

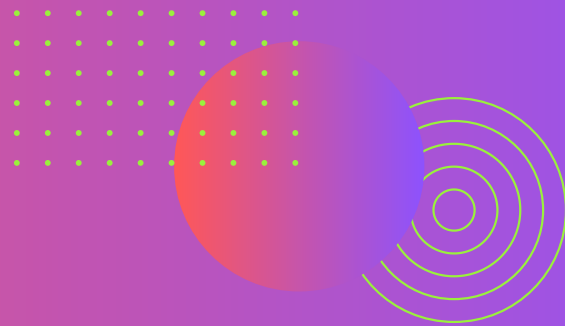
THE IMPACT OF A BAD [FLAWED] INTERNET LAW: FOSTA-SESTA SEVEN YEARS ON

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INTRODUCTION + BACKGROUND

The calls for the amendment of Section 230 of the Communications Decency Act did not start today. In April 2018, during the first Trump administration, the Fight Online Sex Trafficking Act of 2017, popularly known as FOSTA-SESTA, was passed to amend Section 230. The law created exceptions allowing online platforms to be held liable under federal and state civil and criminal laws for promoting or facilitating prostitution and for facilitating sex trafficking through the advertisements of unlawful sexual acts. FOSTA-SESTA enjoyed bipartisan support in Congress and was endorsed by several celebrities, despite widespread concerns from legal experts, sex worker advocates, and civil rights organizations about the proposed amendment to Section 230, the intentional criminalization of the facilitation of consensual sex work (i.e. prostitution), and the potential adverse impact of this legislation on sex workers and sex trafficking victims, who are already a vulnerable group.

Considering the criminal penalties, potentially bankrupting civil lawsuits, and the fact that it's easier for online platforms to overcomply, the adverse impact of this law was almost immediate, with many platforms shutting down, deplatforming sex workers, and over-censoring consensual sexual content. In response, Craigslist shut down its personals section after the bill passed Congress, Reddit began preemptively deleting content, and Google removed adult content from Google Drive accounts. Around the same time the law was passed, Backpage—an ad site popular for listing adult services—was seized by the Justice Department after years of public and governmental pressure to shutter its adult services listings page, primarily on the grounds that it facilitated prostitution and sex trafficking.

However, the defendants in the resulting case were tried under other laws: the U.S. Travel Acts and a series of money laundering statutes. Clearly, the government did not need to pass FOSTA-SESTA to achieve its misguided agenda.

By pressuring and motivating online platforms to over-censor and deplatform sex workers, FOSTA-SESTA took away the very digital tools through which sex workers had gained and built autonomy, achieved financial independence, physical safety, and community. Before the law was passed, sex workers could advertise their services on dedicated websites or social media platforms, screen potential clients through community-made and maintained databases and client lists, seek advice from other sex workers or request reviews on platforms such as Reddit, and easily accept payments from clients they may not have even met via payment processing companies such as PayPal. However, the enactment of this law stripped sex workers of the safety and security that these online spaces provided, pushing many back into the streets, which are harsher, more dangerous, and put them at greater risk of violence and police raids.



Post FOSTA:

39%

of sex workers experienced increased physical + sexual assault

21%

of sex workers in vulnerable groups were forced to go to the streets

78%

of sex workers affirmed the law negatively impacted thier ability to screen clients

COYOTE RI Survey, 2022

HOW FOSTA-SESTA HARMED SEX WORKERS

A 2022 survey by Call Off Your Old Tired Ethics Rhode Island (COYOTE RI) on the impact of the law, four years after its passage, showed that sex workers spent more to vet clients and that 39% of the surveyed group “experienced more physical and sexual assault after FOSTA.” 11% of the surveyed group were forced by the passage of FOSTA to go to the streets, with this number being much higher for vulnerable groups such as sex workers living with disabilities, which rose to 21%. Following the passage of FOSTA-SESTA, years of community-based data leveraged by sex workers to determine whether potential clients were safe were wiped out, thereby leaving sex workers less safe. 78% of the surveyed group affirmed that FOSTA-SESTA negatively impacted their ability to screen potential clients. The survey also found that sex workers were more reluctant to speak to other sex workers about keeping safe due to fear that they may be speaking with an undercover police officer or informant, especially as such conversations could be interpreted as promoting or facilitating prostitution, an act criminalized by the law. 43% of the surveyed group “indicated that they were less likely to help a new worker that asked for safety tips.”

While these findings point to widespread harm, the law’s impact is particularly acute for those at the intersection of sex work and other marginalized identities—especially LGBTQ+ individuals. LGBTQ+ youth are more likely to turn to sexwork for survival, particularly as they may face familial rejection, homelessness, and stigmatization, even within broader social institutions such as schools, shelters, etc.

“FOSTA-SESTA has been described as a “hate policy against LGBTQ+ and other marginalized communities.”



The high rate of violence that LGBTQ+ sex workers are likely to face, including from clients, due to their sexual orientation and gender expression, makes access to online spaces and safety tools especially critical for their physical protection. In this regard, FOSTA-SESTA has been described as a “hate policy against LGBTQ+ and other marginalized communities, in addition to a sex worker hate policy.”

