



BRIEFING NOTE:

U.S.A. FOSTA LEGISLATION

On 11th April 2018, the President of the U.S.A. signed into law two Bills which will negatively impact sex workers both in the U.S.A. and globally. The Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) are anti-trafficking laws that criminalise online platforms used by sex workers for advertising and information sharing, including for safety purposes.

Key Facts:

- The '[Allow States and Victims to Fight Online Sex Trafficking Act of 2017](#)' (FOSTA), exposes internet service providers to criminal charges if they are suspected of 'assisting, facilitating or supporting sex trafficking'. This legislation impacts on the ability of sex workers to use the internet to advertise and provide services, share information and protect themselves.
- The Stop Enabling Sex Traffickers Act (SESTA) was originally proposed as a separate Bill alongside FOSTA, allowing the use of civil law suits against platforms that 'facilitate traffickers'. It was incorporated into FOSTA¹ and this 'FOSTA-SESTA package' was signed into law in April 2018.
- The '[End Banking for Human Traffickers Act](#),' passed by the U.S. House of Representatives² on 24th April 2018, amends the [2000 Victims of Trafficking and Violence Protection Act](#) to encourage increased surveillance by financial institutions to 'detect financial transactions relating to severe forms of trafficking in persons'. Due to the conflation of sex work and trafficking, this legislation will impact on the ability of sex workers to access financial institutions.

FOSTA (H.R. 1865)

FOSTA-SESTA makes it a federal crime in the U.S.A. to operate an internet service that 'promotes or facilitates prostitution' across state or national borders. It also makes internet service providers liable for user content that violates federal anti-trafficking and sex work laws in the U.S.A., exposing internet service providers to civil lawsuits and criminal charges if they allow user content that is deemed to 'promote or facilitate' sex work.

FOSTA-SESTA was passed by U.S. Congress on 21st March and became law on 11th April 2018, despite opposition from sex workers, [anti-trafficking organisations](#), [criminal defence lawyers](#), and [LGBT, health and social justice organisations](#).

¹ The 'Stop Enabling Sex Traffickers Act of 2017' (SESTA) was the U.S. Senate companion bill to FOSTA. The U.S. Senate voted on the FOSTA Bill, and later consolidated SESTA with FOSTA. In linked literature, 'SESTA' and/or 'FOSTA' are used. In this paper we refer to FOSTA and FOSTA-SESTA.

² One of two U.S. legislative bodies. To become a law, it must then be passed by the U.S. Senate and signed by the U.S. President.



Since U.S. Congress passed FOSTA-SESTA, [many internet services](#) used by sex workers for advertising and sharing safety information have pre-emptively closed. Craigslist [has closed](#) its dating section. Some internet services with a broad audience have also [pre-emptively closed or censored](#) sex work-related accounts or content (e.g. Google) or adopted policies that ban some or all sex work-related content (e.g. Microsoft, Reddit). Backpage, one of the most well-known platforms for sex workers to advertise, was [seized by the FBI](#) in early April 2018.

FOSTA will also affect sex workers outside of the U.S.A. who use international internet services (including email, social media, website services and servers). This is because many of these are based in, or operate in, the U.S.A., and therefore these services are impacted by FOSTA.

End Banking for Human Traffickers Act (H.R. 2219)

The 'End Banking for Human Traffickers Act' expands on the '[minimum standards for the elimination of trafficking](#)', introduced in the Victims of Trafficking and Violence Protection Act in 2000³. The 'End Banking for Human Traffickers Act' amendment requires that the government create a framework to 'prevent financial transactions involving the proceeds of severe forms of trafficking'⁴. The legislation also adds that the U.S. Office of Terrorism and Financial Intelligence will 'coordinate efforts to combat the illicit financing of severe forms of trafficking'.

The language of the legislation, including this 'minimum standards' amendment, does not directly target consensual adult sex work or relate to FOSTA-SESTA. However, the U.S. government has historically labelled the bank accounts of sex workers and third parties as 'high risk' and made it nearly impossible for banks to host these accounts by excessively investigating banks that do so. Changes to the minimum standards may also encourage governments to adopt legislation and policies that will lead financial institutions to pre-emptively close sex workers' bank accounts in order to reduce liability. The 'End Banking for Human Traffickers Act' is likely to pass U.S. Senate and become a law by the end of 2018.

Analysis

FOSTA and the 'End Banking for Human Traffickers Act' are part of a global trend of 'anti-trafficking' laws that are [rooted in the conflation of sex work with trafficking](#). These laws frame the repression of sex work as an 'anti-trafficking' measure. They include overly broad definitions of trafficking, increased criminalisation of sex workers' clients and third parties, and punitive and discriminatory immigration restrictions. They impede sex workers' livelihoods and economic security, increase their vulnerability to abusive practices, violence and unsafe work environments, and do not address trafficking and labour exploitation. Globally, sex workers [are increasingly using](#) the internet and other new communications technologies to connect with clients and the sex worker community, address violence, and work with more flexibility and autonomy. The expansion of harmful 'anti-trafficking' laws like FOSTA to specifically target sex workers' use of the internet is concerning, but not surprising. FOSTA, in criminalising sex workers' online workspaces, will have a similar, negative impact on sex workers' safety, health, and human rights as the criminalisation of

³ Victims of Trafficking and Violence Protection Act (2000): <https://www.state.gov/j/tip/laws/61124.htm>

⁴ The U.S. Government defines 'severe forms of trafficking in persons' as inducing the exchange of sex for money, as a third party or client, from someone under 18 or through force, fraud, or coercion; or "The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."



sex workers' physical workspaces.

Access to banking services [is a central component](#) of economic empowerment to improve sex workers' living and work conditions, reduce their vulnerability to violence, and enable them to manage and plan their finances and future. Globally, stigma, criminalisation, and discrimination create barriers to sex workers' access to financial services; the 'End Banking for Human Traffickers Act' is likely to compound these barriers and also further impede sex workers' access to internet services.

Sex Worker Responses to FOSTA-SESTA and the 'End Banking for Human Traffickers Act'

- Sex workers in the U.S.A., under "[Survivors Against SESTA](#)," are mobilising against FOSTA-SESTA. Activities include ongoing documentation of the law's impact on sex workers' access to internet services, organising a lobbying day on 1st and 2nd June (coinciding with International Sex Workers' Day), and sharing information and strategies to mitigate the impact of the law.
- Organisations in the U.S.A. devoted to protecting free speech, particularly on the internet, are likely to file a lawsuit against FOSTA-SESTA. Concerns have been raised regarding the user liability clause being applied retroactively, and this has been challenged by the [U.S. Department of Justice](#).
- Sex workers in and outside the U.S.A. can [report information about internet services censoring or closing sex worker accounts, websites and content](#) to Survivors Against SESTA. They can also find information on FOSTA-SESTA's impact, ways to protect their internet content and ongoing mobilisation on the [Survivors Against SESTA website](#).
- Sex workers outside the U.S.A. who use international internet services should follow changes to the policies of these services in response to FOSTA-SESTA. They should consider proactively backing up content stored with international internet services and may consider shifting to use regional or national internet services that will not be impacted by FOSTA-SESTA.
- [Sex work](#) and [adult film performer](#) communities in the U.S.A. are working to share information about the potential harms of the 'End Banking for Human Traffickers Act'.
- Sex workers in the U.S.A. are mobilising as part of a campaign for individuals to contact their Senators to discuss the harms of the 'End Banking for Human Traffickers Act'. Sex workers in and outside the U.S.A. who choose to participate in the FOSTA lobbying day can include the 'End Banking for Human Traffickers Act' in their lobbying.