



November 28, 2017

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled “Latest Developments in Combatting Online Sex Trafficking”

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing on Thursday, November 30, 2017, at 2:00 p.m. in 2123 Rayburn House Office Building. The hearing is entitled “Latest Developments in Combatting Online Sex Trafficking.”

II. WITNESSES

Panel 1:

- The Honorable Ann Wagner (MO);

Panel 2:

- Mr. Russ Winkler, Assistant Special Agent in Charge, Tennessee Bureau of Investigation;
- Ms. Derri Smith, CEO, End Slavery Tennessee;
- Ms. Yiota Souras, Senior Vice President and General Counsel, National Center for Missing and Exploited Children; and,
- Mr. Eric Goldman, Professor, Santa Clara University School of Law.

III. BACKGROUND

A. Evolution of Online Sex Trafficking: The Double-Edged Sword of Technology

The Internet has revolutionized many aspects of our lives, including how we communicate, but perhaps most fundamentally it has changed commerce. With e-commerce activity in the U.S. economy now measured in the trillions,¹ there has never been an easier time

¹ See *E-Stats 2015: Measuring the Electronic Economy*, U.S. Census Bureau (May 24, 2017), <https://www.census.gov/content/dam/Census/library/publications/2017/econ/e15-estats.pdf>

in history for a seller of products or services to connect with an interested buyer. Unfortunately, sellers and buyers of illicit goods and services have also been able to take advantage of the marketplaces enabled by the Internet, as seen in the case of online sex trafficking.

Always a pervasive and underreported crime, sex trafficking has exploded in the United States due in part to the boost provided by technology. Online platforms make it easier to recruit, sell, or buy children or coerced adults for sex. According to reports by child victims of sex trafficking compiled over a two-year period by Shared Hope International, there was an 800 percent increase during the two-year period in the use of technology as an aid in their prostitution.²

Traffickers make contact with victims, establish trust, and lure them into the sex trade using social media sites.³ And in the vast majority of cases, buyers and sellers connect using online classified ad platforms, most commonly Backpage.com. In a recent nationwide survey of service providers working with child sex trafficking victims, 72 percent of the victims in their care were offered for sex online, most through Backpage.⁴

In some cases, it has been alleged that an online entity has gone beyond simply providing a platform for user-generated content, into facilitation of trafficking activity. For example, in the state of California's ongoing litigation against Backpage, state prosecutors have alleged that Backpage executives knew their site was an online hub for prostitution, and coached traffickers on how to craft ads to avoid law enforcement scrutiny.⁵ Under increasing public pressure, Backpage shut down the adult advertisement section of its website in January 2017, however, law enforcement and victims report that trafficking activity on the site has moved to Backpage's dating section.⁶

At the same time, the technology industry often serves as an essential partner for law enforcement in the fight against online trafficking. Platforms like Backpage are frequently used to facilitate sex trafficking stings conducted by law enforcement. A recent example was an investigation in Brentwood, Tennessee, conducted by the Tennessee Bureau of Investigation, the Brentwood Police Department, and the Williamson County District Attorney-General, which resulted in the indictment earlier this month of 22 men on charges of attempts to purchase sex

² See *National Report of Domestic Minor Sex Trafficking*, Shared Hope International (May 2009), https://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf

³ See Jessica Reichert and Amy Sylwestrzak, *National Survey of Residential Programs for Victims of Sex Trafficking* (October 2013), <https://humantraffickinghotline.org/sites/default/files/National%20Survey%20of%20Residential%20Programs%20-%20ICJIA.pdf>

⁴ See *White Paper: Online Facilitation of Domestic Minor Sex Trafficking*, Shared Hope International (August 2014), <http://sharedhope.org/wp-content/uploads/2014/09/Online-Faciliator-White-Paper-August-2014.pdf>

⁵ See Darrell Smith, *What You Need to Know to Catch up With the Backpage.com Case*, Sacramento Bee (October 15, 2017), <http://www.sacbee.com/news/local/crime/article178966551.html>

⁶ See Timothy Williams, *Backpage's Sex Ads Are Gone. Child Trafficking? Hardly*. New York Times (March 11, 2017), <https://www.nytimes.com/2017/03/11/us/backpage-ads-sex-trafficking.html>

from minors.⁷ Two female agents posed on Backpage as 14 and 16-year-old girls offering sex, attracting a wide variety of men including a computer programmer, an automotive engineer, a construction worker and a chef, to a hotel staked out by law enforcement.

