



Testimony of Abigail Slater

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United States Senate
"S. 1693, The Stop Enabling Sex Traffickers Act of 2017"
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Chairman Thune, Ranking Member Nelson, and members of the Committee, thank you for inviting me to testify. My name is Abigail Slater and I am the General Counsel of Internet Association, which represents more than 40 of the world's leading internet companies.¹ Internet Association is the unified voice of the internet economy. The internet creates unprecedented benefits for society, and Internet Association is dedicated to empowering people through a free and open internet.

We appreciate the Committee holding this hearing on a topic that rightfully is at the top of mind for policymakers, our members, and the public. Sex trafficking is a horrific crime and must be stopped. We must end the crime of human trafficking in our country, and we must hold those that facilitate and take part in these crimes, like *Backpage.com*, fully responsible under our law. We also support targeted amendments to the Communications Decency Act that would allow victims of sex trafficking crimes to seek justice against perpetrators. The internet industry stands ready to work with you on legislative approaches that ensure justice and contribute to the fight against trafficking.

We believe that our goals are shared and that this hearing can and should provide a roadmap to achieving those mutual goals. *Backpage.com* broke existing law and we agree that it must be fully and quickly brought to justice for its horrific crimes in the trafficking of persons for sex. We must work together to combat trafficking and stop these crimes from ever occurring in the first place. Internet Association is confident that by working as partners on this issue we can fully achieve both goals.

To be perfectly clear: our members are an integral part of the solution. They have a long track record of working with law enforcement, anti-trafficking groups, and victims to stop illegal activity.

¹ Member list available at <https://internetassociation.org/our-members/>.



The *Stop Enabling Sex Traffickers Act of 2017* (SESTA)² is a well-intentioned response to a terrible situation. The crimes committed through and facilitated by *Backpage.com* are despicable. Our companies work with law enforcement every single day to actively take down illegal content and in an effort to prevent and end trafficking. SESTA, as it is written, would make our companies liable for all their ongoing work with law enforcement.

As part of my testimony,

- First, I will outline just some of the ways that internet industries are active partners in the fight to combat human trafficking.
- Second, I will provide a short background on Section 230 of the Communications Decency Act (CDA230), its history and foundational role in supporting legitimate online actors, and its applicability to *Backpage.com*.
- Third, I will discuss SESTA and the unintended consequences of broad legislation in light of CDA230's history and the work of online services to operate as good actors.
- Fourth, I will discuss potential ways forward in crafting a targeted approach to allowing justice against rogue, illicit actors without upending legal principles vital to legitimate industries.

Legitimate online services are committed, key actors in the fight against human trafficking.

Internet industries are indispensable to the fight to combat trafficking. Technology is part of the solution, and the partnership between law enforcement and private sector technology companies is key to ending the underlying criminal behavior.

Internet companies that make up Internet Association have a zero-tolerance policy for facilitation of sex trafficking and exploitation of children. Our companies have robust policies and enforcement practices to remove all content that promotes sex trafficking. In addition, our companies partner with non-governmental organizations across the globe on the prevention of sexual violence and exploitation, including the National Center for Missing and Exploited Children; the International Center for Missing and Exploited Children; the International Women's Forum; End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes; Thorn; Polaris; and more.

Beyond significant financial support for organizations on the front lines of the global fight to end modern day slavery and human trafficking, technology companies are harnessing their

² S. 1693 (115th Congress).



technical expertise for innovative and groundbreaking technology that is used to great effect by other companies, law enforcement, and anti-trafficking groups.

Engineers at companies including Google have worked with Thorn and the Hovde Foundation to develop a tool called Spotlight, which harnesses artificial intelligence to comb through millions of ads online and flag potential child victims. This tool is now used by law enforcement in all 50 states, and agencies using it have seen a 60% reduction in their investigation time. In a single year, Spotlight helped identify over 6,000 victims and 2,000 traffickers. With advances in machine learning technology, we can continue to improve this technology and make it even more broadly available.

In May 2016, Facebook hosted over 75 engineers from across the industry, including Microsoft and Google, as well as from child safety NGOs, such as NCMEC, Thorn, and InHope, for the first-ever cross-industry child safety hackathon to develop tools and products that enhance child online safety.³ The 2017 hackathon expanded in scope and reach, and one of the prototypes that came out of the hackathon is a tool that will enable people to match known photos of missing children against online trafficking ads.

The Thorn Technology Task Force, which includes 20 technology companies ranging from Microsoft to Snap, is creating networks of digital defenders to develop new strategies to fight their adaptive adversaries.⁴

Twilio and Salesforce Foundation partnered with Polaris and Thorn to develop the NHTRC SMS-based textline, which allows victims to text the shortcode “BeFree” for a discreet and time-efficient way to access the hotline.⁵

Amazon Web Services powers a number of tools, such as the Federation for Internet Alerts, which provide life-saving child abduction alerts as well as facial recognition technology that aids police in the fight against sex trafficking.⁶

³ “Hackathon Creates Tech Solutions for Child Safety,” Thorn (2017) available at https://www.wearethorn.org/blog/hackathon-creates-tech-solutions-child-safety/?utm_campaign=coschedule&utm_source=facebook_page&utm_medium=Thorn&utm_content=Hackathon%20Creates%20Tech%20Solutions%20for%20Child%20Safety.

