

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-First State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

February 2, 2021

**RE: S.B. 309; RELATING TO PRIVACY.**

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in support of S.B. 309.

Prior to the 2020 Legislative Session, the Department had the good fortune to participate as a member of the Twenty-First Century Task Force (“Task Force”). The Task Force was established through House Concurrent Resolution No. 225 (2019) and was comprised of various members in the private and public sector who committed an extraordinary amount of time and effort in the construction of numerous legislative proposals. S.B. 309 is one such proposal set out by the Task Force, which would add intentional disclosure or threat of disclosure of certain types of deep fake images to the offense of violation of privacy in the first degree (§711-1110.9, H.R.S.).

The Task Force took up the issue of “deep fake” videos and images and unanimously approved an amendment that would address the growing problem. It also acknowledged that technology was improving rapidly, and that social media was making it easier to share such content. The Task Force agreed that the effects of deep fake technology at the personal and societal level can have devastating and have far-reaching negative implications for individuals. The Task Force recommended that the legislature establish criminal violations for those who violate a person's privacy by creating sexually explicit deep fake videos and images that include their likeness without their consent. This amendment to HRS Section 711-1110.9 was addressed in H.B. 2572 (2020) along with a number of other proposals by the Task Force, but unfortunately that bill did not become an act during the Legislative Session. The passage of S.B. 309 would not only align with the Task Force’s recommendations to the Legislature, but in criminal cases, would provide more privacy for Hawaii residents in the future.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 309. Thank you for the opportunity to testify on this matter.



## MOTION PICTURE ASSOCIATION - AMERICA

### Written Testimony of the Motion Picture Association – America In Opposition to Senate Bill 309, Unless Amended

The Motion Picture Association – America (“MPA-A”), on behalf of its member companies, respectfully opposes Senate Bill 309, unless it is amended. MPA-A’s members<sup>1</sup> are the leading producers and distributors of filmed entertainment content across all platforms, including theatrical motion pictures, broadcast, cable and satellite television, and streaming via the internet.

S.B. 309 adds a new subsection (c) to §711-1110.9, which creates a new felony crime for the intentional creation or disclosure of an image of a fictional person that has been altered to make it appear that an actual person is nude or engaging in sexual conduct. This section would make it a felony to create or distribute a “deepfake.” This section of S.B. 309 is overbroad, inconsistent with the free speech clause of the First Amendment and would likely be struck down by a court.

The U.S. Supreme Court has held that only a few categories of speech fall outside the protections of the First Amendment, including obscenity, child pornography, defamation, speech integral to criminal conduct, fighting words, and speech constituting a grave and imminent threat to public safety. In striking down federal law criminalizing falsehoods about receiving military honors, the Supreme Court in *United States v. Alvarez*, the Court flatly **rejected** the notion that “false statements receive no First Amendment protection.” 567 U.S. 709, at 719 (2012).

In addition, S.B. 309 fails to provide appropriate language exempting speech that is protected by the First Amendment, including works of political, public interest, or newsworthy value, and works of parody, satire, commentary, or criticism. *See, e.g., Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) (parody protected by First Amendment). Imagine, for example, a video that depicts former President Trump as a naked “emperor with no clothes.” The producer of such a video could potentially face a felony prosecution under this bill. MPA-A strongly urges the bill be amended to explicitly exclude these categories of protected speech.

As a practical matter, S.B. 309 would unduly interfere with the process of making motion pictures, television shows and programs for internet streaming, and potentially subject filmmakers to criminal prosecution. An actor who was dissatisfied with the final version of a

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<sup>1</sup> MPA-A member companies include: The Walt Disney Studios Motion Pictures; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

movie could assert that the routine editing harmed their business, career, calling, financial condition, reputation or personal relationships. Due to the threat of criminal prosecution, filmmakers would engage in self-censorship and as such this bill could have an unconstitutional chilling effect on speech.<sup>2</sup>

For these reasons, MPA-A respectfully opposes S.B. 309, unless it is amended.

*February 21, 2021*

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<sup>2</sup>The Supreme Court has struck down laws due to their chilling effect on speech. *Renov. ACLU*, 521 U.S. 844 (1997); *Walker v. City of Birmingham*, 388 U.S. 307 (1967)



## SB 309, RELATING TO PRIVACY

FEBRUARY 2, 2021 · SENATE JUDICIARY  
COMMITTEE · CHAIR SEN. KARL RHOADS

**POSITION:** Support.

**RATIONALE:** Imua Alliance **supports SB 309**, relating to privacy, which adds the intentional disclosure or threat of disclosure of certain types of deep fake images or video to the offense of violation of privacy in the first degree.

