



August 21, 2024

The Honorable Charles Schwertner  
Sam Houston Building 201 E 14th St  
Austin, TX 78701

**Re: Senate Business & Commerce Committee’s Hearing on Artificial Intelligence**

Dear Senators of the Business & Commerce Committee,

Consumer Reports<sup>1</sup> appreciates the opportunity to testify about consumer protection issues related to artificial intelligence. Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace.

States are leading the way on artificial intelligence policy, and Consumer Reports has been pleased to see bipartisan consensus on the need to safeguard consumers’ rights. Texas has recently raised the bar for consumers in the Lone Star State by passing data privacy legislation—and by [suing General Motors for its unlawful collection and sale of Texan’s driving data](#) and pursuing justice for citizens whose rights were [violated by Meta’s facial recognition software](#).

Artificial intelligence tools present challenges for consumers related to transparency, fairness, privacy, validity, testability, and more. We outline issues and some potential remedies below, and would be happy to provide committee members additional resources.

**Transparency.** Generative AI products – including chatbots, AI-altered images, and persuasive AI voice clones – have the potential to deceive and confuse consumers. For example, Consumer Reports has heard from [members who believe scammers used AI to impersonate the voices of family members](#) in desperate need of money. Customer service chatbots that aren’t clearly labeled as bots can cause frustration. AI-altered images, like [deepfake celebrity product endorsements](#), can mislead consumers, and cause reputational harm to the person depicted. CR believes that it should be clear to consumers when they are interacting with AI, and that AI-generated content should be labeled when it might cause confusion or deception. Companies and platforms should take steps to reduce the likelihood that their products are used to impersonate, deceive, or otherwise break the law.

Transparency is also an issue for other types of AI, sometimes known as analytical (or discriminative) AI. Analytical AI refers to a broad category of products that includes everything from fraud detection tools, to

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<sup>1</sup> Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today’s consumers, and provides ad-free content and tools to 6 million members across the U.S.

software that uses AI to analyze job applications and make hiring recommendations, to AI and algorithmic tools that insurance companies use in underwriting and pricing decisions. Analytical AI tools may draw on vast quantities of consumers' personal data—such as location data, social media profiles, and online shopping habits—to make predictions. These tools can be faulty, relying on inaccurate data, entrenching bias, or making predictions not rigorously supported by the data. For example, AI background check companies [have been sued](#) for making mistakes that cost people job opportunities and income.

When companies use AI and algorithmic tools to help make high-stakes decisions about consumers' lives—such as decisions about access to employment, housing, insurance, lending and financial products, and more—we believe consumers have a right to know how the system is evaluating them. Once the decision is made, consumers should be presented with an explanation of the key factors, and have an opportunity to correct any incorrect personal information.

This comports with results of a recent [nationally representative survey of 2,022 US adults](#) CR conducted on the use of AI and algorithms in high-stakes decisions about consumers. When asked about a scenario in which an AI program or algorithm had been used to determine whether or not they would be interviewed for a job, most Americans (83%) said they would want to know specifically what information about them the program used to make that decision. Even more (91%) said that they'd want the opportunity to correct any incorrect data if they found out that that program made the decision by relying, in part, on incorrect information.

**Fairness:** Problems with bias in AI systems are well documented. For example, when Amazon developed a machine-learning based recruiting engine, engineers [discovered that the system was downgrading applicants with the word 'women's' in their application](#), such as 'women's chess captain.' The engine had been trained on patterns in the past decade of applications to Amazon, most of which came from men. A different resume screening program identified two factors as the best predictors of future job performance: [having played high school lacrosse and being named Jared](#).

State and federal laws already prohibit discrimination in many contexts, and there's no exemption for AI and algorithmic decision tools. However, it is worth identifying any potential gaps, and clarifying how these laws apply to companies developing and deploying AI and algorithmic tools, as well as expectations for compliance. Companies should also assess their products for discrimination throughout the development process.

