



ECPAT USA

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FACTS AND MYTHS ABOUT SESTA (Stop Enabling Sex Traffickers Act)



The Bottom Line

- The point that must be kept front and center in any discussion about SESTA¹ and its implications is that it is a debate about money -- not freedom, not liberty, not the future of the internet or the safety of sex workers. A group of online websites were making money by knowingly aiding the sale of human beings, including children, on their sites. They were reluctant to stop this practice because it was highly profitable. SESTA changed the economic calculus for these companies, so many have shut down their adult personals sections, or gone out of business. Against this commercial priority, we believe there is another paramount one -- the rights of vulnerable and exploited children, and the need to protect them.

¹ The legislation that was taken up and passed was actually H.R. 1865, called the Fight Online Sex Trafficking Act or FOSTA. H.R. 1865, was amended and merged with the original Senate bill, SESTA. As most commentators refer to the bill as SESTA we follow that convention here.

But unsurprisingly, entities with bottom lines at risk have been very vocal about spreading disinformation about what SESTA is and is not. We hope you will find this Facts & Myths document helpful in setting the record straight.

MYTH: SESTA is an attack on my First Amendment rights to free expression, and is a form of internet censorship.

FACT: SESTA does not implicate anyone's free speech rights. SESTA concerns a victim's right to bring a civil claim for damages against an online business. This is exactly the same sort of liability that every business in America faces. If a business harms someone, or even if they are injured accidentally on a business' premises, an individual can bring a claim for damages against that business.² For many years, internet companies have used an obscure provision of law to avoid civil liability for damages caused by or occurring on their websites. SESTA does not change the law for all those cases, but it does allow victims of human trafficking to seek civil damages against websites that allowed human trafficking.³

MYTH: The government ordered online personal ads to shut down.

FACT: Online personal ads remain entirely legal. SESTA takes no position on them at all. The bill expands a Federal criminal law concerning prostitution, and applies it to prostitution online.⁴ However, websites have never been legally immune from *criminal* activity, only from the civil lawsuits brought by individual citizens. For trafficking victims at least, SESTA allows them the same rights of civil action against online businesses as citizens enjoy against brick and mortar businesses across the country. Furthermore, trafficking children is not a form of free speech, neither is child pornography more generally. Criminal behavior is not, and never has been protected by the First Amendment.⁵

MYTH: Websites will now avoid moderating their sites for trafficking and other crimes.

FACT: As we have learned through the recent Congressional hearings with Facebook CEO Mark Zuckerberg, websites are monitoring our online behavior in great and particular detail. They do so because they are able to monetize the information they collect about us, and sell it to online advertisers. For many websites, including the largest internet giants, this is central to the model for how they make money.⁶ In all likelihood, websites will not alter their business model in any

² Andrew Suszek, When Can A Business Be Sued For Personal Injury -- ALLLAW.COM
<http://www.alllaw.com/articles/nolo/personal-injury/business-be-sued%20.html>

³ Pub. L. 115-164 Sec. 4a et. seq.

⁴ Pub. L. 115-164 Sec. 3a

⁵ See *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

⁶ Hope King, Facebook is Making More Money Off You Than Ever -- CNN.COM

substantial way as a result of this law. . . And monitoring user behavior and then turning a blind eye to human trafficking is exactly what was occurring every day prior to SESTA's passage.

MYTH: SESTA will stifle innovation on the internet

FACT: The internet is a global phenomenon with innovation occurring every day in every corner of the globe. And yet, only the United States shields internet platforms from civil liability -- not the UK, not Canada, not Japan, Korea, or a host of other countries around the world.⁷ However, the internet continues to thrive there and elsewhere. Furthermore, blanket civil liability protection is not granted to any other sector of the U.S. economy, but that has in no way stifled innovation in other sectors. Commercial innovation tends to be driven by competition and customer expectations rather than the legal climate.⁸ In any case, websites that facilitate the sale and rape of children are not an innovation that should be protected.

MYTH: The Department of Justice's closure of Backpage.com means we do not need SESTA

FACT: Backpage.com did not start in the adult personal ad business. When Craigslist closed its "adult services" section, which had been under legal scrutiny for its role in human trafficking, Backpage.com picked up where Craigslist left off. And suddenly, Backpage.com which had once been a sleepy online element of the *Village Voice* in New York, became the second largest online classified website in the world, with the vast majority of its revenue coming from the adult classified section.⁹ Therefore, it is rational to conclude that the closure of one website, without a change in law, would just lead to a new "backpage.com" just as the closure of the Craigslist adult section, spurred Backpage.com to get into the child trafficking business in the first place.

MYTH: SESTA is negatively affecting sex workers and making their work more difficult

FACT: This idea is based on the premise that there is a vast body of young women and men looking to become sex workers and that SESTA interferes with their chosen method of making a living.¹⁰ While acknowledging that there is a very small segment of society that enters sex work with their eyes wide

<http://money.cnn.com/2016/01/27/technology/facebook-earnings/index.html>

⁷ Markham C. Erickson & Sarah K. Leggin, Exporting Internet Law through International Trade Agreements: Recalibrating US Trade Policy in the Digital Age, 24 Cath. Univ. J. of Law & Tech. 345 et. seq.

