

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

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**MEMORANDUM**

**November 28, 2017**

**To: Subcommittee on Communications and Technology Democratic Members and Staff**  
**Fr: Committee on Energy and Commerce Democratic Staff**  
**Re: Hearing on “Latest Developments in Combating Online Sex Trafficking”**

On **Thursday, November 30, 2017 at 2:00 p.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing titled “Latest Developments in Combatting Online Sex Trafficking.”

**I. BACKGROUND OF SECTION 230**

The recent debate about online sex trafficking focuses on Section 230 of the Communications Decency Act (CDA) and the civil immunity it provides to sex trafficking websites. Among other things, Section 230 provides civil immunity for websites that publish information posted by third party individuals or eliminate objectionable content.<sup>1</sup> Section 230 also shields these websites from some state criminal prosecutions.<sup>2</sup> The law does not, however, protect or exempt websites from federal criminal or federal intellectual property lawsuits or liability.<sup>3</sup>

Prior to the passage of Section 230, some courts held that if a company removed or edited third party posts on the company’s website, that company was liable as a publisher for all the

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<sup>1</sup> 47 U.S.C. § 230 (c).

<sup>2</sup> 47 U.S.C. § 230 (e)(3).

<sup>3</sup> 47 U.S.C. § 230 (e)(1)-(2).

information posted by third parties on its website.<sup>4</sup> Those court cases incentivized websites to take a hands-off approach to editing third party posts so as to prevent courts from holding websites liable as publishers. That hands-off approach allowed for more obscene or indecent material on the internet, prompting the passage of Section 230 to encourage companies to police indecent or obscene material posted to their websites by third parties. Section 230 addressed that issue by immunizing websites from civil liability and by providing a safe harbor for websites to edit third party posts, with some exceptions. Today, almost all major internet platforms monitor and remove some third party posts due to protections that are contained in Section 230. Nevertheless, the CDA has still led to some unforeseen situations.

## **II. SECTION 230 AND SEX TRAFFICKING**

Section 230 of the CDA is now at the center of the policy debate surrounding sex trafficking. Sex trafficking refers to a modern form of slavery in which individuals use force or the threat of force to compel a person to commit a sexual act. It is estimated that nearly 150,000 U.S. children are the victims of sex trafficking every year. Several sex trafficking victims in recent years have filed suits seeking civil judgments against websites that host advertisements for sex traffickers. The victims in some of the most recent suits were minors who were raped and abused repeatedly as a result of such advertisements. The CDA's grant of immunity from civil liability has rendered these victims' suits futile.

## **III. CRIMINAL LAW REMEDIES TO SEX TRAFFICKING**

Without amending the CDA, Congress recently attempted to help shutdown websites profiting from sex trafficking by passing the Stop Advertising Victims of Exploitation Act of 2015 (SAVE Act). The SAVE Act generally criminalizes actions by sex traffickers that knowingly advertising for sex traffickers. Because the SAVE Act is a federal criminal statute, websites can still be held liable for violating it under the CDA. The Department of Justice has not convicted anyone yet under this new law. There are reports, however, of an ongoing grand jury investigation to prosecute one such website profiting from advertisements for sex trafficking.

## **IV. PROPOSALS TO AMEND SECTION 230 TO ADDRESS SEX TRAFFICKING**

Because of the perceived injustices from the failed civil suits against websites profiting from sex trafficking, House and Senate bills have been introduced to limit the broad civil immunity granted by Section 230. In the House, Representative Wagner (R-MO), among others, introduced H.R. 1865, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017. That bill was referred to both the Committee on the Judiciary and the Committee on Energy and Commerce. The Judiciary Committee held a hearing on the subject earlier this year. Senators Blumenthal (D-CT) and Portman (R-OH), among others, introduced S.1693, the Stop Enabling Sex Traffickers Act of 2017. While each bill takes a different approach, both the House and Senate bills would expand the scope of federal criminal and civil remedies for victims

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<sup>4</sup> See, e.g., *Stratton Oakmont Inc. v. Prodigy Servs. Co.*, 1995 WL 323719 (N.Y. Sup. Ct.) (1995) (an ISP that advertised its controlled-content practices and that screened and edited material posted to its message boards could be held liable for such actions).

of online sex trafficking and would allow states to pass new laws to punish sexual exploitation online.

**V. WITNESSES**

**Panel I**

**The Honorable Ann Wagner (R-MO)**

Member

U.S. House of Representatives

**Panel II**

**Mr. Eric Goldman**

Professor

Santa Clara University School of Law

**Ms. Derri Smith**

CEO

End Slavery Tennessee

**Ms. Yiota Souras**

Senior Vice President and General Counsel

National Center for Missing and Exploited Children

**Mr. Russ Winkler**

Assistant Special Agent in Charge

Tennessee Bureau of Investigation