



April 4, 2023

The Honorable Jesse Gabriel, Chair
Assembly Committee on Privacy and Consumer Protection
California State Capitol
Sacramento, CA 95814

Re: OPPOSE - AB 886 (Wicks): California Journalism Preservation Act (CJPA)

Dear Chair Gabriel and Members of the Committee:

Chamber of Progress, a tech industry coalition, respectfully opposes **AB 886, which could have the unintended consequence of threatening the open access to information that our internet ecosystem currently provides.**

Chamber of Progress supports public policies at the federal and state level that seek to build a fairer, more inclusive country in which all Americans benefit from technological leaps.

The CJPA bill is a version of a federal bill that languished in Congress last year after being opposed by a large coalition of civil society, industry, and library association members.

The federal Journalism Competition and Preservation Act (JCPA) would have allowed publishers to collectively negotiate fees for online platforms to link to their work.¹ The CJPA would go even further by bypassing negotiations altogether and mandating a fee structure for online platforms that share links to news content.

In response to the federal legislation, a coalition of civil society organizations, librarians, creators, antitrust experts, and industry groups voiced their

¹ <https://www.congress.gov/bill/117th-congress/senate-bill/673/text>

opposition to fees for links, or “link taxes,” as well as requirements that platforms treat all news outlets equally.²

Senator Alex Padilla raised similar concerns about the federal bill, arguing “the bill’s prohibitions on the ability of platforms to take viewpoints into consideration and its overbroad retaliation provision, coupled with compelled arbitration and the ambiguous definition of access, invite a world where platforms will have to pay for content and subsidize outlets they fundamentally disagree with.”³

Supporters of the legislation attempted to make a last ditch effort to pass the bill in December, but were opposed by a similar coalition that included the ACLU, Association of Research Libraries, Fight for the Future, and Electronic Frontier Foundation.⁴

Requiring platforms to pay a fee for links they display or present threatens the open nature of the internet.

Freely sharing links to information has been a core attribute of the modern day internet, yet this legislation’s mandate for platforms to pay a fee for displaying links threatens to disrupt that. While the bill intends to support journalism, publishers benefit from the traffic to their sites that platforms generate.⁵ Disrupting that relationship will not address the core goals of this bill.

Furthermore, this legislation sets a dangerous precedent of the government mandating the type of online information that platforms must pay for and also incentivizes platforms to not display or present hyperlinks to news sources. We have seen this play out internationally.^{6,7} In Australia, platforms were only allowed to bypass the link tax by simply cutting payment deals with the large news companies directly, completely denying any support for local news organizations, as this bill intends to do.⁸

² https://publicknowledge.org/wp-content/uploads/2022/09/September-2_Letter-to-Senate_JCPA.pdf

³ https://www.youtube.com/watch?v=m5ipzyGNL_A

⁴ <https://publicknowledge.org/policy/group-letter-to-congressional-leadership-against-jcpas-ndaa-inclusion/>

⁵ <https://www.nytimes.com/2023/03/30/business/media/publishers-chatbots-search-engines.html>

⁶ https://ca.news.yahoo.com/head-google-canada-set-return-090000908.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAABbd_R06MovQTcSZYS1oRDC4Xo3bYQIEBj1a0z7uqSQBoilWUdMUrL2-brBSFLf01tHkzJP0oZQtrci_pu-SEkM2jECbZveDfRUEb-uqVg00QZ-XSrMtwv9Wo5K5rW3WoJk0dsN4tMFdls5F-vTs0sdFen9mzAv_miG4bYNUdKr0

⁷ <https://techcrunch.com/2021/01/22/google-threatens-to-close-its-search-engine-in-australia-as-it-lobbies-against-digital-news-code/>

⁸ <https://publicknowledge.org/strange-bedfellows-why-advocates-still-oppose-the-jcpa/>

Charging platforms to link to news violates established copyright law.⁹ As the coalition letter from last September argued:

However, the basic mechanism of the bill appears to create an ancillary copyright, if limited to certain major platforms, an approach recently rejected by the Copyright Office. The bill's basic mechanism expands the rights of content owners beyond their traditional bounds in ways that may prove detrimental to the public interest.

