



# EU AI ACT: INSIGHTS FOR AMERICAN HOUSING ADVOCATES

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**SEPTMEBER 2024**

# AGENDA



Program overview



EU AI Act



Implications for Fair Housing



Panel discussion



Questions

## PROGRAM COHORT

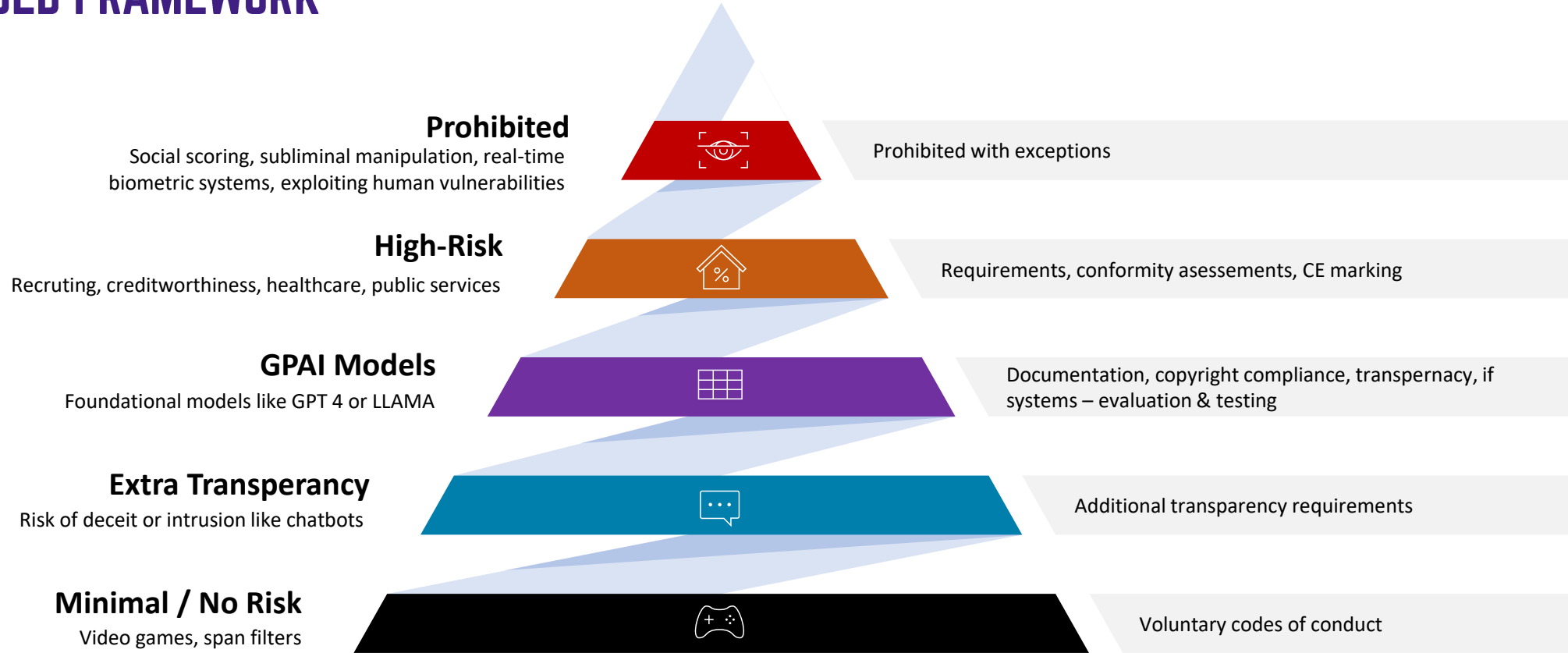
### *Highlights, to give you a sense*

- Approximately 75% lawyers or legal professionals
- International attendees present, but mostly from EU
- Mix of academia, public, private, and NGO members
- Concerns on the implementation of the EU AI Act & compliance requirements
- Limited technical attendees
- EU dominant perspectives in discussions
- Visible public vs private sector tensions
- Keen for interdisciplinary collaboration