Imua Alliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention (victim rescue) services to 150 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims and individuals at risk of sexual exploitation. **During the pandemic, demand for victim services to our organization has skyrocketed by 330 percent, driven in part by a fivefold increase in direct crisis calls from potential trafficking victims.**

Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name. Yet, sadly, many of the victims with whom we work are misidentified as so-called "voluntary prostitutes" and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.

Sex trafficking is a profoundly violent crime. At least 23 percent of trafficking victims in Hawai'i report being first exploited before turning 18, according to a recent report, with the average age of trafficked keiki's initial exposure to exploitation being 11. Based on regular outreach and monitoring, we estimate that approximately 150 high-risk sex trafficking establishments operate in Hawai'i. In a recent report conducted by the State Commission on the Status of Women, researchers from Arizona State University found that 1 in every 11 adult males living in our state buys sex online. When visitors are also counted, that number worsens to 1 in every 7 men walking the streets of our island home and a daily online sex buyer market of 18,614 for O'ahu and a total sex buyer population for the island of 74,362, including both tourists and residents.

ASU's findings are grim, but not surprising to local organizations that provide services to survivors of sex trafficking. Imua Alliance, for example, has trained volunteers to perform outreach to victims in high-risk locations, like strip clubs, massage parlors, and hostess bars. More than 80 percent of runaway youth report being approached for sexual exploitation while on the run, over 30 percent of whom are targeted within the first 48 hours of leaving home. With regard to mental health, sex trafficking victims are twice as likely to suffer from PTSD as a soldier in a war zone. Greater than 80 percent of victims report being repeatedly raped and 95 percent report being physically assaulted, numbers that are underreported, according to the United States Department of State and numerous trauma specialists, because of the inability of many victims to recognize sexual violence. As one underage survivor told Imua Alliance prior to being rescued, "I can't be raped. Only good girls can be raped. I'm a bad girl. If I *want* to be raped, I have to *earn* it."

Many of our victims are subjected to so-called "revenge porn," or the nonconsensual disclosure of images and/or videos of themselves engaged in a sex act or in the nude as a means of shaming them into sexual servitude. In 2014, Hawai'i passed Act 116, which criminalizes revenge porn under HRS §711-1110.9, violation of privacy in the first degree. Following the lead of the Cyber Civil Rights Initiative, we believe that revenge porn is tantamount to sexual assault and that efforts to threaten, humiliate, and intimidate people, especially young women, through such means is an abhorrent violation of privacy, and one we are committed to providing greater awareness of and outreach for in the coming year.

Accordingly, we support this bill's application of our state's violation of privacy provisions to so-called "deep fakes," which are digitally altered images of people that are difficult to distinguish from real images and videos, and in which targeted individuals often appear in the nude or in sexually explicit situations. **As technology has accelerated, so has the ability of unscrupulous individuals to use digital imaging software to humiliate others.** Celebrities are the most frequent targets of deep fake activity, but this technology is becoming more widely accessible, placing everyday individuals in danger (to be clear, we firmly believe that participants in the entertainment industry should be strenuously protected from illicit image manipulation).

We also note that this measure has political repercussions. In an age in which misinformation has become a weapon of political campaigns and Right-Wing extremists, we must be concerned about the potential of deep fake technology to impact democratic elections. **It is by no means implausible that deep fake software will be used to generate politically compromising images and videos in the near future, placing our system of free and fair elections at risk of being corrupted** by individuals intent on undermining our democratic heritage in the name of xenophobia—the very same kind of people who attacked the United States Capitol earlier this year.

**Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · [kris@imuaalliance.org](mailto:kris@imuaalliance.org)**



January 30, 2021

Committee on Judiciary  
Sen. Rhodes, Chair  
Sen. Keohokalole, Vice Chair

The Senate  
The Thirtieth-First Legislature  
Regular Session of 2021

RE: SB 309 RELATING TO PRIVACY  
DATE: Tuesday, February, 2, 2021  
TIME: 9:30am  
PLACE: Via Videoconference

Aloha Chair Rhodes, Vice Chair Keohokalole and the Members of the Committees,

Thank you for the opportunity to testify in **support SB 309**.