⁸ Dr. Sridhar Balasubramanian, Insights Into Innovation: Why Companies Must Innovate, UNC Kenan-Flagler News, March 22nd, 2013

⁹ Emma Brazilian, Village Voice Media Sheds Prostitution Hub Backpage.com -- Adweek, September 24, 2012

¹⁰ For a prime example of this type of thinking, see Chris Hall, Is One of the Most-Cited Statistics About Sex Work Wrong?, The Atlantic, September 5th, 2014

open, and in the absence of coercion, we have several real world examples that demonstrate otherwise. One state - Nevada - has legalized prostitution and regulated brothels. If there are legions of young women and men looking to earn a living from sex work, human trafficking should be rare in Nevada, because people can earn a living in sex work in a regulated and legal environment there.¹¹ Just the opposite is true. In spite of the fact that Nevada has eight counties with legalized brothels, human trafficking remains a huge problem for the state. Las Vegas is the 6th highest ranked city in the nation in terms of calls to the National Trafficking Hotline, it ranks 5th on a per capita basis.¹² In fact, Nevada is amongst the worst states in the nation for human trafficking, and in spite of media portrayals, Nevada law enforcement reports that most of the girls they arrest are from local communities.¹³ Of course, it is not just Nevada. Amsterdam, known worldwide for its red light district and legalized prostitution, has also become a hotbed for human trafficking. Tragically, here too, local Dutch children are often the victims.¹⁴ The reason is simple. Whatever percentage of the prostitution trade is composed of voluntary sex workers, it is far outmatched by demand. And one way the gap is filled is through the exploitation of vulnerable children.

MYTH: This is a victimless crime. Why is the government involved in regulating a financial transaction?

FACT: While studies are insufficient, most experts put the average age of a person entering prostitution between 12 and 15.¹⁵ There is no real dispute that thousands of children are forcibly sexually exploited as prostitutes.¹⁶ The world now recognizes that minor children are not developmentally prepared to consent to sex work.¹⁷ Advocacy groups often refer to a positive picture of college students working their way through school, suggesting that prostitution in the United States is largely a voluntary activity.¹⁸ This illusion ignores the sexual exploitation of children. Any review of research about the lives of sex workers reveals that for the vast majority of them, the “choice” one makes to sell sex occurs in a context of having no other options for survival.¹⁹

¹¹ Barbara Brents & Kathryn Hausbeck, State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels, 44 Soc. Persp. 307, 324 (2001).

¹² Polaris, Ranking of the 100 Most Populous US Cities 2007-2016, http://ag.nv.gov/uploadedFiles/agnvgov/Content/Hot_Topics/Victims/100_Most_Populous_Cities_Report.pdf

¹³ Nevada Among Worst States for Human Trafficking, Public News Service, January 4th 2016.

¹⁴ Anthony Deutsch, At least 1,300 Dutch Girls per year Trafficked, Exploited -- Reuters, October 18th, 2017

¹⁵ Ric Curtis & Karen Terry, The Commercial Sexual Exploitation of Children in New York City, Vol I, John Jay College, Center for Court Innovation, September 2008

¹⁶ Ibid.

¹⁷ UN Convention Against Transnational Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Article 3(a) et seq. 2004

¹⁸ Andrea Di Nicola & Andrea Cauduro (ed.), Prostitution and Human Trafficking: Focus on Clients, Springer 2009

¹⁹ Elise White, et al, Navigating Force and Choice: Experiences in the New York City Sex Trade and the Criminal Justice System's Response. Center for Court Innovation, February 2018

MYTH: Some children, especially LGBTQ youth, leave abusive homes or are thrown out and therefore they need to sell sex to survive.

FACT: It is undoubtedly true that economic hardship makes kids vulnerable to grooming techniques by pimps and traffickers.²⁰ But it is beyond reprehensible that the wealthiest society in the world has responded to the economic insecurity of vulnerable children with a collective shrug. It is functionally saying that if a child is poor, it's fine if they wind up in prostitution. And contrary to the Hollywood fiction of films like *Pretty Woman*, there is no Cinderella ending for these kids. There are well-documented, long term consequences for the victims' mental and physical health, their possibility of completing their education, their reunification with their families and their long-term economic well being.²¹ Thus, to surrender children to this lifestyle is to abandon them to lifelong poverty and trauma.

MYTH: Sex workers need online sites to help screen dangerous johns.

FACT: Prostitution remains incredibly dangerous in this country and around the world. Comprehensive studies indicate that the mortality rate for a female prostitute is 51 times higher than the next most dangerous occupation—working in a liquor store.²² The reasons for this extraordinarily high mortality rate are homicide and drug overdoses.²³ While some prostitute and escort services might keep lists of buyers who they refuse to serve, this does very little to diminish the danger overall. Anonymity is the hallmark of prostitution. People in the industry rarely know the john's real or full name, and vice versa. An online blacklist may deflect a john from a particular sex site, but that only makes it more likely that he will find a trafficking victim who has no choice in whom they service. These vetting lists offer at best a false sense of security, and at worst, an excuse to allow for the sexual exploitation of children online.

For more information about SESTA and how to combat child trafficking see:

www.ecpatusa.org

²⁰ Holly Yzquierdo, Signs Your Teen is Being Groomed by Sex Traffickers -- Catholic Charities and Community Services, December 30th 2015

²¹ Sarah Gonzalez Bocinski, The Economic Drivers and Consequences of Sex Trafficking in the United States, IWPR #B369 September 27, 2017

²² John J. Potterat & Devon D. Brewer, Mortality in a Long-term Open Cohort of Prostitute Women, 159 Am. Journal of Epidemiology 8, April 15th, 2004.

²³ Ibid.

