



June 18, 2024

Senator Tom Umberg
California State Senate
Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

Re: AB 886 (Wicks) “California Journalism Preservation Act” – Oppose

Dear Chairman Umberg:

The 17 undersigned writers, civil society, and industry organizations value free speech and recognize the important role of local journalism. However, we write to respectfully oppose AB 886, the California Journalism Preservation Act.

New language in the bill gives covered platforms two options: either pay an unknown annual fee for “accessing the internet websites of the providers” or enter into arbitration with media outlets producing articles to access their content. That means at its core, the bill remains a tax on content being linked to on websites or on search engines. This approach undermines local publications seeking to engage with audiences, foster online communities, and generate ad revenue at a grassroots level.

The bill starts from the false premise that digital services somehow “siphon” revenue away from news sites by linking to them and then sending them traffic.¹ While there is a serious crisis in local journalism, this crisis has many causes, as explained by a 2022 report from the U.S. Copyright Office.² There is little evidence that online services’ linking to news sites is the cause

¹ Press Release, Assemblymember Wicks authors bill to make Big Tech pay usage fees for news siphoned from local outlets (Mar. 20, 2023), <https://a14.asmdc.org/press-releases/20230320-assemblymember-wicks-authors-bill-make-big-tech-pay-usage-fees-news>.

² Copyright Protections for Press Publishers: A Report of the Register of Copyrights (June 2022), <https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>, at 7-16.

of this crisis. On the contrary, news sites depend on this linking. The bill itself recognizes this by prohibiting so-called “retaliation;” the news sites get much of their traffic from search engines and news aggregators.

Further, AB 886 is unconstitutional in numerous ways:

- It interferes with interstate commerce, by imposing a tax on linking to out-of-state content by Californians.
- It violates the First Amendment by forcing websites to link to content against their choice.
- It is in conflict with the Supremacy Clause because it requires payment for the display of headlines, ledes, facts, and other elements of copyrightable works that the Copyright Act provides are freely accessible. For the same reason, AB 886 is expressly preempted by Section 301(a) of the U.S. Copyright Act.

Putting these serious legal and economic problems aside, this bill would start the internet down a slippery slope. The internet depends on linking, and once California starts taxing links, there would be no end to California (and other states) taxing all kinds of links to other industries favored by legislatures.

The bill also would provide little help to local newspapers or reporters in California. Much of the money would still go to large out-of-state publications or out-of-state publications owned by hedge funds or broadcasting conglomerates. Even with the amended language, the emphasis on newsroom size would still favor national publications other than those serving local communities.

In various parts of the world, these kinds of link taxes have passed and created detrimental conditions for both community publications and internet users alike. These past efforts in Germany, Spain, and France as well as ongoing efforts in Canada and Australia have resulted in vast reductions in traffic being driven to news websites.³ During a time when half of U.S. adults get news “at least sometimes” from social media,⁴ it is imperative that publications can reach their current and potential audiences.

Overall, the CIPA undermines the principle of open access to information on the internet, does not take the value of linking directly to publications into account, and stands to repeat similar unsuccessful attempts seen in various parts of the world. While we have concerns about this bill, we stand ready to work with you on truly supporting local journalism and free expression on the internet.

³ Link Tax Failures: Global Efforts Continue to Uproot the Internet’s Foundation and Journalism Ecosystem (May 14, 2024), <https://ccianet.org/library/link-tax-failures-global-efforts-continue-to-uproot-internets-foundation-and-journalism-ecosystem/>.

⁴ Pew Research Center, Social Media and News Fact Sheet (Nov. 15, 2023), <https://www.pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet/>.

Respectfully submitted,

Authors Alliance – Dave Hansen

BuzzMachine – Jeff Jarvis

California Chamber of Commerce – Ronak Daylami

California Taxpayers Association – Peter Blocker

Computer & Communications Industry Association – Khara Boender

Consumer Technology Association – Michael Petricone

Electronic Frontier Foundation – Hayley Tsukayama

James Madison Institute – Edward Longe

Library Futures – Jennie Rose Halperin

LION Publishers – Chris Krewson

NetChoice – Carl Szabo

R Street Institute – Josh Withrow

Re:Create – Brandon Butler

Software & Information Industry Association – Mort Skroejer

Techdirt – Mike Masnick

TechFreedom – Ari Cohn

TechNet – Dylan Hoffman

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