

# FOSTA/SESTA:

How an Anti-Sex-Trafficking Bill  
Drew Outrage from Sex Workers  
and Internet Freedom Activists

White Paper  
for Globalization and Illicit Commodities

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Image source:  
<https://nyulocal.com/the-real-impact-of-fosta-sesta-1298fe0d589b>



Image source:  
<https://www.engadget.com/2018/04/11/fosta-sesta-silencing-sex-workers/>

# FOSTA/SESTA: AN INTRODUCTION

## FOSTA/SESTA'S TIMELINE AND INTENTIONS

On April 11<sup>th</sup>, 2018, President Donald Trump signed a combined House and Senate bill into law. This controversial bill, called FOSTA/SESTA, is a combination of the House's "Allow States and Victims to Fight Online Sex Trafficking Act" (FOSTA), and the Senate's "Stop Enabling Sex Traffickers Act" (SESTA). Its final incarnation passed the Senate on March 21<sup>st</sup>, 2018.<sup>1</sup> FOSTA/SESTA's official aim is to provide law enforcement with additional mechanisms to target sex traffickers operating online, especially those actors who post ads soliciting clients for trafficked and underage persons against their will. For many supporters of the bill, the ultimate goal is to shutter all websites that offer advertisements for any kind of prostitution.<sup>2</sup>

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<sup>1</sup> Tom Jackman. "Trump Signs 'FOSTA' Bill Targeting Online Sex Trafficking, Enables States and Victims to Pursue Websites." The Washington Post. April 11, 2018. <https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?noredirect=on>.

<sup>2</sup> For example, Rep. Ann Wagner of Missouri, the House sponsor for FOSTA, has said "My number one input, and who I listen to, are the victims' advocates and our prosecutors and law enforcement with bringing these sex trafficking websites to justice. We're going to do what's in the best interest of putting an end to all of these websites, and safeguarding the justice and the rights of our victims." Quoted in Quinn, Melissa, and Damian Dovarganes. "Congress' Sex Trafficking Bills Draw Outrage from Victims Groups and Privacy Advocates." Washington Examiner. January 12, 2018. Accessed April 27, 2018. <https://www.washingtonexaminer.com/congress-sex-trafficking-bills-draw-outrage-from-victims-groups-and-privacy-advocates/article/2645674>.

To achieve these goals, FOSTA/SESTA changes the way in which internet platforms can legally operate. By amending Section 230 of the Communications Decency Act of 1996, FOSTA/SESTA removes “safe harbor” protections that online platforms have previously enjoyed, so that they can now be held legally responsible for user-created content published on their websites.<sup>3</sup> Essentially, this means that a website that hosts such user-created content can be criminally prosecuted when users violate laws via their posts. Officially, FOSTA/SESTA was designed to address user posts that advertise persons who have been trafficked; however, the language of the law doesn’t preclude it being used against people engaged in consensual adult prostitution, in jurisdictions where that is illegal.<sup>4</sup> Sites can also be held liable in civil court.<sup>5</sup> In addition to overruling the 1996 Section 230 rules, FOSTA/SESTA also expands prohibitions against prostitution across state lines as laid out in the Mann Act

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<sup>3</sup> Paul Ehrlich. "Communications Decency Act 230." *Berkeley Technology Law Journal* 17, no. 1, Annual Review of Law and Technology (January 01, 2002): 401-19.

<sup>4</sup> *A note on language in this paper: terms such as “consensual adult prostitute,” and “consensual sex worker” are employed create a clear contrast between these individuals and those who are “underage,” “trafficking victims” or “trafficked persons.” Though sex work of any kind is illegal in most of the United States, those who engage in it by their own choice have a very different perspective than those who are coerced or forced into it. This latter category also includes victims of “Commercial Sexual Exploitation of Children” (CSEC); this is because, whether or not an underage person considers their work in prostitution to be forced, they are legally considered unable to consent. When the terms “sex worker” or “prostitute” are used in this paper, it is in reference to adults for whom coercion is not a factor in their choice of work.*

