

**Statement by
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**“S.1693, The Stop Enabling Sex Traffickers Act of 2017”
September 19, 2017**

**Committee on Commerce, Science, and Transportation
United States Senate**

Chairman Thune, Ranking Member Nelson, and Members of the Committee, I am honored to be here today on behalf of The National Center for Missing and Exploited Children (“NCMEC”).

First, let me say how pleased I am to appear alongside NCMEC’s valued partners representing law enforcement and the technology industry. NCMEC could not sustain its mission to protect children without the heroic efforts of law enforcement to remove children from danger and prosecute those who harm them. Just as important are the significant contributions and voluntary efforts of the technology industry to support child safety online. For many years, technology companies such as Google, Facebook, Microsoft and many others have devoted tremendous resources to reduce online child sexual exploitation on their platforms. We share a collective interest in strengthening the laws and technical tools that can be used to further NCMEC’s work to save children from sexual exploitation and prevent children from being victimized by sex trafficking.

Based on NCMEC’s mission to reduce child sexual exploitation and prevent child victimization, we have endorsed the Stop Enabling Sex Traffickers Act of 2017 (“SESTA”). SESTA uniquely addresses a legal loophole that once closed will ensure justice for child sex trafficking victims and hold legally responsible entities that knowingly assist the trafficking of a child for sex online. NCMEC hopes that following this hearing we can work together to ensure this legislation moves quickly forward and our nation’s most vulnerable victims have the legal protections they so urgently need.

NCMEC History

NCMEC was created in 1984 by John and Revé Walsh and other child advocates as a private, non-profit organization. It has been designated by Congress to serve as the national clearinghouse and to provide a coordinated, national response to problems relating to missing and exploited children. NCMEC works with families, victims, private industry, law enforcement, and the public to assist with preventing child abductions, recovering missing children, and providing services to deter and combat child sexual exploitation. More specifically to today’s hearing, NCMEC serves as a national clearinghouse for reports relating to child sex trafficking and assists law enforcement, first

responders, and victim specialists relating to the identification, location, and recovery of child sex trafficking victims.

Online Child Sex Trafficking

Child sex trafficking is a pervasive and underreported crime. Every year, thousands of children from across the United States are trafficked, sold for sex, repeatedly raped, and suffer traumatic physical, sexual, and emotional abuse. Child sex trafficking involves the rape or other sexual abuse of a child in exchange for something of value. There is no legal protection for selling, facilitating the sale of, or benefiting financially from the sale of a child for rape or sexual abuse. There is no situation in which child sex trafficking could be considered legal or an activity between consenting adults.

Technology has fundamentally changed how children are victimized through sex trafficking in ways that would have been unimaginable just a few years ago. An adult can now shop from the privacy of his home or hotel room, often on a cell phone, to buy a child for rape. Traffickers lure and recruit children online. Websites can be used to create virtual marketplaces on which predatory offenders can peruse a variety of sexual experiences being offered for sale, including with children, and complete their purchase online.

As the national resource center on missing and exploited children issues, NCMEC has learned a great deal about child sex trafficking. NCMEC operates the CyberTipline to provide the public and electronic service providers with an efficient method of reporting incidents of suspected child sexual exploitation, including child sex trafficking. So far in 2017, NCMEC has received more than 9,700 reports of suspected child sex trafficking to the CyberTipline. Because there is no mandatory requirement for reporting child sex trafficking to NCMEC, we believe the reports NCMEC receives reflect only a small fraction of the large number of children trafficked online each year.

The crime of child sex trafficking has increasingly expanded to the internet. Traffickers have learned that by leveraging the power of the internet, they can more easily recruit, control and sell children for sex. Some website operators have also recognized the enormous profitability of creating online platforms to facilitate the sale of adults and children for sex. Over the past five years, 81% of NCMEC's reports regarding child sex trafficking relate to the sex trafficking of a child **online**. More than 73% of reports relating to child sex trafficking made by members of the public to NCMEC concern a Backpage.com advertisement. This trend will continue so long as online classified ad websites are able to knowingly assist human sex traffickers market children for sale for sex to a range of online customers.

At NCMEC, we are confronted daily with the reality that children are being trafficked for sex online. Under current law, these crimes can be committed with virtual impunity for websites that knowingly facilitate the trafficking of a child. In case after case, child sex trafficking victims are failing to have their voices heard and are being deprived of their day in court against **every** entity that knowingly supported their trafficking, because of the legal protections provided to these

entities under current law. SESTA narrowly addresses these judicial barriers and ensures that child victims have full rights to seek redress for the harm done to them.

