

JOINT STATEMENT IN RESPONSE TO TECH INDUSTRY OBSTRUCTION OF SECTION 230 LEGISLATION

As organizations committed to the protection of trafficking victims, we are deeply concerned by the pervasive misinformation being posited in opposition to the *Stop Enabling Sex Traffickers Act of 2017* and the *Allow States and Victims to Fight Online Sex Trafficking Act*. The tech industry’s opposition to any attempt to tweak Section 230 is not driven by free speech concerns; it is driven by the same motivating factor that drives companies like Backpage.com to facilitate sex trafficking—profit. In fact, this legislation seeks to amend a law that has been stretched and strained to the point that its disfigured state now protects the very harms that it was enacted to prevent. The fundamental question here is this: Why are these actions allowed and protected online when they are considered criminal acts offline? Putting up posters of trafficked people or children for sale in a mall would constitute a federal crime. Yet, companies like Backpage do this online – Backpage “rents” out pieces of online real estate and allows “tenants” to post advertisements and photos of trafficked people. We call on Members of Congress and legitimate technology companies to join us in our efforts to end the horrific practice of sex trafficking and to join in an honest dialogue based on the facts:

Myth # 1: *This is just about going after Backpage.com.*

THE FACTS: While Backpage.com (“Backpage”) is the largest online platform where sex trafficking victims are bought and sold, it certainly is not the only platform. If Backpage principals are criminally prosecuted and the website shuts down, another site will fill this space and likely will not filter content at all. The current legal interpretation of Section 230 has created an atmosphere where bad actors like Backpage can operate with low risk and high profits. Other companies will quickly continue to fill this space. The business model, not Backpage, is the reason that amending Section 230 is so essential.

Myth # 2: *Section 230 should not be amended because bad actors can be prosecuted under federal criminal law.*

THE FACTS: There is an urgent need to amend Section 230 because the 1st Circuit, in *Doe v. Backpage*, recently found that even if Backpage had participated in criminal activity, its conduct was protected from the claims of children who had been sold on its site. Indeed, the court advised the children to seek a legislative remedy because Section 230 was in conflict with the Trafficking Victims Protection Reauthorization Act.

While some tech companies are now publicly calling for Backpage to be prosecuted in federal court, this is in stark contrast to their private actions *in support* of Backpage. The Center for Democracy and Technology, the Electronic Frontier Foundation, and other organizations representing technology companies have vigorously and consistently intervened in Backpage

cases, including those filed by children, to support the position and claims of Backpage that Section 230 protects its operations.

Myth # 3: *This legislation is an attack on free speech on the Internet.*

THE FACTS: The primary purpose of Section 230 was to protect a fledgling Internet industry from legal fees related to defamation claims based on third party content, *not to preserve free speech*. Now, profits, rather than speech, are what is driving the debate. Courts have consistently interpreted and expanded Section 230 far beyond its original intent, to protect not only “irrational free speech” (e.g. revenge porn, snuff film sites, and other types of malicious speech) but actual *criminal conduct*.

Myth # 4: *Section 230 is the bedrock of the Internet.*

THE FACTS: Section 230 was never intended to convey Teflon-like blanket immunity to sites engaged in meretricious activity. In 1996, it was enacted in response to a \$200 million dollar defamation suit filed by Stratton Oakmont (the Jordan Belfort/Wolf of Wall Street firm) against Prodigy (an Internet billboard) for failing to remove a comment which accused Stratton Oakmont of stock manipulation. The court ruled against Prodigy. Congress responded by enacting Section 230 at a time when there was no way for new Internet sites to manage large amounts of data. Congress aimed to protect these new sites from multiple defamation claims as long as these sites were, in good faith, filtering or moderating content. At the time, Congress elected to treat online publishers differently from offline publishers, which enjoy no Section 230 protection. However, because of inconsistent language contained in Section 230, courts have interpreted the statute to protect not only good faith filtering, but *all* third-party content (whether or not filtering occurs). This was never the intent. Technology has outpaced our legal framework with harm never contemplated back in 1996. Thus, Section 230 must be calibrated in light of decisions by courts to protect “Bad Samaritans” (hosting of illegal commercial sex; revenge porn; and the like) as well as actual criminal conduct.

Myth # 5: *The Internet will break if Section 230 protection is clarified.*

THE FACTS: Civil liability for all online entities that knowingly facilitate sex trafficking will have no impact on self-regulating, good faith actors. Further, the proposed legislation preserves the Good Samaritan clause, which provides a safe harbor for good actors who filter content in good faith.

Myth # 6: *Amending Section 230 will discourage self-policing.*

THE FACTS: This is false. Most legitimate tech companies have embraced self-policing and will continue to do so. However, for bad actors like Backpage, Section 230 has allowed the Wild West of the Internet to proliferate with no incentive to keep the dark side of technology at bay.

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 J.S. - Survivor of child sex trafficking
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 Mehmet Oz, MD - The Doctor Oz Show
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