

May 23, 2016

RE: Oppose AB 2880

Dear Members of the California State Assembly:

The following organizations strongly oppose Assembly Bill 2880. We oppose the legislation as it enable state and local governments to stifle open government efforts, chill speech, and end free public access to government records.

California law currently guarantees free access to public works with few exceptions. A study by Harvard Law Library found that California has one of the most open access policies for public records in the country due to the presumption of free access from a lack of copyright. Recent court cases have relied on this free access presumption to decide whether the county of Santa Clara could withhold access to government data or whether the city of Inglewood could sue a citizen for utilizing city council video footage. In each instance, the city and state government relied on a theory of copyright and lost as the courts found that they had no copyright authority. AB 2880 will reverse the outcomes of these cases by ending the presumption of free access to state and local created and taxpayer-funded works.

AB 2880 grants, for the first time in our state history, a broad authorization to all state government, local government, and political subdivisions the power to exert copyright restrictions over publications, videos, pamphlets, and other public records that contain copyrightable materials. The legislature has to date never granted such sweeping copyright authority to public entities but rather has provided targeted and limited authorizations in five specific instances.

If AB 2880's broad grant of copyright authority is allowed to become law, state and local government entities will be able to restrict the public's right to copy, distribute, share publicly on the internet, recite in a public forum, make derivative uses of government works, or violate the exclusive right of the government copyright holder. Furthermore, citizens who use copyrighted government works will be subject to litigation and damages if they do not obtain permission from the government unless they have a fair use defense. Those making innovative or critical uses of government data could find themselves threatened with litigation and a real risk of ruinous damages, as copyright law requires no proof of harm or illicit gain.

We ask that the Assembly reject AB 2880's approach and vote no in order to continue California's policy that citizens are entitled to have free and unfettered access to taxpayer funded government records.

Sincerely,

Electronic Frontier Foundation
Creative Commons
Northern California Association of Law Libraries

CalAware
Data Coalition
First Amendment Coalition