



August 6, 2024

California State Senate
Senator Scott Wiener
1021 O Street, Suite 8620
Sacramento, CA 95814

Re: SB 1047 - Safe and Secure Innovation for Frontier Artificial Intelligence Systems Act

Dear Senator Wiener:

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups in California and across the nation to support a policy environment conducive to technology entrepreneurship. Artificial intelligence is used, developed, and deployed by startups, making them key stakeholders in policy conversations regarding AI governance.

While we generally engage in federal policy conversations, due to its potential to negatively impact the broader startup ecosystem, we have followed the development of SB 1047 since its consideration in Senate Committees this spring¹ in the hopes that feedback from local startup ecosystem stakeholders would be incorporated into the legislation. While amendments have been made to improve the bill, we still believe that SB 1047 will be harmful to startups and innovation on balance, and we accordingly write to respectfully encourage your colleagues to oppose this legislation.

SB 1047 will slow down and burden the development of artificial intelligence by creating new regulatory hurdles to model development, discouraging openness, and imputing unreasonable levels of liability upon developers. This is problematic for startups because they are building their own AI models, innovating with open source AI resources,² or utilizing existing models, where startups benefit from competition in model development both from a cost and quality standpoint.³

Previously, you have accurately noted that if in force *today*, the legislation would only apply to “a very small handful of frontier model AI developers that are training the largest, most capital intensive

¹ See, e.g., *Startup News Digest 04/05/24*, Engine (Apr. 5, 2024), <https://www.engine.is/news/startup-news-digest-040524>.

² See, e.g., *Comments of Engine Advocacy regarding Openness in AI Request for Comment*, Engine (Mar. 27, 2024), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/66048124bfb864932c664bd/1711571237337/NTIA+AI+openness+March+27,+2024.pdf>.

³ See, e.g., Min Jun Jung and Nathan Lindfors, *Startups and AI policy: how to mitigate risks, seize opportunities, and promote innovation*, Engine (Sept. 8, 2023), <https://engineadvocacyfoundation.medium.com/startups-and-ai-policy-how-to-mitigate-risks-seize-opportunities-and-promote-innovation-ab3e66cea78f>.

models.”⁴ That view is problematic because it disregards the broader (dis)incentives and potential regulatory moats created by the legislation. By requiring a safety determination at the outset, before model training, and by attaching liability with steep penalties to this determination (rather than to problematic end uses or users), the legislation sends a clear signal against model development.

It is further unclear how the legislation would work in practice. Certifying safety before training and therefore before testing a model would be guesswork at best or disingenuous at worst. Given these disincentives and uncertainties, this legislation creates an environment where potential developers (which could, in the near future, include startups) may desire to focus their energies on AI activities outside of model development (harming competition in model development—from which startups benefit) or outside of the State of California (harming California consumers—which includes startups).

These disincentives would especially restrict the availability of (and innovation with) open source AI models and related resources, which promote transparency and safety, and bolster innovation and startup activity. The reason open source AI is so valuable to startups is that it saves them from the expensive parts of model development and enables them to focus on their core innovation via, e.g., fine-tuning, or other “post-training modifications” that might be regulated by the bill.

Amendments to the legislation’s arbitrary compute-based thresholds are an improvement but do not fix the scope of the bill. The view that they insulate impacts on startups are also problematic because they disregard the forward march of technology and subsequent reductions in cost. These thresholds appear chosen based upon what is possible *today*, but models will get better and compute costs will go down over time, thanks to competition and innovation in inputs like GPUs. Moreover, inflation and improvements in compute will not move together. That means regulators empowered to adjust thresholds may decide to chase the possibilities frontier upward (like chips export controls), leading more activities and entities to be impacted by the law over time. Alternatively, policymakers might decide that because more can be done with less, the threshold should be revised downward to expand the number of entities regulated (like the federal income tax over time). Either scenario exposes the legislation’s threshold as arbitrary. A more consistent and timeless approach would be to regulate problematic outputs or high-risk applications, as opposed to the technology itself.

The legislation has a beneficial provision in its conception of a public AI resource, CalCompute. Compute remains a primary cost center and barrier in AI development, and creating government compute resources can have many benefits for startups, to include deeper understanding of cutting edge models, the bolstering of the AI talent pool, and fostering commercializable research. This is an idea that the state should pursue, but not through this bill. Other legislation under consideration, including SB 893 - California Artificial Intelligence Research Hub, offers an alternative to accomplish this goal without the problematic regulatory structure discussed in this letter.

⁴ *Analysis of Safe and Secure Innovation for Frontier Artificial Intelligence Systems Act*, Senate Judiciary Committee (Apr. 2, 2024), https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/sb_1047_wiener_sjud_analysis.pdf.

Finally, if passed, the legislation will mark a significant step in the development of a patchwork of rules governing artificial intelligence. For startups, national standards are more clear, and less difficult to navigate than multiple sets of rules regarding the same topic. We encourage legislators to seek alternative legislation to address AI and encourage innovation, and accordingly encourage legislators to oppose SB 1047.

Sincerely,

Engine

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