**EU AI ACT**

# RISK-BASED FRAMEWORK



Source: Nathalie Smuha. *AI Regulation and the AI Act*. KU Leuven, AI Summer School (2024)

## HIGH-RISK REQUIREMENTS

- ✓ Risk management process based on a system's intended purpose
- ✓ Data governance: quality training, data validation and testing
- ✓ Documentation and logging to establish traceability & auditability
- ✓ Transparency & information obligations towards users
- ✓ Human oversight (built in system and/or implemented by user)
- ✓ Robustness, accuracy and cybersecurity
- ✓ For some deployers: fundamental rights impact assessment (e.g., healthcare, creditworthiness)



Source: Nathalie Smuha. *AI Regulation and the AI Act*. KU Leuven, AI Summer School (2024)

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## HIGH-RISK REQUIREMENTS

- ✓ **Prior Conformity Assessment** - An assessment done before an AI system is placed on the market to ensure it complies with relevant requirements
- ✓ **Double self-assessment** - Providers conduct two internal assessments - first to determine if their system is high-risk, then to assess conformity with requirements if deemed high-risk
- ✓ *3 options*
  - **Self-interpretation** - Providers interpret requirements and assess their own compliance without external verification
  - **Conformity Assessment Body (Notified Body)** - An independent third-party organization authorized to carry out conformity assessments
  - **Standardization / Common specifications**
- ✓ **CE marking** - A mark placed on products to indicate conformity with EU regulations



## PROMISES OF THE EU AI ACT



**Dual function** – eliminate obstacles to trade & protect safety and fundamental rights



Implements a **risk-based framework**, first of its own to approach governance at scale



**Ongoing list** of high-risk systems, **procedural requirements**, and **database** applications for public review



The use of **prohibited uses cases** set clear expectations of unacceptable harms



Standardization, enforcement, and compliance efforts will set out **global precedence**



**Expected exemptions** – military, security, R&D, and some open source



**Enforcement layers** – self-compliance, supervisory authorities (AI Office), expert reviews, and database



## LIMITATIONS AND POTENTIAL ROADBLOCKS



Risk categorization is a **subjective process** – who gets to define risk and to whom?



Risk-categorization is **self-assessed and flexible** for interpretation and application



Standardization and implementation is heavily influenced by **private and third-party for-profit specialists**



**Conflicting harmony** with existing EU laws – Data Act, GDPR, etc.



Treat to **small to medium** businesses – compliance is costly, estimated 250k+



Focus is on **material harms for establishing liability**, with a lack of emphasis on financial or societal harms

