

August 2, 2017

The Honorable Rob Portman
Chairman, Senate Permanent Subcommittee on Investigations
United States Senate
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
Washington, DC 20510

Dear Senator Portman and Senator Blumenthal:

The undersigned trade associations represent the breadth of the U.S. media and technology industry and stand ready to work with Congress on effective measures to fight human trafficking.

We agree that further action must be taken to end sex trafficking crimes in our nation, particularly against minors. We also agree that rogue actors like Backpage.com must be held accountable for abhorrent actions that support trafficking. However, the *Stop Enabling Sex Traffickers Act of 2017*¹, which proposes amendments to Section 230 of the Communications Decency Act (CDA230), would severely undermine a crucial protection for legitimate online companies, and would be counterproductive to those companies' efforts to combat trafficking crimes.

CDA230 is a bedrock legal protection for online services, ensuring that legitimate businesses can exist by providing that unknowing intermediaries including platforms, websites, ISPs, web-hosting providers, and online advertisers are not held liable for the actions of users. Without this crucial protection, these service providers would be forced to err on the side of removing their users' content or face unsustainable liability for their users' content that would harm the creation of legitimate diverse online services. Notably, CDA230 in its current form already encourages positive legal behavior: from inception, federal crimes have been exempt from CDA230's limitation on liability, and the statute explicitly promotes efforts by intermediaries to target illegal content online.

New legislation is not necessary to hold rogue actors accountable for participation in illegal activity. CDA230 does not shield parties from liability for federal crimes, including federal prosecutions for human trafficking under 18 U.S.C. §1591. Indeed, under existing law, the Department of Justice (DOJ) has the capability to prosecute rogue websites that support human trafficking, including Backpage.com. Congress has already taken action to bolster DOJ's capabilities against bad actors, including the recent passage of the *Stop Advertising Victims of Exploitation Act of 2014*, which added "advertising" to the federal crime for trafficking in 18 U.S.C. §1591.

In addition, the Senate Permanent Subcommittee on Investigations² and the Washington Post³ have recently reported on evidence that indicates Backpage.com has likely violated federal trafficking laws and could be prosecuted by the DOJ.

Rather than target criminals, including traffickers and buyers of victims, the proposed legislation would have a devastating impact on legitimate online services without having a meaningful impact on ending trafficking crimes. Unfortunately, the proposed legislation does not address the underlying criminal behavior and playing whack-a-mole with URLs/domains in civil courts is unlikely to stop bad actor websites that will simply move overseas and change their URLs to avoid being shut down.

¹ Similar legislation has been introduced in the U.S. House of Representatives as H.R. 1865.

² Permanent Subcommittee on Investigations, 'Backpage.com's Knowing Facilitation of Online Sex Trafficking', 1/9/17, www.hsgac.senate.gov/subcommittees/investigations/reports. [Accessed 7/31/17]

³ Tom Jackman and Jonathan O'Connell, 'Backpage has always claimed it doesn't control sex-related ads. New documents show otherwise.', Washington Post, 7/11/17, https://www.washingtonpost.com/local/public-safety/backpage-has-always-claimed-it-doesnt-control-sex-related-ads-new-documents-show-otherwise/2017/07/10/b3158ef6-553c-11e7-b38e-35fd8e0c288f_story.html. [Accessed 7/31/17]

By creating new carve-outs to CDA230, this language will have the unintended consequence of allowing opportunistic trial lawyers to bring a deluge of frivolous litigation targeting legitimate, law-abiding intermediaries and create the potential for unpredictable, inconsistent enforcement by state authorities for political or monetary gain.

The carve-out would have significant unintended consequences, and would actually create significant liability risk for companies that attempt to stop trafficking content from reaching their platforms. This would discourage ISPs and internet platforms from investing in new innovative tools to self-police content that promotes trafficking, for fear such actions would give the company knowledge of some, limited use of its service to further trafficking that the company could not completely keep off its platform.

The value of CDA230 to the entire internet economy should not be understated. The threat of vexatious subpoenas and increased liability under the proposed carve-out would likely result in mass removals of legitimate content. The legal ambiguity the amendment creates would have a chilling effect as platforms will err on the side of extreme caution in removing content uploaded by their users, while cutting back on proactive prevention measures. Further, introducing new ambiguity into CDA230 would send a dangerous signal to other countries that are seeking to require U.S. internet services to filter dissenting political speech and allegations of corruption.

Instead, we encourage Congress to target underlying criminal behavior that will be effective in preventing trafficking and protecting victims. These include working with DOJ to prioritize trafficking prosecutions, increasing DOJ's targeting of rogue sites, and coordination with international law enforcement to shut them down, and crucially, to end the culture of impunity for the criminals who buy sex.

We remain committed to working with Congress to pursue effective and meaningful legislation to combat human trafficking.

Sincerely,

CompTIA
Computer and Communications Industry Association
Interactive Advertising Bureau
Internet Association
Internet Commerce Coalition
Internet Infrastructure Coalition
NetChoice
Software & Information Industry Association
Tech:NYC
The Internet Society

cc: The Honorable John Thune
Chairman, Senate Committee on Commerce, Science, and Transportation

The Honorable Bill Nelson
Ranking Member, Senate Committee on Commerce, Science, and Transportation

The Honorable Chuck Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary