

A Brief Introduction to FOIA-SESTA



Additional Resources

Dedicated to all the amazing sex workers and queer/trans*/gnc folx past, present, and future

Sex work is work! Support your local sex worker rights efforts

- Melissa Gira Grant - Amazing writings on sex worker rights
- SWOP, COYOTE, SWEAT, PACE Society, and other sex worker rights projects (Global Network of Sex Worker Projects <http://www.nswp.org/>)
- Woodhull Foundation - <https://www.woodhullfoundation.org/fosta>
- On Twitter (not comprehensive):
 - Liara Roux @LiaraRoux
 - Lorelei Lee @MissLoreleiLee
 - Kate @KateDAdamo
 - Melissa Gira Grant @melissagira
 - M. Mayhem @MsMaggieMayhem



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Questions/Comments/Corrections?

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RIGHT NOW, IN THE US, THERE IS A NEW BILL THAT'S BEEN INTRODUCED BY THE SAME PEOPLE BEHIND FOSTA TO EXPAND THE PATRIOT ACT AND CUT OFF ACCESS TO FINANCIAL INSTITUTIONS UNDER THE GUISE OF SEX TRAFFICKING: HR 6729 "EMPOWERING FINANCIAL INSTITUTIONS TO FIGHT HUMAN TRAFFICKING ACT". THIS BILL WOULD NOT ONLY HARM SEX WORKERS AND THEIR ABILITY TO EARN MONEY, BUT ALSO DEGRADE PRIVACY PROTECTIONS.

EVEN THOUGH FOSTA IS A US BILL, ITS EFFECTS HAVE BEEN GLOBAL DUE TO RESTRICTIONS ON SKYPE AND OTHER PLATFORMS. WE URGENTLY NEED TO DECENTRALIZE INTERNET SERVICES AND PLATFORMS TO ENSURE THAT ATTACKS ON DIGITAL RIGHTS IN A SINGLE COUNTRY DOESN'T CONTINUE TO AFFECT DIGITAL RIGHTS GLOBALLY.

FINALLY, GIVE DIRECT FINANCIAL SUPPORT TO SEX WORKERS, SEX WORKER RIGHTS ORGANIZATIONS, AND OTHER MARGINALIZED COMMUNITIES. DONATE TO THE LEGAL FUNDS FOR WOODHULL ET AL, FIGHT FOR PRISON ABOLITION, SUPPORT SEX WORKER DECRIMINALIZATION EFFORTS (THIS ALSO IS A GOOD WAY TO FIGHT SEX TRAFFICKING!), LEARN ABOUT CONSENT AND FIGHT AGAINST RAPE CULTURE!

NO BAD WHORES, ONLY BAD LAWS

IN 2017, TWO BILLS WERE INTRODUCED IN THE US THAT ATTACKED SEX WORKER RIGHTS AND DIGITAL RIGHTS. FOSTA, INTRODUCED TO THE HOUSE OF REPRESENTATIVES, AND SESTA, INTRODUCED TO THE SENATE. THESE BILLS, WHICH AFFECTED A TECHNICAL LAW PROTECTING TECHNOLOGY PLATFORMS AND SERVICE PROVIDERS, WERE MET WITH RESISTANCE FROM SEX WORKERS, SEX TRAFFICKING SURVIVORS AND DIGITAL RIGHTS ORGANIZATIONS, WHO LARGELY DID NOT CENTER THE FOLX DIRECTLY AFFECTED—SEX WORKERS.

WHAT IS FOSTA-SESTA

FOSTA, ALSO KNOWN AS FOSTA—SESTA OR SESTA, IS THE SHORT NAME FOR THE US BILL HR 1865 (ALLOW STATES AND VICTIMS TO FIGHT ONLINE TRAFFICKING ACT OF 2017) AND IS ALSO KNOWN AS THE ANTI—BACKPAGE BILL. IT AROSE AS A DIRECT RESPONSE TO THE SUPREME COURT'S JAN 2017 DECISION THAT BACKPAGE WAS PROTECTED AGAINST A LAWSUIT BY SECTION 230 OF THE COMMUNICATIONS DECENTRY ACT (CDA). SECTION 230 OF THE CDA PROTECTS TECHNOLOGY PLATFORMS AND SERVICES FROM LIABILITY THAT COMES FROM CONTENT PROVIDED BY 3RD PARTIES (ALSO KNOWN AS INTERMEDIARY LIABILITY).