The Courts' Struggles to Reconcile Trafficking Laws and the Communications Decency Act

Congress has acted to protect children from being trafficked for sex by enacting the Trafficking Victims Protection Reauthorization Act ("TVPRA"). The TVPRA establishes human trafficking as a federal crime and recognizes the unique vulnerability of children to trafficking by imposing severe penalties on anyone who knowingly recruits, harbors, transports, provides, advertises or obtains a child for a commercial sex act or who benefits financially from such an act. Every state has an equivalent statute available to state prosecutors to bring to justice those who traffic children for sex. These laws have been used effectively to prosecute traffickers who conduct their business on the streets, in hotels, casinos or at truck stops. However, these laws have proven inadequate when a website participates in a venture to traffic children due to the Communications Decency Act ("CDA"), a law that predates the TVPRA.

The CDA was enacted by Congress in 1996 to protect online companies from liability when they host third party content or engage in good faith efforts to regulate explicit material on their platforms. Unfortunately, courts have struggled, and failed, to reconcile the purpose of the immunity provided by the CDA with the mission of the TVPRA to criminalize the sex trafficking of children. This legal conflict has been building for years. The most frequent result is that children who have suffered undeniable and unimaginable harm, are completely barred from seeking judicial relief against a knowing online facilitator of their trafficking. As a further complication, courts have been uncertain regarding how to define what it means to benefit from "participation in a venture" of trafficking under the TVPRA, which is a significant element to prove in a trafficking case involving an online website.

Over the past seven years, over 20 legal cases have been initiated involving Backpage.com. The majority of these cases involve child victims who sought judicial damages against Backpage.com or state legislatures compelled to defend attempts to enact stronger laws to protect children from being trafficked for sex online. Time and time again in these cases, courts acknowledged the horror of the allegations made regarding the child victims' trafficking, but determined themselves powerless to act under the CDA.

The child sex trafficking victims who have been denied relief due to the CDA include:

- A 14-year old child who was trafficked online for two years and advertised with photos displaying her private body parts in sexually exploitive poses.
- A 15-year old child who estimates she was raped over 1,000 times while trafficked on Backpage.com for a year and a half.
- A 15-year old child who was trafficked for two years with ads posted on Backpage.com an average of six times a day with five to fifteen customers a day.

Unfortunately, these victims are not unique. NCMEC has managed tens of thousands of cases where children have been bought and sold by the commercialization of child sex trafficking online.

Courts Call on Congress to Clarify the CDA's Application in Child Sex Trafficking Cases

The judicial system has become increasingly aware that children are inadequately protected, and state prosecutors limited, when an online website (rather than a brick-and-mortar operation) is participating in a trafficking venture. Even when dismissing victims' trafficking claims on legal grounds, both criminal and civil courts have consistently called on Congress to clarify that there is no legal protection for those who facilitate the trafficking of children for sex online. Further, both criminal and civil courts have reluctantly dismissed online sex trafficking charges against Backpage.com, while bemoaning the lack of clarity in how they must apply the CDA.

For example, last year the Sacramento Superior Court dismissed criminal pimping charges against Backpage.com, while recognizing the vital issues at stake:

[T]he Court understands the importance and urgency in waging war against sexual exploitation. Regardless of the grave potential for harm that may result in the exercise of this article of faith, Congress has precluded liability for online publishers for the action of publishing third party speech and thus provided for both a foreclosure from prosecution and an affirmative defense at trial. **Congress has spoken on this matter and it is for Congress, not this Court, to revisit.**

Also last year, the First Circuit Court of Appeals dismissed trafficking charges in a civil case after recognizing the failure of the statutes to provide an adequate means to protect children and hold online sex traffickers liable because of the CDA:

“This is a hard case – hard not in the sense that the legal issues defy resolution, but hard in the sense that the law requires that we, like the court below, deny relief to plaintiffs whose circumstances evoke outrage. . . The appellants' core argument is that Backpage has tailored its website to make sex trafficking easier. Aided by the amici, the appellants have made a persuasive case for that proposition. But Congress did not sound an uncertain trumpet when it enacted the CDA, and it chose to grant broad protections to internet publishers. Showing that a website operates through a meretricious business model is not enough to strip away those protections. If the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through values that drive the CDA, the remedy is through legislation, not through litigation.

