



June 1, 2026

The Honorable Christopher Cabaldon
Chair, Senate Privacy, Digital Technologies, and Consumer Protection Committee
State Capitol Office
1021 O Street, Room 7320
Sacramento, CA 95814-4900

Dear Chair Cabaldon, Vice Chair Jones, and Members of the Privacy Committee,

The Business Software Alliance (“BSA”) appreciates the opportunity to share views from the enterprise software sector on Senate Bill 412. We respectfully oppose AB 412 given the unintended consequences that it risks creating for the State of California.

While BSA shares the objectives of improving Artificial Intelligence (“AI”) transparency and trust, we ask the Senate to focus at this time on implementation of California’s existing AI transparency legislation (AB 2013), which became effective on January 1, 2026.

About BSA

BSA is the leading advocate for the global software industry.¹ As pioneers in the development of enterprise AI, BSA members have unique insights into this technology’s tremendous potential to spur digital transformation for both the public and private sectors, as well as the policies that can best support the responsible use of AI.² BSA members have a strong commitment to:

- Mitigating the potential for unintended bias throughout an AI system’s lifecycle;³
- Promoting AI transparency⁴ and AI accountability,⁵ including via AI Impact Assessments;⁶ and
- Supporting both innovation and intellectual property (“IP”),⁷ as well as new protections for artists in the context of generative AI.⁸

As enterprise software publishers, BSA members occupy a unique position as both copyright licensors and copyright licensees; as both IP holders and innovators; and as both AI developers and deployers.

Background

California’s enviable position as the world’s fourth largest economy owes a great deal to both its creative and its technology industries. California – and the United States broadly – are home to the world’s most successful film, music, publishing, software, and other creative industries as well as the world’s most successful high technology and AI development companies.

35 out of the world's top 50 AI companies are based in California. A recent study from the Little Hoover Commission projected that between now and 2030, AI technologies could help grow economic opportunity in California by over \$400 billion. Already today, software (including in AI) supports some 2.2 million jobs for Californians, \$270 billion in GDP, and \$54 billion in R&D activities (representing 41% of all private sector R&D) across the state.⁹ Provided that the state does not unintentionally undermine the favorable conditions for creativity, innovation, and IP that it has long fostered, AI can bring even greater benefits to California in the future.¹⁰

California's leadership position in innovation and IP is a direct product of the US copyright legal system, which includes not only statutory copyright protections and enforcement tools,¹¹ but also statutory "fair use" limitations that allow for teaching, scholarship, research, and the types of non-consumptive computational analyses employed in AI training.¹² In short, the broader US copyright system – including its statutory protections and its statutory limitations – has created a stable legal foundation for California's ecosystem of creativity and ingenuity in the arts, sciences, and technology.

The Senate should approach with particular caution any legislative proposals that would destabilize this ecosystem or fundamentally alter legal relationships among its participants.

BSA submits that AB 412 is not suitable for legislative enactment. BSA strongly supports ongoing collaboration among copyright holders and AI developers to arrive at effective, consensus-based technical mechanisms to reflect copyright holder preferences on AI training. In equal measure, BSA opposes the one-sided and disruptive approach of AB 412, which would alter legal obligations, relationships, and longstanding practices in US copyright law and enforcement. We elaborate below.

Discussion

We respectfully urge the Senate not to advance AB 412. Our concerns are listed below:

1. **Minimize Risks to the Economy, Enterprises, and Citizens of California:** By increasing the legal risks and the costs associated with the creation of diverse and representative data sets, AB 412 will deter AI development in California. At a time when jurisdictions around the world are competing to attract AI investment, the Senate should not ignore the possibility of AI development activities moving to other countries or regions.

Furthermore, AB 412 would make any remaining California-based AI developers less competitive than their counterparts elsewhere, because they alone would be forced to expend limited resources: (a) responding to pre-litigation "transparency demands" from law firms that engage in (often abusive) copyright litigation; and (b) defending against such litigation in court.