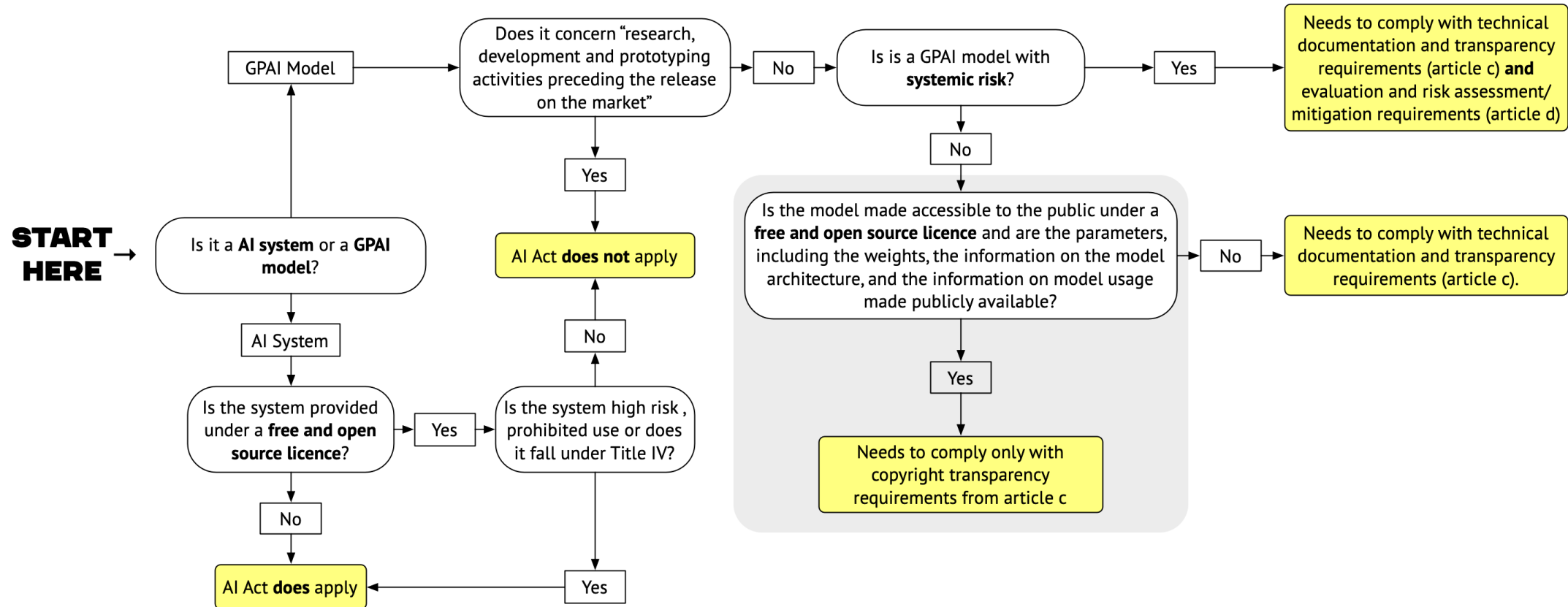


Upholding government superiority, a **top-down approach to policymaking**, limited practice emphasis



**Many exemptions** apply to open source, research-based, high-risk and non-high-risk AI

# EXAMPLE OF OPEN-SOURCE EXEMPTIONS

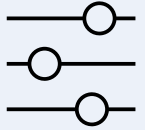


Source: Paul Walker, Open Future (2024)

## EXAMPLE OF HIGH-RISK EXEMPTIONS (1 OF 3)

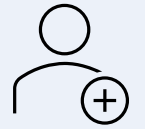
### “Perform a narrow procedural task”:

A mortgage underwriting AI system that *only calculates debt-to-income ratios* or subset of a model could potentially claim this exemption. The provider might argue that these are narrow, specific tasks within the broader underwriting process.



### "Improve the result of a previously completed human activity":

An AI system that reviews human-made underwriting decisions to *flag potential errors or inconsistencies* might claim this exemption. The provider could argue that the system is merely enhancing human work rather than making independent decisions.

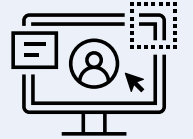


**Source:** Wachter, S. (2024). Limitations and loopholes in the EU AI Act and AI Liability Directives: what this means for the European Union, the United States, and beyond. *Yale Journal of Law and Technology*, 26(3).

## EXAMPLE OF HIGH-RISK EXEMPTIONS (2 OF 3)

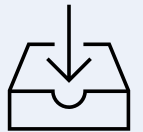
**“Detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment, without proper human review”:**

An AI system that analyzes historical mortgage approval patterns *to identify unusual cases for human review* could potentially use this exemption. The provider might claim the system isn't making decisions but only flagging anomalies for human consideration.



**"Perform a preparatory task":**

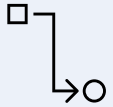
An AI system that *gathers and organizes applicant information* before human underwriters review it might claim this exemption. The provider could argue the system is only preparing data for human decision-makers.



**Source:** Wachter, S. (2024). Limitations and loopholes in the EU AI Act and AI Liability Directives: what this means for the European Union, the United States, and beyond. *Yale Journal of Law and Technology*, 26(3).

