

1. Identification of a Problem:

Over the past year, media attention has brought the problem of nonconsensual distribution of intimate images, commonly referred to as “revenge porn,” to light. A typical situation involving the nonconsensual distribution of intimate images starts with an amorous couple taking intimate images while in a relationship; once the relationship ends, the former boyfriend or girlfriend posts the private images online or distributes them through text message, email, or other means, to family, friends, or even strangers. While the archetype, this is not the only situation in which this nonconsensual distribution has been found to be a problem. Individuals involved in “sexting,” or subject to digital hacking also create the type of situation this project seeks to remedy.

Senator Canella’s bill (SB 255, 2013) spurred the attention this problem was receiving, both in California and across the country, and highlighted the benefit of a legislative fix. SB 255, now a part of Section 647 of the California Penal Code, allows victims to press criminal charges when images of them in a state of undress or engaging in a sexual act are distributed without consent in limited circumstances.¹ However, victims report that their primary concerns are getting these images removed from the public sphere as quickly as possible.² This new criminal law and existing civil law provides no clear remedy for such relief. Even if there were an applicable civil law, many victims would still be hesitant to file suit because doing so under current civil law would result in their name and the images becoming part of the public record, drawing more attention to the situation they are attempting to remove from the public eye.³ Many victims groups and attorneys believe this needs to be remedied to embolden victims to bring forth civil suits on this matter.

2. Background:

a. Evidence of the Problem:

Research completed by University of Maryland Professor Danielle Keats Citron and the End Revenge Porn Project shows that at least 90% of the victims of non-consensual distribution of intimate imagery are women. This research further found that one-in-ten former intimate partners have threatened to expose their ex by sharing intimate images of their ex online; 60% follow through with their threat. Of that 60%, the vast majority do more than just share the intimate images: 59% share their ex’s full name, 26% include her email address, 16% include a home address, and 14% include the victim’s work address.⁴ This non-consensual distribution degrades, emotionally harms and severely embarrasses the victims. It guarantees reputational harm and frequently affects victims’ employment status or prospects. It further creates a substantial safety

¹ Cal. Pen. Code § 647(j)(4) (West, Westlaw through 2013 portion of 2013-2014 Legis. Sess.).

² Mary Anne Franks, “Combating Non-Consensual Pornography: A Working Paper,” 3-9 (Dec. 5, 2013).

³ Overview of Pseudonymous Litigation, Without My Consent,

<http://www.withoutmyconsent.org/attorneys/overview-pseudonymous-litigation> (last visited May 8, 2014.)

⁴ Natalie Webb, *Revenge Porn by the Numbers*, End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-infographic/> (last visited May 8, 2014.); *Lover’s Beware: Scorned Exes May Share Intimate Data and Images Online*, McAfee: An Intel Company, <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx> (last visited Apr. 11, 2014.).

risk for many of the women victims, 49% report they were harassed or stalked by people who saw the revenge porn post containing their personal information.⁵

Despite the increasing frequency of this devastating distribution, the law has not caught up with this problem. Senator Cannella's efforts through SB 255 were a good start, but the resulting criminal law has flaws, which will be later explored in detail. Moreover, there are victims who do not want to approach the situation from a criminal justice standpoint. Yet there is still no clear path to a civil remedy for these victims. Intentional infliction of emotional distress, invasion of privacy, public disclosure of private facts, or other common law tort claims do not clearly fit the form of conduct involved. Nor do they provide for pseudonymous filing that prevents further harm, embarrassment, or risk of harassment or physical attack that comes from identifying information and the intimate images at issue becoming part of the public court record when the victim files the civil suit. Currently, if a victim is willing to file a civil suit despite the risks, they typically must assert multiple claims hoping one will "stick" with that particular court.

b. Existing Law on the Subject and Its Inadequacies:

At first glance it appears as though a multitude of existing California law would apply to the revenge porn archetype. The California Computer Crime law,⁶ the California Invasion of Privacy to Capture Physical Impression Law,⁷ the California Impersonation through Internet or Electronic Means law,⁸ the common law tort of Intentional Infliction of Emotional Distress (IIED),⁹ and the Invasion of Privacy Public Disclosure of Private Facts¹⁰ all seemingly apply. However, further investigation shows that these existing laws do not meet the specifics presented by most revenge porn scenarios when a more than superficial examination is done. This is

⁵ Natalie Webb, *Revenge Porn by the Numbers*, End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-infographic/> (last visited May 8, 2014.).

