

Stop Enabling Sex Traffickers Act of 2017

WHAT IS THE COMMUNICATIONS DECENCY ACT (CDA)?

The Communications Decency Act (CDA), enacted in 1996, is an important law designed to govern the nascent internet industry and promote an open forum for commerce online. Section 230 of the CDA establishes immunity for “interactive computer service providers” (ICSPs) from civil and state criminal liability in order to promote self-regulation by online entities. Over the past 20 years, federal courts have interpreted this immunity very broadly, effectively extending blanket immunity to online entities that publish third-party content. In the vast majority of cases, this immunity makes sense, but not when a website actively participates in the sex trafficking of children. Unfortunately, the internet has caused sex trafficking to increase dramatically, and unscrupulous websites have inappropriately hidden behind section 230 immunity. It’s time to close this loophole that has allowed this blatant exploitation of children and women.

HOW DOES THE CDA CONTRIBUTE TO SEX TRAFFICKING?

CDA immunity has not encouraged the expected self-regulation in all areas. A network of unscrupulous online entities are exploiting CDA immunity to facilitate sex trafficking. Today, victims are bought and sold online at alarming—and increasing—rates. The entities that create a marketplace for the sale and purchase of trafficking victims enjoy a lucrative business model—one with high profits and low risk. With estimated revenues of more than \$150 million a year, Backpage.com is a market leader in commercial sex trafficking and has been linked to hundreds of reported cases of sex trafficking, including trafficking of vulnerable women and children. When states and victims have tried to hold these companies accountable through the legal system, courts have blocked their efforts, citing the blanket immunity under the CDA.

WHAT IS THE EVIDENCE THAT WEBSITES ARE ACTUALLY FACILITATING CHILD SEX TRAFFICKING?

A two-year Permanent Subcommittee on Investigations (PSI) inquiry, led by Senators Rob Portman and Claire McCaskill, culminated in a report entitled “Backpage.com’s Knowing Facilitation of Online Sex Trafficking,” which found that Backpage.com knowingly facilitated criminal sex trafficking of vulnerable women and young girls and then covered up evidence in order to increase its own profits. In addition, a recent report in *The Washington Post* showed that – despite its claims – Backpage has aggressively solicited and created sex-related ads designed to lure customers. It further demonstrates that Backpage is not merely a passive publisher of third-party content. It is an active co-creator of many of these sex advertisements, including those that seek to traffic women and young girls. In addition:

- “YouthSpark in Atlanta, Georgia, surveyed service providers across the nation on questions related to domestic minor sex trafficking victims in their care. Seventy-two percent of the child victims in their care were bought and sold for sex online.” (Shared Hope Remarks, AZ Governor’s Task Force, 2014)
- “Of all the child sex trafficking reports submitted by members of the public to the CyberTipline, more than seventy-one percent (71%) relate to Backpage ads.” (National Center for Missing and Exploited Children, Yiota G. Souras testimony, United States Senate Permanent Subcommittee on Investigations, 2017)

IS LEGISLATION NECESSARY TO HOLD WEBSITES ACCOUNTABLE FOR PARTICIPATION IN ILLEGAL ACTIVITY?

Yes. History has shown that legislation is absolutely necessary to hold bad actors accountable. The bipartisan *Stop Enabling Sex Traffickers Act* would clarify Section 230 of the Communications Decency Act to ensure that websites that facilitate sex trafficking can be held liable so that victims can get justice. This narrowly-crafted legislation offers three reforms to help sex trafficking victims. The bipartisan bill would:

- Allow victims of sex trafficking to seek justice against websites that facilitated the crimes against them;
- Eliminate federal liability protections for websites that assist, support, or facilitate a violation of federal sex trafficking laws; and
- Enable state law enforcement officials, not just the federal Department of Justice, to take action against individuals or businesses that violate federal sex trafficking laws.

This legislation is necessary because when states and victims have tried to bring actions against this company, Backpage has evaded responsibility by saying that it doesn't *write* ads for sex—it just publishes them. Notwithstanding the evidence brought to light by PSI's investigation, courts have generally sided with the company, citing the blanket immunity granted by the Communications Decency Act.

Because judicial interpretations of Section 230 have deviated further away from its statutory text and purpose, it is imperative for Congress to craft a narrow legislative solution. In fact, the U.S. Court of Appeals for the First Circuit in ruling against three victims that were allegedly trafficked on Backpage, wrote that Congress must address these "evils" ... "through legislation, not through litigation." And that is precisely what this bill does.

WILL HOLDING WEBSITES LIABLE FOR ADVERTISING SEX TRAFFICKING HURT CRIMINAL INVESTIGATIONS?

The internet has revolutionized the trafficking of children, and federal law has not kept pace. Where once traffickers and purchasers were required to cautiously search each other out in public, the internet links them in seconds and facilitates the easy exchange of money for children, for sex. This legislation would make clear that Congress never intended Section 230 to create a lawless internet where bad actors can engage in criminal activity online that they cannot engage in offline.

DOES THIS LEGISLATION ENCOURAGE CENSORSHIP ON THE INTERNET?

This bipartisan legislation both preserves internet freedom while holding those who actively facilitate online sex trafficking accountable. This narrowly-crafted legislation targets websites engaged in one criminal activity: **sex trafficking**. It allows state authorities to investigate and prosecute websites that facilitate sex trafficking and it allows victims of sex trafficking to exercise civil remedies and get justice. A full analysis of Section 230's purpose reveals that it was intended solely to provide a defense to website operators acting in good faith, who lacked knowledge that third parties were posting harmful content on their sites. Congress never could have anticipated that courts would extend Section 230's protection to websites, like Backpage, that willfully support and profit from the sexual exploitation of women and children.

CAN THIS ISSUE BE RESOLVED WITHOUT AMENDING THE COMMUNICATIONS DECENCY ACT?

No. When states and victims have tried to hold companies like Backpage accountable through the legal system, courts have blocked their efforts, citing the blanket immunity under the CDA. It's time for a 21-year-old law to be brought into the 21st Century. The internet has revolutionized the trafficking of children, and federal law has not kept pace. The CDA was never intended to help protect sex traffickers who prey on the most innocent and vulnerable among us. This narrowly-crafted, bipartisan legislation gives state law enforcement the tools they need to go after criminals who traffic women and children online for sex. Finally, this Act does not amend the CDA's "Good Samaritan" provision, which protects good actors who pro-actively block and screen for offensive material on their website.

WILL THIS LEGISLATION INCENTIVIZE OPPORTUNISTIC TRIAL LAWYERS, STATE PROSECUTORS, AND STATE ATTORNEYS GENERAL TO PERSECUTE LEGITIMATE WEBSITES?

Congress' desire to avoid overregulating the Internet should not be confused with congressional intent to create full-blown immunity for any and all willful misconduct that occurs online. As 47 state Attorneys General wrote to Congress in 2013, "Federal enforcement alone has proven insufficient to stem the growth of internet facilitated child sex trafficking. Those on the front lines of the battle against the sexual exploitation of children—State and local law enforcement—must be granted the ability to investigate and prosecute those who facilitate these horrible crimes." This narrowly-crafted, bipartisan legislation gives state law enforcement the tools they need to go after criminals who traffic women and children online.