## EXAMPLE OF HIGH-RISK EXEMPTIONS (2 OF 3)

Systems performing profiling of natural persons are always considered **high-risk under the AI Act**. However, exemptions outlined can create potential loopholes for providers to:



Break down their system into **smaller components**, each claiming to perform only narrow tasks or preparatory work



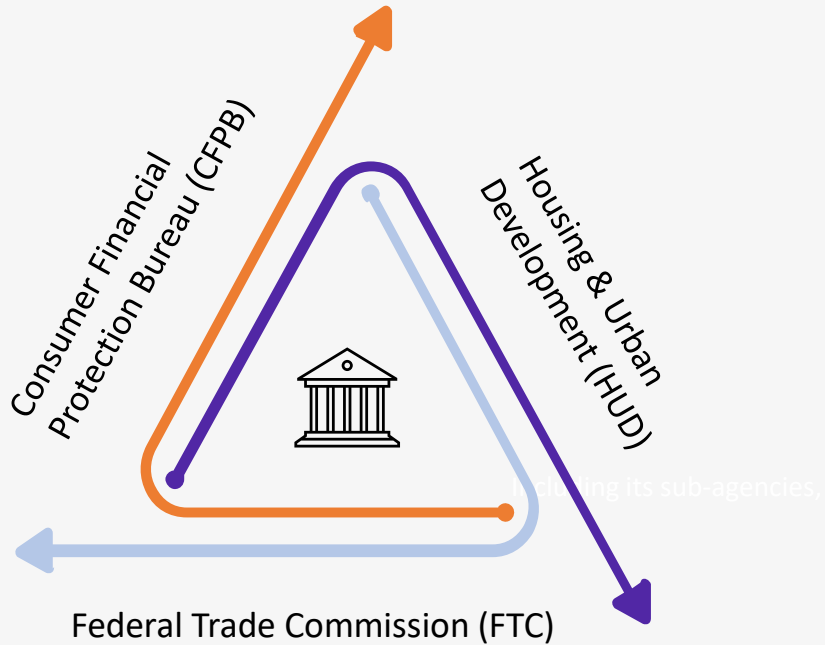
Systems may be profiled to **merely support** or enhance human decision-making rather than replacing it



**Emphasize the human review** aspects of their process, even if the AI system is doing most of the analytical work

# US REGULATORY ACTION ON AI

# KEY AGENCIES



Issues

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REPORT JUN 17, 2024

# Taking Further Agency Action on AI

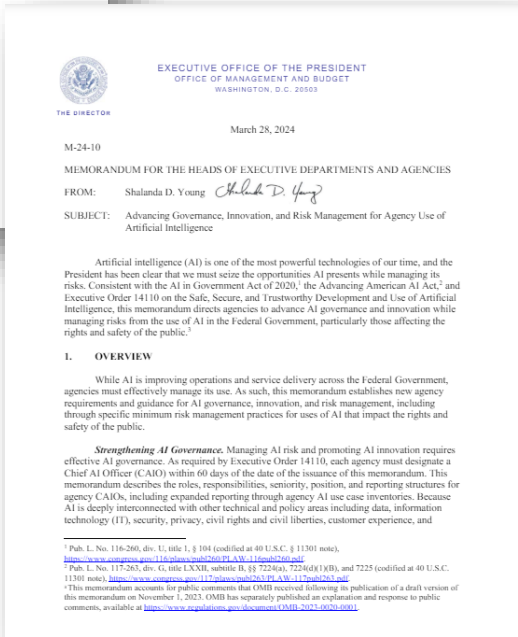
## How Agencies Can Deploy Existing Statutory Authorities To Regulate Artificial Intelligence

This joint report from Governing for Impact and the Center for American Progress maps select agencies' existing statutory authority to protect consumers, workers, and families from potential artificial intelligence harms.

Source: Center for American Progress Report on Agency Actions on AI Regulation (2024) [www.nationalfairhousing.org](http://www.nationalfairhousing.org)

# KEY ACTIONS AT THE FEDERAL LEVEL ON AI

## Executive Order 14110: Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence



### Executive Order 14110

+ Office of Management and Budget (OMB) Memo on AI Governance in Federal Government

### Specific guidelines to HUD and CFBP to:

1. Study whether tenant screening systems are using criminal and eviction records, credit and other data points in illegal ways that result in discrimination (EO 14110, Section 7.3(c)(i)).
2. Address how existing laws apply to housing, credit and other real estate ads on digital platforms that use algorithms to deliver ads (EO 14110, Section 7.3(c)(ii)).

