

# US digital businesses express concern over possible implications of SESTA bill

Concern has been raised by the US tech community about the possible repercussions of the proposed amendment to Section 230 of the US Communications Decency Act 1996 ('CDA 230') which protects US companies from civil liability for user-generated content on their digital platforms, following the US Senate Commerce Committee's approval of the latest version of the Stop Enabling Sex Traffickers Act ('SESTA') on 8 November 2017. If signed into law, SESTA would make digital platforms that are knowingly assisting, supporting, or facilitating a violation of sex trafficking law liable to be prosecuted, by amending Section 230 to exclude enforcement of federal or state sex trafficking laws from the immunity granted by CDA 230.

The proposed amendment to CDA 230 follows cases involving Backpage.com, which faced several lawsuits in the US for allegedly promoting sex trafficking ads on its website; Backpage.com invoked CDA 230 as a defence against liability during court proceedings and succeeded in every case. Senator Rob Portman, who submitted the first draft of SESTA on 1 August 2017, stated in a press release on his website that "for too long, courts around the country have ruled that websites like Backpage.com can continue to facilitate illegal sex trafficking online with no repercussions [...] court rulings have made it clear that Congress must act to amend the Communications Decency Act to hold those who run sites that facilitate sex trafficking civilly and criminally accountable for their crimes."

However, SESTA has faced criticism due to the potential implications of amending CDA 230 for the providers of digital platforms that allow user-generated content. Wikimedia, the parent company of Wikipedia, published a blog post on 9 November 2017, contesting that without Section 230, there would be "an internet without content created and shared by anyone. [...] When plaintiffs target online speech, they often go after the website, not the speaker. It can be difficult to track down individual users, and suing a website may appear to be more lucrative [...] small internet companies, startups, and nonprofit websites like the Wikimedia projects lack the resources to defend against a flood of lawsuits. Websites shouldn't be sued into the ground, or afraid to even launch, simply because of holes in Section 230's protections. Any amendments to Section 230 must take into account their effects not just on large, well-funded tech companies, but on startups and nonprofit organisations as well." Additionally, nonprofit digital rights group the Electronic Frontier Foundation published a statement on its website on 8 November 2017 referring to SESTA as "a deeply flawed bill," encouraging readers to sign an online petition to "defend our online communities" and speak out against SESTA to US Congress.

According to the latest version of SESTA, platforms would lose immunity under CDA 230 if they are 'knowingly assisting, supporting or facilitating a violation.' Michelle Cohen, Member

at Ifrah Law PLLC, comments that "SESTA may be overbroad in its reach of those who support, assist or facilitate a violation of the sex trafficking law if the 'knowing' aspect is not carefully circumscribed. For instance, if someone hosts a site of adult content and neutral-content and a user uses the site to engage in sex trafficking, will the host be liable in general? Will the host be liable if a member of the public or authorities reports sex trafficking and the host fails to take steps to take down the content? Is the host required to regularly monitor and remove content going forward? There are many open questions."

Following the release of the first draft of SESTA, a number of large tech companies also publicly criticised the Bill; for example Google stated in a 7 September 2017 press release that "if smaller platforms are made liable for 'knowledge' of human trafficking occurring on their platforms, there is a risk that some will seek to avoid that 'knowledge'; they will simply stop looking for it. This would be a disaster." However prior to the passing of the amended SESTA Bill by the Senate Commerce Committee, the Internet Association, comprised of companies such as Google, Amazon, Facebook and Microsoft, published a statement on 3 November 2017 in support of SESTA, quoting the CEO of the Internet Association, Michael Beckerman, as saying that "important changes made to SESTA will grant victims the ability to secure the justice they deserve, allow internet platforms to continue their work combating human trafficking, and protect good actors in the ecosystem."

At the time of publication, SESTA has been placed on public hold by Senator Ron Wyden, who stated in an 8 November 2017 press release that "I continue to be deeply troubled that this bill's approach will make it harder to catch dangerous criminals, that it will favour big tech companies at the expense of startups and that it will stifle innovation."

"If SESTA becomes law, one question will be whether there will be efforts to exempt other types of content from CDA 230, such as terrorist related content or other content a specific group of people find objectionable," adds Kathy Ossian, CEO at Ossian Law. "While fighting sex trafficking activity is a very worthy cause, this could be a slippery slope."