⁶ Cal. Penal Code § 502(e)(1) (West, Westlaw through 2013 portion of 2013-2014 Legis. Sess.). Enables the victim of a computer hacking to bring a civil action against the violator for compensatory damages, injunctive relief or other equitable relief if the victim suffers damage or loss due to the violation of this code section. This law allows both civil and criminal penalties to be brought against a hacker who takes intimate images from a victim's computer. For more information see: <http://www.withoutmyconsent.org/attorneys/california-computer-crime>.

⁷ Cal. Civ. Code § 1708.8 (West, Westlaw through 2013 portion of 2013-2014 Legis. Sess.). Commonly referred to as the "Anti-Paparazzi Act," this civil law lets any individual bring an action against any person "whom trespasses onto another's property in order to capture an image of the individual engaged in personal activity." For more information see: <http://www.withoutmyconsent.org/attorneys/california-invasion-privacy-capture-physical-impression-aka-anti-paparazzi-act>.

⁸ Cal. Penal Code § 528 (West, Westlaw through 2013 portion of 2013-2014 Legis. Sess.). Applies to situations where the defendant has impersonated the victim by creating fake email accounts, social media accounts, blog posts or online advertisements under the victim's name, held themselves out as the victim, and included intimate images of the victim without their consent. This criminal law allows the victim to bring a civil claim while also pressing criminal charges in particular circumstances. For more information see: <http://www.withoutmyconsent.org/attorneys/impersonation-through-internet-or-electronic-means-0>.

⁹ Common law tort that requires: This tort requires: "(1) outrageous conduct by the defendant; (2) intention to cause or reckless disregard of the probability of causing emotional distress; (3) severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." See *Trerice v. Blue Cross of Cal.*, 257 Cal. Rptr. 338, 340 (Cal. Ct. App. 1989). Must prove the dissemination of the images caused the victim to suffer severe emotional distress. For more information see: <http://www.withoutmyconsent.org/attorneys/intentional-infliction-emotional-distress>.

¹⁰ Common law civil claim that requires: "(1) A public disclosure; (2) That concerns private facts; (3) The disclosure of which would be offensive and objectionable to a reasonable person of ordinary sensibilities; and (4) Where the disclosure is not of legitimate public concern." Has not been successfully applied to a revenge porn scenario at this time, but has been successfully used in aiding the prevention of the release of a sex tape. See *Michaels v. Internet Entertainment Group*, 5 F. Supp. 2d 823 (C.D. Cal. 1998). For more information: <http://www.withoutmyconsent.org/attorneys/invasion-privacy-public-disclosure-private-facts>.

because most of the seemingly applicable laws apply to very narrow circumstances and have very tailored requirements.

For example, the Computer Crime law only applies to scenarios where the intimate images were taken through hacking. Thus, this section of the criminal code would only allow a narrow class of victims to seek civil and criminal relief.¹¹ Similar results are found upon further examination of the California code sections relating to Invasion of Privacy to Capture Physical Impression Law or Impersonation through Internet or Electronic Means.

Copyright law has provided a promising avenue for some victims of non-consensual pornography. If the victim took the image or video of him/herself, s/he is the copyright owner and can in theory take action against unauthorized use.¹² This strategy has proven successful in some situations akin to nonconsensual distribution of intimate images.¹³ However, it like the existing laws listed above will only apply to the narrow circumstances where the victim took the image or video, making it useless to victims who did not take the images or videos themselves.¹⁴

