



Congress is preparing to vote next week on proposals ostensibly aimed at fighting sex trafficking online, but one approach could hurt startups and actually make it harder for good actors to fight sex trafficking on their platforms.

- **H.R. 1865, the Allow States to Fight Online Sex Trafficking Act—or FOSTA:** a widely supported, thoroughly debated bill to combat sex trafficking. The House Judiciary Committee worked with law enforcement, victims' groups, and the tech community to create a carefully crafted legislative solution to end sex trafficking and to go after those who perpetrate these horrific crimes.
- **S. 1693, the Stop Enabling Sex Trafficking Act—or SESTA:** a flawed bill that would make it riskier for companies to police sex trafficking content on their platforms. The Senate Commerce Committee passed an ambiguous and overly-broad bill meant to create liability for websites that host user-generated content, even if they don't know specific illegal content exists.

The House Committee on Rules is considering H.R. 1865 on Monday with an amendment being offered by Congresswoman Walters that would add SESTA. While both approaches attempt to stop sex trafficking and Backpage.com—a platform that can and should be shut down—these are not solutions that can be Frankenstein-ed together.

## Why the urgency? What's going on here?

- FOSTA is a carefully crafted bill. SESTA has not been considered by either committee of jurisdiction in the House.
- Attaching SESTA at the final hour deprives the language of any meaningful process.
- And why move so fast? Backpage is fighting legal battles on multiple fronts, including a Grand Jury convened by the DOJ in AZ, a criminal investigation brought by the MO Attorney General, and civil litigation in MA, OR, and AL.

## If SESTA is added to FOSTA, Congress may end up hurting the people the bill is meant to help.

### Losers:

- *Victims.* Tech platforms engage in content moderation to identify and stop objectionable content online. By creating new and unclear liability, SESTA could subject platforms that engage in content moderation to legal risk, undermining the work that tech and victims' groups have done on creating moderation best-practices and reporting.
- *Law enforcement.* Tech platforms monitor posted content closely for illegal activity thanks to CDA 230. When they see suspicious activity, they flag law enforcement and work with them to stop criminals. SESTA will undermine this cooperation.
- *Consumers.* Many of the platforms we use on a daily basis will be unsure about how they should operate in a post-SESTA world. Increased liability on platforms—particularly liability for content that platforms can't control—will decrease investment in the sector and potentially bankrupt smaller companies.

### Winners:

- *Trial lawyers.* Existing liability protections do not immunize platforms from federal criminal charges, but they do prevent frivolous civil lawsuits. SESTA will create a new path for trial lawyers to bring lawsuits for quick settlements, fishing expeditions, and more.
- *Giant social media platforms.* With increased legal risk around user-generated content, only companies that can afford to hire lawyers and content moderators to navigate ambiguous rules will be able to thrive, further cementing their advantages over small competitors out of the market. Facebook [employs 7,500 content moderators](#); most startups employ only a handful of people across all functions.

**Bottom line:** An issue this serious and complex affects all online platforms. It's particularly bad for startups that don't have the resources to navigate nebulous legal liability or frivolous lawsuits. The internet is too important for Congress to rush through legislation without fully weighing all of the consequences.