



Internet Association



June 2, 2016



The Honorable Mark Stone  
Chair, Assembly Judiciary Committee  
State Capitol, Room 5155  
Sacramento, CA 95814

**RE: AB 2880 (Committee on Judiciary) – State Intellectual Property  
OPPOSE**

Dear Chairman Stone,

We regretfully must inform you of our **OPPOSITION** to your **AB 2880**, which would allow state entities to own, license, and formally register intellectual property they create or otherwise acquire. While we appreciate you and your staff's willingness to meet with us, as well as the attempt made to respond to our concerns with the May 31<sup>st</sup> amendments, we must remain opposed for the following reasons:

- **The bill does not clarify existing law: it dramatically changes it.** There are currently very few copyrights in documents and other materials created by California state government entities. The vast majority of state records are therefore free for the public to post online, share with each other, and build upon. This bill would allow government agencies to copyright their documents, for the first time limiting the public's ability to freely share and build upon those records.
- **The bill goes far beyond the problem it is supposed to solve.** Although the incident precipitating the bill involved only trademark rights at Yosemite, the bill extends to both copyrights and trademarks. While trademark law primarily regulates commercial activity, copyright law implicates fundamental First Amendment freedom and the due process right to know the text of the law. Further, the purpose of copyright law is to incentivize the creation of new creative works by ensuring that authors have a limited period of exclusivity in which to profit from them. The State needs no such incentive to create, and the public has already paid for the works in the form of taxes.
- **The bill puts at risk many legitimate and necessary uses of government information available today.** Numerous websites maintain public archives of California legal materials. If government entities can copyright their documents, they could assert that copyright to prevent the publication of this crucial legal material.

- **There is already precedent for this type of abuse of copyright in California.** The city of Inglewood filed a copyright lawsuit against a blogger who posted a video from a city council meeting in the context of a post criticizing the mayor and city council - even though there was no copyright in the video. Even if it had been copyrightable, moreover, the blogger's "core First Amendment speech commenting on political affairs and matters of public concern" was "textbook fair use". Ultimately the court awarded the blogger attorney's fees against the city for its frivolous suit, brought, in the court's words, to "pressure an individual into abandoning protected activity."
- **Making information available under the California Public Records Act is inadequate.** The CPRA expressly states that it does not "limit any copyright protections." If government documents were copyrighted, entities might condition release of documents on citizens' agreement to onerous license conditions, like non-disparagement clauses, NDAs, or steep licensing fees. They might also seek to prevent citizens from sharing materials with each other, on the theory that such further use and sharing of the documents would not be covered by the CPRA. Citizens should not have to beg a state agency for access to government information.

For these reasons and more, we must respectfully **OPPOSE** your **AB 2880**.

Sincerely,

Internet Association  
CalChamber  
California Newspaper Publishers Association

cc: Members, California State Assembly  
Eric Dang, Consultant, Assembly Judiciary Committee  
Paul Dress, Assembly Republican Caucus