This leaves common law tort actions, such as IIED, as the seeming best fit for victims of non-consensual distribution of intimate images under current law. However, the elements required by IIED, as listed in footnote 8 supra, have presented a barrier that cannot be overcome by the reality of many revenge porn situations. The requirement of severe emotional distress seems to be the primary limiting factor. California Jury Instruction 1604 describes “severe emotional distress” as “suffering anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.”¹⁵ While it appears clear that a victim of something as devastating as non-consensual distribution of intimate images would exhibit some, if not all of these symptoms, severe emotional distress case law has made it very difficult to recover under this standard. In requiring a showing of severe emotional distress, the “court has set a high bar... severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable [person] in a civilized society should be expected to endure it.”¹⁶ As currently defined, this standard has often set such a “high bar” that plaintiffs cannot recover.¹⁷ This is further evidenced by the first California civil case to receive a positive verdict dealing with a slightly atypical revenge porn scenario failed on its IIED claim much to the plaintiff’s attorney’s surprise. This case and the attorney’s efforts will be further expanded upon our “Prior Attempts to Address the Problem” section found below.

Therefore, these existing statutes and common laws would likely assist victims of revenge porn in very tailored circumstances, but they do not address the true behavior at issue in non-consensual distribution of intimate images situations. Furthermore, none of these current laws provide for pseudonymous filing. Groups and attorneys working with victims of non-consensual distribution of intimate images have found this lack of easily available pseudonymous filing to

¹¹ California Computer Crime Law, Without My Consent, <http://www.withoutmyconsent.org/attorneys/california-computer-crime> (last visited May 5, 2014.)

¹² 17 U.S.C. § 501 (West).

¹³ Mary Anne Franks, “Combating Non-Consensual Pornography: A Working Paper,” 6 (Dec. 5, 2013).

¹⁴ Copyright Infringement, Without My Consent, <http://www.withoutmyconsent.org/attorneys/federal-copyright-infringement> (May 10, 2014).

¹⁵ Judicial Council Of California Civil Jury Instruction 1604, Judicial Council Of California Civil Jury Instruction 1604.

¹⁶ *Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009).

¹⁷ *Id.*

present a barrier to victim's attempting to utilize current civil law. Without pseudonymous filing their personal identifying information and the intimate images are made a part of the Court's public record. This has been found to prevent making victims from filing civil suit due to a fear that this will only bring further public attention to the very private matter they are seeking to remove from the public eye. For the reasons explained above, we believe existing California law does not provide a remedy for the problem we were seeking to address.

c. Prior Attempts to Address the Problem:

Senator Cannella's SB 255 (2013) was the first attempt to remedy the "revenge porn" problem in California. It was signed into law during the fall of 2013 and can now be found in Section 647(j)(4) of the California Penal Code. This criminal law finds that "any person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct and subject to that same punishment."¹⁸ Being convicted of this crime results in a misdemeanor charge and up to six months in jail and/or a \$1,000 fine.¹⁹

As originally passed into law, this criminal statute presents serious shortcomings. First, it does not cover distributed intimate images the victim takes of him/herself and then shares with another person, i.e. "selfies." Secondly, the requirement of intent to cause "severe emotional distress" further limits the efficacy of this criminal law. As discussed above, a "severe emotional distress" standard creates an incredibly high barrier, one that many plaintiffs have difficulty meeting in a number of civil law scenarios.²⁰ Fortunately, Senator Cannella and the Cyber Civil Rights Initiative are attempting to address both of these shortcomings in their "Revenge Porn 2.0" bill, SB 1255, this legislative session.²¹ These changes will greatly enhance victims' ability to utilize California criminal law to address their revenge porn nightmare. However, the bill provides no civil remedy for victims of revenge porn and still does not provide a clear process for victims seeking to stop the distribution of these intimate images or get them taken off the Internet.

