April 13, 2020

The Honorable Ed Chau
California State Capitol, Room 5016
Sacramento, CA 95814

Dear Assemblymember Chau:

As scholars who study information technologies or their social and political effects, we write to express our strong opposition to AB 2261. The bill would undermine civil rights, harm public safety, and pave the way for a future where governments are given too much power—power to track people, deny them fundamental opportunities, and deprive them of essential freedoms that are central to a vibrant democratic society.

**Facial recognition poses an unprecedented threat to privacy and civil liberties.**

As two of the authors of this letter have forcefully argued, facial recognition technology represents an unprecedented threat to privacy and civil liberties.1 Ubiquitous, automated facial recognition is well suited for discriminating against people of color, targeting political activists, and supporting militaristic and authoritarian modes of government.2 There is little doubt that adopting an artificial-intelligence supported infrastructure of networked cameras that are connected to databases of known faces will further erode privacy in public and allow for government agents to perform large-scale identification, tracking, and behavioral analysis of populations.3 We believe this automated surveillance apparatus poses such deep threats to society that the harms far outweigh any possible benefits it could provide.

Simply put, the risks of pervasive facial recognition are extraordinary, and AB 2261 fails to protect affected communities from those risks.

**Weak restrictions pave the way for pervasive deployment of facial-recognition infrastructure.**

In our opinion, slight restrictions like those in AB 2261 will fail to stop the ever-creeping sprawl of face-scanning infrastructure. Crucially, the bill’s basic assumptions about consent, notice, and choice as they pertain to facial and other biometric surveillance are faulty. The use of informed consent as a regulatory mechanism for surveillance and data practices has proven to be a widely acknowledged failure.4 Even if, hypothetically, people were given maximum control for providing consent, they still would be overburdened

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when trying to meaningfully exercise it at scale.\textsuperscript{5} Unfortunately, AB 2261 relies on these broken regulatory defaults by permitting private entities to deploy facial recognition technology in public with little more than a posted sign.\textsuperscript{6} Furthermore, AB 2261 grants governments the overly-broad latitude of being able to identify people in public without going through any check-and-balance process whatsoever.\textsuperscript{7} Consequently, under AB 2261, Californians will be forced to assume that they can no longer maintain their anonymity in public, because they might be identified everywhere they go. As a result, their ability to freely live their lives in public—attend religious services, seek medical treatment, join political protests, exercise their freedom of speech and association, and so much more—will be severely compromised.

**Human involvement cannot mitigate the wrongful applications of the technology.**

We are also seriously concerned about AB 2261’s reliance on human review to protect people from the harms of facial recognition. AB 2261 permits a government or company to use biased facial recognition systems to deny people access to jobs, financial services, employment, health care, and even basic necessities. Indeed, the bill only requires that a person with potentially minimal training be kept in the decision-making loop. This is a grave mistake. While human oversight sounds sensible in the abstract, in reality the record on human involvement in the use of facial recognition technology is far from reassuring. In one striking example, officers from the New York Police Department used an image of the actor Woody Harrelson in an attempt to find someone who apparently resembled the actor.\textsuperscript{8} The scholarly literature on how automation impacts human judgment suggests that AB 2261 will be a disaster for vulnerable people because humans are prone to misinterpreting the outputs of automated systems, placing too much trust in them, and deferring to automated suggestions in unexpected and potentially harmful ways.\textsuperscript{9} Research documents how automated decisions about housing, lending, and service provision compounds the burden on poor Americans made responsible to dispute complex technical errors.\textsuperscript{10}

We hope that the legislature will take the threat of facial recognition seriously. Facial recognition technology threatens to translate who we are and everywhere we go into trackable information that can be instantly stored, shared, and analyzed. Since the future of human autonomy depends upon facial recognition technology being restricted before the systems become too entrenched in our lives, we must oppose AB 2261.