On the issue of charging fees for the display of links, the Electronic Frontier Foundation argued about JCPA, “It’s equally untenable to restrict who can link to publicly available pages on the web. That implies a sort of property right in links, an ownership of how information is shared.”¹⁰ Other critics have argued that link taxes like the one proposed by the CJPA will be “an end to the open web” that will almost surely lead to “less” news content online.¹¹

To further illustrate the impact that impeding access to news could create, a 2019 Pew study indicated that nearly as many Americans prefer to get their local news online as those who watch the news on television.¹² Further, the study found that 15% of Americans use social media sites as a way to learn about local news issues. Post-pandemic, we can only imagine the importance that covered platforms play in helping users connect to the happenings in their community.

This legislation would effectively force companies to pay all news outlets, including right wing sites, that perpetuate harmful misinformation.

Legislation like the JCPA and CJPA are intended to help small local news organizations — however, numerous conservative media outlets like the Daily Caller and Newsmax would benefit. In fact, our analysis of a link tax like the one proposed by the CJPA found that conservative news outlets would earn seven times as much as local news.¹³

Knowing the bill will fill their pockets and expand their reach, over 60+ right wing outlets supported the JCPA, a bill with a similar framework as the bill before

⁹ <http://blog.archive.org/2021/12/15/link-taxes-a-bad-idea-for-journalism-and-the-open-internet/>

¹⁰ <https://www.eff.org/deeplinks/2022/06/journalism-competition-and-preservation-act-will-produce-neither-competition-nor>

¹¹ <https://www.techdirt.com/2023/03/21/why-link-taxes-like-canadas-c-18-represent-an-end-to-an-open-web/>

¹² <https://www.pewresearch.org/journalism/2019/03/26/nearly-as-many-americans-prefer-to-get-their-local-news-online-as-prefer-the-tv-set/>

¹³ <https://medium.com/chamber-of-progress/the-jcpa-could-deliver-conservative-news-outlets-seven-times-as-much-revenue-as-local-newspapers-23836322ab19>

this committee.¹⁴ **This legislation would effectively force companies to pay all news outlets, including the well funded ones. More importantly, many of these companies are not even based in California.**

The CJPA also undercuts platforms' efforts to moderate dangerous content. Under the CJPA, the threat of hateful and potentially violent speech spreading across platforms is clear and present, with the bill's ban on platforms refusing to "index content or chang[e] the ranking, identification, modification, branding, or placement of the content" of any eligible digital journalism provider on the covered platform.¹⁵

This "non-retaliation" provision essentially guarantees that platforms must carry the content spread by all eligible publishers, including the content of those publishers who have historically spread misinformation or disinformation.¹⁶

The CJPA would also force platforms to host and pay for, and incentivize publication of, clickbait and low-quality news. **Outlets that stand to gain the most under the bill would be those that churn out a high volume of attention-grabbing articles whose links would be shared widely, like content farms and tabloids.** By rewarding outlets with the highest volume of links rather than the highest quality reporting, the CJPA could crowd out coverage of local events in favor of clickbait and sensational news.

Additionally, because hyperlinks empower expression and facilitate access to information, they are critical components of modern communication. Hence, any regulation aiming to curb the expressive activity of hyperlinking is **likely to implicate strict scrutiny under the First Amendment.**

Journalism in this country – particularly local journalism – faces real pressures that must be addressed, but **the solution should not undermine the integrity of the very institution this legislation claims to help.** Alternative solutions, like tax credits for subscriptions to local media or for outlets who hire local journalists, could better support small, local news organizations without rewarding peddlers of clickbait and misinformation.¹⁷

¹⁴ <https://www.newsmediaalliance.org/digital-programs-and-advocacy/jcpa-supporters/#ConservPubs>

¹⁵ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB886

¹⁶ <https://www.npr.org/2021/04/30/992534968/newsmax-issues-retraction-and-apology-to-dominion-employee-over-election-stories>

¹⁷ <https://www.freepress.net/blog/how-congress-can-truly-help-local-journalism>

For these reasons, we oppose this legislation and would like to work with the author on alternative approaches that directly support local news.

Respectfully,

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Chamber of Progress