There have been no prior attempts to address this problem through either creating or amending a civil statute, nor through case law. There have been attempts to use current civil law to address this problem with varying results. Karl Kroneberger was the first attorney to receive a positive civil verdict for a victim of revenge porn. On February 14, 2014 the jury award his client \$250,000 in damages after her intimate images were distributed without consent by her ex-boyfriend's new girlfriend.²² The defendant created a fake Facebook account featuring the intimate images and then sent a "friend request" to the plaintiff's friends, family, and professional colleagues, effectively bringing to their attention the existence of these now published nude photos. Mr. Kroneberger reports that his client was incredibly hesitant to take legal action because she did not want to bring more attention to her situation, since filing a suit would require her name and embarrassing grievance to be public record. In fact, he asserts

¹⁸ Cal. Pen. Code § 647(j)(4) (West, Westlaw through 2013 portion of 2013-2014 Legis. Sess.).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Cal. Pen Code § 647(j)(4) (amended by SB 1255).

²² Julia Love, "San Jose Jury Returns Groundbreaking Revenge Porn Verdict," *The Recorder*, (Feb. 20, 2014).

that he has had many other potential clients decide not to pursue civil action due to a fear of further publicizing the matter.²³

In his initial complaint, Mr. Kroneberger used a "shotgun" approach by bringing eight different civil claims against the defendants because there currently stand no tailored tort available to redress this specific situation. He thus brought forward various claims including IIED, negligence, statutory impersonation, invasion of privacy, and damages hoping something would stick with the jury.²⁴ Mr. Kroneberger got lucky and the jury found on three of the presented claims. He believes that this success is atypical and due to the very particular facts of this case. Mr. Kroneberger believes the jury was particularly impacted by the fact that the ex-boyfriend had left a copy of the CD holding the images in his garage despite promising to destroy the CD or return it to the plaintiff upon their break up. His current girlfriend was able to discover and distribute the images because of the ex-boyfriend's negligence. Mr. Kroneberger believes this helped the jury find for his plaintiff. He was further surprised by the fact that IIED, a claim he believed would be an easy win, was not met in the eyes of the jury.²⁵

We believe that this case shows that victims want civil options to address nonconsensual distribution. Furthermore, the broad approach taken by Mr. Kroneberger highlights victims' need for a specific cause of action to assist in redress. Specifically, victims' need a clear, focused civil remedy that does not further publicize the private matter and that results in the removal of the images from the public sphere, as well as compensatory damages, when appropriate.

3. Alternative Solutions:

There are several alternatives that could be used to address the revenge porn problem. They are likely all politically feasible since none require much money, the topic is current and in the news, and the harm being done is serious and emotional. Every Member of the Public Safety Committee asked to be a coauthor to Senator Cannella's bill last year, and there was almost no opposition, showing the current legislative climate is friendly towards addressing non-consensual distribution of intimate images.²⁶ While it is not a difficult political pill to swallow, no solution is perfect. Part of the problem is that identifying individuals online can be difficult and websites that host revenge porn are generally not friendly to victims.²⁷ However, there are several alternatives that will help. First, criminalizing the act is helpful to deter future offenders. This alternative has been done and is being reworked this year by Senator Cannella. Another option would be to simply adjust the common law torts of intentional infliction of emotional distress or defamation to better fit with the revenge porn situation. Given the flexibility and evolving nature of common law, this may not be an appropriate thing to etch into statute. Finally, a new section of civil code could be created providing an explicit cause of action for non-consensual distribution of intimate images.

4. Preferred Solution:

Our preferred solution is to create a new civil remedy for victims of non-consensual distribution of intimate images, currently embodied in AB 2643 (Wieckowski). The purpose of our preferred

²³ Telephone Interview with Karl Kroneberger, Internet Law Attorney, Kroneberger & Rosenfeld (Feb. 20, 2014).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Interview with Tyler Munzing, Legislative Aid, Senator Cannella's Office (Nov. 5, 2013).