By destabilizing settled business expectations and altering the copyright legal framework for AI training, AB 412 creates a high risk of unintended impacts. Among other things, reduced AI development in California will cost AI-related jobs and undermine efforts to create new innovations for the benefit of California artists, patients, workers, and other citizens.

2. **Avoid Redundancy or Conflict with California's Existing AI Transparency Legislation:** BSA is concerned with apparent redundancies and conflicts between AB 412 and California's existing AI transparency law (AB 2013), which took effect on January 1, 2026. The stated goal of AB 412 is to increase transparency around the use of copyrighted materials to train AI models. This is also a stated goal of AB 2013, which requires information to be provided on the datasets used to train AI models, including sources of the datasets. Before AI developers have even had a chance to comply with AB 2013 and before California can evaluate AB 2013's effectiveness at achieving its transparency goals, AB 412 would impose new and conflicting requirements that go beyond AB

2013. We urge the Senate to give AB 2013 time to be fully implemented and tested before taking further legislative action covering the same subject.

3. **Afford the Courts Time to Resolve Open Judicial Matters:** In addition to potential conflicts with AB 2013, there are numerous ongoing court cases – including in California – involving AI transparency issues. The Senate should give those judicial matters time to proceed, thus affording the courts a chance to develop more nuanced, evidence-based common law doctrine on the relationship between copyright and AI training. Recent federal decisions underscore why AB 412 should not short-circuit the courts’ ongoing development of copyright doctrine in this area. In *Bartz v. Anthropic PBC* and *Kadrey v. Meta Platforms, Inc.*, two Northern District of California judges held, on summary judgment, that the non-consumptive and transformative use of material from copyrighted books to train large language models was fair use under Section 107—while also demonstrating that courts remain fully capable of distinguishing lawful AI training from separate conduct, such as the creation or retention of pirated libraries, that may fall outside fair use.

Because AB 412 is grounded in a one-sided view of the legal issues at play in these cases, its premature enactment would preempt the courts’ carefully considered evaluation of matters pending before them. We urge the Senate not to short-circuit judicial processes or rush to pick winners and losers in this way. The courts should be granted the time and space needed to issue final judgments, based on their careful consideration of the law and facts presented, in accordance with the US Copyright Act and the US Constitution.

4. **Allow Copyright Holders and Other Stakeholders Ample Opportunity to Develop New Technical Solutions to Avoid Unwanted AI Training:** The Senate should give appropriate deference to ongoing efforts by copyright holders and AI developers to develop new technological solutions for copyright holders to express their preferences regarding AI training that may involve copyrighted works. At the present time, there are active cross-industry consultations relating to automated tools to indicate a rights-holder does not want a website used for training purposes, similar to the current “do not crawl” tools that apply to search engines. These discussions are occurring in organizations like the IETF (Internet Engineering Task Force), W3C (World Wide Web Consortium), and C2PA (Coalition for Content Provenance and Authenticity). Participants in these and similar discussions include representatives of the creative and technology industries, as well as civil society and academia. Given that a broad cross-section of IPR holders and technology providers are engaged in ongoing discussions to arrive at effective, consensus-based technical mechanisms that promise better outcomes than AB 412 would, we urge the Senate to give these stakeholders time to advance their technical discussions.¹³
5. **Discourage Frivolous Litigation:** AB 412 would invite frivolous litigation. AB 412 does not recognize that computational analysis for statistical and predictive purposes is not a consumptive use of any content for its expressive purpose, and thus likely to be a “fair use” under 17 USC 107. AB 412 does not acknowledge that facts or mathematical concepts are not copyrightable. AB 412 does not allow for consideration of – for example – the nature and objective of AI training; the size or diversity of data sets; their degree of tokenization or transformation; which content may be in the public domain; questions around licensing, scope, ownership, or duration of asserted rights; the provenance of any raw data (e.g., a particular text snippet from an online restaurant review or social media post). AB 412 also contains no safeguards against false or overbroad copyright claims; no protections for First Amendment speech; and no accounting for the impact on federal copyright law. None of these critical legal issues are addressed in AB 412.

