

DRAFT – NOT FOR DISTRIBUTION

Dear Chairwoman Jackson,

We wish to express our strong concern about A.B. 2880, the state intellectual property bill currently under consideration by the California Senate. While the bill as recently amended purports to explicitly place California government works into the public domain, we believe that the exception for works that state agencies determine to have “commercial value” is too broad, and could be used to indiscriminately withhold large numbers of works that would otherwise be available for public reuse. Under current law, most works of California state employees are in the public domain and free of copyright restrictions, mirroring the situation with U.S. federal government works, neither of which contain any provision for a “commercial value” exception.

Wikimedia projects have long used public-domain and freely-licensed works to support the Wikimedia movement’s educational mission, to create “a world in which every single human being can freely share in the sum of all knowledge.” This includes using textual and visual media as part of encyclopedia articles, and making them available for reuse by others. The passage of A.B. 2880 could have substantive negative effects on this mission, as any new California state government works held back from the public domain could no longer be used to illustrate Wikipedia articles, and would be unavailable for unrestricted reuse by others. Additionally, if the bill is interpreted to retroactively allow copyright claims on previously published works, over 1,100 images currently hosted on Wikimedia projects may be subject to removal. Examples of public-domain California government work currently used to enhance Wikipedia articles include:

- **Portraits of state government officials.** Formal photographs of many state officials are used to illustrate their biographies on Wikipedia, ranging from executive officials and members of the California legislature to county and city officials. Articles potentially affected by this bill include those on Governor Jerry Brown, UC Santa Barbara Chancellor Henry Yang, and San Francisco Mayor Edwin Lee. If these photographs like these were removed from the public domain, they would have to be replaced with informal photographs taken by volunteers in public places.
- **Photographs of transportation infrastructure.** Photographs and maps from Caltrans, the California High-Speed Rail Authority, LACMTA, and others are used to illustrate articles ranging from the San Diego-Coronado Bridge to the Fresno River Viaduct. While some such photographs and maps could be recreated by volunteers, others such as aerial shots or photos taken within construction sites are much harder to recreate, and historical photographs are irreplaceable.
- **Municipal and state agency seals and flags.** The articles of many cities, counties, and state government agencies are illustrated with in image of their flag and/or seal. Due to our own restrictions on fair use of copyrighted works, they may have to be replaced with low-resolution versions, or removed entirely on some language editions that do not allow fair-use images at all, such as Spanish Wikipedia.

Beyond the practical effects of removing works from the public domain, we feel strongly that that works funded by the public should be available for public use, including transformative reuses that contribute to both the economy and cultural discourse. Any exceptions should be narrow and clearly defined. The concept of “commercial value” is so broad that it could be applied arbitrarily to almost any photograph or other work, and it is possible that few or no works will enter the public domain as a result of this legislation. Even the exception for trademark interests could potentially be applied to any document that simply bears a state logo. This contrasts with the current situation where nearly all state government works enter the public domain, with few exceptions. Furthermore, the need to check all California government works against a registry presents an extra burden on our contributors, especially if the registry is difficult to access.

We strongly urge that the “commercial value” and other exceptions be removed from the bill. The Legislature should confirm and strengthen the public domain status of California government works, rather than allowing arbitrary withdrawal of new and potentially existing works from the possibility of public reuse.

Sincerely,

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