of their own. Thank you for your time and consideration.

Sincerely,

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