

April 17, 2023

The Honorable Buffy Wicks
1021 O Street, Suite 4240
Sacramento, California 95814

Re: AB 886 – as amended 4/23/2023
OPPOSE

Dear Assemblymember Wicks:

ACLU California Action regrets that we must respectfully oppose your AB 886. While we laud the bill's intended goal of providing financial support to journalists, the means for doing so proposed in AB 886 run afoul of the constitution, risk decreasing access to news, and incentivize the proliferation of clickbait and misinformation while also likely not benefiting the very journalists the bill intends to help.

AB 886's link tax would harm everyday Americans, who depend on the internet for information. Turning links into a revenue stream would be a dramatic departure from current law, which allows for protecting the commercialization of expression but not of underlying facts. This undermines the bedrock of the internet: that you can link to information without fear of infringing on copyright or related rights. Furthermore, the U.S. Copyright Office itself rejected the premise of a link tax as envisioned by AB 886 due to First Amendment constitutional concerns.¹

A web address is literally that: the directions that get a user to the page they were looking for—the digital equivalent to a card-catalogue entry in a library. The text snippet that appears with a link helps a user figure out whether that link is the one they are looking for. Attaching a legal right to payment for links risks making it harder for anyone to find information from trusted sources online.

The platforms covered by this law are private parties who cannot be forced to disseminate the speech of the covered publishers, yet AB 886's antiretaliation provisions have the effect of forcing covered platforms to either carry the content of covered news organizations who request it or risk lawsuits alleging retaliation. That mandate is contrary to the First Amendment's guarantee of free speech, including freedom from compelled speech. The Supreme Court has repeatedly stated that the First Amendment protects the right of someone to refuse to carry the speech of others.² Similar legislation was considered, and rejected, by Congress due to these constitutional concerns.

¹ Copyright Protections for Press Publishers, Report at 30–45 (June 2022),

<https://www.copyright.gov/policy/publishersprotections/202206-Publishers-Protections-Study.pdf>.

² Supreme Court of the United States, *Miami Herald Publishing Co., Division of Knight Newspapers, Inc. v. Tornillo*, No. 73-797, (June 25, 1974), https://scholar.google.com/scholar_case?case=3261378222094247847; *Hurley et al. v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., et al.*, No. 94-749, (June 19, 1995), https://scholar.google.com/scholar_case?case=8332999881059454410; *Pacific Gas & Electric Co. v. Public Utilities Commission of California et al.*, No. 84-1044, (February 25, 1986), https://scholar.google.com/scholar_case?case=3637010320786103562.

The retaliation provision will also have the perverse impact of protecting clickbait articles, even articles spreading misinformation that are going viral on social media, from being removed by platforms. So long as the eligible digital journalism provider asserts a right to payment, the platform is discouraged from exerting any meaningful content moderation over the links provided by the eligible digital journalism provider. Given that the legislation's allocation share is premised on the number of times a link is displayed or presented, the driving incentive to increase the usage fee will not be what informs the public, but rather what promotes engagement, sharing of the links, and public outrage.

Further, while well-intentioned to benefit local news outlets, AB 886 would instead likely line the pockets of the existing conglomerates rather than encourage the new, local, independent news organizations we so desperately need. Venture capital firms have snapped up newsrooms for far less than they are worth, downsizing newsrooms, fighting the labor unions that staff them, and selling off the assets of the papers.³ The same firms that took advantage of the state of media will be enriched by AB 886—they are the ones who will collect the payments mandated by this bill. This concern is shared by many working journalists, including the presidents of The NewsGuild-CWA locals and leaders of Guild bargaining units that represent unionized journalists employed by the nation's largest local news conglomerates, who wrote to the U.S. Senate expressing their strong opposition to the federal version of this bill. They expressed no confidence that the JCPA would do anything for their members.⁴

AB 886 violates the First Amendment rights of online platforms, will not resurrect local news, rewards clickbait and misinformation, and threatens to reduce public access to facts. For these reasons, we must respectfully oppose AB 886.

Sincerely,


Carmen-Nicole Cox
Director of Government Affairs


Becca Cramer-Mowder
Legislative Advocate

cc: Members and Committee Staff, Assembly Privacy & Consumer Protection Committee

³ Katie Roof, *Media Consolidation Offers Lessons for Venture Investors*, Wall Street Journal (October 16, 2019), <https://www.wsj.com/articles/media-consolidation-offers-lessons-for-venture-investors-11571234400>; David Folkenflik, *'Vulture' Fund Alden Global, Known for Slashing Newsrooms, Buys Tribune Papers*, NPR (May 21, 2021), <https://www.npr.org/2021/05/21/998730863/vulture-fund-alden-global-known-for-slashing-newsrooms-buys-tribune-papers>

⁴ Newsguild Letter to US Senate Judiciary Committee on JCPA, Newsguild (September 7, 2022), <https://static1.squarespace.com/static/5dc4d9a691d92155f36cba0d/t/63190f587fa5af7b18171b1b/1662586712706/NewsGuild+locals++9-7-22+Senate+JCPA+letter.pdf>.