<sup>5</sup> Kitty Stryker. "How an Anti-Sex Trafficking Bill Is Changing the Internet." *Teen Vogue*. April 03, 2018. <https://www.teenvogue.com/story/fosta-sesta-anti-sex-trafficking-bill>.

to include prostitution facilitated by the internet.<sup>6</sup>

In this paper, I will provide background on how the FOSTA/SESTA bill came to be, including how federal legislators and law enforcement envision it as a tool to combat sex trafficking via the internet, and how the legal battle against popular (now-shuttered) site backpage.com influenced the creation of the bill. I will also look at the critiques from internet freedom advocates and consensual sex workers and their allies, including a discussion of how sex workers use the internet to mitigate their personal risk. Finally, I will look at the early results of the legislation, and provide some ideas of what to watch for, in the future.

## SUPPORTERS AND CRITICS OF FOSTA/SESTA

*“Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer ... or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.”*

From “FOSTA” – House Bill 1865

In both its Senate and House incarnations, FOSTA/SESTA received broad bipartisan support from lawmakers, as well as public support from celebrities, some

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<sup>6</sup> Melissa Gira Grant. "Proposed Federal Trafficking Legislation Has Surprising Opponents: Advocates Who Work with Trafficking Victims." IN JUSTICE TODAY. January 26, 2018. <https://injusticetoday.com/proposed-federal-trafficking-legislation-has-surprising-opponents-advocates-who-work-with-bf418c73d5b4>.

corporations and from anti-trafficking groups.<sup>7</sup> The combined FOSTA/SESTA package passed its final vote in the Senate by a very wide margin – 97 votes in favor and only 2 votes against.<sup>8</sup>

At the same time, however, FOSTA/SESTA has been subject to notable and vocal critiques. These came primarily from two groups. The first is concerned with how the new law will impact internet freedom and creativity. By holding website owners responsible for the content that their users post, such critics fear, the law will force those companies to heavily regulate that user content. This could result in fewer ways to express one's self freely online, and increased censorship from the companies that control the most popular online platforms, in response to their new civil and legal liabilities.<sup>9</sup> These critics also worry that FOSTA/SESTA could be applied far beyond the sphere of online sex work. They have expressed concerns that the new law will have a chilling effect on free speech across a wide range of online communications, where site owners will police and censor comment sections and discussion forums across a range of subjects. This group has included internet freedom advocates like the Electronic Frontier Foundation (EFF) and TechFreedom. In March 2018, EFF outlined its

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<sup>7</sup> Tom Jackman. "Trump Signs 'FOSTA' Bill."

<sup>8</sup> "U.S. Senate: U.S. Senate Roll Call Votes 115th Congress - 2nd Session". Accessed April 20 2018. [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=115&session=2&vote=00060](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=2&vote=00060)

<sup>9</sup> Elliot Harmon. "How Congress Censored the Internet." Electronic Frontier Foundation. March 24, 2018. Accessed April 26, 2018. <https://www.eff.org/deeplinks/2018/03/how-congress-censored-internet>.

opposition to FOSTA/SESTA:

Websites and apps we all use every day...rely on [Section 230] protection. Under the current system, users are generally liable for the content they post, not the platforms. If SESTA passes, these platforms will be exposed to significantly more liability...that will create an incentive to review anything a user wants to post, if the platform decided (sic) to allow user content at all.<sup>10</sup>

The second group of critics includes consensual adult sex workers and their allies and advocates. Members of this group fear that FOSTA/SESTA will drive up risk for those adults engaged in consensual prostitution, as well as for those who are trafficked or underage. They worry that removing access to the platforms on which consensual prostitutes can advertise for clients and communicate about risk with other sex workers will result in fewer safe options for such workers. They also argue that online solicitation is much safer than other forms, such as street prostitution, as it provides workers with means to establish clients' identities and backgrounds, and to negotiate terms of their interactions. Rates of exploitation, disease transmission and other risks are also mitigated by online platforms, as opposed to in street work. Online communications limited by FOSTA/SESTA also include discussions among sex workers, such as forums where they can share information about particularly dangerous clients, individuals who carry sexually transmitted diseases, and other risks.<sup>11</sup> Members of this group of critics

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<sup>10</sup> "Stop SESTA." Electronic Frontier Foundation. March 06, 2018. Accessed April 27, 2018. <https://www.eff.org/document/stop-sesta>.

