



January 27, 2025

The Honorable Delegate Cliff Hayes, Chair  
House Communications, Technology and Innovation Committee  
Virginia General Assembly  
House Committee Room C - 206

Re: **Opposition to HB 2462, the “Digital Replication Right Act”**

Dear Chair Hayes:

On behalf of the undersigned public interest organizations and trade associations, we write to **respectfully urge you to oppose HB 2462**, the “Digital Replication Right Act” for both procedural and substantive reasons.

### **HB 2462’s Premises and Proposals Have Been Insufficiently Publicly Examined**

With the exception of brief discussion last year among the AI Subcommittee of the Joint Commission on Technology and Science, no public airing of the issues underlying – and now the actual language of – HB 2462 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.

### **HB 2462, An Effective Clone of NO FAKES, Is Seriously Flawed and Likely Unconstitutional**

We urge the Subcommittee not to advance HB 2462 because, as written, we believe the bill would contravene the fundamentals of federal copyright law by unconstitutionally protecting facts (as courts consistently 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. Specifically, as a broad restraint on speech, the bill is unlikely to survive the strict scrutiny test mandated by the Supreme Court for assessing such legislation having not been narrowly tailored to its objectives.

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.

We thus urge you and your colleagues to proceed cautiously and without haste to best balance protecting Virginia consumers and industry. We also **respectfully urge you to reject HB 2462** at this time.

Sincerely,

Chamber of Progress  
Electronic Frontier Foundation  
Engine  
Public Knowledge  
Software & Information Industry Association