



April 4, 2023

Assemblymember Jesse Gabriel
California State Assembly
Committee on Privacy and Consumer Protection
Legislative Office Building
1020 N Street, Room 162
Sacramento, CA 95814

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

Dear Chairman Gabriel:

The 12 undersigned civil society and industry organizations value free speech and local journalism. However, we write to respectfully oppose AB 886, the California Journalism Preservation Act.

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 report last year from the Copyright Office.² There is little evidence that online services’ linking to news sites is the cause of this crisis. On the contrary, the 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.

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.

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. Most of the money would go to large out-of-state publications, or out-of-state publications owned by hedge funds or broadcasting conglomerates. At the same time, it would provide financial incentives for clickbait rather than quality journalism, and it would require the subsidization of all kinds of potentially problematic publications that could fit under the bill's broad definitions.

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.

Respectfully submitted,

Authors Alliance
California Chamber of Commerce
Computer & Communications Industry Association
James Madison Institute
Library Futures
LION Publishers
NetChoice
R Street Institute
Re:Create
Software & Information Industry Association
TechFreedom
TechNet

Cc: Assemblymember Buffy Wicks