Erroneous and Unfair AI Decision Systems

The Problem for Consumers:

Increasingly, some of the most consequential decisions made about consumers' lives–from what healthcare they can access, or whether they get selected for their dream rental unit, approved for a mortgage, or are offered a job–are being made by companies with the assistance of AI, or algorithmic decision-making systems (ADMT). Evidence suggests that these systems can be error-prone and biased. For example:

- One algorithmic resume screening program identified two factors as the best predictors of future job performance: having played high school lacrosse and being named Jared.[i]
- Another hiring assessment provided high scores in English proficiency even when questions were answered exclusively in German.[ii]
- A health care algorithm used widely by hospitals to identify which patients would receive additional care was found by independent researchers to be biased against Black patients; in attempting to predict which patients would become the sickest, it instead predicted who would spend the most money care.[iii]
- A sepsis-prediction algorithm used by many hospitals nationally was found by researchers to not be nearly as accurate as the company selling it had claimed—and only slightly more accurate than simply flipping a coin.[iv]
- AI background check companies have been sued for making mistakes that cost people job opportunities and income.[v]

Consumers are often completely in the dark when AI decision systems are used for life-altering decisions. They don't know what information the system relies on, and if it's incorrect or illegally obtained, they may have no recourse. Companies are not required to test their products before putting them on the market. The level of secrecy makes it challenging to enforce existing laws such as consumer protection laws, civil rights laws, and labor laws.

In 2024, Colorado passed a law, SB 205, that established baseline accountability for the use of automated decision-making technology in high-stakes decisions about consumers and workers.[vi] Among other responsibilities in SB 205, companies must notify the consumer when using ADMT

for a consequential decision, explain the decision, provide an opportunity to correct any incorrect personal information the decision was based on, and provide the opportunity to appeal the decision. California's privacy agency has passed rules related to the use of ADMT which contain some similar provisions, but which apply to far fewer uses of the technology.[vii] State legislators considered some 17 bills on this topic in 2025.

Consumer Reports' Positions:

CR supports state and federal legislation and rulemaking that: requires companies to test their products before they hit the market and periodically after for bias, accuracy, and compliance with existing laws; requires companies to provide actionable information to consumers about how ADMT influence consequential decisions before and after the decision is made; enable consumers to correct and appeal consequential decisions; and include robust enforcement via a private right of action, or well-funded enforcement by relevant state offices.

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[ii] Sheridan Wall, Hilke Schellmann, MIT Technology Review, "We tested AI interview tools. Here's what we found," (July 7, 2021) https://www.technologyreview.com/2021/07/07/1027916/we-tested-ai-interview-tools/

[iii] Ziad Obermeyer, Brian Powers, Christine Vogeli, Sendhil Mullainathan, Science, "Dissecting racial bias in an algorithm used to manage the health of populations" https://www.science.org/doi/10.1126/science.aax2342

[iv] Arvind Narayanan and Sayash Kapoor, Financial Review, (Sept. 13, 2024) https://www.afr.com/technology/snake-oil-don-t-believe-the-artificial-intelligence-hype-20240909-p5k93y

[v] Issie Lapowsky, Protocol, "Locked out of the gig economy: When background checks get it wrong" (February 7, 2020) https://web.archive.org/web/20230330234207/https://www.protocol.com/checkr-gig-economy-lawsuits

[vi] Consumer Reports, 'Consumer Reports backs signing of high-risk AI bill, calls on Colorado General Assembly to strengthen it before it goes into effect,' May 18, 2024. https://advocacy.consumerreports.org/press_release/consumer-reports-backs-signing-of-high-risk-ai-bill-calls-on-colorado-general-assembly-to-strengthen-it-before-it-goes-into-effect/

[vii] California Privacy Protection Agency Board Meeting, July 24th 2024, https://cppa.ca.gov/meetings/materials/20250724.html

About Consumer Reports

Founded in 1936, CR is on a mission to create a fair and just marketplace for all. Widely known for our rigorous research and testing of products and services, we also survey millions of consumers each year, report extensively on marketplace issues, and advocate for consumer rights and protections around safety, digital rights, financial fairness, and sustainability. CR is independent and nonprofit.