<sup>11</sup> "The Impact of SESTA: For Allies." #SurvivorAgainstSESTA. April 22, 2018. Accessed April 26, 2018. <https://survivorsagainstsesta.org/about-sesta/>.

include sex worker activist networks, including the Sex Workers Outreach Project (SWOP). In early 2018, SWOP issued a statement outlining their objections to FOSTA/SESTA and the closure of sites that host classified ads:

Attempting to deter sex workers from their jobs by removing advertising and screening platforms is akin to pushing sex work 'underground' and in the streets – where workers have less power in relation to their clients and where sex workers are at greater risk of arrest and police violence. Street-based sex workers who need support are often unable to connect with social services. [Classified websites] helped close this gap by making screening, verification of clients, and police abuse much less likely to occur...To do this in the name of anti-trafficking is absurd, as this drives trafficking further underground and makes it more difficult to access the most marginalized members of any group of people – whether they be exploited or not.<sup>12</sup>

## HOW WE GOT HERE: THE CASE AGAINST BACKPAGE.COM

Lawmakers and others speaking in support of FOSTA/SESTA argue that the bill addresses the problem of internet-facilitated trafficking for sex. In such cases, traffickers use coercion or violence to force their victims to engage in commercial sex, with the traffickers often keeping all or most of the profits. In cases of CSEC, the persons involved are underage (see footnote 4). As will be discussed in a later section of this paper, this is not the only way that the internet is used to facilitate commercial sexual encounters, and many of these other kinds of encounters are in fact consensual.

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<sup>12</sup> "Backpage Seized by the Feds (and Shut Down)." Sex Workers Outreach Project. Accessed April 27, 2018. <http://www.new.swopusa.org/2018/04/06/backpage-seized-by-the-feds-and-shut-down-again/>.

However, there is also significant evidence to support the argument that online platforms can and have been used by traffickers selling sex against their victims' wills. For FOSTA/SESTA proponents, the most important, visible, and outrageous perpetrator of trafficking on the internet has been backpage.com The federal case against the website is in many ways directly responsible for the creation and passing of FOSTA/SESTA. In tracing the story of how law enforcement, prosecutors and legislators engaged Backpage, we can learn a lot about how that case informed the language and intent of FOSTA/SESTA.

On April 9<sup>th</sup>, 2018, backpage.com was seized and closed. This was the result of a joint action by the Federal Bureau of Investigations and a range of other federal and law enforcement agencies, including the U.S. Postal Service and the Internal Revenue Service.<sup>13</sup> However, the website had been facing increasing scrutiny and legal action for some time. According to a 2017 Senate Subcommittee report, before the seizure and since its 2004 founding, Backpage was the largest online marketplace for commercial sex, with a value of more than \$50 billion, and operating in 97 countries.<sup>14</sup> And backpage.com's visibility and popularity clearly contributed to its status as a target for

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<sup>13</sup> Dell Cameron. "Feds Praise Backpage Takedown as Sex Workers Fear for Their Lives." Gizmodo. April 09, 2018. Accessed April 26, 2018. <https://gizmodo.com/feds-praise-backpage-takedown-as-sex-workers-fear-for-t-1825124288>.

<sup>14</sup> "Backpage.com's Knowing Facilitation of Online Sex Trafficking." Staff Report, Permanent Subcommittee on Investigations, U.S. Senate. April 2017. Accessed April 23, 2018. [https://www.portman.senate.gov/public/index.cfm/files/serve?File\\_id=5D0C71AE-A090-4F30-A5F5-7CFFC08AFD48](https://www.portman.senate.gov/public/index.cfm/files/serve?File_id=5D0C71AE-A090-4F30-A5F5-7CFFC08AFD48)



anti-sex trafficking activists and other concerned parties. For instance, the National Center for Missing and Exploited Children reported that 73% of CSEC cases referred to them by the public involved, in some way, the use of backpage.com.<sup>15</sup>