[SAG-AFTRA](#) represents over 1100 actors, recording artists, and media professionals in our state. We are the professional performers working in front of the camera and behind the microphone.

We work in an industry that has seen tremendous advancement in the technology used to create and disseminate content. This evolution in content creation and distribution has not only led to an exponential growth in production and consumption of content, it has equalized the means of creation, broken down the barriers to entry and allowed for professional looking content created by almost anyone with determination and a smart phone.

However, there is a dark side to all this advancement. This dark side can be summed up by a new word that has entered our lexicon: Deepfakes. The same technology used to create younger versions of actors in movies, or insert actors who are no longer able to perform in movies due to death or unavailability, can now be used to create realistic non-consensual pornographic digital content. New technologies allow content creators to manipulate images to depict individuals as engaging in sexual activity or as performing in the nude without their consent or participation. Specifically, Internet users can use a publicly available artificial intelligence algorithm to transform still images of a person into live action performance by realistically inserting their face onto the body of a porn performer.

A recent Washington Post article, accessed [here](#), describes how “Fake-porn videos are being weaponized to harass and humiliate women: ‘Everybody is a potential target.’” Just as a smart phone has turned all of us into filmmakers with free and easily accessible distribution avenues (TikTok, Facebook, Instagram etc...), the same technology can be used to violate privacy, harass and abuse, turning unwilling people (mostly women) into porn stars.

Mericia Palma Elmore, Executive Director  
SAG-AFTRA Hawaii Local  
[mericia.palmaelmore@sagaftra.org](mailto:mericia.palmaelmore@sagaftra.org)  
Ph: 808-596-0388 • Fax: 808-593-2636  
201 Merchant St Suite 2301 Honolulu, HI 96813

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF  
TELEVISION AND RADIO ARTISTS  
SAGAFTRA.org  
Associated Actors & Artistes of America / AFL-CIO



This proposed legislation amends HRS 711-1110.9 to include nonconsensual, digitally produced sexually explicit material, such as Deepfakes pornography, among the offences that constitute a violation of privacy in the first degree.

This amendment to HRS 711-1110.9 not only fits squarely within Hawaii's revenge porn laws, it also fulfills the constitutional mandate set forth in Section 6 of the Hawaii Constitution, requiring the legislature to take affirmative steps to implement rules that guarantee that the people's right to privacy be recognized and shall not be infringed.

While there may be concern about protecting First Amendment rights, we would like to remind the committee that this union and its members are acutely aware of the need to protect our country's laws guaranteeing the freedom of expression and the press. In fact, when it comes to the First Amendment, our members are at the front lines, risking their health, safety and personal freedom, [see](#) this most recent statement regarding our member journalists and the Black Lives Matter protests. Additionally, content creation - creative expression as protected by First Amendment, is the very backbone of our industry. However, obscenity, harassment and sexual abuse are not rights guaranteed under the First Amendment.

Thank you again for your continued support and please don't hesitate to contact the SAG-AFTRA Hawaii Local office for more information on this issue as it relates to professional performers.

Respectfully,



Mericia Palma Elmore  
Executive Director SAG-AFTRA Hawaii Local

**SB-309**

Submitted on: 1/31/2021 12:25:06 PM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>      | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------|---------------------------|---------------------------|
| Jalem Correia       | Testifying for SAG-AFTRA | Support                   | No                        |

Comments:

Aloha and happy new year,

Thank you so much for addressing this critical issue!

I am in support of SB309 and making the creation and distribution of deepfake pornography a felony.

Deepfake pornography has been made of, and victimized, over 1,000 SAG-AFTRA members and is being used to harass college students and former partners.

The reality is, this can destroy lives and families.

The privacy protection of SB309 is a basic human right to be free from abuse and harassment.

Mahalo nui loa!

Best of health and many blessings,

Jalem Correia



# INTERNATIONAL LONGSHORE & WAREHOUSE UNION

LOCAL OFFICE • 451 ATKINSON DRIVE • HONOLULU, HAWAII 96814 • PHONE 949-4161

HAWAII DIVISION: 100 West Lanikaula Street, Hilo, Hawaii 96720 • OAHU DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814  
MAUI COUNTY DIVISION: 896 Lower Main Street, Wailuku, Hawaii 96793 • KAUAI DIVISION: 4154 Hardy Street, Lihue, Hawaii 96766  
HAWAII LONGSHORE DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814

## LOCAL 142

The Thirty-First Legislature  
Regular Session of 2021

### THE SENATE

Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

State Capitol, Videoconference

Tuesday, February 2, 2021; 9:30 a.m.