Most recently, less than a month ago, the Sacramento Superior Court again dismissed criminal pimping charges and bluntly assessed its view of the current state of CDA law to immunize a website from online sex trafficking:

If and until Congress sees fit to amend the immunity law, the broad reach of section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking.

NCMEC's Support of SESTA

NCMEC has worked closely with children victimized by online sex trafficking, their families, attorneys and prosecutors in many of the cases where child sex trafficking claims have been dismissed under the courts' interpretation of the CDA. Through our work, we have witnessed the anguish of their recovery and the long-lasting trauma their families suffer. We also have heard their hopelessness when their legal efforts to hold responsible websites that knowingly facilitated the crimes against them are dismissed by the court.

Congress has now heard these children's voices as well. NCMEC applauds the introduction of SESTA by Senators Rob Portman and Richard Blumenthal, and their 26 bi-partisan co-sponsors, to address the legal roadblocks that child victims have faced. NCMEC's support for SESTA is reflective of our mission to combat the sexual exploitation of children, including the pernicious monetization of children for sex trafficking on websites, such as Backpage.com.

NCMEC supports SESTA, the first such bill that NCMEC has supported proposing a clarification of the CDA, because the goals of the legislation are sufficiently narrow to help ensure justice for child sex trafficking victims and clarify remedies available to civil attorneys and state Attorneys General to assist victims in holding every entity that knowingly participated in their trafficking. We believe SESTA strikes an important balance between providing sex trafficking victims the opportunity to hold everyone actively participating in their victimization accountable with the need to continue encouraging innovation of technology on the internet.

NCMEC is fundamentally aware that combatting child sex trafficking is a multi-faceted problem. SESTA will not put an end to online child sex trafficking. No single solution can accomplish this. But it will provide an essential tool to providing legal rights to child sex trafficking victims and ensuring that online entities that participate in the trafficking of a child are not legally immune for their crimes.

Because Backpage has been for years one of the largest facilitators of online sex trafficking ads, it is not surprising that Backpage has been the focus of civil, criminal, and legislative efforts to curtail sex trafficking on the site. Backpage has shown that children can be trafficked for sex online through a functionally simple and wildly lucrative website, while both criminal and civil courts have demonstrated that a loophole exists that enables this type of website to invoke the immunity under the CDA. NCMEC is aware that there are many other websites on which children are trafficked for sex. If Backpage ultimately closes because of any of the pending legal actions, another website or multiple websites will surely fill the marketplace that Backpage currently dominates. SESTA's narrow goals are intended to make certain that the CDA's ongoing protections enjoyed by a robust internet industry will not extend to next generation platforms like Backpage.com that *knowingly* assist, support, or facilitate child sex trafficking.

SESTA narrowly focuses on criminal conduct – the sale of a child for sex – which does not implicate the First Amendment or the Good Samaritan exception under Section 230. The legislation will clarify that immunity under the CDA is not extended to actual criminal conduct –

the *knowing* facilitation, assistance or support of trafficking – while maintaining the CDA’s core publisher protections for the mere publication of third party content or the good faith removal of objectionable online material. The balancing of interests here involves the rights of child sex trafficking victims who are denied access to justice versus clarifications to the CDA twenty-one years after its enactment.

Additionally, given the volume of this criminal activity online and the impact on state and local communities, State Attorneys General should be able to prosecute websites that knowingly assist the sex trafficking of children within their state which SESTA provides.

We believe that SESTA provides essential clarifications to an important statute and are encouraged that well-intentioned dialogue is continuing in an effort to understand the proposed legislation and ensure it fulfills its mission to protect children, including today’s hearing.

Conclusion

Thank you for the opportunity to provide the Committee with information on NCMEC’s role in combating online child sex trafficking and our support for SESTA. As the nation’s clearinghouse on missing and exploited children issues, NCMEC’s sole priority is to protect the interests of children victimized by sexual exploitation. SESTA would be a powerful tool to further the rights of child victims consistent with NCMEC’s mission while protecting the provisions of the law that encourage a healthy and robust internet. We are aware that technology companies and other advocates have been meeting with sponsors of the bill to discuss this proposed legislation.

We welcome the opportunity to provide additional support as SESTA moves through the legislative process and look forward to continuing to work with you on these very important issues.