**"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."**

**Section 230 of the Communications Decency Act, 1996**

In September of 2016, then-Attorney General of California, now U.S. Senator, Kamala Harris, filed the first of a series of charges against the operators of backpage.com in the United States. The first set of charges against Carl Ferrer, Michael Lacey and James Larkin used existing anti-pimping legislation, citing numerous ads that appeared to clearly represent solicitation and pimping.<sup>16</sup> It was rejected by Sacramento County judge Michael G. Bowman, who cited Section 230 of the 1996 Communications Decency Act as the reason for his decision.<sup>17</sup> Harris had been fully aware of this possibility; in 2013 she had signed a letter with other state attorneys

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<sup>15</sup> "Backpage.com's Knowing Facilitation of Online Sex Trafficking." P.2

<sup>16</sup> Matt Hamilton, "Backpage Says Criminal Charges by Kamala Harris Are 'election Year Stunt'." Los Angeles Times. October 07, 2016. Accessed April 27, 2018. <http://www.latimes.com/local/lanow/la-me-ln-backpage-ceo-arrested-charged-20161006-snap-story.html>.

<sup>17</sup> Rong-Gong Lin II, and Matt Hamilton. "Pimping Charges against Backpage.com Chief Executive Tossed out by Judge." Los Angeles Times. December 09, 2016. Accessed April 27, 2018. <http://www.latimes.com/local/lanow/la-me-ln-backpage-charges-tossed-20161209-story.html>.

general asking for an amendment to Section 230 that would prevent its use in cases of sexual exploitation and trafficking.<sup>18</sup>

After the first charges against Ferrer, Lacey and Larkin were rejected, Harris expressed a resolute desire to continue the fight:

"The Communications Decency Act was not meant to be a shield from criminal prosecution for perpetrators of online brothels...To all those who have been victimized by pimps online and trafficked through Backpage.com, you are not alone and the fight for justice is not over. We are exploring all legal options and will continue to advocate for all victims and to aggressively prosecute those who prey on and exploit the vulnerable."<sup>19</sup>

Three weeks after Judge Bowman's decision, in December 2016, Harris' office filed another set of charges against backpage.com. This time, the focus was not simply on how the site facilitated selling sex. The new charges alleged that the site's operators and employees created and manipulated profiles of women without their consent, and in some cases refused to remove the content when the women requested that they do so. The charges also included money laundering and conspiracy to commit pimping.<sup>20</sup>

Backpage.com had successfully used Section 230 and its protections for hosts of third party content online to fight against the charges brought against them. Judges

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<sup>18</sup> Alene Tchekmedyan. "Atty. Gen. Kamala Harris Files New Pimping and Money-laundering Charges against Operators of Backpage.com." Los Angeles Times. December 23, 2016. Accessed April 27, 2018. <http://www.latimes.com/local/lanow/la-me-ln-backpage-charges-20161223-story.html>.

<sup>19</sup> Quoted in Ill Rong-Gong Lin, and Matt Hamilton. "Pimping Charges against Backpage.com..."

<sup>20</sup> Alene Tchekmedyan,. "Atty. Gen. Kamala Harris Files New Pimping and Money-laundering Charges..."

accepted their case as one based around 1<sup>st</sup> Amendment rights to free speech and dismissed the charges accordingly. For backpage.com, however, all of this would change as new revelations about their business practices came to light. In 2017, the results of two investigations, one by a Senate subcommittee, and another by journalists at the Washington Post, significantly undermined Backpage’s claims of being solely a neutral publishing site.

In April of 2017, a Senate Subcommittee released a report of its findings on the site, entitled “Backpage.com’s Knowing Facilitation of Online Sex Trafficking”. This document alleged that “Backpage’s public defense is a fiction. Backpage has maintained a practice of altering ads before publication by deleting words, phrases, and images indicative of criminality, including child sex trafficking.”<sup>21</sup> Backpage.com could not claim to be purely a host of online content if they played an active hand in altering that content to aid users in avoiding criminal prosecution. Further, the site’s operators, including CEO Ferrer, had claimed ignorance of how users employed the site for trafficking and CSEC – new reports alleged that this was a lie.