### STATEMENT OF THE ILWU LOCAL 142 ON S.B. 309 RELATING TO PRIVACY

The ILWU Local 142 **supports** S.B. 309, which adds the intentional disclosure or threat of disclosure of certain types of deep fake images or video to the offense of violation of privacy in the first degree.

The ILWU Local 142 stands in solidarity with SAG-AFTRA and their many members who have been harmed and humiliated by the use of Deepfakes and are concerned about their well-being if the law doesn't change.

We strongly recommend passage of S.B. 309 to protect people from the harm of Deepfakes. Thank you for the opportunity to testify.



**SB-309**

Submitted on: 1/31/2021 1:42:08 PM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| FAITH FAY           | Individual          | Support                   | No                        |

Comments:

Aloha Senate Judiciary Committee,

As a SAG-AFTRA Actress that mentors' kids, guest speaks to junior high and high school age students, and volunteers for several non-profits in my community I make my choices extremely carefully. I have turned down roles/projects that depict myself or women in a negative or objectified sexual way. We must act aggressively to avoid a downfall of many in our community who stand in a positive light who in turn encourage others. Giving individuals digital rights to their persona in motion pictures, video games, pornographic videos and other media is vital to avoid exploitation or likeness being used in inappropriate content.

As a University of Hawaii Alumni and resident of Hawaii I pride myself on making positive choices to share my art, encourage, and inspire others in my community and beyond. I ask that my senators, representatives, state, and community stand strong beside me and protect me so that I and others may continue to be a positive beacon. Deepfake pornography has been made of over 1,000 SAG-AFTRA Actors and is being used to harass individual. SB 309 supports protection, which is a basic human right to be free from abuse and harassment.

“Consider the hypocrisy: If someone puts the character Wonder Woman (portrayed by Actress Gal Gadot) in a movie without consent, Warner Bros. would send a cease-and-desist letter or ask a judge for a preliminary injunction. But if someone superimposes Actress Gal Gadot’s face into a sex scene, these corporations argue that this legislation should provide no remedy for it, all in the name of “free speech.””

Thank you for your time and hard work, Faith Fay

**SB-309**

Submitted on: 1/31/2021 2:29:24 PM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Leanne Teves        | Individual          | Support                   | No                        |

Comments:

Aloha Senate Judiciary Chair Karl Rhoads and the members of the Judiciary committee.

Mahalo for supporting SB 309 RELATING TO PRIVACY.

I am writing in support of this bill, in making the creation and distribution of deep-fake pornography a felony. This privacy protection, a human right to be free from abuse and harassment, will prevent further victimization of fellow SAG-AFTRA members. Thank you for your time and support of this bill.

**SB-309**

Submitted on: 2/1/2021 9:10:35 AM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Kelly Rice          | Individual          | Support                   | No                        |

Comments:

Aloha and mahalo for addressing this important issue. I support SB 309 relating to privacy.

Sincerely,

Kelly Rice

**SB-309**

Submitted on: 1/31/2021 2:44:34 PM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Scott Rogers        | Individual          | Support                   | No                        |

Comments:

Mahalo nui loa for taking up SB309 and for hearing our testimony. "Deep Fakes" are an issue that is only going to get much, much worse as technology gets better and better. Please pass SB309 as it will continue the ongoing process of keeping our laws up to date with technology.

Aloha e mahalo,

Scott Rogers

January 31, 2021

Aloha!

First, thank you for giving me the opportunity to voice my support for SB309, making deepfake pornography a felony.

It is already too easy to ruin someone's reputation online without adding the threat of deepfakes. Lives have been shattered by the use of deepfakes and there needs to be punishment for those who would damage other people by the use of it.

Mahalo.

Jean Simon



**LATE**

**SB-309**

Submitted on: 2/1/2021 10:19:01 AM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>      | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------|---------------------------|---------------------------|
| Deborah Glazier     | Testifying for SAG-AFTRA | Support                   | No                        |

Comments:

THANK YOU for addressing this important issue. Privacy protection is a basic human right to be free from abuse and harassment. This issue has victimized fellow SAG-AFTRA members, and could impact you or anyone. Deepfake pornography has been made of over 1,000 SAG-AFTRA members and is being used to harass college students and former partners.