IT IS IMPORTANT TO NOTE THAT SECTION 230 OF THE CDA DOES NOT PROTECT PLATFORMS AND SERVICE PROVIDERS FROM CRIMINAL CHARGES. SECTION 230 OF THE CDA FUNDAMENTALLY PROTECTS PLATFORMS AGAINST LITIGATION OF DEFAMATION, LIBEL, AND OTHER LIABILITIES FROM CONTENT THAT IS PUT UP BY THEIR USERS. IF THE PLATFORM OR SERVICE PROVIDER DOES SOMETHING CRIMINAL, SECTION 230 DOES NOT PROTECT THEM.

AFTER THE SUPREME COURT RULING, US LAWMAKERS INTRODUCED FOSTA—SESTA TO REMOVE THAT PROTECTION. BOTH BILLS, WHICH WERE LATER COMBINED, EXPLICITLY MENTIONED THAT SECTION 230 OF THE CDA WAS NEVER MEANT TO PROTECT "WEBSITES THAT UNLAWFULLY PROMOTE AND FACILITATE PROSTITUTION AND WEBSITES THAT FACILITATE TRAFFICKERS IN ADVERTISING THE SALE OF UNLAWFUL SEX ACTS WITH SEX TRAFFICKING VICTIMS."

THE LAW DOES MORE THAN SIMPLY REMOVE PROTECTION AGAINST CIVIL LIABILITY FROM 3RD PARTIES ON PLATFORMS, IT CREATES CRIMINAL LIABILITY FOR TECHNOLOGY PLATFORMS AND SERVICE PROVIDERS AND ALLOWS STATE ATTORNEY GENERALS TO FILE LAWSUITS.

IMPLICATIONS of FOSTA

AS YOU MIGHT HAVE PICKED UP, FOSTA CONFLATES ALL SEX WORK AS SEX TRAFFICKING. SO TECHNOLOGY PLATFORM OR SERVICE THAT SUPPORTS SEX WORKERS CAN BE HELD CRIMINALLY LIABLE UNDER FOSTA. THIS MEANS THAT SEX WORKERS HAVE LOST IMPORTANT HARM REDUCTION RESOURCES, SUCH AS SITES TO DISCUSS BAD/DANGEROUS CLIENTS OR SHARE SAFETY INFORMATION.

THE LANGUAGE OF SECTION 230 OF THE CDA REFERS TO "INTERACTIVE COMPUTER SERVICE" TO REFERENCE WEBSITES. HOWEVER, THE DEFINITION IS BROAD AND CAN INCLUDE MOBILE APPLICATIONS AND POTENTIALLY EVEN INTERNET SERVICE PROVIDERS, WHO HAVE LARGELY BEEN IGNORED IN THE CONVERSATION SO FAR.

IN OCTOBER 2018, THE DC DISTRICT COURT RULED IN FAVOR OF DISMISSAL LARGELY AGREEING WITH THE DEFENSE'S ARGUMENT THAT THE PLAINTIFFS LACKED STANDING. WOODHULL EL AL FILED AN APPEAL TO THE DC CIRCUIT COURT, WHICH IS WHERE THE LAWSUIT CURRENTLY STANDS.

What happens Now?

IT'S SAFE TO ASSUME THAT THE SELF-CENSORSHIP FROM MAJOR PLATFORMS WILL REMAIN EVEN IF FOSTA IS REPEALED. THIS IS ACTUALLY ONE OF THE ARGUMENTS THAT THE DC DISTRICT COURT RULING MADE IN REFERENCE TO THE PRELIMINARY INJUNCTION. BUT A REPEAL OF FOSTA IS STILL SOMETHING WE NEED TO FIGHT AND ADVOCATE FOR, ESPECIALLY BECAUSE A REPEAL OF FOSTA CAN ALLOW NEW PLATFORMS, SERVICES, AND RESOURCES (RE-)EMERGE.

WHILE WE ARE WAITING FOR THE FOSTA LAWSUIT TO BE FOUGHT, WE SHOULD START THINKING ABOUT WHAT TO DO IN THE CASE THAT FOSTA IS NOT REPEALED. TECHNOLOGISTS NEED TO CONSIDER WHAT THE IMPLICATIONS OF THEIR DESIGN DECISIONS ARE AND ENSURE THAT THEIR MARGINALIZED USERS ARE PROTECTED AGAINST LAWS LIKE FOSTA. SUPPORT EFFORTS LIKE OPEN PRIVACY (DISCLOSURE: I'M ON THE BOARD OF THE ORGANIZATION) THAT ARE WORKING TO BUILD PLATFORMS AND TECHNOLOGY THAT IS PRIVACY PRESERVING FOR SEX WORKERS AND OTHER MARGINALIZED GROUPS.

