



**MOTION PICTURE ASSOCIATION OF AMERICA, INC.**  
1600 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
(202) 293-1966

**MEMORANDUM IN OPPOSITION  
TO HAWAII SENATE BILL 465**

On behalf of the Motion Picture Association of America, Inc. (MPAA), and our member companies, we are respectfully writing to submit our opposition to SB 465, legislation to create a cause of action for constructive invasion of privacy and the taking of a physical impression while a person is engaged in personal or familial activities. MPAA is a trade association representing the leading California-based producers and distributors of theatrical and television motion pictures in the United States.\*

**SB 465 VIOLATES THE FIRST AMENDMENT OF THE U.S.  
CONSTITUTION AND ARTICLE I SECTION 4 OF THE HAWAII  
CONSTITUTION**

SB 465 abridges the right of free speech, as enshrined in the U.S. and Hawaii Constitutions. The U.S. Supreme Court, in the case involving disclosure of the Pentagon Papers related to the Vietnam War, upheld the right of a newspaper to publish information contained in documents that were provided to the newspaper from a source who had stolen the documents. *New York Times Co. v. United States*, 403 U.S. 713 (1971). This legislation implicates the same rights addressed by the Supreme Court in that case.

This bill attempts to protect privacy, but it does so at the cost of abridging the right of free speech. The Supreme Court, in cases since *New York Times*, has stated “illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern.” *Bartnicki et al. v. Vopper, et al.*, 532 U.S. 514, at 534 (2001). In the *Bartnicki* case, the Supreme Court

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\* MPAA member companies are: Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

held that the First Amendment protects speech that discloses the contents of an illegally intercepted communication. Similarly, if someone engages in activity to capture an image, sound recording or other physical impression about someone or something that is of public interest, speech that emanates from that activity is protected by the First Amendment.

MPAA member companies are engaged in producing and distributing content that is of public interest, from news programs and news magazines to sports and entertainment information programming. Subjects of these programs cover a broad range and may include stories about the lives of public persons, from elected and public officials to celebrities, entertainers and famous individuals. And gathering information about such stories may entail monitoring and photographing persons and events. If this bill were to become law, the subject of such a story could file a legal claim for constructive invasion of privacy against a journalist or a news broadcaster who engaged in monitoring another in pursuit of a news story. New operations might selectively investigate matters of public interest, evaluating the risk of a lawsuit. The bill, therefore, would have a chilling effect on free speech and violates the First Amendment. Laws that promote self-censorship because of the fear of legal consequences violate the First Amendment as much as laws that directly ban certain speech. *See Smith v. California*, 361 U.S. 147, 154 (1959).

The bill also makes it actionable to publish an image, sound recording or other physical image “that was taken ... in violation of this section.” This means that if a photo was delivered anonymously to a news organization or a blogger and then published, without any knowledge by the publisher as to how the photo was taken, that publisher would be in violation. In *Bartnicki*, the Supreme Court found that even where the publisher had reason to believe the recording was illegally intercepted, in violation of the wiretapping statute, the publication was protected by the First Amendment.

SB 465 is also vague and ambiguous. For example, the term “personal or familial activity” is not defined and is very subjective. If a public person were walking on a public sidewalk to take his child to school and a tourist snapped a photo and posted it to their social media site or blog that action could be subject to a lawsuit under this bill. Similarly, a famous person having dinner with her family at a restaurant might be able to state a claim under this bill against both the person who took a photo and the news program that broadcast the photo.

**SB 465 WILL IMPEDE EFFORTS TO INVESTIGATE THEFT  
OF MOTION PICTURES, TELEVISION PROGRAMS AND  
SIMILAR WORKS**

We are concerned that, if this bill is enacted, legitimate investigations and law enforcement activities will be jeopardized. MPAA and our member companies conduct investigations in instances of suspected theft of motion pictures and television programs. Under the language of this bill, the time-honored law enforcement practices which are undertaken to protect member company products could be actionable. For example, an MPAA or member company private investigator might possess information about a location where illegal duplicating of DVDs was occurring. The investigator would monitor such a location, potentially taking photographs, sound recordings or other physical impressions of those occupying the premises, and therefore making the investigator, MPAA and any member companies subject to legal action under this bill.

