June 16, 2026

The Honorable Thomas Umberg
Chair, Senate Judiciary Committee
1021 O St, Suite 3240
Sacramento, CA 95814

Dear Chair Umberg:

The Business Software Alliance (BSA) appreciates the opportunity to provide further views on AB 412.[1] We respectfully submit that the recent amendments do not resolve the concerns BSA raised in its June 1, 2026 letter. Although the amendments revise the bill's request-and-response mechanism and alter certain other terms, they leave intact the bill's fundamental flaw: AB 412 would impose massive statutory liability on AI developers, deployers, or integrators for failing to comply with information demands that are often impossible to satisfy and that do not correspond to any accepted theory of copyright infringement. In short, AB412 appears to be a special purpose legislative vehicle designed to create liability for conduct that both federal law and courts in California have found legally permissible.

First, AB 412 (as amended) appears to undermine federal law. The amended provisions would require developers to respond within 30 days to rights-owner requests seeking determinations about whether covered materials are present in training datasets or related records. The bill would then impose $1,000 per violation, per day, plus attorneys' fees and other relief, if the requester is not provided the required information. That structure creates an extraordinary litigation lever. A requester could trigger escalating penalties even where no court has determined that the relevant use falls outside fair use – i.e., where there is no underlying predicate legal claim.

In this regard, AB 412 conflicts with the federal copyright framework Congress established in 17 U.S.C. § 107. Congress did not merely create exclusive rights for copyright owners; it also created statutory protections for fair use. Federal courts in the Northern District of California have recently applied Section 107 in the AI training context. In *Bartz v. Anthropic PBC* and *Kadrey v. Meta Platforms, Inc.*, federal judges held on summary judgment that the computational analysis of material from copyrighted works was a statutorily protected fair use.

AB 412 would disregard that legal balance. It would penalize developers based on the alleged failure to answer questions about the presence of information that federal courts have recognized to be non-actionable under Section 107 as part of a transformative, computational analytical process. California should not create state-law liability that burdens or chills uses Congress has protected as non-infringing.

More fundamentally, AB 412 raises federal preemption concerns. The Copyright Act establishes a nationally uniform system governing rights, limitations, defenses, and remedies for copyrighted works. A state-based legal regime that creates copyright-related statutory damages, injunctive relief, and fee-shifting based on alleged use of copyrighted material in AI training risks conflict with both express preemption under 17 U.S.C. § 301 and conflict preemption under the Supremacy Clause. The preemption concerns are not allayed by simply calling this regime a "transparency" mechanism while using it to regulate and penalize conduct governed by federal copyright law.

Second, AB412 (as amended) appears to undermine California law. For example, California recently enacted AB 2013 to address AI training-data transparency through higher-level disclosures that seek to balance transparency and confidentiality. That law took effect only on January 1, 2026. Before California has even had a meaningful opportunity to test or take action on AB 2013's implementation, AB 412 would impose a far more intrusive, work-by-work disclosure regime that is untethered to any judicially accepted theory of copyright infringement and that would pose serious implementation risks and challenges.

Similarly, under the California Uniform Trade Secrets Act, undisclosed information that would reveal how a model is trained, curated, and compiled may be protected as part of a "compilation" that derives independent economic value from "not being generally known" to the public or to other persons who can obtain economic value from its "disclosure or use." AB 412 pulls in the opposite direction by seeking to force the disclosure of sensitive dataset and training information and by creating safe harbors when entire datasets of confidential information are revealed. That structure creates a perverse result: one part of California law recognizes the value of undisclosed information and protects reasonable efforts to maintain its secrecy, while AB 412 would impose legal liability for failing to disclose such information.

Third, AB 412 (as amended) raises Constitutional concerns. The Constitutional flaws inherent in the amended law will engender litigation and legal uncertainty – without any practical benefits.

For example, the First Amendment bars compelled commercial-speech disclosures unless reasonably related to a substantial government interest and not unduly burdensome. *See Zauderer v. Off. of Disc. Counsel*, 471 U.S. 626, 651 (1985); *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 755 (9th Cir. 2019). The overwhelming consensus is that AB 412 is prohibitively burdensome relative to its stated transparency objective, and less-restrictive alternatives plainly exist.

Likewise, a statutory penalty violates due process when it is "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." *St. Louis I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 64 (1919); *see Aminoil v. U.S. E.P.A., 599 F. Supp. 69, 74–76* (C.D. Cal. 1984). AB 412's $1,000-per-day, per-copyright-owner penalty — applied to a duty that cannot realistically be performed — creates unbounded liability and a chilling effect on California enterprises that use AI.

Finally, California Civil Code § 3531 codifies the maxim that "the law never requires impossibilities," and courts may invoke it to excuse noncompliance in as-applied challenges. *See Nat'l Shooting Sports Found. v. State*, 5 Cal. 5th 428, 433 (2018). Because AB 412's identification requirements cannot be

met in practice, courts may decline to enforce it case by case, leaving the State with a statute that is both contested and ineffective.

Finally, the amendments fail to address administrability concerns that have been repeatedly raised. Under US law, copyright attaches automatically when an original work is fixed in tangible form; registration is not required and ownership is typically unclear. There is no comprehensive, machine-readable registry that allows developers to identify whether a copyright owner is associated with any of the billions of data points in a dataset. Furthermore, computational data analysis is not actually performed on copyrighted works as such, but rather on a dataset that has been transformed and constructed via a complex tokenization, selection, and error correction process. Having rightsholders provide "registration," "preregistration" or "index" numbers (which are almost never found at any stage of this process) does nothing to cure the administrability concerns that have been extensively catalogued by many other organizations.[2]

BSA respectfully urges the Committee not to advance AB 412.

Sincerely,

Joseph Whitlock
Joseph Whitlock
Senior Director, Policy
Business Software Alliance
CC:

The Honorable Roger Niello, Vice Chair, Senate Judiciary Committee
Honorable Members, Senate Judiciary Committee
Allison Meredith, Counsel, Senate Judiciary Committee
Morgan Branch, Consultant, Senate Republican Caucus

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[1] The Business Software Alliance (www.bsa.org) is the global trade association of the enterprise software industry, representing companies that are leaders in artificial intelligence, cybersecurity, cloud computing, quantum, and other breakthrough technologies. We work in over 20 markets in the US, Europe, and Asia, advocating for policies that build trust in technology so that every industry sector and the public can benefit from innovation.

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 e.g.,* BSA Letter (June 1, 2026), at: https://www.bsa.org/policy-filings/us-bsa-letter-california-ab-412; Zeidman Consulting Letter (May 29, 2026), at: https://progresschamber.org/wp-content/uploads/2026/06/CA-Letters-Letter-to-CA-Lawmakers_-Oppose-Market-Based-Solutions-as-an-Alternative-to-Government-Regulations-for-Protecting-IP-from-AI-AB-412-Technology-Policy_Artificial-Intelligence.pdf; CalChamber Coalition Letter (June 1, 2026), at: https://ccianet.org/wp-content/uploads/securepdfs/2026/06/CalChamber-Led-Coalition-Letter-on-CA-AB-412.pdf; Consumer Technology Association Letter (June 1, 2026), at: https://www.cta.tech/media/kyfhdm5e/cta-updated-letter-on-ab-412.pdf; EFF Letter (June 1, 2026), at: https://www.eff.org/document/ab-412-opposition-letter-june-2026; Chamber of Progress Letter (June 1, 2026), at: https://progresschamber.org/resources/letter-to-ca-lawmakers-oppose-burdensome-digital-fingerprinting-regime-for-ai-training-data-ab-412/