²⁷ Woodrow Hartzog, "How to Fight Revenge Porn," *The Atlantic* (May 10, 2013).

solution is to create a clear, focused civil remedy for victims of non-consensual distribution of intimate images. This bill specifically provides for equitable relief in the form of a temporary restraining order, a preliminary injunction, or permanent injunction ordering the defendant to remove the distributed material. This serves victims' primary goal of getting the images out of the public eye as quickly as possible. AB 2643 also provides victims with the option of pseudonymous filing, preventing victims from the further harm and embarrassment that comes with making their identifying information and the images part of the public court record when the civil suit is filed without a pseudonymous option. This, combined with the provision for attorney's fees, should assist in making a civil course of action a viable remedy for most victims of nonconsensual distribution of intimate images.

a. Stakeholders' Interests:

Support

Women's Organizations seem uniformly against revenge porn, the crime primarily victimizes women and has been tied to domestic violence. We drafted our bill language with insight and advice from the California Partnership to End Domestic Violence (the Partnership), Erica Johnston an attorney and co-founder of Without My Consent, and Professor Mary Anne Franks of the Cyber Civil Rights Initiative.

Currently the California Partnership supports our project stating, "many survivors of domestic violence have experienced this specific abuse tactic" in discussing nonconsensual distribution of intimate images. The Partnership believes that "by providing a private right of action, AB 2643 empowers victims with an option for getting the images out of the public eye as quickly as possible, and allows the victim to obtain relief and justice for these acts."

The Cyber Civil Rights Initiative previously focused on fighting this problem by solely introducing criminal law. Since our conversations with them regarding AB 2643, they have taken an official support position on the bill and are using it as a potential model for introducing civil law along with their criminal law efforts in other states. The Cyber Civil Rights Initiative states "AB 2643 streamlines and clarifies a specific cause of action victims can bring against their perpetrator... Victims often feel they have no recourse when they discover that their intimate images have been distributed without consent. They are not sure what to call what has happened to them; they are afraid that taking legal action will mean even greater exposure; and they are not sure what the benefit of the process would be. This bill helps will all three of these burdens."

The California Legislative Women's Caucus sponsors or at least supports the majority of bills related to domestic violence, sexual assault, and other women's issues. If we adequately promote this bill as protecting victims and as a women's issue than the Women's Caucus might be interested in sponsoring or supporting. Currently, achieving the sponsorship of the California Legislative Women's Caucus is still a work in progress. We plan to continue conversations with the Women's Caucus as the bill moves forward.

At this time Attorney General Kamala Harris, the California Employment Lawyers Association, the California Police Chiefs Association, the Consumer Attorneys of California, the Democratic Activists for Women Now (DAWN), the McGeorge Women's Caucus, the Peace Officers

Research Association of California, Women Escaping a Violent Environment (WEAVE) and Women Lawyers of Sacramento are also in support.

Opposition

The American Civil Liberties Union (ACLU) is the only current formal opposition to this project. The ACLU notified Assembly member Wieckowski's Office and the Assembly Judiciary Committee of their opposition the Thursday before AB 2643 was to be heard in committee. Due to timing we were unable to approach their concerns before the bill was heard in committee. If we were to be able to repeat this process we would have more strongly considered reaching out to the ACLU while drafting the bill's language and perhaps would have been able to prevent their opposition. We should have been more proactive and less unaware of their concerns. Their stance on Senator Cannella's SB 255 made us wary of reaching out to them to early in our process and this was perhaps a mistake.

The ACLU explains their opposition as being linked to two primary concerns. First, they believe AB 2643 is "drafted so broadly that it could prohibit distribution of nude images where there may be no expectation of privacy – a nude beach – and without a showing of any harm." Second, the ACLU believes the bill should define "sexual act" and that by currently leaving it undefined the bill is potentially too broad or too vague.²⁸

AB 2643 was amended in the Assembly Judiciary Committee to provide no liability for images taken in a public place where the victim has no reasonable expectation of privacy. The Assembly Judiciary Committee analysis suggests this should mostly address the ACLU's first concern. The Committee provided a second amendment, which replaced "sexual act" with "sexual intercourse, oral copulation, sodomy, or other act of sexual penetration." The Committee believes this should primarily address the ACLU's second concern.²⁹ At this time there is no requirement for a showing of harm, which is listed within the ACLU's first concern, we hope to continue working with Assembly member Wieckowski's Office to further discuss and address this concern with the ACLU, while not limiting the effectiveness of this bill for victims.

