



**Computer & Communications
Industry Association**
Open Markets. Open Systems. Open Networks.

September 8, 2024

The Honorable Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: SB 1223 (Becker) – Neural Data Privacy – Request for Veto

Dear Governor Newsom,

TechNet and the following organizations are respectfully opposed unless amended to SB 1223 (Becker), which would add neural data to the category of sensitive personal information under the California Consumer Privacy Act (CCPA).

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data.

We have a concern about the breadth of technologies that could be included under the definitions of “neural data” and “neurotechnology” and have suggested amendments to tailor them to technologies that directly measure brain activity.

The fundamental challenge with the existing definitions is that they include references to the “peripheral nervous system” (“PNS”) – all nerves in parts of the body other than the brain and spinal cord. There are two problems with these references. First, information about activity of the PNS simply is not capable of revealing someone’s inner thoughts and mental processes, which this bill seeks to protect. Those result from activity of the brain, not the PNS. Many scientists argue that even information about brain activity does not and will not permit decoding complex thoughts, and [recent research](#) has described attempts to argue otherwise as alarmist.

Second, regulating activity of the PNS would sweep too broadly and ensnare nearly any technology that records anything about human behavior, because all outwardly observable human behavior results from activity of the PNS. Every time you speak, move, or perform any other action, your central nervous system sends signals to the PNS, which then brings about the action, such as by stimulating your muscles. This means that any measurement of outwardly observable human behavior could be deemed a “measurement of the activity” of the PNS.

As a result, the definitions of “neural data” and “neurotechnology” would ensnare vast swaths of technology that have nothing to do with mental privacy. For example, they could mean that any data about how someone moves a mouse is sensitive, because, to move a mouse, someone’s brain sends a signal to the nerves in their hand, part of the PNS. As another example, it would disincentivize innovation in vehicular safety features, such as systems that monitor drivers’ eye movements and body positions to

detect fatigue. Both of those kinds of data could be considered measurements of the activity of the PNS.

We previously suggested amendments in April that would have removed references to the PNS. After our language was rejected, we offered the following amendments which include key limitations that the sponsors of SB 1223 believe apply to the bill and in a gesture of good faith, maintain references to the PNS. We believe these changes maintain the focus on the riskiest kinds of information—information about the brain itself—without unintentionally stifling other kinds of low-risk, beneficial technologies. The below amendments were rejected without explanation.

*“Neural data” means information that is generated by the **direct** measurement of the **electrical** activity of **the nerves in** an individual’s central or peripheral nervous systems that ~~is-can-be~~ processed by, or with the assistance of, neurotechnology.*

*“Neurotechnology” means a device, instrument, or a set of devices or instruments, that allows a **direct** connection with a person’s central or peripheral nervous system for **the various** purposes ~~of, including, but not limited to,~~ reading, recording, or modifying a person’s brain activity or the information obtained from **direct measurements of** a person’s brain activity.*

Our members were committed to reaching a compromise that preserves SB 1223’s ability to protect against realistic risks without unduly burdening innovation. But we continue to believe the bill needs to be more narrowly targeted to data and technologies that are actually capable of revealing complex thoughts—not just intentions to move.

Thank you for your consideration. If you have any questions regarding TechNet’s position, please contact Dylan Hoffman, Executive Director, at dhoffman@technet.org or 505-402-5738.

Sincerely,



Dylan Hoffman
Executive Director for California and the Southwest
TechNet

Ronak Daylami, California Chamber of Commerce
Khara Boender, Computer and Communications Industry Association