

The War on Porn Rebranded as the War on Sex Trafficking

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On October 8, 2014, ThinkProgress.com declared the end to the War on Porn.¹ The censors had lost and erotic media would live on. One sign that the war had been lost was the fact that annual contributions to the well-known anti-erotica group, Morality in Media, had dwindled from over \$1 million dollars in 2001 to just over \$20,000 in 2005.² By 2006, the group terminated its lobbying registration entirely. A few years later, Attorney General Eric Holder completely disbanded the Obscenity Task Force, which was formerly responsible for bringing federal obscenity prosecutions. The Unit's most recent misadventure, the case against John Stagliano, ended in disaster for the government, with all charges being dismissed by the court. It seems the dawn has indeed come for the War on Porn. So is there cause for celebration?

Yes and no. Certainly, the apparent end to active obscenity prosecutions is a victory for the First Amendment. This uncertain legal risk that plagued adult industry operators for years seems to have subsided. But censors never change their stripes. Sex panic still sells, politically; it just needed a 21st Century face lift. Thus "The War on Human Sex Trafficking" was born. Who can turn their backs on helpless women and children sold into a life of servitude? As it turns out, this is one of the few bipartisan issues left in Congress.

The War on Trafficking has become a legislative juggernaut, with numerous bills introduced this Session having some connection with trafficking. The two most important bills are now pending in the Senate, and are designated S. 572 (the SAVE Act) and S. 178 (the Justice for Victims of Trafficking Act). The main sponsor of the SAVE Act, Senator Kirk (R-III), recently introduced this bill as an amendment to S. 178, so they are presently combined. While the SAVE Act purports to add just a few words to 18 U.S.C. s. 1591, its impact could be dramatic. If passed, the bill would criminalize the advertising of any sexual act involving minors or coerced adults, and result in mandatory 10-15 year jail terms. One problem: How does an online advertising network tell if an advertisement violates these prohibitions? In the absence of face to face interaction with advertisers, is it realistic to require a website to know the age, much less the state of mind, of its advertisers? A large part of this effort has been directed at Backpage.com, and its escort advertising activity. If this bill is adopted, escort advertising sites will supposedly be required to identify and block any ad posted by a minor or a coerced adult.

While a last minute dispute between Republicans and Democrats, regarding a provision of the bill restricting payment for abortions, prevented the bill from near adoption in March, 2015, the bill still enjoys widespread bipartisan support. An identical House version of the SAVE Act, HR. 285, already passed that Congressional body. Should this legislation be passed into law, it could represent the biggest threat to the adult entertainment industry in modern times.

Naturally, the bill's sponsors hope that escort advertising sites will conclude that the risk of prosecution is too high, and simply shut down. This is an exceedingly short-sighted approach to the problem of identifying sex traffickers. Closing sites like Backpage.com will actually hurt trafficking victims. Currently, these sites represent the most significant, reliable source for law enforcement investigations into trafficking cases. Clearwater Police Chief, Anthony Holloway, recently stated in an interview with Reason.com, that sites

¹ <http://www.nytimes.com/2007/09/28/us/28obscene.html?ex=1348718400&en=7dbb4d5def591585&ei=5124&partner=permalink&exprod=permalink&r=0>

² *Id.*

like Backpage.com are a valuable investigative tool for trafficking, and that if shut down, the traffickers would just go to other sites.³ Such “other sites” may well be located offshore, and outside of U.S. jurisdiction, yet be able to display the same ads to the same audience as U.S. based sites. So the only real impact of forcing these sites out of business will be the loss of a quick, reliable source of information about sex traffickers.

Beyond the loss of an important investigative resource, the SAVE Act will negatively impact online innovation. As noted by the Center for Democracy and Technology, criminalizing online advertising runs counter to the First Amendment, and the strong protections afforded to interactive computer services under Section 230 of the Communications Decency Act.⁴ Forcing network operators to screen ads and advertisers for potential trafficking activities will slow this Internet traffic to a screeching halt, for those who continue to operate in the space. Other entrepreneurs will simply conclude that the risks are too great and avoid developing new technology and business models that would otherwise contribute to the online marketplace.

The other bill pending in Congress, S. 178, is a mammoth piece of legislation that incorporates the so-called HERO’s Act, which will funnel money into the investigation and prosecution of sex-trafficking cases at all levels. Essentially, local prosecutors will be able to get their hands on federal money if they find sex trafficking cases to pursue. While this may help some trafficking victims, the incentive to generate questionable investigations with the promise of a large federal dollar payoff is problematic. It will only be a matter of time before some enterprising prosecutor will decide to test the boundaries of the First Amendment, and charge some advertising network with trafficking because a user-uploaded escort ad involved a “coerced” adult. The problem doesn’t stop with escort advertising. Any sex act is potentially covered under the pending legislation, such as those which routinely occur on live web cam sites. If the web cam model happens to be performing under duress, new trafficking laws could kick in and result in mandatory 10 year prison sentences for those who advertised the services. The same result could occur with ads for gentlemen’s clubs, if the performer engaged in a sex act and turned out to be trafficked. The room for uncertainty is substantial. The potential for self-censorship is massive.

Sex trafficking is one of our nation’s problems, but the size of the problem is highly debatable. An oft-quoted statistic from a 2011 study states that over 300,000 children are “at risk” of being trafficked every year.⁵ But that number relates to the potential victims of trafficking, not actual trafficking victims. And most “trafficking” involves forced labor, not sexual slavery.⁶ It is also frequently argued that the Internet has become the #1 platform for advertising prostitution. That’s hardly shocking, given that the Internet has become the #1 platform for just about all goods and services in modern times. That’s certainly not a reason to pass laws designed to criminalize passive interactive computer services.

While the scope of the trafficking problem is difficult to identify, the powers pushing the War on Trafficking can be found with ease. Perhaps not surprisingly, Evangelical Christians have embraced the movement, and have essentially hijacked it from its feminist roots.⁷ It has become a virtual cause célèbre in the Evangelical movement. There’s a “Shine a Light on Slavery Day” (Feb. 27, if you’re interested), prayer weekends, movies, even lipstick sold to “kiss slavery goodbye.”⁸ One Christian trafficking activist and

³ <http://reason.com/archives/2015/03/14/lawmaker-crusades-against-backpage-ads>

⁴ <https://cdt.org/blog/senate-save-act-raises-major-free-expression-concerns/>

⁵ <http://reason.com/archives/2015/03/14/lawmaker-crusades-against-backpage-ads>

⁶ <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

⁷ http://www.slate.com/articles/double_x/faithbased/2015/03/christians_and_sex_trafficking_how_evangelicals_made_it_a_cause_celebre.html

⁸ *Id.*

megachurch pastor, David Platt, even tried to connect trafficking to porn, writing in his book; “Every time someone views pornography, they’re contributing to the cycle of sex slavery.”⁹

Perhaps the most telling sign that the War on Porn has been rebranded as the War on Trafficking: Morality in Media recently announced that it was changing its name to the “National Center on Sexual Exploitation.”¹⁰ Perhaps those donations will start rolling in again.

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⁹ <http://www.christianpost.com/news/ala-megachurch-pastor-david-platt-sex-trafficking-opponents-need-to-stop-watching-porn-which-fuels-prostitution-134505/>

¹⁰ <http://pornharms.com/changed-name/>