Potentially Interested Groups

We foresaw that the tech industry (namely internet providers and social media companies) would have concerns that they could be held liable for failing to remove videos or pictures that end up being revenge porn. Internet providers and social media companies are already exempt from liability related to these postings under Section 230 of the federal Communications Decency Act, CDA. The 9th Circuit Court of Appeals has found "Section 230 of the CDA immunizes providers of interactive computer services against liability arising from content created by third parties: 'no provider... of an interactive computer services shall be treated as the publisher or speaker of any information provided by another information content provider.'"³⁰ To acknowledge this federal exemption and to ensure the tech industry did not move to oppose or kill AB 2643 the language of our bill contains an express reference to Section 230 of the CDA and its effect. We worked closely with Assembly member Wieckowski's Office and the Assembly Judiciary Committee Consultants to ensure this would be the right choice for our

²⁸ Assembly Committee on the Judiciary, Analysis of AB 2643, 7 (Apr. 17, 2014).

²⁹ *Id.* at 8.

³⁰ *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008).

efforts. At this time there has been no formal or informal opposition to AB 2643 from the tech industry. The specific language relating to this can be viewed below in the “Excerpts of Legal Drafting” section.

5. Excerpts of Legal Drafting

Research on potentially applicable civil remedies in this area lead us to decide that there was no current clear path to a civil justice for victims of nonconsensual distribution of intimate images. There were various potential options as discussed above, but none seemed to fit the unique circumstances victims of this behavior face. We thus wanted to create a private right of action that would clearly apply to this problem. AB 2643 reflects this in the following language:

“(a) A private cause of action lies against a person who intentionally or recklessly distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without his or her consent, if all of the following are met: the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration.”

Our conversations with Without My Consent, the Cyber Civil Rights Initiative, and the California Partnership to End Domestic Violence combined with our research and media related to this matter lead us to identify two key components to combating nonconsensual distribution of intimate images with a civil remedy. These two components are a provision for pseudonymous filing and the explicit inclusion of injunctive relief. Pseudonymous filing is necessary for victims to be able to use this private right of action without fear of further publicity being draw to this incredibly private and embarrassing situation. This is expressly provided for in subsection (f) and explicitly provides:

“[a] plaintiff in a civil proceeding pursuant to subdivision (a), may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff.”³¹

Language regarding injunctive relief is found and section (d) and reads as follows:

“In addition to any other relief, the court may order equitable relief against the person violating subdivision (a), including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to remove the distributed material.”³²

Injunctive relief is key to the victim’s ability to use this private right of action to ensure the removal of the intimate images from public view. By ensuring each of these forms of equitable relief apply we help ensure the plaintiff achieves this goal as quickly as possible.

Due to potential concerns of the tech industry and conversations with the Assembly Judiciary Committee consultants as further discussed above in our “Stakeholders’ Interests” section, the following language is currently included regarding Section 230 of the Communications Decency Act:

“(g) Nothing in this section shall be construed to alter or negate any rights, obligations, or

³¹ Civ. §48.95(e)(1) (enacted by AB 2643).

³² §48.95(d) (enacted by AB 2643).

immunities of an interactive service provider under Section 230 of Title 47 of the United States Code. Nothing in this section shall be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.”³³

It is possible that these sections or other aspects of the bill will be amended as AB 2643 continues moving through the legislative process. We may receive further recommendations from the Senate Committees to which AB 2643 is assigned.

6. Explanation of Real World Efforts

(1) Coalition Building: As discussed in our “Stakeholders’ Interests” section AB 2643 is currently receiving broad support. Some organizations, such as the Partnership and the Cyber Civil Rights Initiative, were instrumental to us throughout the process of developing language and goals for this project. They were therefore contacted earlier in the process and knew more about the project before committing their support. Other supporters were discovered once the bill was officially introduced. Some, like the Police Chiefs Association, supported completely of their own accord. Other organizations were contacted to see if they might have an interest in taking a formal support position. We plan to continue contacting various California Women’s Organizations to see if they would be interested in joining our coalition as AB 2643 continues through the legislative process.