In July 2017, a Washington Post investigation publically confirmed and added to the charges levelled against Ferrer, Larkin and Lacey in the Senate report. Leaked documents shared with the reporters showed how contractors for Backpage working at

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<sup>21</sup> “Backpage.com’s Knowing Facilitation of Online Sex Trafficking.”

call centers in the Philippines followed prostitution ads as they were posted on competitors' sites, then contacted posters to offer them free advertising on backpage.com. They would also place fake ads on competitor's sites that would re-direct potential customers to Backpage.<sup>22</sup>

The charges against backpage.com's leadership languished until the shuttering of the site in April 2018. At time of writing, CEO Carl Ferrer had plead guilty to conspiracy and money laundering guilty in exchange for more lenient sentencing, and with a promise to testify against site founders Michael Lacy and James Larkin. Larkin and Lacy also face charges of money laundering – the same charges brought by then-California Attorney General Harris in December 2016.<sup>23</sup>

All of this brings us to an interesting irony in the story of how the case against Backpage and the case for FOSTA/SESTA informed one another. Harris and other legislators saw firsthand, through the Backpage case, that alleged trafficking-facilitators working online could successfully employ Section 230 to continue operating and avoid charges. They were deeply concerned about what they perceived as a frustrating and

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<sup>22</sup> Tom Jackman and Jonathan O'Connell. "Backpage Has Always Claimed It Doesn't Control Sex-related Ads. New Documents Show Otherwise." The Washington Post. July 11, 2017. Accessed April 26, 2018. [https://www.washingtonpost.com/local/public-safety/backpage-has-always-claimed-it-doesnt-control-sex-related-ads-new-documents-show-otherwise/2017/07/10/b3158ef6-553c-11e7-b38e-35fd8e0c288f\\_story.html?utm\\_term=.92e7faac8021](https://www.washingtonpost.com/local/public-safety/backpage-has-always-claimed-it-doesnt-control-sex-related-ads-new-documents-show-otherwise/2017/07/10/b3158ef6-553c-11e7-b38e-35fd8e0c288f_story.html?utm_term=.92e7faac8021).

<sup>23</sup> "Backpage CEO Pleads Guilty to Money Laundering, Agrees to Testify." NBCNews.com. April 12, 2018. Accessed April 27, 2018. <https://www.nbcnews.com/news/us-news/backpage-ceo-carl-ferrer-says-he-ll-testify-against-site-n865616>.

poorly applied loophole in the law. FOSTA/SESTA was created, championed, and ushered through its different incarnations in the House and Senate in large part because lawmakers wished to address that loophole. And yet, when federal agencies seized backpage.com in April 2018, they did so two weeks before the FOSTA/SESTA bill was signed into law – and, given the new information about how Backpage manipulated content, they would not have needed it to bring the charges that they eventually did. This fact was not lost on critics of the bill. For instance, Berin Szóka, President of advocacy group TechFreedom, said, “ The argument for SESTA was a sham all along. Today’s domain seizure makes clear that law enforcement agencies didn’t need a new law to shut down Backpage; they had plenty of legal tools and just needed to make it a priority.”<sup>24</sup>

## THE LANDSCAPE: ONLINE SOLICITATION OF SEX IN THE UNITED STATES

FOSTA/SESTA originated out of a desire to regulate sex work on the internet, especially but not exclusively in cases of non-consensual exploitation and trafficking. As discussed above, the website backpage.com was a primary target of such efforts, as it very publically and knowingly hosted ads for prostitutes, some of which were underage

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<sup>24</sup> Quoted in "Backpage Shutdown Proves SESTA Was Rushed Unnecessarily." TechFreedom. April 12, 2018. Accessed April 27, 2018. <http://techfreedom.org/backpage-shutdown-proves-sesta-rushed-unnecessarily/>.

