

The undersigned free expression and privacy organizations, trade associations, and law professors, write to convey our strong opposition to efforts to create new federal criminal liability for publishers of content created by a third party (also known as user-generated content).

Congress is considering several legislative proposals that would wrongly target web hosts and other publishers for the criminal acts of others. These bills would criminalize the hosting or publishing of content—advertising, in particular—that aims to further a child trafficking venture. We share the vital goal of ending human trafficking. It is a horrific crime, and there are many positive steps that the federal government can and should take to prevent human trafficking and help its victims: **Congress should provide additional resources for prosecutions under the strong federal law that already criminalizes the conduct of those who knowingly place advertisements for such activity in online or offline publications, and should provide funding for victims services, counseling, and community outreach.**

However, the legislative proposals to create new federal criminal liability for online content hosts and publishers are overbroad, counterproductive, and would place unconstitutional burdens on the free speech and privacy rights of millions of Americans. We urge Congress to take the following points into consideration:

- **Congress has long recognized the importance of protecting content hosts.** The Internet is a powerful platform for individuals to access information and exchange opinions. This is due in significant part to legal protections for intermediaries that make up the Internet, including third-party content hosts, user-generated content platforms, and advertising networks. 47 U.S.C. § 230 (commonly known as “Section 230”) provides these intermediaries with crucial certainty that they will not be held legally liable for the content that their users post. Congress recognized that, without such legal protection, the risk of potential liability would strongly discourage content hosts from offering people the ability to share information, opinions, and creative expression online. In passing Section 230, Congress declared, “It is the policy of the United States to promote the continued development of the Internet and other interactive computer services and other interactive media.”
- **Users will see fewer free and low-cost online publications and services.** Publishers of third-party content depend on liability protections to run successful businesses. Newspapers, particularly small presses, rely on the ability to publish advertisements to support their reporting. Digital marketplaces are able to provide platforms for individuals and small businesses to engage in commerce. And millions of sites provide original content and services to their users for free, generating all of their revenue from online advertising. This advertising is often delivered by networks that have no legal nexus to the original purchaser of the ad and no means for reviewing the content of the ad.
- **Small businesses will be disproportionately affected.** Legislation that creates the potential for federal criminal liability based on content created by a third party would expose all of these intermediaries and publishers to the threat of criminal prosecution. The need to defend against such prosecutions, even as a wholly innocent party, would prove ruinous to small businesses, and would create an insurmountable barrier to many new start-ups. U.S. laws that have placed responsibility for content with the creators of that content have resulted in the

most robust and attractive Internet infrastructure in the world. Imposing liability on the conduits of this information would likely lead users of U.S. infrastructure to use providers in other countries.

- **Content hosts will engage in self-censorship.** Faced with the potential for costly and time-consuming legal proceedings, user-generated content sites and other publishers would likely take down any content that is flagged as potentially problematic, rather than risk even the possibility of criminal prosecution. This overbroad approach would lead to the removal of constitutionally protected speech. It would also create a potentially powerful “heckler’s veto” mechanism for those seeking to suppress other users’ speech, as content hosts would be unlikely to take the risk of ignoring even a spurious flag.
- **Content hosts will be discouraged from moderating content.** Perversely, the new risk of criminal liability would discourage good-faith screening and content moderation efforts by content hosts. Efforts to pre-screen could be used to support allegations that a content host had knowledge of illegal content, and one incorrect decision in a pre-screening process that allowed something unlawful to slip through could open the door to prosecution. This perverse incentive is precisely what Congress intended to prevent with Section 230’s “good Samaritan” provision.
- **Extensive recordkeeping requirements will place immense burdens on content hosts and online speakers.** An online identity verification requirement would unquestionably chill adults’ willingness to engage in lawful communications and significantly intrude upon their right to privacy. Similar identification requirements in the Child Online Protection Act led to that law being struck down due, in part, to the burden these requirements place on speakers, listeners, and hosts of protected speech.<sup>1</sup> Hosts and other intermediaries would be unable to independently verify identification information supplied by those posting content, and would face the risk of liability despite good-faith efforts to comply with the law. Identification requirements would create thousands of privately held databases of sensitive information, dramatically increasing the likelihood of damaging data breaches that expose individuals’ personal information to malicious actors.
- **Courts have found similar state laws unconstitutional.** State laws pursuing similar aims have been enjoined for violating the First Amendment, with courts finding that such laws are vague, overbroad, create a chilling effect on lawful speech, and fail the least-restrictive-means test.<sup>2</sup>

Again, we strongly support anti-trafficking measures that provide increased support and services for victims. We underscore the fact that existing federal law criminalizes not only trafficking, but also intentionally aiding or abetting a trafficking venture. But holding hosts of third-party content criminally responsible for content they did not create would be as

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<sup>1</sup> *ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008), cert. denied, 555 U.S. 137 (2009).

<sup>2</sup> See *Backpage v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012), *Backpage v. Cooper*, 939 F. Supp. 2d 805 (M.D. Tenn. 2013), *Backpage v Hoffman*, 2013 U.S. Dist. LEXIS 119811 (Dist. N.J. 2013).

counterproductive as it would be unjust. It would significantly curtail individuals' opportunities to create, share information, and express themselves online and would chill economic activity.

For these reasons, we emphatically urge Members of Congress to reject this legislative approach.

Endorsed by,

Access

American Civil Liberties Union

American Society of News Editors

Association of Alternative Newsmedia

Center for Democracy & Technology

Computer and Communications Industry  
Association

Electronic Frontier Foundation

Interactive Advertising Bureau

Internet Commerce Coalition

Internet Infrastructure Coalition

National Coalition Against Censorship

NetChoice

New America's Open Technology

Institute Online Policy Group

PEN American Center

TechFreedom

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If you'd like to add your organization to the list of signatories, please contact [Emma Llanso](#),  
Director of CDT's Free Expression Project.

A current list of signatories is available [here](#).