



October 18, 2024

The Honorable Adam Ebbin, Chair
Commonwealth of Virginia
Joint Commission on Technology and Science
201 North 9th Street
Richmond, Virginia 23219

Dear Chair Ebbin:

On behalf of the undersigned public interest organizations and trade associations, we write to respectfully urge the AI Subcommittee of the Joint Commission on Technology and Science (JCOTS) to oppose SB 164 for both procedural and substantive reasons.

SB 164 Has Been Insufficiently Publicly Examined

It is our understanding that the AI Subcommittee intends to recommend that SB 164 be amended to mirror legislation pending in both chambers of Congress: the "NO FAKES Act" of 2024 (S. 4875 and H.R. 9551). With the exception of discussion among the AI Subcommittee, no public airing of the language of the anticipated version of SB 164 has occurred in the legislature. Nor has it been considered at the federal level. Indeed, NO FAKES as introduced in the United States Senate and House has received no hearing whatsoever. Per below, the bill raises significant issues that should not be rushed through the legislative process under deadline.

SB 164, If Conformed to NO FAKES, Would be Seriously Flawed and Likely Unconstitutional

Should the AI Subcommittee proceed with a version of SB 164, as has been discussed, we believe the bill would contravene the fundamentals of copyright law by unconstitutionally protecting facts (as courts have held voices and likenesses to be), subject online service providers to liability from which federal law now productively shields them, and unconstitutionally interfere with all citizens' rights to free speech.

In addition, Virginia already prohibits the unauthorized commercial use of any person's name, portrait, or picture for up to 20 years after the death of that person (Va. Code Ann. § 8.01-40). Adopting text that emulates NO FAKES would unnecessarily duplicate that prohibition and would contravene the limitations placed upon such laws by the First and Fourteenth Amendments.

With these considerations, we urge you and your colleagues to proceed cautiously to best balance protecting Virginia consumers and industry.

We welcome further discussion of SB 164 and the Subcommittee's proposal to amend the bill's language to track the NO FAKES Act.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam M. Eisgrau', written in a cursive style.

Adam M. Eisgrau
Senior Director
AI, Creativity & Copyright Policy
Chamber of Progress

Chamber of Progress

Electronic Frontier Foundation

Engine

Fight for the Future

Public Knowledge

Software & Information Industry Association