



February 7, 2024

Senate General Laws and Technology Committee
Attn: Eric Bingham, Andrew Horton
Room 306, General Assembly Building
201 North Ninth Street
Richmond, VA 23219

RE: SB 164 - “Virginia Consumer Protection Act; prohibited practices, artificial intelligence disclosure” (Oppose)

Dear Chair Ebbin and Members of the Senate General Laws and Technology Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to raise several concerns regarding SB 164. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members.

As written, SB 164 the bill risks creating confusion surrounding compliance and could generate unnecessary conflicts with the pre-existing Virginia right of publicity law. Foremost, CCIA recommends further examining how existing law might apply to the concerns SB 164 is intended to address, and consider specific amendments as needed, to avoid such confusion or diverging compliance requirements².

We appreciate the Committee’s consideration of our concerns with SB 164 as further detailed below.

SB 164 raises serious questions about control over personal likeness.

SB 164 appears to make the personal right of publicity freely transferable and licensable, which raises serious questions about individual control and ownership of their own likeness. This could create scenarios in which other persons or entities could gain access to another person’s likeness in perpetuity and in any context³. For example, the bill would allow parents to consent on behalf of minors to allow their likeness to be used. This could prevent an individual from keeping control of their likeness if their parent decided when they were younger to transfer the rights to another entity. Even if the individual originally consented, the lack of any mechanism like rights reversion to address abusive contracts is problematic.

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² See <https://law.lis.virginia.gov/vacode/8.01-40/>; <https://law.lis.virginia.gov/vacode/title18.2/chapter6/section18.2-216.1/>.

³ Rothman, Jennifer E. “House’s Draft AI Bill Risks Loss of Control over Our Own Voices and Likenesses.” *Rothman’s Roadmap to the Right of Publicity*, 24 Jan. 2024, rightofpublicityroadmap.com/news_commentary/houses-draft-ai-bill-risks-loss-of-control-over-our-own-voices-and-likenesses/.



SB 164 will create uncertainty and conflict between different Virginia laws

As previously mentioned, SB 164 is likely to conflict with existing Virginia Right of Publicity law as the bill specifies that “Commercial exploitation of the property right by any executor, assignee, heir, or devisee if the individual is deceased shall maintain the right as the exclusive property of the executor, assignee, heir, or devisee until such right is terminated by proof of the non-use of the name, photograph, voice, or likeness of any individual for commercial purposes by an executor, assignee, heir, or devisee for a period of two years subsequent to the initial 10-year period following the individual's death”. To avoid establishing that this right is, in effect, perpetual, CCIA recommends that there be an established fixed and finite time limit – current Virginia statute specifies that it is limited to 20 years after the individual’s death.

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CCIA has additional concerns with the current language included in SB 164—for example, with the broad and vague definitions and undefined terms—and would welcome the opportunity to further discuss those. We appreciate the Committee’s consideration of these comments and stand ready to provide additional information as the General Assembly considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association