Additionally, the technology industry and non-profit organizations it partners with frequently work with law enforcement to build and implement sophisticated technology tools critical in the effort to identify and prosecute trafficking material online. For example, Thorn, a non-profit organization founded by Ashton Kutcher in 2009 to fight trafficking and child sexual exploitation, recently launched Spotlight, a Web app that uses machine learning to analyze the mountains of data represented by thousands of classified and forum posts advertising escort services, and flag potentially exploitative content.⁸ The app, now used by 780 law enforcement agencies in all 50 states, helped identify more than 6,300 trafficking victims in the U.S. as of October 2016.⁹

Thorn is currently developing a similar tool, called Solis, to target international activity on the Dark Web. As trafficking content increasingly moves to new venues and from still photos to videos and even live streaming, ever more sophisticated technology will be required for law enforcement to keep pace, as well as more active partnership by online platforms in the effort to combat sex trafficking.

B. Legislative Efforts to Address Online Sex Trafficking

While facilitation of sex trafficking is a crime under federal law,¹⁰ successful prosecution of online entities (as opposed to brick-and-mortar businesses) has proven elusive due to the immunity provided to “interactive computer services,” including both Internet Service Providers (ISPs) and online platforms that publish third party content, by the Communications Decency Act (CDA).¹¹ Section 230 of the CDA provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” While some limited exceptions are provided for intellectual property and some criminal claims, the resulting broad immunity for any online service that publishes third-party content has often been credited with fostering innovation and freedom of expression online. And while the anti-indecency provisions that were also part of the CDA were struck down by the Supreme Court in 1997 due to First Amendment concerns, the immunity provisions of section 230 were not affected.¹²

⁷ See Elaina Sauber, *22 Indicted in ‘Significant’ Brentwood Human Trafficking Sting*, The Tennessean (November 9, 2017), <http://www.tennessean.com/story/news/local/williamson/brentwood/2017/11/09/tbi-announces-significant-human-trafficking-sting-brentwood-22-indicted-brentwood-human-trafficking/848135001/>

⁸ See Abhimanyu Ghoshal, *How Ashton Kutcher is Building Tech to Fight Child Sex Traffickers*, TheNextWeb.com, <https://thenextweb.com/insider/2017/02/16/how-ashton-kutcher-is-using-tech-to-fight-child-sex-traffickers/>

⁹ *Id.*

¹⁰ 18 U.S.C. 1591(a)(2).

¹¹ 47 U.S.C. 230.

¹² See Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).

However, concerns have remained about potential facilitation of sex trafficking by intermediary online services. In April of 2012, Chairman Marsha Blackburn, along with Congresswoman Carolyn Maloney, sent a bipartisan letter to Google questioning how the company's advertising practices indirectly aided human trafficking, since the use of online markets provides traffickers with the ability to reach almost unlimited customers.¹³ Since then, the use of the Internet as a venue for trafficking activities has rapidly increased, and with that there has been further focus on the immunity provided by the CDA, and how it may be shielding bad actors from prosecution.

This year, both chambers of Congress are considering legislation that would amend section 230 to give law enforcement and prosecutors more ability to shut down websites and prosecute individuals who facilitate online trafficking activities.