⁴ See Thorn Technology Task Force, available at <https://www.wearethorn.org/about-our-fight-against-sexual-exploitation-of-children/>.

⁵ “7 Ways Technology is Fighting Trafficking,” Forbes.com (Jan. 2016) available at <https://www.forbes.com/sites/rebeccasadwick/2016/01/11/tech-fighting-human-trafficking/#4cb245ce6cac>.

⁶ “Police can use this facial recognition technology to fight sex-trafficking,” Mashable (2017) available at http://mashable.com/2017/06/28/facial-recognition-child-sex-trafficking/#o8_T3aMVCSq8.



Match Group is working with THORN to pilot new technology that would use THORN data to automatically detect users who attempt use Match Group sites to disseminate information associated with known sex traffickers and remove them from the sites.

These are just a few of many examples that grow by the day. Recognizing the role technology plays in providing solutions is key to understanding why a narrow, targeted approach is the only way to truly achieve our goals: undermining companies' incentives to experiment and participate in the innovation that targets criminal activity will only undermine our fight against trafficking.

Section 230 of the Communications Decency Act and *Backpage.com*.

Congress passed CDA230 in 1996 as 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 and diverse online services. CDA230 remains as crucial today for startups as it was in 1996: the diversity of services and products today is greater than ever before, and CDA230's clarity provides a pathway for innovation for legitimate, responsible new entrants.⁷

Congress struck a key balance in CDA230. CDA230 is not a complete bar on liability—it allows the U.S. Department of Justice (DOJ) to prosecute rogue, illicit actors that conduct illegal activity. From its inception, there have been several clear exemptions to CDA230, including federal criminal law, which ensures that that the DOJ is empowered to prosecute online providers that take part in criminal activity.⁸ Additionally, it does not apply to information that the platform operator has itself created or developed, "in whole or in part."⁹ CDA230 also encourages online services to moderate their services through the combined protections of 230(c)(1) and 230(c)(2)'s Good Samaritan clause, which provides an incentive to moderate offensive, lewd, and/or violent content without the danger of creating additional liability.

It is a federal crime to sell, solicit, or advertise the sexual services of persons who have been coerced into commercial sex under 18 U.S.C. § 1591.¹⁰ Congress has made clear that sex trafficking must be stopped and that law enforcement actions against perpetrators should be

⁷ See Letter by Copia Institute, Engine, and 30+ startups on S. 1693 (2017) available at <https://www.230matters.com/letter.html>.

⁸ 47 U.S.C. § 230(e)(1)

⁹ 47 U.S.C. § 230(f)(3)

¹⁰ 18 U.S.C. § 1591



prioritized. In 2015, in great part due to strong desire to bring justice against *Backpage.com*, Congress supplemented an existing statute on trafficking by ensuring that the knowing advertisement of minors for commercial sex was a federal crime.¹¹

We also commend the Permanent Subcommittee on Investigations (PSI), which concluded a twenty-month investigation of *Backpage.com* and found that *Backpage.com* knowingly concealed evidence of criminality by systematically editing adult advertisements and that *Backpage.com* executives knew the website facilitated illegal activity including sex trafficking of minors.¹²

To date, the DOJ has not held *Backpage.com* accountable for its actions under anti-trafficking criminal law. Congress must ensure the DOJ has the resources and priorities necessary. *Backpage.com* is not immune from liability for federal crimes, including those under 18 U.S.C. §1591, and U.S. Attorneys must use these and other legal avenues to undertake immediate and vigorous justice against *Backpage.com* for its knowing facilitation of criminal sex trafficking. State exemptions would create the potential for unpredictable, inconsistent enforcement against law-abiding intermediaries that operate without borders.

SESTA's broad approach will harm good actors and undermine our shared goal of combatting trafficking.

We share the goals of the sponsors and are committed to working with them to find an effective way forward that provides a mechanism to hold criminals accountable.

At the outset, it is key to understand that SESTA does not require that an entity have knowledge of the illegal activity or a means to stop that activity. Section 4 of the legislation expands the scope of the term "participation in a venture" under current sex trafficking laws in Title 18 to "knowing conduct by an individual or entity, by any means, that assists, supports, or facilitates" sex trafficking. The term "knowing conduct" is not a defined legal term—it could include the fact that a platform simply knows that users communicate on its site. The phrase "assists, supports, or facilitates" has no requirement that an entity know that conduct is taking place, has means to prevent it, or any other discernible limitation. The term "facilitate" is extremely broad; courts have defined it to mean "to make easier or less difficult."¹³ This means that a prosecutor could simply allege that the use of a platform for coded communication connected to trafficking, without knowledge by the platform, facilitated sex trafficking;

¹¹ P.L. 114-22.

