



Computer & Communications
Industry Association
Tech Advocacy Since 1972



September 22, 2022

Council of the District of Columbia
Committee on Government Operations and Facilities
The John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington, DC 20004

RE: CCIA Comments on DC B24-0558 — “Stop Discrimination by Algorithms Act of 2021” — OPPOSE

Dear Chair White and Members of the Committee on Government Operations and Facilities:

On behalf of the Computer & Communications Industry Association (CCIA)¹ and in response to the notice for the September 22 public hearing, we write to respectfully express opposition to B24-0558. CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. While CCIA shares the Council’s concern and agrees more work can and must be done to study the potential implications of automated decision-making, B24-0558 is not the solution.

Algorithmically-informed decision-making is complex and often misunderstood.² These technologies are data-driven and can efficiently process massive amounts of data to create gains in productivity and accuracy, as well as support technological and scientific breakthroughs. Algorithmically-informed decision models have also been shown to increase access to financial credit and lower interest rates across demographic groups when compared to traditional models. For example, a recent Consumer Financial Protection Bureau update about Upstart, a lending marketplace that uses artificial intelligence (AI) to improve access to affordable credit while reducing the risk and costs of lending for bank partners,³ found that Upstart’s tested model approves 27% more applicants than the traditional model, and yields 16% lower average APRs for approved

¹ For 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.cciagnet.org/members>.

² See generally Mike Masnick, *The Latest Version Of Congress's Anti-Algorithm Bill Is Based On Two Separate Debunked Myths & A Misunderstanding Of How Things Work*, Techdirt (Nov. 11, 2021), <https://www.techdirt.com/2021/11/10/latest-version-congresss-anti-algorithm-bill-is-based-two-separate-debunked-myths-misunderstanding-how-things-work/>.

³ Upstart, <https://www.upstart.com/i/about> (last accessed Sept. 14, 2022).

loans. This expansion of credit access occurs across all tested race, ethnicity, and gender segments resulting in the tested model increasing acceptance rates by 23-29% and decreasing average APRs by 15-17%.⁴

This legislation may actually be counterproductive to efforts to prevent bias, and also may result in other adverse and unintended consequences. We appreciate the opportunity to further detail our concerns about several of the bill's provisions.

1. Businesses operating online depend on clear regulatory certainty across jurisdictions nationwide.

Ambiguous and inconsistent regulation at the state or local levels would undermine business certainty, creating significant confusion surrounding compliance. This type of regulatory patchwork may deter new entrants, harming competition and consumers. There are several existing efforts at the federal level to regulate the use of automated decision-making technology and require the study of potential adverse impacts.

For example, The National Institute of Science and Technology (NIST) AI Risk Management Framework (RMF) is an ongoing effort aimed at better managing risks in the design, development, use, and evaluation of AI products, services, and systems. The second draft of the AI RMF was just released this past August.⁵ The NIST National Center of Excellence is also leading federal regulatory efforts to establish practices for testing, evaluating, verifying, and validating AI systems.⁶ These ongoing studies by national experts should signal the complexity of the issue. Lawmakers should wait for and review forthcoming best practices by technical experts to help inform the development of national standards and regulations.

Further, careful consideration of what constitutes best practice should involve conversations with practitioners and relevant stakeholders. Online businesses are already taking steps to ensure a safer and more trustworthy Internet – last year, leading online businesses announced⁷ that they have been voluntarily participating in the Digital Trust &

⁴ Patrice Alexander Ficklin & Paul Watkins, *An update on credit access and the Bureau's first No-Action Letter*, Consumer Financial Protection Bureau Blog (Aug. 6, 2019), <https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/>.

⁵ NIST, AI Risk Management Framework <https://www.nist.gov/itl/ai-risk-management-framework> (last accessed Sept. 19, 2022).

⁶ NIST, National Cybersecurity Center of Excellence, *Mitigation of AI/ML Bias in Context*, <https://www.nccoe.nist.gov/projects/mitigating-ai-ml-bias-context> (last accessed Sept. 14, 2022).