SUPPORT SEX WORKER RIGHTS AND THE RIGHTS OF MARGINALIZED COMMUNITIES! SURVEILLANCE AND POLICING TECHNOLOGY ARE OFTEN REFINED AND TESTED ON MARGINALIZED COMMUNITIES. BY SUPPORTING THEIR RIGHTS YOU ARE ALSO SUPPORTING YOUR RIGHTS.

17% AFTER CRAIGSLIST HOSTED PERSONALS IN THE CITIES INCLUDED IN THE STUDY. THEY CONCLUDE THAT THIS DROP IS DUE TO ONLINE EROTIC SERVICES LIKE CRAIGSLIST.

IN ADDITION TO THIS DECREASE IN THE MURDER OF WOMEN, ONLINE EROTIC SERVICES WERE AN IMPORTANT RESOURCE FOR BOTH LAW ENFORCEMENT AND SOCIAL WORKERS WORKING WITH SEX TRAFFICKING SURVIVORS. THE DEPARTMENT OF JUSTICE EVEN WROTE TO CONGRESS IN FEB 2017 AND NOTED THAT FOSTA WOULD MAKE IT MORE DIFFICULT TO PROSECUTE SEX TRAFFICKERS. SEX TRAFFICKING SURVIVORS AND ORGANIZATIONS ALSO OPPOSED FOSTA BECAUSE OF THE INCREASED DIFFICULTY TO SUPPORT THEIR CLIENTS AND SEX TRAFFICKING SURVIVORS.

Lawsuit Against FOSTA

AFTER FOSTA WAS SIGNED INTO LAW, IT WAS EXPECTED THAT A LAWSUIT WOULD BE BROUGHT AGAINST IT—IN THE DEPARTMENT OF JUSTICE'S LETTER TO CONGRESS THEY EVEN NOTED THE CONCERN THAT IT WAS UNCONSTITUTIONAL.

ON JUNE 28, 2018, A LAWSUIT AGAINST FOSTA AS UNCONSTITUTIONAL WAS FILED (WOODHULL ET AL V. USA) AS WELL AS A MOTION FOR A PRELIMINARY INJUNCTION TO IMMEDIATELY STOP THE ENFORCEMENT OF FOSTA. IN RESPONSE, THE DEFENSE FILED A MOTION TO DISMISS THE LAWSUIT ON THE GROUNDS OF LACK OF JURISDICTION (I.E., THE LAW DOESN'T AFFECT THE PLAINTIFFS).

SINCE FOSTA IS A US LAW, THERE ARE LIMITS IN THE JURISDICTION OF WHERE FOSTA WILL APPLY. IT IS CLEAR THAT ANY TECHNOLOGY PLATFORM OR SERVICE BASED IN THE US IS WITHIN JURISDICTION. LESS OBVIOUS IS THAT THIS INCLUDES ANY WEBSITE REGISTERED WITH A DOMAIN NAME THAT IS MANAGED IN/BY THE US—THIS MEANS THAT ALL .COM DOMAINS ARE WITHIN FOSTA'S JURISDICTION.

HOWEVER, FOSTA COULD POTENTIALLY APPLY TO PLATFORMS OUTSIDE OF THE US. THE FBI WAS ABLE TO SEIZE THE BACKPAGE.CA, A CANADIAN DOMAIN, THROUGH THEIR INVESTIGATION OF CRIMINAL CHARGES AGAINST THE WEBSITE (THIS WAS DONE BEFORE FOSTA WAS SIGNED INTO LAW AND AN EXAMPLE THAT FOSTA IS NOT NECESSARY FOR CRIMINAL LIABILITY TOWARDS PLATFORMS). IT IS UNCLEAR HOW THE US LEGAL SYSTEM AND LAW ENFORCEMENT WILL HANDLE NON-US BASED PLATFORMS AND SERVICES.

ONE OF THE DIFFICULTIES TO UNDERSTANDING THE LEGAL IMPLICATIONS OF FOSTA IS THAT ITS SCOPE WILL LIKELY BE DETERMINED IN THE FIRST LAWSUITS UNDER THE LAW. AT THIS POINT, ONLY ONE LAWSUIT HAS BEEN BROUGHT UNDER FOSTA: JANE DOE V. FACEBOOK ET AL.

