



DEPARTMENT OF THE ATTORNEY GENERAL

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GOVERNOR

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ATTORNEY GENERAL

For Immediate Release
May 24, 2019

News Release 2019-27

**Attorney General Asks Congress to Hold
Internet Service Providers Accountable, Ensure States
Maintain Right to Stop Criminal Violations of State Law**

HONOLULU – Attorney General Clare E. Connors joined 47 Attorneys General across the country this week to ask Congress, again, to amend the Communications Decency Act in order to make sure state and local authorities are able to protect our citizens online and take appropriate action against criminal actors.

The Communication Decency Act of 1996 (CDA) was designed to encourage the growth of the internet by promoting free expression, particularly on online message boards. The Act was intended to allow companies who sponsor message boards to remain immune to repercussions from inappropriate posts, but, due to a misinterpretation of Section 230 of the Act, some federal court opinions have interpreted it so broadly that individuals and services that knowingly aid and profit from illegal activity have evaded prosecution.

“Stop Enabling Sex Traffickers Act” and “Allow States and Victims to Fight Online Sex Trafficking Act” (known as FOSTA-SESTA) was signed into law in 2018, making clear that the CDA’s immunity does not apply to enforcement of federal or state sex trafficking laws. Unfortunately, the abuse on these platforms does not stop at sex trafficking, but includes all sorts of harmful illegal activity such as online black market opioid sales, identity theft, and election meddling.

Section 230 expressly exempts prosecution of federal crimes from the safe harbor, but “addressing criminal activity cannot be relegated to federal enforcement alone simply because the activity occurs online,” the letter states. “Attorneys General must be allowed to address these crimes themselves and fulfill our primary mandate to protect our citizens and enforce their rights.”

Attorneys General have addressed this issue with Congress before. In 2013 and 2017, nearly every state and territory Attorney General wrote to inform Congress of the damaging misinterpretation and misapplication of Section 230 of the CDA.

Attorney General Connors said, "Amending the CDA to clarify its application will enable our state law enforcement offices to take action consistent with the original intent of the law."

In addition to Hawaii, the following states joined in this letter: Mississippi, Texas, Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Guam, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, the District of Columbia, Guam, and Puerto Rico.

A copy of the letter is attached.

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May 23, 2019

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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.

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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.

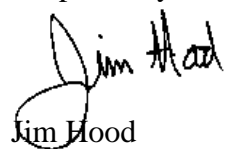
While we welcome the ability to pursue some of the Internet's most pernicious actors under FOSTA-SESTA, we sadly note that the abuse on these platforms does not stop at sex trafficking. Stories of online black market opioid sales, ID theft, deep fakes, election meddling, and foreign intrusion are now 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
Mississippi Attorney General



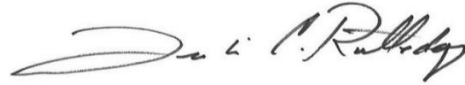
Ken Paxton
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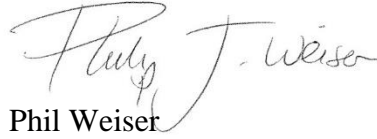
Steve Marshall
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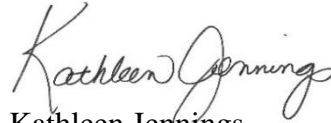
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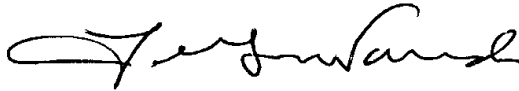
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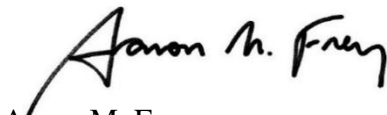
Derek Schmidt
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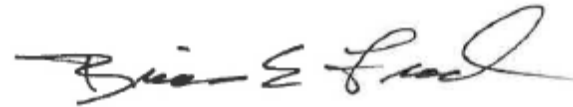
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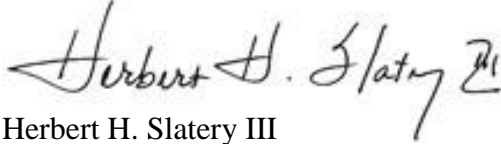
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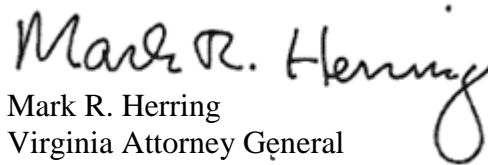
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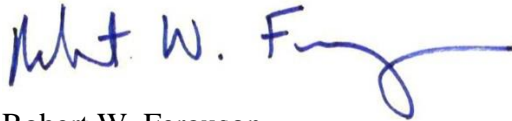
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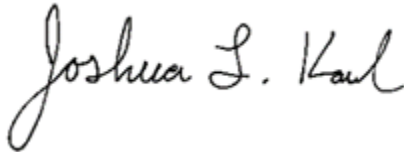
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