May 23, 2019

Rep. Jerrold Nadler
Chair
House Committee on the Judiciary
2138 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Doug Collins
Ranking Member
House Committee on the Judiciary
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Sen. Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Bldg.
Washington, DC 20510

Sen. Dianne Feinstein
Ranking Member
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Rep. Frank Pallone, Jr.
Chair
House Committee on Energy and Commerce
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Rep. Greg Walden
Ranking Member
House Committee on Energy and Commerce
2322 Rayburn Bldg.
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Sen. Roger Wicker
Chair
Senate Committee on Commerce, Science, and Transportation
512 Dirksen Senate Bldg.
Washington, DC 20510

Sen. Maria Cantwell
Ranking Member
Senate Committee on Commerce, Science, and Transportation
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RE: Amendment of Communications Decency Act (CDA)

Dear Congressional Leaders:

In 2013 and again in 2017, Attorneys General from virtually every state and territory wrote to inform Congress of a damaging misinterpretation and misapplication of Section 230 of the Communications Decency Act of 1996 (CDA) that rendered state and local authorities unable to enforce criminal laws against companies that actively profited from the promotion and facilitation of sex trafficking and crimes against children. To be sure, we are grateful for all the work you have done to protect the vulnerable among us. To bootstrap your efforts, we renew our recommendation for a modest but necessary amendment to the CDA. We must enable our state and local authorities to protect our citizens, including the most vulnerable among us, and to take appropriate action against criminal actors.
As noted in our earlier letters, some federal court opinions have interpreted the CDA so broadly that the perverse result has been to protect individuals and services that knowingly aid and profit from illegal activity online at the expense of the victims for whom the protection was intended. To that end, the impropriety of Section 230’s application to businesses that profited from the knowing promotion and facilitation of sex trafficking and crimes against children prompted Congress to enact the “Stop Enabling Sex Traffickers Act” and “Allow States and Victims to Fight Online Sex Trafficking Act” (known as FOSTA-SESTA). This bill, signed into law in 2018, provides that the CDA’s immunity does not apply to enforcement of federal or state sex trafficking laws.

While we welcome the ability to pursue some of the Internet’s most pernicious actors under FOSTA-SESTA, we sadly note that the abuse on these platforms does not stop at sex trafficking. Stories of online black market opioid sales, ID theft, deep fakes, election meddling, and foreign intrusion are now ubiquitous, and these growing phenomena will undoubtedly serve as the subjects of hearings throughout the 116th Congress. Current precedent interpreting the CDA, however, continues to preclude states and territories from enforcing their criminal laws against companies that, while not actually performing these unlawful activities, provide platforms that make these activities possible. Worse, the extensive safe harbor conferred to these platforms by courts promotes an online environment where these pursuits remain attractive and profitable to all involved, including the platforms that facilitate them.

Addressing criminal activity cannot be relegated to federal enforcement alone simply because the activity occurs online. The authorities in our states must be allowed to address these crimes themselves and fulfill our primary mandate to protect our citizens and enforce their rights. We therefore renew our recommendation that 47 U.S.C. § 230(e)(1) be amended to the following (added language in **bold**):

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal, **State, or Territorial** criminal statute.

In its passage of FOSTA-SESTA, Congress understood that the immense challenges presented by sex trafficking on the Internet must be shared by Federal and State authorities. The increasing challenges presented by profiteers of the many other criminal enterprises online require the same level of investigation and prosecution that can only come from inclusion of State and Local resources. We ask that you adopt this simple addition to the CDA to remove the law’s restrictions on enforcement and enable us to better protect citizens nationwide.

Respectfully,

Jim Hood     Ken Paxton
Mississippi Attorney General   Texas Attorney General
Steve Marshall  
Alabama Attorney General

Leslie Rutledge  
Arkansas Attorney General

William Tong  
Connecticut Attorney General

Karl A. Racine  
District of Columbia Attorney General

Christopher M. Carr  
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Clare E. Connors  
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Aaron M. Frey  
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Kevin G. Clarkson  
Alaska Attorney General

Phil Weiser  
Colorado Attorney General

Kathleen Jennings  
Delaware Attorney General

Ashley Moody  
Florida Attorney General

Leevin Taitano Camacho  
Guam Attorney General

Lawrence Wasden  
Idaho Attorney General

Derek Schmidt  
Kansas Attorney General

Jeff Landry  
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Brian Frosh  
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Eric S. Schmitt
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Douglas Peterson
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Patrick Morrisey  
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