A GROUP OF SEX WORKER AND DIGITAL RIGHTS ORGANIZATIONS HAVE FILED A LAWSUIT AGAINST THE US FOR FOSTA BEING AN UNCONSTITUTIONAL LAW. THIS IS DISCUSSED MORE BELOW.

Internet Censorship due to FOSTA

EVEN THOUGH NO CRIMINAL CHARGES HAVE BEEN BROUGHT UNDER FOSTA, IT HAS ALREADY HAD MAJOR IMPACT DUE TO PLATFORM SELF-CENSORSHIP. SOME OF WHAT HAS HAPPENED IS:

- CRAIGSLIST TOOK DOWN THEIR PERSONALS GLOBALLY. IT INITIALLY WAS ONLY IN THE US, BUT ALL PERSONALS WERE REMOVED A FEW MONTHS LATER.
- REDDIT TOOK DOWN SEX WORKER SUBREDDITS THAT WERE USED FOR SHARING HARM REDUCTION RESOURCES.
- DIFFERENT SITES SEX WORKERS USED FOR ADVERTISING OR SELLING CAM SESSIONS WERE TAKEN DOWN OR CHANGED TERMS OF SERVICE TO EXPLICITLY BAN TRANSACTIONS.
- VARIOUS WEBSITES UPDATED THEIR TERMS OF SERVICE TO BAN "EROTIC"/"EXPLICIT"/"SEXUAL"/"PORNOGRAPHIC" CONTENT.
- WORDPRESS.COM AND OTHER WEBSITE HOSTS STARTED TAKING DOWN SEX WORKER RELATED WEBSITES.

PRIOR TO FOSTA PASSING, SOME WEBSITES WERE ALREADY IMPLEMENTING CHANGES:

- GOOGLE DRIVE WAS AUTOMATING SCANS AND REMOVING VIDEOS THAT WERE "EXPLICIT". THERE WERE REPORTS OF THIS HAPPENING FOR PAID ACCOUNTS AS WELL AS 'FREE' ACCOUNTS.
- PATREON UPDATED THEIR TERMS OF SERVICE AFTER FOSTA & SESTA WERE INTRODUCED AS BILLS. IT IS SUSPECTED THE TERMS OF SERVICE CHANGE WAS DUE TO FOSTA.

Real World Effects of FOSTA

FOSTA IS ALREADY HAVING DRASTIC IMPACTS ON SEX WORKERS AROUND THE GLOBE—IT ISN'T JUST A US PROBLEM. SINCE SEX WORKERS AREN'T A MONOLITHIC GROUP, THE EFFECTS VARY BASED ON OTHER FORMS OF OPPRESSIONS, SUCH AS ACCESS TO TECHNOLOGY, GENDER IDENTITY, AND RACE. THERE ARE EVEN SEX WORKERS I HAVE WORKED WITH THAT HAVEN'T HAD ACCESS TO THE ONLINE HARM REDUCTION RESOURCES SINCE BEFORE FOSTA; THEY'VE STILL BEEN AFFECTED.

DUE TO THE INTERNET CENSORSHIP, HARM REDUCTION RESOURCES AND PLATFORMS USED BY SEX WORKERS DISAPPEARED OVER NIGHT. AMONG THE EFFECTS ARE THAT IT HAS MADE IT MORE DIFFICULT TO SHARE INFORMATION AND SAFETY TIPS, TAKEN AWAY ECONOMIC OPPORTUNITIES FOR SEX WORKERS, AND CREATED BARRIERS TO CONNECTING WITH COMMUNITY AND SERVICES.

FOSTA IS PUTTING SEX WORKERS LIVES AT RISK. IT IS DISPROPORTIONATELY AFFECTING MARGINALIZED FOLX, SUCH AS BLACK TRANS* WOMEN. IT CUTS SEX TRAFFICKING SURVIVORS, THE PEOPLE THE BILL SUPPOSEDLY PROTECTS, OFF FROM CRUCIAL SERVICES AND SUPPORT FROM SOCIAL WORKERS. IT PRIORITIZES AND SHIFTS POWER TO CLIENTS, PIMPS, AND TRAFFICKERS.

DESPITE STREET-BASED SEX WORKER BEING MUCH RISKIER, THERE HAS BEEN AN INCREASE IN STREET-BASED WORK POST-FOSTA. IN 2017, A STUDY AUTHORED BY WEST VIRGINIA UNIVERSITY AND BAYLOR UNIVERSITY FOUND THAT THE RATE OF WOMEN MURDERED DROPPED BY