

September 12th, 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 Chairman Portman and Senator Blumenthal:

The undersigned technology and internet companies appreciate and support your efforts to fight the scourge of human trafficking, a problem that has destroyed many lives. However, we have serious concerns about the approach taken in the Stop Enabling Sex Traffickers Act of 2017 — both that it will prove counterproductive to everyone’s goal of eliminating trafficking, and that it will have damaging unintended consequences for many internet companies that are wholly unrelated to the issue. We would be happy to participate in a collaborative effort to tackle human trafficking by finding an approach that would be more effective, without the potential damaging side effects.

While we are not experts in human trafficking, we are experts in the internet and how previous attempts to fight illegal activity online have and have not worked. We greatly fear that the approach being proposed — revising Section 230 of the Communications Decency Act (“Section 230”) — will be tremendously counterproductive to the stated goal of stopping human trafficking.

First, the tech industry has long been highly cooperative in fighting against trafficking. Many companies in the space have a long history of working closely with law enforcement to alert them to evidence of potential trafficking, and law enforcement groups have relied on that information to track down and arrest those responsible. Your bill would create a tremendous chilling effect for many companies, discouraging them from working with law enforcement as they might be implicated for having “knowledge” of potential trafficking crimes.

Second, the tech industry has been deeply engaged in a number of different programs to help fight trafficking¹, and these efforts have been found to be among the most effective in actually stopping such trafficking². Tools like Spotlight, NHTRC, Memex, PhotoDNA, CyberTipLine, BeFree, Ulula, LaborLink and many others combine cut-

¹ “How technology is taking down human trafficking” Devex, by Catherine Cheney
<https://www.devex.com/news/how-technology-is-taking-down-human-trafficking-87658>

² “7 Ways Technology Is Fighting Human Trafficking” Forbes, by Rebecca Sadwick
<https://www.forbes.com/sites/rebeccasadwick/2016/01/11/tech-fighting-human-trafficking>

ting edge technology tools and services with big data to help fight trafficking. We fear that a change in Section 230 putting potential liability on technology companies may chill further innovation in this space, as those efforts to eradicate trafficking may be held against them as evidence of knowledge under the proposed law.

As an industry, we also have decades of experience in other policy areas and efforts to target undesirable or illegal content online. Again, our experience suggests the approach of undermining Section 230 will have the opposite of the intended effect. Section 230 of the CDA is currently designed to encourage online service providers to moderate their own services. While many people focus on 230(c)(1), it is the combination of that with 230(c)(2)'s "Good Samaritan" clause that gives service providers the incentive to moderate and filter content without fear of creating additional liability. Undermining that careful balance actually encourages the opposite behavior to what you are seeking: it will create the incentive for providers not to look for evidence of trafficking and not to proactively moderate and filter such evidence, as any such action could implicate them in both civil and criminal lawsuits under your proposed revision.

This perverse result would likely do much more harm than good to the overall goal of fighting trafficking.

Opening up Section 230, and drastically changing a law that has been key to the growth of the internet for the past two decades, is making a massive policy change without any evidence that it will be targeted and effective. While there may be a few specific platforms that you are targeting with this legislation, it will have a much wider and devastating impact on many others. Especially for smaller startups and new entrants, the potential liability from lawsuits under a revised Section 230 could both chill necessary innovation and cause companies to close down entirely, including those that are perfectly legal and legitimate.

Expanding potential liability and opening up the possibility of civil lawsuits against technology platforms will also encourage a barrage of frivolous litigation targeting platforms, as well as fishing expeditions searching for any evidence that might be used against them. For two decades, we've seen time and time again how perfectly legitimate online platforms have been targeted by vexatious and frivolous lawsuits. Section 230 has been an important wall of protection against such mistargeted legal action. Many of the undersigned companies only exist thanks to the important protections they receive under Section 230, and those protections are a key reason that the United States has been home to the vast majority of top internet companies.

We would also like to call your attention to the fact that, under Section 230 as it currently stands, there is no immunity for federal crimes — and the Justice Department has every right and ability to investigate and pursue anyone who is violating federal trafficking statutes. There is nothing under the law as it stands today that is blocking the Justice Department from pursuing action if such crimes are being committed by technology and internet platforms.

As stated at the beginning of this letter, while we may not be experts in human trafficking, we strongly support your overall goal of targeting those who engage in such illegal behavior. We would be happy to work with Congress in crafting targeted and effective solutions, rather than undermining a key part of the framework that has helped create the modern internet, which would likely be counterproductive to all of our goals.

Sincerely,

The Copia Institute, Engine Advocacy, and the attached list of signatories.

Signatories:

Afilias USA
App Developers Alliance
Applied Innovations
Automattic
Change Catalyst
Cloud Linux Inc.
Cloudflare
ConferenceEdge
cPanel, Inc.
DiscountASP
Dropsuite Limited
Endurance International Group
Enplug
Fastly, Inc.
GitHub
Green Olive Tree
HandyNetworks
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