



Stop Franken-FOSTA

The Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA, [H.R. 1865](https://www.congress.gov/bills/115/1865)) might sound noble, but it would do nothing to stop sex traffickers. What it *would* do is force online platforms to police their users' speech more forcefully than ever before, silencing legitimate voices in the process. This Frankenstein bill combines the worst of FOSTA and the Senate version, the Stop Enabling Sex Traffickers Act (SESTA, S. 1693), in an effort to expand online platform liability for user-generated content, including by rolling back Section 230 protections.

Websites and apps we all use every day – from WhatsApp and Instagram to Yelp and Wikipedia, even bloggers with comments sections – rely on Section 230 (47 U.S.C § 230). Under the current system, users are generally liable for the content they post, not the platforms. If FOSTA becomes law, these platforms will be exposed to significantly more liability for what their users do with their services. That will create an incentive to review anything a user wants to post, if the platform decides to allow user content at all.

Section 230 can be credited with creating today's Internet. It provided the legal buffer entrepreneurs needed to experiment with new ways to connect people online and is just as critical for today's startups as it was for today's popular platforms when they launched.

Section 230 is Not Broken

- Existing law allows federal prosecutors to go after bad online platforms, like Backpage.com, that knowingly play a role in sex trafficking.
- In 2015, Congress passed the [SAVE Act](#), giving federal prosecutors an additional tool to target sex traffickers by making “advertising” sex trafficking a federal crime. Section 230 does not prohibit federal prosecutions against platforms that host ads they know to involve sex trafficking.
- Courts have allowed civil claims against online platforms when a platform was shown to have a direct hand in creating the illegal user-generated content. Even without FOSTA/SESTA, victims of sex trafficking can bring civil suits against culpable websites, as well as the pimps and “johns” who directly harmed them.

Gutting Section 230 is Not a Solution

- The new version of FOSTA would destroy the careful policy balance struck in Section 230, opening platforms to increased criminal and civil liability at both the federal and state levels.
- This includes a second, new federal sex trafficking crime targeted at online platforms that would not require a platform to have *knowledge* that people are using it for sex trafficking.
- The new exceptions to Section 230 immunity would also apply retroactively: a platform could be prosecuted for failing to comply with the law before it was even passed.

Congress made the deliberate choice to protect online free speech and innovation, while providing discrete tools—including the SAVE Act of 2015—to go after culpable platforms. FOSTA threatens the open Internet. It would incentivize platforms to act as gatekeepers or over-censor what their users post, including victims of sex trafficking. Internet speech is more important, not less, than it was when Section 230 was enacted.

For more information on problems with FOSTA/SESTA, please contact India McKinney at india@eff.org.