The bill in its current form does not include an exemption for the types of activities that law enforcement personnel or employees of governmental activities typically engage in. Nor does it include an exemption for those who conduct preliminary investigations similar to law enforcement activities. MPAA and member companies undertake piracy investigations at the early stages due to the limited resources available to local law enforcement agencies. MPAA and member companies partner with such law enforcement agencies, once private investigative efforts have produced sufficient information to warrant law enforcement intervention, such as the issuance and execution of a search warrant. Private investigative efforts are necessary to protect member companies' products and local law enforcement agencies have come to rely on the assistance they receive from the MPAA and member companies' investigations. This legislation could subject such private investigative efforts to legal action and therefore, we urge the bill be rejected.

**SB 465 WILL NOT ELIMINATE PAPARAZZI**

Proponents of the legislation assert that aggressive paparazzi are causing harm, and that this legislation will curb that behavior. However, police already have the power to ensure that public streets and sidewalks are open and not blocked to vehicular and pedestrian traffic. And there are ample common law

remedies for invasion of privacy, including obtaining an injunction against conduct that menaces or harasses another. There is no certainty that enactment of this legislation will change the behavior of a few. But this overreaching legislation will negatively affect legitimate and lawful activity that is protected by the U.S. and Hawaii Constitutions.

For these reasons, MPAA and our member companies oppose SB 465 and urge that it be defeated.

*February, 2013*

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 05, 2013 10:23 PM  
**To:** JDLTestimony  
**Cc:** bkulbis@reagan.com  
**Subject:** Submitted testimony for SB465 on Feb 8, 2013 10:00AM

**SB465**

Submitted on: 2/5/2013

Testimony for JDL on Feb 8, 2013 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brett Kulbis	Individual	Oppose	No

Comments: This is ridiculous legislation that is only being submitted to appease an ego maniac like Mr. Tyler. My Tyler has been in the entertainment business for many years and totally understands what comes with that territory.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 07, 2013 2:57 AM  
**To:** JDLTestimony  
**Cc:** sallyraisbeck@hawaii.rr.com  
**Subject:** Submitted testimony for SB465 on Feb 8, 2013 10:00AM

**SB465**

Submitted on: 2/7/2013

Testimony for JDL on Feb 8, 2013 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sarah V Raisbeck (Sally)	Individual	Oppose	No

Comments: Publicity stunt? This measure seems to me more a publicity stunt than anything likely to protect privacy. It applies to any person, (including me), whether or not the intent is commercial, uses the completely vague standard of "offensive to a reasonable person" and is likely to have a chilling effect on legitimate reporters. And it would be very unlikely to pass a court test of the First Amendment. Please trash this trashy bill.

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**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 4:47 PM  
**To:** JDLTestimony  
**Cc:** wrightt003@hawaii.rr.com  
**Subject:** Submitted testimony for SB465 on Feb 8, 2013 10:00AM

**SB465**

Submitted on: 2/6/2013

Testimony for JDL on Feb 8, 2013 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tim Wright	Individual	Oppose	No

Comments: My name is Tim Wright I live on the Big Island of Hawaii. For the pass 20 years I have worked as a free-lance news photographer. My photos have been published in Hawaii and world wide. I have worked for the Associated Press, local Hawaii newspapers and yes the National Enquirer. The public loves to see photos of celebrities in Hawaii. I have photographed over 100 celebrities in Hawaii from Michael Jackson to Vanna White. I oppose this bill. Don't make photography a crime in Hawaii.

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February 6, 2013

Senator Clayton Hee, Chairman  
Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

Dear Chairman Hee:

I am writing to you in support of Senate Bill 465, also known as the Steven Tyler Act. Mr. Tyler initiated and is a proponent and vocal supporter of the bill, and I stand with him in advocating for a civil cause of action for constructive invasion of privacy in Hawaii.

As you know, Hawaii is a beautiful state known worldwide as a peaceful oasis far removed from the nonstop activity on the mainland. This tranquility is being violated by paparazzi who use high tech equipment or engage in high-speed car chases to capture celebrities' most private moments from unprecedented distances and sell those images or recordings for exorbitant sums of money.