Instead, AB 412 would simply legislate new penalties based on the mere existence of material from a copyrighted work – or more precisely – based on non-compliance with heavy documentation demands made without any legal basis. This one-sided approach will burden California’s courts,

diverting resources to frivolous litigation and away from other judicial priorities. AB 412 will also burden California's innovators, scientists, and creators, discouraging the development of AI-related tools that advance artistic, economic, health, safety, security, and other objectives.

6. **Protect Intellectual Property Rights on an Equal Opportunity Basis:** AB 412 appears to be designed to serve the interests of certain law firms or certain well-resourced commercial content licensors. At the same time, features of AB 412 raise concerns regarding the infringement of other IPR holders' rights. For example, AB 412 seeks to have AI developers "make all of the data used to train the developer's GenAI model publicly available at no cost to users of the developer's internet website." This proposal not only raises concerns regarding trade secret protection for proprietary data sets, but it also appears to encourage the public dissemination of data sets regardless of whether they contain any material from anyone else's copyrighted works. In contrast with the (non-public and non-consumptive) computational analysis of tokenized data sets, the broad public dissemination of content envisioned by AB 412 could raise a host of legal concerns. These one-sided features of AB 412 are likely to increase costly litigation and resource diversion in California.
7. **Reduce the Risk of Unintended Bias, Error, or Other Unintended Outcomes:** AB 412 would penalize responsible AI developers that seek to improve AI safety and trust, by discouraging them from building larger, more diverse, and more representative data sets – an AI best practice.¹⁴ AB 412 effectively increases the risk premium associated with such AI best practices by threatening those who adopt them with onerous statutory penalties and increased litigation risk. Regrettably, AB 412 will create perverse incentives for AI developers to train on smaller and less diverse data sets. California has strong public policy interests in protecting against the inadvertent introduction of bias, errors, or other problematic outcomes in AI training. AB 412's one-sided approach pays no heed to those public policy interests.
8. **Constitutional Concerns:** AB 412 establishes a state-based copyright-related framework of statutory, injunctive, and equitable relief against AI developers based on the mere existence of material that may come from a copyrighted work. This is unprecedented. Under the US Constitution and the Copyright Act, the US Congress retains sole authority to impose such conditions on the use of copyrighted works. This legal framework helps safeguard the national uniformity under the Copyright Act and the Constitution's IP Clause.¹⁵ AB 412 raises significant Constitutional concerns that are worthy of careful consideration by the Senate and by the US Congress.

Conclusion

BSA strongly supports the dual goals of promoting transparency and trust in AI. However, we remain concerned that AB 412, as amended, will jeopardize California's leading position in AI development and adoption, with longer term economic and innovation consequences for the State.

AB 412 threatens to create unique disadvantages for California vis-a-vis other US states and foreign jurisdictions that are not burdened by this problematic legislation. The adverse implication of AB 412 enactment will be that other states and jurisdictions may be considered to be more legally predictable and stable destinations for AI investment, development, and adoption.

California must avoid the perception that it is becoming hostile to AI investment. Enactment of AB 412 would make that perception – and that reality – more likely. Thank you for allowing us to share these comments. We welcome the opportunity to further engage with you or a member of your staff on these important issues.