or trafficked. But backpage.com is only one of the forums that sex workers use as they employ online technology to facilitate their work. A 2017 article in the journal *Technology in Society* describes other popular mechanisms, some of which are intended for the purpose of solicitation, and some of which have been used for the practice but weren't necessarily intended for it. These include "dating and hook-up platforms" intended for non-commercial sex, but often used by prostitutes; websites run by escort agencies or by individual sex workers and "webcam platforms," which serve primarily as a way for sex workers to engage with clients in ways that may or may not stay exclusively online.<sup>25</sup> It is also important to note that not all such tools are exclusively used for solicitation. There are also popular "Customer Review Forums," which allow clients to review the services of sex workers and provide space for workers to advertise, as well as forums run and used primarily by sex workers themselves, which facilitate networking, information sharing and support among that group.<sup>26</sup> While it is too early to be sure which of these online spaces will be affected by FOSTA/SESTA, the language of the law makes it very possible that any site considered to "facilitate" illegal activity, including consensual prostitution, could be liable.

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<sup>25</sup> Stewart Cunningham, et.al. "Behind the Screen: Commercial Sex, Digital Spaces and Working Online." *Technology in Society*, 2017. doi:10.1016/j.techsoc.2017.11.004. P.4

<sup>26</sup> Stewart Cunningham, et.al. "Behind the Screen." P.4

A significant body of research supports sex worker activists' claims that online advertising and communication is a safer way to solicit clients than most other methods. Though regulated brothels appear to offer the highest level of protection, internet solicitation is safer than street work or unregulated club-based work.<sup>27</sup> Safer, here, means that workers soliciting online are less likely to experience violence, exploitation (from clients, traffickers or pimps, or law enforcement), disease exposure and criminal prosecution.<sup>28</sup> Lowered risk of exploitation appears to stem from the relative independence that digital tools offer workers, so that they are able to manage their own business, without the potentially exploitative presence of third parties.<sup>29</sup>

Additionally, there is evidence to support sex workers' claims of the specific risk management benefits of online platforms for advertising. A 2016 article in the *Journal of Sex Research* examined 600 individual ads on backpage.com in order to understand how sex workers utilize online platforms to manage their personal risk. Researchers Harrison and Moorman determined two categories of "risk management messages"

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<sup>27</sup> B. G. Brents, and K. Hausbeck (2010). *Sex Work Now: What the Blurring Boundaries around the Sex Industry Mean for Sex Work, Research and Activism*. In Melissa Hope Ditmore; Antonia Levy; Alys Willman, *Sex Work Matters: Power and Intimacy in the Sex Industry* London: Zed Books.

<sup>28</sup> Jessica D. Moorman, and Kristen Harrison. "Gender, Race, and Risk: Intersectional Risk Management in the Sale of Sex Online." *The Journal of Sex Research* 53, no. 7 (2015): 816-24. doi:10.1080/00224499.2015.1065950. p. 816-17.

<sup>29</sup> Stewart Cunningham et.al, "Behind the Screen: Commercial Sex, Digital Spaces and Working Online."P.8

that appeared consistently in such ads. These included terms that the researchers defined as “rule setting,” i.e., “no blocked calls,” or “no law enforcement,” as well as language aimed at “client screening,” such as citing specific required/preferred ages, body types or races for clients.<sup>30</sup> The researchers also applied an intersectional lens to this analysis; that is, they tried to establish if there were any meaningful differences in how sex workers of different races and gender identities approached online advertising for sex.

Harrison and Moorman found that “web-based advertisements act as a structural form of client screening—a technological middle man...” that follow similar patterns to the risk management approaches used in the safest venues, regulated brothels.<sup>31</sup> The researchers also raised the important point that sex workers who are especially vulnerable to violence and abuse, including black women and transgender women of any race, tend to be the highest users of these client screening and rule setting messages.<sup>32</sup> This suggests that while online solicitation platforms may increase safety for all consensual sex workers, workers from particularly marginalized groups may especially benefit from the tools they provide – and may be especially at risk from the removal and criminalization of these sites that will likely result from FOSTA/SESTA.

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<sup>30</sup> Jessica D. Moorman, and Kristen Harrison. “Gender, Race, and Risk” P.820-822.

