

The Honorable John Thune
Chairman, Senate Commerce Committee
United States Senate
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member, Senate Commerce Committee
United States Senate
Washington, DC 20510

7 November 2017

Dear Chairman Thune, Ranking Member Nelson, and Members of the Committee,

We, the undersigned human rights and civil liberties organizations, trade associations, and individuals write to convey our significant concern with the Manager's Amendment to S.1693, the Stop Enabling Sex Traffickers Act (SESTA), which the Committee will consider on Wednesday. We appreciate and support the bill sponsors' deep commitment to fighting human trafficking, and we recognize that the Manager's Amendment is an effort to respond to many of the concerns that we and others have voiced over the original draft of the legislation. But the Manager's Amendment does not resolve some of the fundamental issues with SESTA that we believe will lead to increased censorship across the web.

In the United States, Section 230 of the Communications Act has proven as important as the First Amendment in supporting freedom of speech online. Section 230's protections against liability under state law and federal civil statutes ensure that online intermediaries can host a diverse array of information, ideas, and opinions without facing the chilling effect of potential litigation. Section 230 also guarantees that intermediaries can moderate the speech on their services and engage in "good Samaritan" blocking and filtering of objectionable content.

SESTA would undermine these key features of Section 230 and the Manager's Amendment does not resolve these issues. It keeps SESTA's underlying approach of expanding the potential of federal and state criminal and civil liability for intermediaries based on speech posted by their users. This would create an incredibly strong incentive for intermediaries to err on the side of caution and take down any speech that is flagged to them as potentially relating to trafficking.

This would also create an environment ripe for a heckler's veto, enabling an individual to target a platform with a lawsuit if he disagrees with the speech the platform hosts. The financial toll of litigation costs in this environment would be a significant burden for all platform hosts. Small and medium platforms are particularly vulnerable to being driven out of business due to the sheer expense of litigation, even if they successfully defend a lawsuit—a fact that could be leveraged by those seeking to censor.

Smaller intermediaries would also find it more difficult to compete with giant, established platforms who may be able to accept this new liability risk as a cost of doing business as a content host. Running a platform for third-party debate and discussion would become a much riskier and more expensive proposition. This could mean a further withering of the diversity of online platforms for speech and a closing down of spaces for diverse viewpoints online.

Pressures on intermediaries to prevent trafficking-related material from appearing on their sites would also likely drive more intermediaries to rely on automated content filtering tools, in an effort to conduct comprehensive content moderation at scale. These tools have a notorious tendency to enact overbroad censorship, particularly when used without (expensive, time-consuming) human oversight. Speakers from marginalized groups and underrepresented populations are often the hardest hit by such automated filtering.

Small and medium businesses will have fewer resources to devote to implementing the technical tools needed to comply with the law and to defend against overly aggressive lawsuits. Nonprofit and non-commercial platforms often have even fewer resources and opportunities for outside investment than small commercial platforms. Many of these smaller platforms would likely respond to the increased liability risk with broader takedown policies that will sweep in constitutionally protected speech.

Crucially, Section 230 does not, and has never, prevented intermediaries from facing federal criminal charges. Congress amended the federal criminal law against trafficking, 18 U.S.C. § 1591, through the Stop Advertising Victims of Exploitation Act in 2015 and has enacted or renewed a number of other anti-trafficking laws over the past several years. Congress should pursue other avenues to combat this very serious issue and avoid undermining the statute that has served, for over 20 years, as the foundation for free speech online.

Sincerely,

Access Now
Campaign for Liberty
Center for Democracy & Technology
Citizen Outreach
Committee for Justice
Demand Progress Action
Electronic Frontier Foundation
Engine
FreedomWorks
National Coalition Against Censorship
New America's Open Technology
Institute
R Street

Jane Bambauer, University of Arizona
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Internet and Society
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