



*Promoting Convenience, Choice, and Commerce on the Net*

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**Testimony of Braden Cox, Policy Counsel, NetChoice**

**Massachusetts Attorney General's Office, Hearing on Sexual Exploitation Online**

**Suffolk University Law School, October 19, 2010**

I'm Braden Cox, Policy Counsel for NetChoice. NetChoice is a coalition of trade associations and e-commerce companies that share the goal of promoting the integrity and availability of the global Internet. We are engaged in online safety issues in the states, in Washington, DC and in international internet governance organizations.

We thank the Attorney General for holding this hearing on such an important subject. As we've heard today, human trafficking and the sexual exploitation of children are serious matters that deserve serious attention.

Today I'd like to briefly describe how NetChoice coalition members have been involved with child safety issues on the Internet and offer a few ideas on what to do about sex trafficking criminals who try to use the Internet to further their crimes.

NetChoice members have worked tirelessly to keep criminals off our web sites in order to make them safer for children. But we alone cannot do the job. We need a coordinated effort between law enforcement, parents, educators, and other companies.

That's why in 2008 NetChoice worked with its members to create model legislation for implementing a comprehensive legislative approach to keep kids safe online and to pursue and control child predators. The legislation created new crimes of online solicitation, luring and grooming and made it so that we can work with states to respond effectively and quickly to law enforcement requests, even without subpoenas when there's an emergency.

Since it was adopted by the Council of State Governments, there have been a number of states that have created new laws based on this model.

Online companies have also developed a number of technology tools to create a safer experience for all their users, but particularly their younger ones. We offer parental control software that allows parents to monitor, filter, and block content for their children. Companies that offer search products have "safe search" technology that ensures that only appropriate search results appear. Responsible online companies scan images and refer to a hash value database to screen for child porn, and when we find apparent images of child porn we report them to the National Center for Missing and Exploited Children.

Many online companies have a “report abuse” mechanism to report harassment and other abuses that occur on their websites. Finally, we are increasingly building our products and services according to a “safety by design” principle that ensures that safety and privacy considerations are implemented from day-one.

The online industry has also served on two comprehensive studies of online safety:

- One study was conducted right here in Massachusetts by the Harvard Berkman Center for Internet and Society. It was initiated in 2008 by MySpace and 49 state attorneys general—including Attorney General Coakley, who spoke at one of the meetings in Cambridge. The goal of this study was to review technologies that could address online safety risks.
- Another study was recently issued by the Online Safety & Technology Working Group. Congress created this group as a part of the Protecting Children in the 21<sup>st</sup> Century Act. I was appointed to be a member of the working group, and our final report was sent to Congress this June.

The findings of both reports stress that child safety is not one-size-fits-all. It takes a comprehensive “toolbox” that is holistic and multi-dimensional.

Like child safety, sex trafficking is a complex problem that requires a multi-disciplinary approach. Online companies already work actively with law enforcement when it comes to reporting apparent child pornography. We have a long track record of responding when law enforcement is part of the process.

Similarly, we’re committed to help law enforcement eliminate commercial sexual exploitation. We support Attorney General Coakley’s desire for the creation of an Internet safety task force to address the issues presented today. There needs to be a dialogue among NGOs, law enforcement, technologists and online companies.

What are some public policies should be done about child prostitution and sex trafficking?

- States can strengthen laws that penalize sex traffickers, protect victims and provide law enforcement with training on human trafficking. Existing Racketeering law might also be amended to more easily prosecute the organized crime elements we know exist in the commercial sexual exploitation of women and children.
- Congress can amend the Electronic Communications Privacy Act (ECPA) to reflect modern Internet communications. Updating ECPA would go a long way to allow online computer services to better provide and preserve data for law enforcement investigations, while still protecting the constitutional rights of citizens.

- To the extent that new laws are required, they should target sex traffickers and the few sites that are complicit with them. This can be done effectively without any changes to Section 230 of the Communications Decency Act.

Section 230 has been a critical component to the growth of online content and services and we support its current form, which provides important legal certainty for thousands of innovative websites.

In summation, NetChoice members have worked tirelessly to keep criminals off our web sites in order to make them safer for children. Online companies are willing to help if there's any way we can assist law enforcement in eliminating commercial sexual exploitation.

Again, we thank the Attorney General's Office for your attention to this matter.

## **Section 230**

### **1. Why Section 230?**

Section 230 was enacted by Congress in 1996 in response to a wave of litigation holding online forums liable for third party postings. Congress recognized that this sort of liability would severely compromise the growth of the Internet as a participatory medium where users can post information for other users.

Section 230 has been a huge success, and has made possible a wave of Internet innovation and job creation in Massachusetts and the rest of the U.S.

Section 230 provides important legal certainty that promotes innovation in Internet content and services. It makes websites and entrepreneurs are willing to try innovative new products involving user generated content without the fear of open-ended liability.

Section 230 has been critical to the growth of Internet search, social networking, photo-sharing, Android and iPhone applications, and important trust mechanisms such as user product reviews and user feedback on e-commerce platforms.

These sites allow us to communicate with friends (Facebook), share photos with family (Picasa/Flickr), and engage in community forums dealing with topics from how the Red Sox did this year to the sharing of recipes for the best chowder.

### **2. What Section 230 Does and Doesn't Do**

Section 230 protects websites from civil lawsuits if they do not play a role in developing unlawful content and do not elicit the posting of unlawful.

Section 230 does not protect online services for content that they are involved in creating.

Section 230 does not protect online services if they create categories that elicit posting of illegal material.

Section 230 does not protect online services from criminal liability for any violation of federal criminal law, from liability for electronic communications privacy violations, or from violations of intellectual property rights.

### **3. Why Section 230 in its current form?**

Further exceptions would undercut the important benefits that Section 230 provides to Massachusetts' economy.

Section 230 works well because of its simplicity and clear and limited exceptions. A cutback of protection would reduce the clarity that this rule provides and make online sites less able to check their sites for illegal activity. The result would be less incentive to take proactive

measures to address bad or illegal activity, if sites will still be liable for a small percentage of activity that leaks through.

#### **Public policies must be technology-neutral**

- It has always been a challenge to differentiate between legal and illegal activity in the advertising of escort services.
- These services have been traditionally advertised in newspapers, yellow pages, even on billboards located on highways. Now these listing appear on the Internet.
- The key when moving forward with public policy in this area is to be technology-neutral. Internet sites should not be singled-out or blamed for what is a multi-faceted, even international problem.

#### **General interest sites are qualitatively different from those websites dedicated to adult services classifieds**

- There is a difference between sites that offer general search and listings and those sites that provide enhanced classifieds for adult services
- Many sites have white and yellow pages that make listings available, just like the phone company. They provide address and phone number information.
- Other sites go further and provide detailed information about the services, pricing and even photos.
- Sites such as AOL and Yahoo do not accept sponsored search or display ads for adult services [name names or just say “most major websites”?]
- But it is hard for any website to parse through all advertisements, particularly if these ads are served by third parties. How to differentiate between massage parlor ads and the Ritz day spa ads?

2 quotes:

1. NetChoice members have worked tirelessly to keep criminals off our web sites in order to make them safer for children. Online companies have developed technology tools and pushed model legislation that empowers parents, educates children, and provides more resources for law enforcement.
2. Like child safety, sex trafficking is a complex problem that requires a multi-disciplinary enforcement response. Online companies already work actively with law enforcement and we're willing to help if there's any way we can assist law enforcement in eliminating sex trafficking.