⁷ Margaret Harding McGill, *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021), <https://www.axios.com/tech-giants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

Safety Partnership (DTSP) to develop and implement best practices and recently reported on the efforts to implement these commitments.⁸

We urge Councilmembers to study both the benefits and drawbacks of algorithmic technologies and to engage with practitioners and stakeholders to support the ongoing development of practicable solutions.

2. Notice requirements are overly prescriptive and broad.

Any notice and disclosure requirements for “algorithmic eligibility determinations” and “algorithmic information availability determinations” should be limited to a broader explanation of technology functionality – general criteria or categories of inputs that are used to inform a decision – rather than information about the specific decisions made. For example, if a residential leasing company considers certain personal information when evaluating a housing application, those categories of information could be described. Consumers would receive minimal or even decreased benefit from a more detailed description.

The notice requirement should be limited to explaining the relevance and purpose of the algorithmic decision-making and the categories and use of the personal data processed. To provide transparency that meaningfully allows consumers to understand the impact of algorithmic decisions, CCIA recommends that notices be clear, accessible, and limited to general explanations of technology functionality. Such notices addressing how automated decisions are made may include descriptions of the types of personal data used without providing information on specific decisions.

3. Broad definitions of algorithmic eligibility determination” and “algorithmic information availability determination” would force businesses to collect extensive information and conduct audits for an unwieldy number of systems.

The bill’s broad definitions of “algorithmic eligibility determinations” and “algorithmic information availability determinations” would apply to a large number of AI systems, and to comply with Sec. 7(a)(2), covered entities would be required to collect significantly more information from consumers than they otherwise would. This proposed requirement conflicts sharply with data minimization principles that companies are also under pressure to abide by.

⁸ DTSP, *The Safe Assessments: An Inaugural Evaluation of Trust & Safety Best Practices* (July 2022), https://dtspartnership.org/wp-content/uploads/2022/07/DTSP_Report_Safe_Assessments.pdf.

These extremely broad definitions would also require covered entities to conduct audits for an incredibly large number of AI systems and the bill provides little clarity about when they must conduct such audits. Such assessments should be reserved solely for automated systems that make a decision that results in a legal or similarly significant effect concerning an individual. Disclosures for low-risk automated decisions would provide no benefit to consumers while simultaneously impeding business activity and unnecessarily diminishing the personalization of consumer services.

4. Overly prescriptive annual audit reporting requirements risk exposing businesses' sensitive information and may unintentionally harm consumers.

B24-0558 describes a long list of information that must be submitted annually to the District of Columbia Attorney General, including granular information regarding data, data sources, methodologies, and algorithmic optimization criteria. These audit reporting requirements would require companies to divulge a vast amount of proprietary information. Disclosure requirements should not risk exposing trade secrets or business sensitive information as this would have a chilling effect on customer service and innovation.

Such expansive reporting requirements may also have the adverse unintended consequence of giving nefarious foreign agents, purveyors of harmful content, and other bad actors a playbook for circumventing and hacking algorithmic tools rather than protecting consumers. Lengthy data storage requirements coupled with sharing such data also potentially exposes consumer data and poses a threat to user privacy online.

5. The bill's private right of action would create unwarranted, inflated liability for thousands of online enterprises.

B24-0558 permits the District of Columbia Attorney General, in addition to any aggrieved person, to bring a civil action against an entity who violates the bill's provisions. By creating a new private right of action, this legislation would open the doors of the District's courthouses to speculative claims from plaintiffs. As speculative lawsuits prove extremely costly and time-intensive to litigants and the judiciary, it is foreseeable that these costs would be passed on not only to taxpayers, but also online services and local brick-and-mortar businesses in DC that use these services to advertise online. These costly proceedings would disproportionately impact smaller businesses and startups across the District.⁹

⁹ Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, *Broadband Breakfast* (Mar. 23, 2021),

* * * * *

While we support the Council's concern regarding the potential for algorithmic discrimination and bias, we encourage Councilmembers to resist advancing legislation that is not adequately tailored to this objective. We appreciate the Committee's consideration of these comments and stand ready to provide additional information as the Council considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association

<https://broadbandbreakfast.com/2021/03/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms>.