I absolutely support SB 309 and for making the creation and distribution of deepfake pornography a felony!

# IRON WORKERS STABILIZATION FUND

**LATE**

February 3, 2021  
9:30 am

Senate Committee on Judiciary  
Via Videoconference  
State Capitol  
415 South Beretania Street

Re: SB309 - RELATING TO PRIVACY.

Aloha Chair Karl Rhoads, Vice-Chair Jarrett Keohokalole, and members of the Senate Committee on Judiciary:

We **SUPPORT** the intent of SB309. The bill, if enacted, adds that the intentional disclosure or threat of disclosure of certain types of deep fake images or video to the offense of violation of privacy in the first degree.

The House through HCR 225, SD 1 (2019) established the twenty-first century privacy law task force. The findings of this task force provides recommendations for the protection of the privacy of citizens in this digital age. We support the efforts of the task force, and especially the recommendation to protect individuals from the use of their images engaged in sexual conduct against their wishes. Such use of individuals images could threaten their careers and ability to earn a living in the future. Protect the privacy of our workers in this new digital age.

Sincerely,



T. George Paris  
Managing Director

TGP: MP



# INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Affiliated with A.F.L.-C.I.O.

LOCAL UNION NUMBER 625  
94-497 UKEE STREET • WAIPAHU, HAWAII 96797

**LATE**

T.G. Paris  
President Emeritus

February 3, 2021 - 9:30 am

Senate Committee on Judiciary  
Via Videoconference  
State Capitol  
415 South Beretania Street

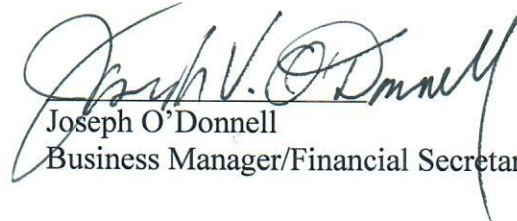
Re: SB309 - RELATING TO PRIVACY.

Dear Chair Rhoads, Vice-Chair Keohokalole, and members of the committee:

We **SUPPORT** the intent of SB309. The bill, if enacted, adds that the intentional disclosure or threat of disclosure of certain types of deep fake images or video to the offense of violation of privacy in the first degree.

As we enter the twenty-first century, we are now facing new privacy issues that can dramatically affect the careers of all in the digital era. We support the efforts of the HCR 225, SD (2019) task force, and especially the recommendation to protect individuals from the use of their images engaged in sexual conduct against their wishes. Such use of individuals images could threaten their careers and ability to earn a living in the future. We support the making the creation and distribution of deepfake pornography as a felony. Please enact this much needed legislation to protect the privacy of our workers in this new digital era.

Sincerely,



Joseph O'Donnell  
Business Manager/Financial Secretary-Treasurer

**LATE**

**SB-309**

Submitted on: 2/1/2021 5:26:32 PM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Geoffrey Hajim      | Individual          | Support                   | No                        |

Comments:

Mahalo for addressing this important issue. I am in support of SB 309. Deep fake pornography is an obvious weapon used in cyberspace and will affect the most vulnerable among us.

We must make the creation and distribution of deepfake pornography a felony.

**LATE**

**SB-309**

Submitted on: 2/2/2021 8:41:27 AM

Testimony for JDC on 2/2/2021 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>                 | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|-------------------------------------|---------------------------|---------------------------|
| AFL-CIO             | Testifying for Hawaii State AFL-CIO | Support                   | No                        |

Comments:

The Thirty-First Legislature, State of Hawai'i

Hawai'i State Senate

Committee on Judiciary

Testimony by

Hawai'i State AFL-CIO

February 2, 2021

S.B. 309 – RELATING TO PRIVACY

The Hawai'i State AFL-CIO is a state federation of 74 affiliate local unions and councils with over 68,000 members across both public and private sectors. We appreciate the opportunity to testify in support of S.B. 309.

This bill is intended to protect victims from a form of sexual abuse: non-consensual deepfake pornographic videos, in which a person's likeness is used to depict sexual acts. With the advent of social media, deterrence is needed to protect individual rights. This is not about consensual use of deepfake technology in which performers, celebrity or otherwise, consent and are properly paid for use of their likeness in digital sex scenes. This is to protect victims from the trauma of this type of sexual abuse.

We appreciate your consideration of our testimony.

Respectfully submitted,

Randy Perreira

President