<sup>31</sup> *Ibid*, P.820.

<sup>32</sup> *Ibid*, P.820.



# CONCLUSIONS AND LOOKING FORWARD: FOSTA/SESTA AS LAW OF THE LAND

## EARLY REACTIONS TO FOSTA/SESTA

Not surprisingly, the passage of FOSTA/SESTA and its April 11<sup>th</sup>, 2018 signing into law was met with joy from supporters and outrage from critics. On March 21<sup>st</sup>, Senator Harris issued a statement following the passage of SESTA in the Senate. Harris acknowledged the concerns of critics while simultaneously hailing the victory as an important step:

For too long, traffickers have hidden behind liability protections designed to safeguard free speech. As California Attorney General, I witnessed firsthand the difficulty of charging sex trafficking sites—even for crimes as egregious as pimping minors. That loophole must close...I recognize that there are concerns about curbing innovation and free expression online. But it is simply a false choice to suggest that we either protect victims or we protect free speech. We can and must do both. For those who continue to support sex trafficking online, our message is clear: your time is up.<sup>33</sup>

Meanwhile, headlines from internet freedom advocates maintained that the law's passage would lead to "Changing the Internet"<sup>34</sup> or "Censoring the Internet."<sup>35</sup>

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<sup>33</sup> Kamala Harris. "Harris Statement on Senate Passage of SESTA." U.S. Senator Kamala Harris of California. March 21, 2018. Accessed April 27, 2018. <https://www.harris.senate.gov/news/press-releases/harris-statement-on-senate-passage-of-sesta>.

<sup>34</sup> Kitty Stryker. "How an Anti-Sex Trafficking Bill Is Changing the Internet." Teen Vogue. April 03, 2018. <https://www.teenvogue.com/story/fosta-sesta-anti-sex-trafficking-bill>.

<sup>35</sup> Elliot Harmon. "How Congress Censored the Internet." Electronic Frontier Foundation. March 24, 2018. Accessed April 26, 2018. <https://www.eff.org/deeplinks/2018/03/how-congress-censored-internet>.

From sex workers and their allies, headlines proclaimed that the new law would enable “sex censorship”<sup>36</sup> and “put sex workers’ lives at risk.”<sup>37</sup>

Immediately following President Trump’s signing of FOSTA/SESTA, a range of websites responded to the new legal pressure and shut down all or part of their “adult” content. As sex workers and their allies had feared, many sites removed or altered content that they had relied upon for finding and screening clients.

Craigslist.org removed its “personals” section from each of its local pages. Previous anti-trafficking protests had led to the removal, in 2010, of the site’s “adult services” page.<sup>38</sup> SWOP tracked the sites most commonly used by sex workers that were affected. As of April 27<sup>th</sup>, 2018, these included closures of sub-threads on reddit.com for escort services; the (possibly temporary) closure of VerifyHim, a site that uses forums to allow sex workers to highlight abusive clients; and the closure of an array of sites for sex advertising, including myscarlettbook.com, touchbyvenus.com and escortdesign.com.<sup>39</sup>

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<sup>36</sup> Violetblue. "Congress Just Legalized Sex Censorship: What to Know." Engadget. March 31, 2018. Accessed April 27, 2018. <https://www.engadget.com/2018/03/30/congress-just-legalized-sex-censorship-what-to-know/>.

<sup>37</sup> "How the FOSTA/SESTA Bill Puts Sex Workers’ Lives at Risk." Bellesa Collective. Accessed April 27, 2018. <https://www.bellesa.co/collective/article?id=360%2Fhow-the-fosta-sesta-bill-puts-sex-workers-at-risk>.

<sup>38</sup> C.C. Miller, “Craigslist Says it Has Shut its Section for Sex Ads.” *The New York Times*, 15 September 2010. Accessed April 18 2018. <http://www.nytimes.com/2010/09/16/business/16craigslist.html>.

<sup>39</sup> "Documenting Tech Actions." #SurvivorsAgainstSESTA. April 16, 2018. Accessed April 27, 2018. <https://survivorsagainstsesta.org/documentation/>.