Simple activities like cooking on the barbecue with your kids, sunbathing in your own backyard, or driving to a friend's house become elusive luxuries for public figures. Enacting SB465 would provide me and other public figures with a peace of mind that is nearly impossible to find in Hawaii because of the rampant paparazzi and the state's current lack of a constructive invasion of privacy law, such as other states have.

Providing a remedy to the often-egregious acts of the paparazzi is a very notable incentive to purchase property or vacation on the islands. Not only would this help the local economy, but it would also help ensure the safety of the general public, which can be threatened by crowds of cameramen or dangerous high-speed car chases.

For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,



Tommy Lee  
of Mötley Crüe



February 6, 2013

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Hawai'i State Senate  
Committee on Judiciary and Labor  
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Honolulu, HI 96813

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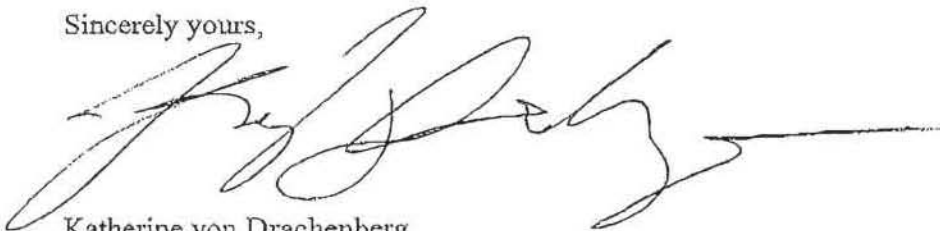
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Sincerely yours,

A handwritten signature in black ink, appearing to read 'Katherine von Drachenberg', with a long horizontal line extending to the right.

Katherine von Drachenberg  
p/k/a "Kat von D"

February 6, 2013

Senator Clayton Hee, Chairman  
Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

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For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,

  
Mick Fleetwood

February 6, 2013

Senator Clayton Hee, Chairman  
Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

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For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,

Margaret Cho





February 6, 2013

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Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

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For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,

Jack Osbourne

# Sharon Osbourne

February 6, 2013

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Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

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Sincerely,



Sharon Osbourne

# OZZY OSBOURNE

February 6, 2013

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Hawai'i State Senate  
Committee on Judiciary and Labor  
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Honolulu, HI 96813

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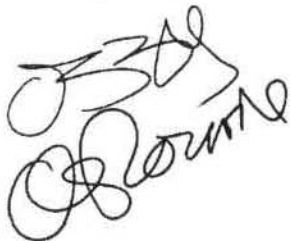
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For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Best regards,



Ozzy Osbourne



# KELLY OSBOURNE

February 6, 2013

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Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

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For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kelly Osbourne". The signature is fluid and cursive, with a long horizontal line extending to the right.

Kelly Osbourne

## hee2 - Kathleen

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 5:13 PM  
**To:** JDLEstimony  
**Cc:** sl@hlmedialaw.com  
**Subject:** Submitted testimony for SB465 on Feb 8, 2013 10:00AM

### **SB465**

Submitted on: 2/6/2013

Testimony for JDL on Feb 8, 2013 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Britney Spears	Individual	Support	No

Comments: Dear Chairman Hee: I am writing to you in support of Senate Bill 465, also known as the Steven Tyler Act. Mr. Tyler initiated and is a proponent and vocal supporter of the bill, and I stand with him in advocating for a civil cause of action for constructive invasion of privacy in Hawaii. As you know, Hawaii is a beautiful state known worldwide as a peaceful oasis far removed from the nonstop activity on the mainland. This tranquility is being violated by paparazzi who use high tech equipment or engage in high-speed car chases to capture celebrities' most private moments from unprecedented distances and sell those images or recordings for exorbitant sums of money. Simple activities like cooking on the barbecue with your kids, sunbathing in your own backyard, or driving to a friend's house become elusive luxuries for public figures. Enacting SB465 would provide me and other public figures with a peace of mind that is nearly impossible to find in Hawaii because of the rampant paparazzi and the state's current lack of a constructive invasion of privacy law, such as other states have. Providing a remedy to the often-egregious acts of the paparazzi is a very notable incentive to purchase property or vacation on the islands. Not only would this help the local economy, but it would also help ensure the safety of the general public, which can be threatened by crowds of cameramen or dangerous high-speed car chases. For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration. Sincerely yours, Britney Spears

