

The Honorable Christopher Cabaldon
Chair, Senate Privacy, Digital Technologies, and Consumer Protection
1020 N Street, Room 568
Sacramento, CA 95814

RE: A.B. 412 – OPPOSE (As amended May 28)

Dear Chair Cabaldon:

I write today on behalf of the Electronic Frontier Foundation (EFF), a San Francisco-based, non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 32,000 active donors and members, including thousands of supporters in California. We respectfully write to express our concerns about CA A.B. 412, a bill that would create a new state-level requirement to discern and disclose information about the use of copyrighted works in generative AI (GenAI) systems.

We support thoughtful transparency and accountability in AI. However, in its current form, A.B. 412 imposes a new and effectively impossible regulatory burden. It would cause collateral damage for innovation in this state, and could encourage smaller tech companies or even independent computer researchers and nonprofits to leave the state. Finally, this proposal would do nothing to further the cause it purports to advance—ensuring that creators, especially small ones, are fairly compensated for their work.

A.B. 412 Demands the Impossible

This bill compels software developers to proactively create and maintain a list of copyrighted works that their models were trained on. But this task remains fundamentally unworkable, for multiple reasons. The core problem is a misapprehension of how copyright operates in practice. Copyright Office does not offer a consistent, much less efficient, mechanism to consistently identify copyrighted works or associate them with their owners. Mass automated searching is not possible, and even if it were, a work may be registered after a search has already been conducted. Many works, such as photos, magazines, newspapers and newsletters, may be registered in groups, with little information about individual items included in those groups.

Nor is there a manageable way to determine in advance when to go looking: a single public website may include millions of posts, photographs, comments, or uploads with no reliable copyright information at all. One Flickr image may be registered with the copyright office, while the next is not. A chat forum user could post an original copyrighted story, poem, or photograph with no indication of registration or ownership status. On social media websites, contact information for content creators is often unavailable or unverifiable. A.B. 412 thus makes an impossible regulatory demand: to perpetually cross-reference potentially copyrighted works, just because they *might* (or might *eventually*) be registered with the Copyright Office.

The Bill Would Harm Independent Researchers and Developers

A.B. 412 reaches far beyond commercial AI companies. Its definition of “developer” extends to anyone who “makes the GenAI model available to Californians for use.” We appreciate the latest amendment, which includes a carveout for universities and governments. However, the exemption does not extend to other non-commercial development or open-source experimentation. Thus, its obligations would still apply not just to big tech firms, but independent developers tweaking existing models, and public-private partnerships that often lead to innovative small businesses. This new compliance burden would entrench the larger players who can afford to at least attempt to meet it, to the detriment of California’s innovation ecosystem. We need safe, transparent, and publicly beneficial AI systems—the ripple effects of this bill could sharply *reduce* access to such systems.

Federal Courts Are Already Addressing These Concerns

Federal courts are actively considering how copyright law applies to AI training, and copyright owners face no significant barriers to bringing claims. There are now more than 100 copyright lawsuits against AI companies in the U.S., most of them over training data.¹ These lawsuits have been brought by authors, artists, media companies, and other rights holders.

When there has been a lack of clarity about what training data is copyrighted, that has not been a meaningful barrier to court access. In fact, courts have made assumptions against AI companies in cases like this. Many of these cases raise unresolved questions about fair use and transformative use. Courts may conclude that much of this activity is lawful, just as courts previously found that search engines, thumbnail images, plagiarism detection tools, and other technologies can make transformative use of copyrighted material without permission. Some California federal courts have already come to that conclusion. A.B. 412 nonetheless prematurely treats AI training as infringement.

Finally, because copyright law is governed primarily by federal statute, A.B. 412 raises substantial federal preemption concerns under 17 U.S.C. § 301, which states that subject matter governed by federal copyright is exclusively regulated under federal law.

A.B. 412 Remains A Solution in Search of a Problem

Existing legal frameworks already provide copyright owners with powerful tools to exercise their rights in federal court, including in the context of AI. Multiple pending lawsuits attest to the fact that copyright holders are neither powerless nor unprotected. We appreciate your attention to these concerns and look forward to continued engagement on ensuring AI transparency is pursued in a lawful, workable, and innovation-preserving manner. We welcome further discussion on the proposed language and thank Assemblymember Bauer-Kahan and her staff for their ongoing discussions about the bill.

Sincerely,



Rindala "Rin" Alajaji
Associate Director of State Affairs
Electronic Frontier Foundation

cc: Honorable Members and Committee Staff, Senate Privacy, Digital Technologies, and Consumer Protection; The Honorable Rebecca Bauer-Kahan

¹ Prof. Edward Lee, Santa Clara University, "AI Litigation Tracker," accessed 5/28/2026, available at:

<https://chatgptiseatingtheworld.com/aicopyrightcasetracker/>

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