Sincerely,

**Dr. Evan Selinger**
Professor, Department of Philosophy
Rochester Institute of Technology

**Dr. Woodrow Hartzog**
Professor of Law and Computer Science, School of Law and Khoury College of Computer Sciences
Northeastern University

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\textsuperscript{6} AB 2261, Draft Section 1798.310(d), as of the date of this letter.

\textsuperscript{7} AB 2261, Draft 1798.360(a), imposing no restrictions on identifying people unless a government entity is engaged in “ongoing surveillance.”


Professor Peter Asaro
Associate Professor and Director of Graduate Media Studies Program, School of Media Studies
The New School

Associate Professor Kelly Gates
Associate Professor, Communication
University of California, San Diego

Professor Lilly Irani
Associate Professor, Communication, Computer Science, Design Lab
University of California, San Diego

Dr. Caren Kaplan
Professor Emerita, American Studies
University of California, Davis

Dr. Brian Goldfarb
Chair and Assoc Prof, Communication
University of California, San Diego

Professor Kavita Philip
Professor, History
University of California, Irvine

Professor Daniela Rosner
Associate Professor, Human Centered Design
University of Washington

Dr. Erin McElroy
Postdoctoral Researcher, Ai Now Institute
New York University

Professor Christina Dunbar-Hester
Associate professor, Communication
University of Southern California

Dr. Paula Chakravartty
Associate Professor, Media Culture and Communication
New York University

Dr. R. Stuart Geiger
Principal Investigator, Berkeley Institute for Data Science
University of California, Berkeley

Professor Angela Xiao Wu
Assistant Professor, Media, Culture, and Communication
New York University

Professor Eric S Roberts
Charles Simonyi Professor of Computer Science, emeritus, Computer Science
Stanford University

Professor Larry Gross
Professor, Annenberg School for Communication and Journalism
University of Southern California

Professor James Hollan
Distinguished Professor, Department of Cognitive Science
University of California, San Diego

Dr. Theodora Dryer
Postdoctoral Researcher, STS History of Technology
AI Now, New York University

Professor Ricardo Dominguez
Professor, Qualcomm Institute/Visual Art
University of California, San Diego

Professor Jonathan Sterne
James McGill Professor of Culture and Technology, Art History and Communication Studies
McGill University

Dr. Juliet Schor
Professor, Sociology
Boston College

Dr. Sasha Costanza-Chock
Associate Professor, Media Studies
Massachusetts Institute of Technology

ShinJoung Yeo
Assistant Professor, Media Studies
Queens College, City University of New York
Ms. Joy Buolamwini  
Graduate Researcher, Media Lab  
Massachusetts Institute of Technology

Professor Christopher Kelty  
Professor, Information Studies  
University of California, Los Angeles

Dr. Anna Lauren Hoffmann  
Assistant Professor, The Information School  
University of Washington

Dr. Luke Stark  
Postdoctoral Researcher, Fairness, Accountability, Transparency, and Ethics Group  
Microsoft Research

Dr. Tamara Kneese  
Assistant Professor, Media Studies  
University of San Francisco

Dr. Carl DiSalvo  
Associate Professor, Interactive Computing  
Georgia Institute of Technology

Dr. Saiba Varma  
Assistant Professor, Anthropology  
University of California, San Diego

Harry & Norman Chandler Professor of Communication Fred Turner  
Professor, Communication  
Stanford University

Dr. Louise Hickman  
Post Doctoral Scholar, Communication  
UC San Diego

Professor Rana A. Sharif  
Lecturer, Communication and Gender Studies  
California State University Northridge

Dr. L. Riek  
Associate Professor, Computer Science and Engineering  
UC San Diego

Ben Green  
PhD Candidate, Applied Mathematics  
Harvard University

Professor Lucy Suchman  
Professor, Anthropology of Science and Technology  
Lancaster University, UK

Professor Andrew Clement  
Professor emeritus, Faculty of Information  
University of Toronto

Professor Morgan G. Ames  
Assistant Adjunct Professor, School of Information  
University of California, Berkeley

cc: Members and Committee Staff, Assembly Privacy and Consumer Protection Committee  
Members and Committee Staff, Assembly Judiciary Committee