¹² "Backpage.com's Knowing Facilitation of Online Sex Trafficking," Permanent Subcommittee on Investigations, United States Senate (2017).

¹³ *United States v. Rivera*, 775 F.2d 1559, 1562 (11th Cir. 1985).



because the platform knows that users communicate generally on the site, a prosecutor would have to go no further in introducing cause for liability.

SESTA would introduce new legal risk not just for internet services that do not knowingly and intentionally facilitate illegal conduct, but also create risk for an incredibly broad number of innocent businesses by expanding the notion of contributory liability. SESTA would hold potentially liable any entity that can be said to benefit from its role in facilitating a sex trafficking violation, even if it has no knowledge that it is doing so or no practical way of terminating such assistance.

Under the regime of liability without knowledge or participation in the criminal activity, SESTA introduces new risks under CDA230 by creating state criminal and civil exemptions, as well as federal civil exemptions. It is not hard to imagine that opportunistic lawyers will bring a deluge of frivolous litigation targeting legitimate, law-abiding intermediaries, as civil liability is unbounded by any actual knowledge or participation in trafficking.

Key to the discussion of state-level exemption is that (1) there is no data on the current criminal and civil laws that would be exempt to CDA230 under this bill and (2) there is no full understanding or limitation of the types of laws that may be passed to introduce liability on online services providers unconnected to the true, knowledgeable facilitation of sex trafficking.¹⁴ CDA230's exclusion of state liability is appropriate. The internet is a borderless medium, and the potential for inconsistent regulation and liability untethered to the fight against trafficking is counterproductive to the intended goals of the legislation.

SESTA will not only risk the development of innocent online services key to the fight against trafficking, but threatens to be counterproductive to the stated goals. 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. Undermining the balance struck in CDA230 encourages the opposite behavior desired. It will create the incentive for providers not to look for evidence of trafficking and to cease proactively eliminating illegal and unsavory content, including by chilling the development of technological measures to address such content, as any such action could implicate civil and criminal causes of action.

¹⁴ See Goldman, Eric, "Senate's "Stop Enabling Sex Traffickers Act of 2017"—and Section 230's Imminent Evisceration" (2017) available at <http://blog.ericgoldman.org/archives/2017/07/senates-stop-enabling-sex-traffickers-act-of-2017-and-section-230s-imminent-evisceration.htm> (discussing the potential for state laws not germane to the goal of combating trafficking under SESTA).



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.

We encourage Congress to target underlying criminal behavior that will be effective in preventing trafficking and protecting victims. I return to the point made at the outset of my testimony: while we are deeply concerned about the broad nature of SESTA, we strongly support its intended purpose, and stand ready to work with the Committee and the sponsors of the legislation on achieving justice without risking the harms that would be realized under such a wide approach.

A narrow approach tailored to the goal of ensuring justice for victims will best serve the goal of combatting trafficking.

Ensuring justice against *Backpage.com* is possible without undermining all the work currently underway to stop online sex trafficking. We do not have to choose between justice against *Backpage.com* and protecting legitimate online services.

There is also no single solution. The fight against trafficking requires a multipronged approach and a committed partnership between the government and private sector. To start, we urge the DOJ to prioritize prosecutions of criminal actors in violation of federal sex trafficking law, which is already exempt from CDA230. This includes immediate action based on the July 2017 referral of PSI's investigation to the DOJ.¹⁵

I would also like to highlight several areas we believe may be worth this Committee's attention for further exploration.

If clarification under Title 18's reference to "participation in a venture" is necessary to the federal accountability for rogue actors, we welcome language that clarifies the definition offered in SESTA to include a knowledge standard for "assist[ing], facilitat[ing], or support[ing]" trafficking.

Lastly, we understand that exploring exemptions to CDA230 to allow for justice sought by victims is a key aspect of the reason we are here today. Under 18 U.S.C. 1595, victims are able to seek civil action against perpetrators of sex trafficking crimes.¹⁶ A tailored amendment that

¹⁵ See *Portman, Carper, McCaskill Send DOJ Criminal Referral for Backpage.com* available at <https://www.portman.senate.gov/public/index.cfm/press-releases?ID=6CF2AC67-EDB1-4F13-9372-C13D9C6E5D9F>.

¹⁶ 18 U.S.C. 1595



ensures civil suits were brought against online actors that acted with knowledge and intent is worth consideration.

Conclusion

The internet community stands ready to work with this Committee and the sponsors of the legislation on targeted approaches that not only bring justice against *Backpage.com*, but also support the ongoing fight against sex trafficking.

Thank you for allowing me to testify on this critical matter.