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August 30, 2026

The Honorable Gavin Newsom
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: SUPPORT FOR AB 1705 (BAUER-KAHAN AND DIXON)

Dear Governor Newsom:

The Children's Advocacy Institute at the University of San Diego School of Law (CAI), which has sought to advance the well-being of California's children through legal education, advocacy, and litigation for over 30 years, is pleased to support AB 1705 (Bauer-Kahan and Dixon) and respectfully asks that you sign it.

The Urgent Need for AB 1705: A 40 Year-Old Victim of Child Pornography.

Among the many harms being caused by the artificial intelligence (AI) gold rush, where AI companies funded with billions are building and making freely available AI products without baseline safeguards, is the explosion in so-called "deepfake" pornography. This is where someone uses so-called Generative AI to place a nonconsenting person's face over the face of someone depicted in video or photographic pornography, where AI can shape the face into realistic expressions.

Consider the North Carolina criminal case involving former child psychologist David Tatum.[1] Tatum used old photographs of classmates who were under 18 when the pictures were taken and, using AI, infused those faces into child pornography.

As one victim testified in her victim's impact statement during Tatum's sentencing, "It's a very strange and unsettling realization that, as an adult woman in her 40s, I became a victim of child pornography." As the FBI explains:

> One woman, now in her 40s, said the image of her that Tatum altered and sexualized was from a photograph taken more than two decades ago. She and others were smiling and waiting for the bus on the first day of school when she

[1] https://www.fbi.gov/news/stories/charlotte-child-sexual-abuse-material-case-shows-unsettling-reach-of-ai-generated-imagery

> was 15. "David Tatum took that cherished memory and turned it into a new memory—one that elicits nausea, fear, and overwhelming discomfort and distrust within me," she said. …
>
> Still another victim said she had just turned 13 and was going into her final year in middle school when the picture of her was taken that Tatum later manipulated into something sexually explicit.
>
> "The saddest part," she added, "is that I don't even know this man, have never met him before in my life, but he has impacted it so much and in such a negative way."

This is not an isolated incident but a rapidly growing trend. As the Assembly Privacy and Consumer Protection Committee's analysis of last year's AB 392,[2] a bill with nearly identical objectives to this bill, explained (p.7):

> In 2018, fewer than 2,000 deepfake pornography videos had been uploaded to the best-known deepfake streaming site; by 2022, that number had grown to over 13,000 with 16 million views every month. By 2023, researchers had determined that in the previous seven years at least 244,625 deepfake image-based sexual abuse videos had been uploaded to the top 35 websites that had been set up to either exclusively or at least partially host deepfake pornography videos. In addition, over the first nine months of 2023, 113,000 videos were uploaded to these websites.

Indeed, not only do the major Internet pornography providers not devote sufficient resources to verify that they are displaying only consensual conduct, but some instead actually showcase deepfake pornography. Again, as the Assembly Privacy and Consumer Protection Committee analysis of last year's bill explains (p.5):

> This is an exploding genre of image-based sexual abuse where sexually explicit videos and images are forged using Artificial Intelligence and are often indistinguishable from genuine images…The AdultDeepFakes.com website advertises the "Best Celebrity DeepFake Porn Videos."

The analysis (p.8) also documents how this can be life-shattering for women. It is worth quoting that analysis at length:

> Regardless of the form the image-based sexual abuse takes, the weaponizing of these images and videos can destroy the lives of women and girls.

[2] The Assembly and Privacy Consumer Protection Committee Analysis can be found at the following link: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202520260AB392

> Maintaining a "good" online identity has become essential in contemporary society. Applying for college or a job, online dating, even ordering an Uber or food delivery depend on a person's ability to create a good online identity. Beyond the damage to their future, women and girls often face deep emotional and psychological harm. Thirty years after the theft of her intimate video with her husband, Pamela Anderson, a rape survivor, equates the theft and release of the tape to being raped again. Other women who have experienced image-based sexual abuse, whether deepfakes or otherwise, also compare the experience to being sexually assaulted. Women have reported feeling so much shame about their body because of deepfake images that they couldn't look in a mirror. One woman reported that she could not shower for days after she discovered deepfaked images of her online because she felt "so gross" and "didn't want to see her body."

<u>What AB 1705 Does</u>.

Codifies best practices.

AB 1705 codifies common sense best practices publicly embraced by Pornhub, the seventh most popular website in the world with billions of visits monthly. After a scathing investigative report detailing how the site was "infested with rape videos … monetizes child rapes, revenge pornography, spy cam videos of women showering, racist and misogynist content, and footage of women being asphyxiated in plastic bags" and interviewing women whose lives had been shattered as a result[3], the company – reacting to Visa and Mastercard threats to cut it off from using their credit cards -- admitted it had profited from sex trafficking and vowed reforms.[4]

There were two key Pornhub reforms: (i) ensuring those depicted in its offerings consented both to the sexual acts and having those acts uploaded to Pornhub and (ii) documenting age.

As to the former, according to Pornhub, "users now need to be verified in order to upload videos making it easier for users to be held accountable for the content they upload." And, "verified users must maintain proof of identification, age, and consent for all performers in uploaded content."[5]

AB 1705 requires the same things, but also sets useful baselines on how these steps should be taken. Pursuant to the bill, users are required, before uploading content to a pornographic

[3] Nicholas Kristof. "The Children of Pornhub" New York Times (Dec. 4, 2020) https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html
[4] Erin Nolan. "Pornhub's Parent Company Admits to Profiting From Sex Trafficking," New York Times (Dec. 21, 2023) https://www.nytimes.com/2023/12/21/nyregion/pornhub-aylo-profits-sextrafficking.html?searchResultPosition=2
[5] Assembly Privacy Committee analysis, p. 10.

site, to submit a statement under penalty of perjury that everyone depicted consents to the material being uploaded, consented to the sexual acts depicted, and was not and is not a minor.

Clarifies applicability of current law.

It wasn't bad PR that alone prompted Pornhub to change. Pornhub only acted to reform itself after its financial survival was imperiled by Visa and Mastercard's threat of cutting off the platform. Similarly, the only thing that will motivate the platforms subject to this bill to comply with the law before being sued is if they realistically fear the law will be enforced, to their significant financial detriment. If they don't fear they will have to pay money for violating the law and harming people, they won't comply with the law before being forced by court order to do so.

For these reasons, simply clarifying how current law applies to a problem facilitates the willingness of all attorneys, whether public or private, to take on cases enforcing those laws and so, at the same time, promotes voluntary, self-interested compliance to prevent being sued. Knowing this, AB 1705 clarifies that the duty of "ordinary care" imposed on people and corporations in their daily affairs by Civil Code section 1714(a) applies to ensuring that those depicted in pornographic content are of age and have consented. This is very likely already the case, but clarifying it removes all doubt, promoting fear of enforcement and thereby promoting compliance without litigation.

Sensibly, the bill leverages current law insofar as if a website doesn't ensure compliance with the consent and age verification requirements for uploaded content, then the website is presumed not to be exercising "ordinary care." Which, of course, is true. A company that is violating the law isn't operating in an ordinarily careful way.

Allows survivors who have been personally violated to enforce the law as well as public prosecutors.

People who are harmed by lawbreaking ought not have to rely entirely on the ever-shifting priorities and resources of under-funded, under-resourced government attorneys led by elected officials. They should be able to help themselves especially when, as here, the violation is so deeply personal.

Likewise, as government lawyers should only be prioritizing civil cases that affect many Californians, permitting only government enforcement of a law means that an individual victim's ability to enforce laws personally perversely hinges not on the merits of their individual case but on whether the law is being ambitiously violated as opposed to just a little bit violated, or violated in just their case. Under such a scheme, unless lots of people's rights are violated, your rights can never be vindicated.

To this end, if a pornographic website violates the laws enacted by AB 1705, a prevailing victim of having images or videos of them included in pornography without their consent -- *a form of assault, according to women who have suffered from it* -- can obtain both reimbursement for reasonable attorneys' fees and costs expended and up to $75,000 per violation. Public prosecutors, too, are empowered to enforce the law.

Conclusion.

Please sign AB 1705. A signature in favor of this measure is a signature to protect children from having their childhoods robbed simply by enforcing requirements that every pornographic website should already be doing, as a matter of morality, conscience, and to prevent themselves from participating in child pornography distribution.

Sincerely,



Ed Howard
Senior Counsel,
Children's Advocacy Institute