



September 18, 2017

The Honorable John Thune
Chairman
U.S. Senate Committee on Commerce, Science, & Transportation
Dirksen Senate Office Building, SD-512
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member
U.S. Senate Committee on Commerce, Science, & Transportation
Hart Senate Office Building, SH-425
Washington, DC 20510

RE: Hearing on S. 1693, The Stop Enabling Sex Traffickers Act of 2017

In anticipation of the scheduled September 19 hearing before the Senate Commerce, Science, and Transportation Committee addressing proposed revisions to section 230 of the Communications Act of 1934, the American Civil Liberties Union (“ACLU”) writes in support of maintaining the statutory immunity provisions of that provision. As originally devised, section 230 became one of the key drivers behind the explosion of Internet-based commerce and speech. Efforts to narrow the immunity provisions will necessarily have an outsized impact on American and, indeed, global commerce and speech.

The ACLU supported the adoption of section 230. As a strong proponent of the principle that the antidote to bad speech is more speech, we favor facilitating the digital marketplace of ideas. That marketplace encourages a rich array of views while also elevating important communications and drowning out voices harmful to society. Section 230 is critical to maintaining the Internet’s diverse ecosystem of speech and advancing our economic and political dialogue.

The ACLU has previously voiced its opposition to the bill at the center of the scheduled hearing – S. 1693. There is no question that stopping sex trafficking, the subject of the bill, is an important goal. But the relevant questions are whether this bill will achieve its goal, whether there is a more effective way to achieve the goal, and the scope of the bill’s collateral impacts on the Internet ecosystem, the economy, and the modern marketplace of ideas. In our view, protecting section 230 is paramount due to its importance to the U. S. and the world. This is especially so because there are questions about the effectiveness of the proposed law at stopping sex trafficking and there are effective tools that could be used to better effect, all without harming the utility of the Internet.

Prior to the enactment of section 230, early Internet providers faced lawsuits for attempting to police all content posted to their networks by users. In fact, the

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legislative language of section 230 references a case in which an old bulletin board service was sued for exercising editorial control to remove offensive language. Nevertheless, in recent years that history seems to have been forgotten, or perhaps ignored, in the search for solutions to crimes that involve web-based communications.

Online providers cannot and should not suffer criminal liability merely for facilitating the speech of others – even if elements of those communications are distasteful or even unlawful. To do so would discourage online hosts from making responsible efforts to police their sites, and that in turn would make it more difficult to expose those actually engaged in criminal behavior. Just as Internet commerce and speech would not have grown exponentially without the protections of section 230, so penalizing service providers now will discourage online entrepreneurs from moving the miracle of modern Internet communications into its next magical phase.

Congress of course has a profound duty to examine matters that may be ripe for public policy change. We agree that the issue the bill purports to address is an important one to resolve. But this Committee must not look at the problem in isolation and it must examine the impact of such a law outside the single frame of the heinous crime of sex trafficking. With this change, will online businesses curtail their content or online presence out of an abundance of caution at a new exposure to risk? Will the insurance industry compel online businesses to follow broad new restrictive protocols? Will the adoption of this law spur further immunity restrictions when another sympathetic cause casts blame on the communicative power of the Internet?

It should not need to be stated, but section 230 does not bar Internet intermediaries from being charged with federal crimes. Congress has taken other steps to strengthen sex trafficking laws. There are not only many instances of successful prosecutions, but Congress', prosecutors', and the public's attention to these issues has successfully resulted in the shuttering of online pages against which victims' advocates have campaigned. That is not to say more can't be done, but it is to say that Congress should examine carefully the collateral impact of a law such as this one on such a vital force for commercial and political expression as the Internet.

As you attempt to find the right path for addressing crimes such as sex trafficking, just as you would be sure to incorporate constitutional due process standards, we also urge you to examine impacts on other core freedoms as well. Congress unleashed the Internet in adopting section 230 two decades ago. Before taking steps to unwind that accomplishment, take the time to document the benefits achieved through 230 and the losses that would accrue by narrowing its protections.

Please contact Michael W. Macleod-Ball, advisor to ACLU on First Amendment issues, at 202-253-7589 if you have questions or comments about this statement.

Sincerely,



Faiz Shakir
National Political Director

CC: Members of the Senate Committee on Commerce, Science, & Transportation