

September 13, 2018

Dear Members of Congress:

As organizations and leaders in the movement to end human trafficking, we want to thank you for your strong support of the landmark FOSTA-SESTA legislation that overwhelmingly passed the House and Senate and was signed into law by the President earlier this year. The need for legislation to clarify Section 230 of the Communication's Decency Act (CDA) was urgently needed given the 1st Circuit ruling in *Doe v. Backpage.com* which held that even if Backpage.com had participated in the crime of sex trafficking, Section 230 shielded the company from the claims filed by child victims.

Your support of FOSTA-SESTA gave voice to trafficked women and children (and their parents) who were seeking to hold bad actor website operators accountable for knowingly facilitating and participating in the crime of sex trafficking. In fact, in the wake of FOSTA-SESTA, the UK is now considering similar legislation.

However, this new law and the legal rights it provides to survivors is now in jeopardy because of the U.S. Trade Representative's inclusion of Section 230-like language in the new trade agreement with Mexico. Inclusion of Section 230-like language is the cornerstone of the tech lobby's strategy to undermine FOSTA-SESTA. As early as this past January, the Electronic Frontier Foundation (EFF) sent out to their membership the following statement:

Exporting Section 230 to Mexico and Canada isn't the only reason to advocate for its inclusion in a modernized NAFTA. This negotiation comes at a time when Section 230 stands under threat in the United States, currently from the SESTA and FOSTA proposals, which could escalate into demands that platforms also assume greater responsibility for other types of content. As uncomfortable as we are with the lack of openness of trade negotiations, baking Section 230 into NAFTA may be the best opportunity we have to protect it domestically.

There is no doubt that no matter what assurances the U.S. Trade Representative may give that FOSTA-SESTA is not affected by the agreement's Section 230-like language, groups like EFF and their Silicon Valley supporters will use the new agreement language to challenge FOSTA-SESTA in the courts, causing delays in its use by survivors or by local and state law enforcement in the United States. The EFF is already challenging the constitutionality of FOSTA-SESTA and has asked the court for a preliminary injunction.

It would be antithetical to Congress's express intent if the new agreement with Mexico contains a Section 230-like provision. This language would essentially conflict with newly-enacted U.S. law, exporting the "Backpage problem" to Mexico. There is no reason to immunize bad actors, whether it is in the U.S., our neighboring countries, and/or countries that are our trade partners.

Lastly, it is surprising to us that at a time when there are so many questions being asked by Congress about the utility of Section 230 (even from Senator Ron Wyden, its co-author) in light of platform irresponsibility, that the United States would enshrine Section 230-like language in a trade agreement and effectively make it the global legal standard that online platforms could use as a shield against legal liability or from them taking proactive steps to do what is right. It also does not make sense for the United States Congress to support a provision that would potentially tie its hands on updating laws to better deal with websites facilitating not only human trafficking, but the selling of counterfeit and illegal drugs, fake news, search manipulation, terrorist

activity, and the use of social networks and online advertising by foreign governments to undermine our own democracy.

As survivors and advocates dedicated to eradicating human trafficking, we are grateful for your support, but ask that you implore the Administration to remove the Section 230-like language in the new Mexican-US Trade Agreement. It is imperative that this new trade agreement not undermine the hard-fought victory to enact FOSTA-SESTA into law that helps ensure that websites that knowingly facilitate sex trafficking will at long last be held accountable for their actions.

Sincerely,

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