Transparency for consumers will help address biased systems too. Consumers should be provided with a specific and accurate explanation when they are denied an important life opportunity. This is already the norm under federal consumer credit law: when creditors take adverse actions against you, [they are legally required to provide you an explanation under the federal Equal Credit Opportunity Act](#).

Some artificial intelligence tools are so complex that the companies using them do not know why they produce the specific recommendations they do. Those tools should not be used to make high-stakes decisions about consumers. This principle is [recognized under federal guidance related to the Equal Credit Opportunity Act](#) as well.

**Privacy:** Artificial intelligence has the potential to supercharge targeted advertising, crafting unique messages based on what companies know about a specific consumer. These practices could cross the line into being manipulative. Consumer Reports was glad to see Texas pass a consumer privacy law to set baseline protections — [though we'd like to see lawmakers build upon those protections](#). Our core principle when it comes to consumer data is “data minimization”; that is permitting companies only to collect and process the data necessary to fulfill the services consumers request. This same principle applies to AI products.

**Snake oil and substantiation:** Some AI products do not live up to their marketing hype. When MIT Technology Review tested Curious Thing, a product that was marketed at the time as an AI job interview assessment tool, their tester received a 6 out of 9 for English competency [despite answering all of the questions in German](#). Companies such as HireVue have developed AI assessments used by major employers to [analyze candidates' choice of words, facial expressions, speaking voice, perceived “enthusiasm,” and more to generate an “employability” score](#). AI researchers have described using facial expressions and speaking voice to predict job performance as “pseudoscience” and argue that applicants may be penalized for traits that may not ultimately relate to job performance, such as unusual mannerisms, or having a stutter.

When companies over promise or deceive consumers about what their AI products can do, they are likely violating state consumer protection laws that prohibit deceptive practices. Consumer Reports believes that companies should have to substantiate the claims they make about their AI products.

**Testability:** Artificial intelligence poses some unique challenges for third-party testing. Companies can control researchers' access to software and technology in a way they cannot control access to physical products available in stores, like washing machines and blenders. For example, companies can cut off researcher's access to data, as Facebook did when it [shut down the accounts of the researcher's behind New York University's Ad Observatory](#), a project that studied the ads people see on Facebook. Tech companies can also [frustrate external testing by adding clauses to their terms of service](#) that prohibit users from sharing information about their accounts with researchers. Other legal impediments exist: it's unclear whether companies would be successful in claims that public interest auditors have violated state and federal anti-hacking laws, such as the Computer Fraud and Abuse Act.

Policymakers should consider targeted reforms of these state and federal anti-hacking laws to ensure that good faith public interest research that does not meaningfully tax a company's resources or compromise other interests (such as privacy) is allowed. Legislators should also consider enacting legislation that explicitly prohibits contractual language unfairly limiting researchers' ability to audit algorithms for bias. Lastly, we recommend enacting protections for whistleblowers. When individuals bring up issues internally to upper management those issues don't get addressed in a reasonable time period, those individuals should be protected from retaliation if they come forward.

**Other issues:** There are other issues and remedies that policymakers ought to consider. One such issue is platform accountability. It is trivially easy to run a Google search and find software to clone other people's voices without their consent, unlocking new avenues for scammers. A person using AI to commit fraud should bear responsibility for violating the law, but the companies that provide these tools and the

platforms that make them easily accessible should perhaps also bear some liability and should be required to exercise reasonable care.

Another issue is intellectual property. Generative artificial intelligence models are trained by digesting vast swaths of the internet, including teenager's video blogs, published books, chart-topping songs, and original journalism. This practice may prove to be in violation of intellectual property law: several lawsuits, including cases brought by [authors such as John Grisham](#) and [publications such as the New York Times](#), are currently pending. It may also violate consumers' reasonable expectations about what happens to the photos, words, and other information they share online.

We appreciate the opportunity to share our perspective and the work Texan policymakers have already undertaken to create a fairer digital marketplace.

Best regards,

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Consumer Reports