## LESSONS LEARNED AND LOOKING FORWARD

At the time of writing for this paper, it remains too early to know the real impact of FOSTA/SESTA's passage. Whether the new law was logistically necessary, it is possible that it will embolden prosecutors to take further action against sites that facilitate non-consensual sex work, including trafficking and CSEC, which could lead to higher rates of prosecution and conviction for pimps and traffickers. We have already begun to see that private companies are reacting to the passage by self-censoring their "adult" content. Regarding the safety concerns raised by sex workers, we do not yet know whether the closure of such sites will lead to higher rates of exploitation, violence or disease; it may take a long time before those data emerge, if they do. And so far, Internet freedom activists' fears that this censorship will spread to other sections of the internet – comment sections, social media, political content – have not yet been realized. But the possibility remains.

At this stage, then, we cannot look at FOSTA/SESTA and determine whose predictions were correct. What we can do is attempt to learn from the rhetoric on all sides, and from the processes that led to the bill's passing and signing into law. An article by Washington Times Opinion author Molly Roberts sums up part of the problem. Titled "No one wants to listen to the sex workers," the piece decries legislators' unwillingness to take the lived experience of marginalized women seriously

when crafting legislation that could affect them.<sup>40</sup> Roberts acknowledges the sins of sites like backpage.com in profiting off the exploitation of trafficking victims, but she feels that the sites' value to workers' safety and independence is equally important. Her frustration is that mainstream publications, legislators and activists have had real information from sex workers, but have chosen to ignore that input:

...the real mark of feminism is trusting women to do what they want with their bodies. And it's at least listening to women about what sort of policy would help everyone exercise that kind of control. Sex workers are trying to talk to all of us right now. It just feels like no one wants to hear.<sup>41</sup>

Looking to the future, the case of FOSTA/SESTA will likely serve as a prominent example for those who agree with Brown – for sex workers, their allies and supporters, and others who attempt to engage with the political process but find that their expertise is not taken seriously. For these marginalized political actors, this case could lead to new and different ways of organizing and advocating for their needs, or it could cause some to abandon political engagement altogether. The passage of FOSTA/SESTA was undoubtedly a blow to political activism among sex workers, but it seems probable that they will find ways to adapt and persevere in pressuring lawmakers to hear their messages.

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<sup>40</sup> Molly Roberts. "Opinion: No One Wants to Listen to the Sex Workers." The Washington Post. April 10, 2018. Accessed April 27, 2018. [https://www.washingtonpost.com/blogs/post-partisan/wp/2018/04/10/if-backpages-shutdown-is-a-win-for-sex-workers-why-are-sex-workers-so-mad-about-it/?utm\\_term=.b4a2857a1ca7](https://www.washingtonpost.com/blogs/post-partisan/wp/2018/04/10/if-backpages-shutdown-is-a-win-for-sex-workers-why-are-sex-workers-so-mad-about-it/?utm_term=.b4a2857a1ca7).

<sup>41</sup> Molly Roberts. "Opinion: No One Wants to Listen to the Sex Workers."

For legislators, FOSTA/SESTA appears, for now, to be a success story. But as this paper discusses, its evolution was messy and imperfect. The backpage.com prosecution that largely spurred interest in amending Section 230 to hold content providers responsible for user-created content ultimately succeeded without the changes that FOSTA/SESTA will bring. In fact, FOSTA/SESTA may not have made a major difference in the case regardless of timing, since investigations into Backpage revealed that the company was not a neutral platform for content at all, but actively manipulated user posts. This reality calls into question the need for the new law in the first place.

If the critics' worst fears are realized, FOSTA/SESTA may have serious implications for the health and safety of consensual workers, and little or no impact on prosecuting traffickers. In that case, FOSTA/SESTA will stand as an example of legislation pushed forward because of momentum, unexamined good intentions, and political will, and despite attempted input from more-informed voices on the ground. Moving forward, perhaps FOSTA/SESTA can be a powerful case study about voice, enfranchisement, and balancing intention with actual consequences.

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