

**RESPONSES TO COMMON ARGUMENTS OPPOSING
AMENDMENTS S.1693/H.R. 1865 TO
SECTION 230 OF THE COMMUNICATIONS DECENCY ACT¹**

<p>Amending Section 230 the CDA is an assault on free speech and sends a dangerous signal to other countries trying to compel tech companies to filter dissenting political views/claims of corruption.</p>	<p>SESTA/FOSTA² do not address speech at all, but rather the First Circuit decision in <i>Doe v. Backpage</i> in Boston which expanded Section 230 to protect websites alleged to have engaged in criminal conduct in violation of the federal anti-trafficking law. Thus, Section 230 now protects conduct rather than speech. Further, tech companies make subjective decisions currently regarding what content (including legal speech content) to host and what content to censor from their platforms. These proposed Section 230 amendments would target only criminal conduct that never has had any First Amendment or free speech protection. The First Circuit decision noted above specifically stated that Section 230 conflicted with the TVPRA (federal trafficking statute) and that the children in the Jane Doe cases needed to seek a legislative remedy. Several judges, in dismissing similar cases against Backpage, have called on Congress to act.</p> <p>It is worth noting that Section 230 protects only online operators. Radio, television, and offline media have no such protection, and are required to defend against all manner of suits based upon third party content.</p> <p>The “absolutism” of the tech lobby, which refuses to consider reasonable updates to Section 230, is driven by organizations funded by tech companies who are fiercely fighting any update of Section 230, no matter how narrow. As such, these tech lobbies are advocating to protect business interests rather than any free speech or other policy concern. As stated above, there is no implication for free speech with SESTA/FOSTA, nor will the 1st Amendment be affected.</p>
<p>Federal criminal law already punishes sex trafficking and is excepted from CDA immunity. The problem is that the Department of Justice is too slow in enforcing.</p>	<p>In 1996, it might have been reasonable to anticipate the Department of Justice could manage crimes on the Internet because there was virtually little commercial traffic online. Twenty-one years later the volume and complexity of online commercial interactions—and the corresponding criminal activity—far exceeds the capacity of a single federal enforcement agency. It is no longer realistic to assume the Department of Justice can manage all online crimes. It also is not appropriate to deprive state attorneys general of the ability to prosecute crimes affecting their own communities simply because the perpetrators are online entities.</p> <p>The same tech companies and lobbies calling for “vigorous” enforcement of federal criminal laws against Backpage are the very same lobbies which have actively intervened in various cases in support of Backpage—filing amicus briefs arguing that Backpage, even if involved in criminal conduct, ought to be protected by Section 230.</p>
<p>Let current civil cases and criminal investigation run their course against Backpage to see how courts apply CDA.</p>	<p>NCMEC receives approximately 9,000-10,000 reports relating to child sex trafficking every year. The volume of potential victims and the human cost is too high to wait for judicial clarification, especially when cases thus far have uniformly held that sex trafficking claims based on online ads are not protected under the CDA. The most recent decision on this issue from a California state criminal court actually held that</p>

	CDA protection was so broad that it protected even those who supported sexual exploitation of others through human trafficking.
Amending the CDA will result in a wave of frivolous and unpredictable lawsuits.	This is a fearmongering argument. Lawsuits can be filed against companies, legitimate or not, and it is a cost of doing business. The proposed CDA amendments are narrowly tailored to allow civil claims to proceed against bad actors, and the amendments seek to resolve the conflict of laws issues raised by the First Circuit in Boston.
Amending Section 230 of the CDA will result in costly legal expenses to defend against state Attorney General claims.	See above. Further, it is unreasonable given the volume of bad actors online and community impact of a crime like online sex trafficking to strip states of the legal ability to enforce their laws against those who are participating in the trafficking of their state's children. If a state faced a trafficking ring in their jurisdiction, they would prosecute. Why should they not be allowed to pursue these same legal remedies if a company uses an online website to traffic human beings in their state?
The tech industry's ability to self-police will be harmed because amending Section 230 of the CDA will create fears they could have "knowledge" sufficient to trigger liability.	This is a specious argument because Internet companies are in the advertising/data mining business. Thus, constant and meticulous monitoring of third party content is actually their business model. This argument, that cyberspace ought to remain unregulated (e.g., The Wild West) no longer makes sense with a fully mature, robust industry.
This legislation lowers the bar for "participation in venture" as a disincentive to Good Samaritan policing and might lead to over-screening or no screening at all.	SESTA/FOSTA specifically target bad actors who are engaged in the crime of sex trafficking. The safe harbor accorded to websites which "filter in good faith" will remain and be protective of content-neutral sites.
Backpage.com helps law enforcement with their sex trafficking related investigations.	This argument is reminiscent of the comment by a Vietnam Era journalist who said, "We had to destroy this village in order to save it." Backpage is the leading online trafficker of children and women. Although Backpage has been responsive to subpoenas, they are required by law to be. However, if you ask law enforcement how much of the illegality on Backpage they can attack, the answer varies from between 1-5%, which means the 95-99% of the illegality on Backpage is now risk-free and uninvestigated. So Backpage does significantly more harm than good.
Backpage.com is a good place to find your missing child.	This is actually not true. Most children that go missing will stay missing, and photos are so often photoshopped or faked that it just does not make sense to allow a criminal operation to continue to operate, so that a few missing persons can be identified. Yes, it is difficult for police to locate victims, but more victims go missing <i>because</i> of online sites like Backpage—which make the crime infinitely more efficient and profitable, and, stunningly, nearly risk free for sex traffickers.

For more information and to get involved see the websites and resources:

Endsexualexploitation.org/CDA
Sharedhope.org (Stop the Injustice: ONLINE)
Consumerwatchdog.org
 Coalition Against Trafficking in Women
iamjanedofilm.com

¹ S. 1693: Stop Enabling Sex Traffickers Act of 2017 (SESTA), Sponsored by Senator Rob Portman; H.R. 1865: Allow States & Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA), Sponsored by U.S. Representative Ann Wagner.

² See above.