(2) Negotiating with Opposition: ACLU’s opposition is discussed in-depth in our “Stakeholders’ Interests” section above. We plan to continue working with Assembly member Wieckowski’s Office to see if a compromise can be reached. The Author’s office will have final say in deciding whether to take necessary amendments to remove their opposition.

We believe we prevented opposition from the tech industry through our work with the Judiciary Committee Consultants to explicitly reference Section 230 of the Communications Decency Act in our bill language. We also worked with the Judicial Council to address ensure they had no concerns regarding the pseudonymous pleading provision. This resulted in them drafting amendments regarding this provision, which have since been accepted. These changes also possibly prevented opposition due to a fear of this provision burdening the California Courts.

(3) Grassroots Organization: Originally we had hoped to try to build relationships with victims of non-consensual distribution of intimate images in the hopes that they may be interested in supporting the bill’s efforts through committee hearing testimony or public statements to the press. However, the incredibly personal and embarrassing nature that is the core of this issue has led us to move away from these goals. We have focused more on building support with Women’s Organizations and learning how the victims they support have been affected by this problem, rather than trying to organically target affected individuals. This is likely how the process will continue, but we would be more than open to having a victim become involved if one was willing. Perhaps the relationships built through our coalition efforts will help lead to this.

³³ §48.95(g) (enacted by AB 2643).

(4) Supporting Document Production: We have received support letters from all organizations listed in support. We have also drafted a template support letter that was sent to some organizations we sought support from. Some of these organizations relied on this template to some extent, while others did not. Moreover, we currently have committee analyses from both the Assembly Judiciary Committee and the Assembly Appropriations Committee. We completed the background information sheet for the Assembly Judiciary Committee and thus have a copy of this as well. We worked with the Partnership's Public Policy Manager to make sure she had any information she needed from us for her Assembly Judiciary Committee hearing testimony and therefore have a copy of her statement. At this time we do not have the remarks of Attorney Karl Kroneberger or DAWN's representative, but could contact them for more information. Sadly, there is no testimony from this hearing on CalChannel. Nor was testimony given for recording at the Assembly Appropriations hearing due to our consent file status. These supporting documents can be accessed at the Muddox Building on the McGeorge School of Law Campus, where our legal clinic records are kept.

7. Explanation of the Work Remaining

As of May 10th, 2014 AB 2643 is on the consent calendar for the Assembly Floor. The Office of the Chief Clerk's guide to Legislative Procedure states

“noncontroversial bills may be reported to the Floor with a recommendation that they be placed upon the consent calendar... After their second reading, these bills are placed on the ‘Consent Calendar-First Legislative Day’ for one day, and are then placed upon the ‘Consent Calendar – Second Legislative Day,’ at which point they become eligible for passage. Bills listed on second-day consent calendar are voted on without debate and with one roll call vote.”³⁴

The bill received no “nay” votes in either the Assembly Judiciary Committee or the Assembly Appropriations Committees. We thus foresee little difficulty for AB 2643 making its way out of its house of origin and to the Senate. Once passed to the Senate, AB 2643 will need to go through the rules committee process and be assigned to committee hearings. It will likely be assigned to the Senate Judiciary Committee and Senate Appropriations Committee.

Once the Senate Rules Committee assigns AB 2643 to Senate Committees, we will repeat our process of preparing for Committee Hearings. We plan to continue working with Assembly member Wieckowski's Office to pick and prepare witnesses to give testimony, gather support letters, and perform “drop-ins” on the Senator's Offices serving on the involved Committees. At this time it also seems likely that we will work with Assembly member Wieckowski's Office and the Consultants for the Senate Judiciary Committee to make some technical amendments to AB 2643. Due to the overall lack of opposition, our openness to working with the ACLU's current concerns, and the ease with which this bill moved through the Assembly, we realistically expect the bill to pass through the legislative process and make its way to the Governor's desk. We plan to continue gathering support, working with the concerns of interested parties, and eventually work with the Governor's legislative staff to ensure AB 2643 continues successfully making its way through the legislative process.

³⁴ California State Assembly Office of the Chief Clerk, *Legislative Procedure*, 8 (Revised January 2011).