On April 3, 2017, Congresswoman Ann Wagner introduced H.R. 1865, the "Allow States and Victims to Fight Online Sex Trafficking Act" (FOSTA). Since being introduced, the legislation has garnered the support of 171 cosponsors in the House of Representatives. The legislation also has support from sixty-plus law enforcement and advocacy organizations across the country, including the National District Attorneys Association; National Association of Police Organizations; Major Cities Chiefs Association; Fraternal Order of Police; National Organization for Victim Assistance; and many others. According to the authors, the legislation would:

- Amend section 230 of the CDA to allow state authorities to investigate and prosecute websites that facilitate sex trafficking using state criminal statutes that prohibit sex trafficking or sexual exploitation of children.
- Amend section 230 to allow victims of sex trafficking and sexual exploitation of children to exercise civil remedies, such as the private right of action available to sex trafficking victims in the Trafficking Victims Protection Reauthorization Act (18 USC 1595).
- Amend 18 U.S.C. § 1591, the sex trafficking statute, to define "participation in a venture" in response to the U.S. Court of Appeals for the First Circuit's 2016 decision in *Jane Doe vs. Backpage.com, LLC*.
- Amend 18 U.S.C. § 1591 to clarify that it is unlawful for a provider of an interactive computer service to publish information provided by an information content provider, with reckless disregard that the information is in furtherance of a sex trafficking offense.

On August 1, 2017, Senator Rob Portman introduced S. 1693, the "Stop Enabling Sex Traffickers Act of 2017." The legislation currently has 47 Senate cosponsors and was the subject of a Senate Commerce Committee hearing in September. According to the authors, the legislation would:

- Amend section 230 of the CDA to create new legal liability for internet companies whose sites knowingly facilitate sex trafficking and other crimes through content hosted on their

¹³ See <https://blackburn.house.gov/news/documentsingle.aspx?DocumentID=288910>

platforms. While it does not affect federal criminal liability, section 230 was written to protect internet platforms from civil and state criminal liability for content created by others, including liability arising from the actions of others who post unlawful content or use the platform for unlawful behavior.

On November 8, 2017, the Senate Commerce Committee amended and approved S. 1693. The bill as amended would:

- Require that nothing in section 230 of the CDA be construed to impair enforcement of any state criminal prosecution against a defendant who has violated the federal anti-human trafficking standard, thus allowing state law enforcement officials to criminally prosecute websites that knowingly assist, support, or facilitate sex trafficking. Such prosecution was previously preempted by section 230 and subsequent court decisions.
- Require that nothing in section 230 be construed to impair federal or state civil liability for knowingly facilitating sex trafficking, allowing victims to file suit against websites that violate the federal sex trafficking law.
- Amend federal criminal law (18 U.S.C. §1591) to define “participation in a venture” to mean “knowingly assisting, supporting, or facilitating a violation” of the section.
- Amend federal law (18 U.S.C. §1595) to clarify that the attorney general of a state may, as *parens patriae*, bring a civil action against a violator of the federal sex trafficking law on behalf of the residents of the state in an appropriate district court of the United States.

Some argue that any change to section 230 would erode protections to free speech and open commerce, potentially resulting in a situation where a social platform, such as Facebook, could be held liable for any and all content posted by its millions of users.¹⁴ Others express concern that federal law enforcement is not fully utilizing all of the tools available under current law to take down bad actors who facilitate online sex trafficking.¹⁵

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Robin Colwell or Tim Kurth of the Committee staff at (202) 225-2927.

¹⁴ See Cindy Cohn and Jamie Williams, *20 Years of Protecting Intermediaries: Legacy of ‘Zeran’ Remains a Critical Protection for Freedom of Expression Online*, The Recorder (November 10, 2017), <https://www.law.com/therecorder/sites/therecorder/2017/11/10/20-years-of-protecting-intermediaries-legacy-of-zeran-remains-a-critical-protection-for-freedom-of-expression-online/?slreturn=20171028093507>; *SESTA Hasn’t Been Fixed, Would Hurt Victims*, TechFreedom (November 8, 2017), <http://techfreedom.org/sesta-hasnt-fixed-hurt-victims/>

¹⁵ See Carl Szabo, *DOJ is Not Wielding Its Power to Bring Down Online Sex Trafficking*, The Hill (September 1, 2017), <http://thehill.com/blogs/pundits-blog/energy-environment/348894-doj-is-not-wielding-its-power-to-bring-down-online-sex>