*Agencies must appoint CAIOs and implement governance structures to identify, assess, and manage risks of rights-impacting AI in the federal government*



# ENFORCEMENT GAPS

## Less Discriminatory Alternatives (LDAs) in Fair Lending



Advancements in machine learning research have enabled broader adoption of LDAs

Accuracy and fairness **can coexist**

# ENFORCEMENT GAPS

## Shortcomings of Legal Theories in Practice



Reactionary legal systems



Top-down approach to policymaking



Interplay of multi-stakeholder incentives



Due process: How to prove "intent" in case of AI misuse

### Null Compliance: NYC Local Law 144 and the Challenges of Algorithm Accountability

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#### ABSTRACT

In July 2023, New York City became the first jurisdiction globally to mandate bias audits for commercial algorithmic systems, specifically for automated employment decisions systems (AEDTs) used in hiring and promotion. Local Law 144 (LL 144) requires AEDTs to be independently audited annually for race and gender bias, and the audit report must be publicly posted. Additionally, employers are obligated to post a transparency notice with the job listing. In this study, 155 student investigators recorded 391 employers' compliance with LL 144 and the user experience for prospective job applicants. Among these employers, 18 posted audit reports and 13 posted transparency notices. These rates could potentially be explained by a significant limitation in the accountability mechanisms enacted by LL 144. Since the law grants employers substantial discretion over whether their system is in scope of the law, a mall result cannot be said to indicate non-compliance, a condition we call "null compliance." Employer discretion may also explain our finding that nearly all audits reported an impact factor over 0.8, a rule of thumb often used in employment discrimination cases. We also find that the benefit of LL 144 to ordinary job seekers is limited due to shortcomings in accessibility and usability. Our findings offer important lessons for policy-makers as they consider regulating algorithmic systems, particularly the degree of discretion to grant to regulated parties and the limitations of relying on transparency and end-user accountability.

<sup>1</sup>Please direct all correspondence to Lucas Wright at law323@cornell.edu  
<sup>2</sup>See Appendix A.1 for full list of student investigators.

#### CCS CONCEPTS

- Social and professional topics → Governmental regulations;
- Computing methodologies → Artificial intelligence.

#### KEYWORDS

algorithm audit, compliance, transparency, bias

#### ACM Reference Format:

Lucas Wright, Roxana Mika Muenster, Briana Vecchione, Tianyao Qu, Pika (Senhuang) Cai, Alan Smith, COMM/INFO 2450 Student Investigators, Jacob Metcalf, and J. Nathan Matias. 2024. Null Compliance: NYC Local Law 144 and the Challenges of Algorithm Accountability. In *The 2024 ACM Conference on Fairness, Accountability, and Transparency (FAccT '24)*, June 03–06, 2024, Rio de Janeiro, Brazil. ACM, New York, NY, USA, 13 pages. <https://doi.org/10.1145/3630106.3658998>

#### 1 INTRODUCTION

On the cusp of potential major changes to the AI regulation landscape in many jurisdictions, New York City implemented the world's first law mandating the conducting and publishing of algorithmic bias audits for commercial products in July 2023. NYC Local Law 144 (LL 144) mandates that any NYC-based private employer or City agency that deploys certain automated employment decision tools (AEDTs) in the hiring or promotion process must conduct a *disparate-impact study*<sup>2</sup> for race and gender features, and make the *audit report* available to the general public via their website (Appendix A.1). The employer must also provide a *transparency notice* to any job seeker, informing them about the use of an AEDT

## FROM AIA TO FHA

### Key lessons for AI legislation in US to ensure FHA protections

- ✓ **New policy should support existing civil rights statutes** – fairness, liability, search for LDAs
- ✓ **System categorization** enables transparency, expectations of use, and compliance requirements
- ✓ **We must avoid polices with overreliance on self-assessment** – explore government-based review or third-party assessments
- ✓ **Enforce transparency** to establish responsibility, not just for reporting and liability preparation
- ✓ **Systemic risk should account for** societal, financial, and individual harms
- ✓ **Effective human oversight** – restrict the role of automation, invest in model explainability, and define responsibility owners
- ✓ Standards need to be established with a **multistakeholder group** – industry cannot be the only power holders



# PANEL DISUCSSION