Similar to LGBTQ+ sex workers, other sex workers who belong to marginalized groups have been more significantly impacted by FOSTA-SESTA. This includes sex workers of color, those with disabilities, migrant workers, and sex workers from low-income households. Studies have also shown that sex workers who identify with one or more of these intersecting marginalized identities experience heightened adverse impacts. For example, the 2022 survey report referenced earlier by COYOTE RI found that, due to a decrease in income since the passage of FOSTA-SESTA, many sex workers have been unable to afford stable housing. According to the survey, 34% of trafficking survivors, 37% of sexworkers with disabilities, and 40% of people of color are more likely to experience unstable housing.



“The impact of FOSTA-SESTA has been particularly harsh on members of the LGBTQ+ community.”

FOSTA-SESTA’S UNINTENDED CONSEQUENCES FOR LGBTQ COMMUNITIES

Before FOSTA-SESTA was passed, LGBTQ-themed content, including non-explicit content, was often filtered out or restricted as “potentially inappropriate.” Big tech companies such as Apple and Google have also made various attempts to define the limits of sexual expression and what is considered “family friendly” or “appropriate,” through policies setting out content boundaries that have sometimes disproportionately classified LGBTQ-themed content as adult or inappropriate.

Additionally, their policies have restricted certain apps containing NSFW materials from the respective app stores. These restrictive and inconsistent policies have historically posed danger to LGBTQ+ people who rely on such platforms to connect, meet, and form relationships with others who share sexuality. The passage of FOSTA-SESTA has only amplified these already adverse policies. Against this background, the impact of FOSTA-SESTA has been particularly harsh on members of the LGBTQ+ community and even more so on LGBTQ+ sex workers, who exist at the intersection of sex work and a marginalized identity. This is particularly significant given the well-documented fact that LGBTQ people are more likely to rely on sex work for survival.

Beyond the obvious impact of the law on sex workers, the broader LGBTQ+ communities have also been affected by FOSTA-SESTA, as they have been forced to self-censor more online in order to avoid account suspensions or bans. While members of LGBTQ+ communities are generally very expressive about their sexuality online, their right to free expression in this regard has been curtailed by many platforms' responses to FOSTA-SESTA, which have been characterized by a cautious and overly broad approach to moderation, which includes rules "forbidding sexual comments" and other forms of sexual expression. This content moderation regime has also impacted queer content creators and artists who specialize in erotic and LGBTQ+ themed content, making them increasingly vulnerable to having their content flagged or removed.

eBay's response to the changing regulatory climate, including the passage of FOSTA-SESTA, further illustrates how this law negatively impacts this already marginalized community. In May 2021, eBay banned the sale of "sexually oriented materials" on its service. The New Yorker noted that considering eBay's role in democratizing access to materials on queer history and sexuality, this policy may lead to the erasure and inaccessibility of this history, one that is integral to the recognition of the marginalized community.

FOSTA-SESTA does not only constrain the identity and sexuality of queer people online, but also threatens the systemic erasure of their history.



THE CASE AGAINST BAD INTERNET BILLS LIKE FOSTA-SESTA

Given this evidence of harm, it is important to ask whether FOSTA-SESTA has lived up to its promises? or whether it has merely traded safety for censorship? The answer is simple: FOSTA-SESTA has not done any good and has instead caused actual harm.

**"FOSTA-SESTA has not done any good
and has instead caused actual harm."**

A 2021 report by the U.S. Government Accountability Office (GAO) concluded that “criminal restitution has not been sought and civil damages have not been awarded under section 3 of FOSTA.” Regarding criminal prosecution under the law, the report noted that “prosecutors have not brought more cases with charges under Section 3 of FOSTA because the law is relatively new and prosecutors have had success using other criminal statutes.” Private actions for damages under this law have also been very limited. The report further noted that a 2020 civil action for damages under various statutory provisions, including section 3 of FOSTA, was dismissed by the court in 2021 without any damages being awarded. Nothing appears to have changed since the 2021 GAO report. Seven years on, FOSTA-SESTA has been nothing more than a complete disaster with horrendous net negatives.

The passage of FOSTA-SESTA was not an isolated act of weakness by Congress. It is one of the bad internet laws that Congress has passed without thoughtful consideration and without taking accountability of the resulting ripple effects. Unfortunately, there is a slew of bad and dangerous internet bills in congress waiting to be passed, including those that attack the very essence of Section 230.

Given Section 230’s foundational role to the functioning of the internet, particularly in safeguarding the freedom of expression, any efforts to amend it must be critically evaluated for their potential to enable censorship and adversely impact marginalized members of the society.

Join the ongoing campaign to petition congress against the passage of bad internet bills:

SECTION 230 REPEAL

Trump + Congress have threatened to sunset Section 230, which would force platforms to over-moderate content to avoid liability and end online free expression as we know it.

SCREEN ACT

This bill would instate nationwide age verification requirements for websites that lawmakers deem “harmful to minors.” It is backed by far-right politicians and anti-porn groups, and intended to censor our access to the Internet while collecting our data in droves.

ONLINE ID CHECKS

These bills allow the government to limit access to reproductive healthcare information and online LGBTQ communities. The SCREEN Act promises to bring these requirements to the entire country.

KOSA

This bill claims to make kids safer, but it’s really a dangerous censorship bill that would give the government unprecedented control over the internet. This would put youth in danger by preventing them from accessing potentially life-saving resources.

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