Sincerely,

Joseph Whitlock

Senior Director, Policy
Business Software Alliance

- ¹ BSA's members include: Adobe, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cohere, Cohesity, Dassault Systemes, Databricks, Datadog, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., TrendAI, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.
- ² See BSA | The Software Alliance, Artificial Intelligence in Every Sector, available at <https://www.bsa.org/files/policy-filings/06132022bsaaieverysector.pdf>.
- ³ See BSA | The Software Alliance, Confronting Bias: BSA's Framework to Build Trust in AI, available at <https://www.bsa.org/reports/confronting-bias-bsas-framework-to-build-trust-in-ai>.
- ⁴ Business Software Alliance, Best Practices for Information Sharing Along the General Purpose AI Value Chain, <https://www.bsa.org/policy-filings/best-practices-for-information-sharing-along-the-general-purpose-ai-value-chain>
- ⁵ Business Software Alliance, Enhancing AI Accountability, at <https://www.bsa.org/files/policyfilings/10232024enhancingaiaccountability.pdf>
- ⁶ Business Software Alliance, Impact Assessments: A Key Part of AI Accountability, at <https://www.bsa.org/files/policy-filings/08012023impactassess.pdf>
- ⁷ Business Software Alliance, Comments to US Copyright Office regarding Artificial Intelligence and Copyright, at: <https://www.bsa.org/policy-filings/us-comments-to-us-copyright-office-regarding-artificial-intelligence-and-copyright>; Business Software Alliance, Artificial Intelligence and Copyright Policy, at: <https://www.bsa.org/policy-filings/usartificial-intelligence-and-copyright-policy>
- ⁸ Business Software Alliance, Artificial Intelligence and Digital Replicas, (2024), at: <https://www.bsa.org/files/policy-filings/06122024aidigireplication.pdf>
- ⁹ Software.org, California State Software Jobs and Economic Contributions Report (2021), at: <https://software.org/wp-content/uploads/CA-2021SoftwareJobs.pdf>
- ¹⁰ In the coming years, AI is expected to increase North American GDP by 14.55% to \$10.7 trillion. It is also expected create 97 million new jobs, particularly in the United States. <https://www.pwc.com/gx/en/issues/artificialintelligence/publications/artificial-intelligence-study.html> See also <https://www.mckinsey.com/featuredinsights/artificial-intelligence/notes-from-the-AI-frontier-modeling-the-impact-of-ai-on-the-world-economy#/>; See also <https://www.forbes.com/councils/forbestechcouncil/2024/03/12/the-future-of-work-embracing-ai-job-creationpotential/>
- ¹¹ See e.g., 17 USC 106, 17 USC 512, 17 USC 1201 *et seq.*
- ¹² See e.g., 17 USC 107, Business Software Alliance, BSA Comments to USPTO on AI & Copyright Licensing and Fair Use, at: <https://www.bsa.org/policy-filings/us-bsa-comments-to-uspto-on-ai-copyright-licensing-and-fair-use>.
- ¹³ We also note that these voluntary discussions are focused broadly on Robots.txt or other content provenance tools that rights holders can use to express a preference against AI training. In other words, respect for such preferences will help avoid unnecessary litigation. This is a very different context from the “fingerprinting” technologies proposed in AB 412. Under AB 412, these “fingerprinting” technologies could be misused as a basis to bring frivolous or unsupported litigation – producing the opposite of the intended result of respecting rights holder preferences while minimizing the risk of litigation.
- ¹⁴ See e.g., National Institutes of Standards and Technology, Artificial Intelligence Risk Management Framework (RMF 1.0), NIST AI 100-1 (Jan. 2023), at: <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>. The NIST AI RMF explains, for example, that “[c]omputational and statistical biases can be present in AI datasets and algorithmic processes, and often stem from systematic errors due to non-representative samples.”
- ¹⁵ As the District of Maryland held a few years ago, “Congress passed the Copyright Act to serve public goals by protecting private rights,” which is accomplished through “a nationally uniform system for the creation and protecting of rights.” *Association of American Publishers v. Frosh*, 586 F.Supp.3d 379, 388–89 (D. Md. 2022). State laws that disrupt that uniformity, “stand[] as an obstacle to the accomplishment of the purposes and objectives of the Copyright Act” and are therefore subject to conflict preemption. *Id.* at 389. This is why courts struck down a recent state law that forced copyright owners to license e-books to state libraries on “fair” terms: such laws intrude on Congress’s choices in balancing “the artist’s right to control the work during the term of the copyright protection and the public’s need for access to creative works.” Letter from Shira Perlmutter, Register of Copyrights, to Sen. Thom Tillis, (Aug. 30, 2021), <https://copyright.gov/laws/hearings/2021-08-30-Response-to-Senator-Tillis-on-eBookLicensing.pdf> (quoting *Sewart v. Abend*, 495 U.S. 207, 228 (1990)).