



FLOOR ALERT

AB 886 (Wicks) - OPPOSE

The 13 undersigned civil society and industry organizations value free speech and local journalism. However, we respectfully oppose AB 886 (Wicks) deemed the California Journalism Preservation Act (CJPA). The bill would require a link tax on digital services, aimed at subsidizing news publishers who operate online.

Taxing links fundamentally challenges the operation of the internet. Setting aside the bill’s serious legal deficiencies, the CJPA would be the start of a slippery slope, impeding a fundamental function of the open internet: the ability to link. The internet depends on linking, and if one state taxes links to subsidize a favored constituency, it is likely that other states will follow California’s lead, funding subsidies for other favored industries with taxes on relevant links. If financially unsustainable subsidies become the norm, digital services may exit the market, making access to information more difficult.

The CJPA is unconstitutional. The bill violates the First Amendment in at least two independent ways. First, by forcing covered digital services to link to news publishers who demand payment under the guise of prohibiting “retaliation”, the bill unlawfully limits the editorial discretion of those services. Second, the bill runs afoul of the First Amendment principle against compelling the subsidization of another’s speech. In addition, the bill is preempted by federal copyright law. That is, it attempts to intervene in policy choices that the Constitution reserves for Congress, here with regard to intellectual property. As a result, it conflicts with the Constitution’s Supremacy Clause by conflicting with the Copyright Act.

International analogues to the CJPA have not been successful. In jurisdictions abroad, ranging from the European Union to Australia to Canada, policymakers have considered or experimented unsuccessfully with link taxes and internet-funded subsidies for favored domestic news publishers. Instead of being the models for success and the longevity of journalism that some make these efforts out to be, they have proven uniformly unsuccessful. An economic report from Spanish publishers showed that a previous effort in Spain “that was passed in the name of helping news publications, ended up doing tremendous harm to many online publications — especially smaller sites that frequently (and happily) relied on Google News and other aggregators for a significant amount of traffic.”

The CJPA won’t actually help local journalism or journalists. Outside of unenforceable declarations in Section 2, the term “local” does not appear by itself in the bill — always “local, regional, national, or international matters.” Instead of a ceiling, the CJPA imposes a revenue floor of \$100,000, ensuring the smallest publishers are ineligible for subsidies. It further prohibits payments to any new entrants that later enter the market. As a result, most of the “journalism usage fee payments” would go to large and out-of-state or even international publishers, including those increasingly owned by hedge funds or broadcasting conglomerates. While a concentrated journalism industry might be more economically viable for efficiency reasons, a more national media landscape is the polar opposite of the localism that the bill’s proponents aim to boost.