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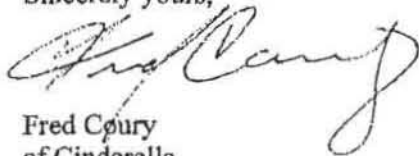
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Sincerely yours,



Fred Coury  
of Cinderella

February 6, 2013

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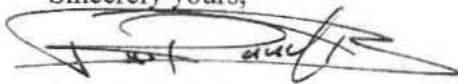
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Sincerely yours,

A handwritten signature in black ink, appearing to read 'Frankie Banali', written over a horizontal line.

Frankie Banali  
Quiet Riot

February 6, 2013

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Hawai'i State Senate  
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For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in black ink, consisting of a stylized 'D' followed by a long, sweeping horizontal line that curves slightly upwards at the end.

Darren "Dizzy" Reed  
of Guns N' Roses

February 6, 2013

Senator Clayton Hee, Chairman  
Hawai'i State Senate  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 407  
Honolulu, HI 96813

Dear Chairman Hee:

I am writing to you in support of Senate Bill 465, also known as the Steven Tyler Act. Mr. Tyler initiated and is a proponent and vocal supporter of the bill, and I stand with him in advocating for a civil cause of action for constructive invasion of privacy in Hawaii.

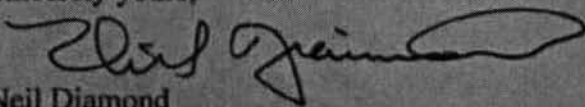
As you know, Hawaii is a beautiful state known worldwide as a peaceful oasis far removed from the nonstop activity on the mainland. This tranquility is being violated by paparazzi who use high tech equipment or engage in high-speed car chases to capture celebrities' most private moments from unprecedented distances and sell those images or recordings for exorbitant sums of money.

Simple activities like cooking on the barbecue with your kids, sunbathing in your own backyard, or driving to a friend's house become elusive luxuries for public figures. Enacting SB465 would provide me and other public figures with a peace of mind that is nearly impossible to find in Hawaii because of the rampant paparazzi and the state's current lack of a constructive invasion of privacy law, such as other states have.

Providing a remedy to the often-egregious acts of the paparazzi is a very notable incentive to purchase property or vacation on the islands. Not only would this help the local economy, but it would also help ensure the safety of the general public, which can be threatened by crowds of cameramen or dangerous high-speed car chases.

For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Neil Diamond", written over a light-colored background.

Neil Diamond

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 5:16 PM  
**To:** JDLTestimony  
**Cc:** Derekslaw@aol.com  
**Subject:** Submitted testimony for SB465 on Feb 8, 2013 10:00AM

**SB465**

Submitted on: 2/6/2013

Testimony for JDL on Feb 8, 2013 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Avril Lavigne	Individual	Support	No

Comments: Dear Chairman Hee: I am writing to you in support of Senate Bill 465, also known as the Steven Tyler Act. Mr. Tyler initiated and is a proponent and vocal supporter of the bill, and I stand with him in advocating for a civil cause of action for constructive invasion of privacy in Hawaii. As you know, Hawaii is a beautiful state known worldwide as a peaceful oasis far removed from the nonstop activity on the mainland. This tranquility is being violated by paparazzi who use high tech equipment or engage in high-speed car chases to capture celebrities' most private moments from unprecedented distances and sell those images or recordings for exorbitant sums of money. Simple activities like cooking on the barbecue with your kids, sunbathing in your own backyard, or driving to a friend's house become elusive luxuries for public figures. Enacting SB465 would provide me and other public figures with a peace of mind that is nearly impossible to find in Hawaii because of the rampant paparazzi and the state's current lack of a constructive invasion of privacy law, such as other states have. Providing a remedy to the often-egregious acts of the paparazzi is a very notable incentive to purchase property or vacation on the islands. Not only would this help the local economy, but it would also help ensure the safety of the general public, which can be threatened by crowds of cameramen or dangerous high-speed car chases. For these reasons, I support Senate Bill 465 and a civil cause of action for constructive invasion of privacy. Thank you for your time and consideration. Sincerely yours, Avril Lavigne

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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