

Surveil to protect and surveil to punish: Strategies to tackle sexual exploitation between national law and global corporate policies

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Carmela Morgillo¹ and Salomé Lannier²

Abstract

This article offers a transdisciplinary contribution to the debate on the global impact of the U.S. Allow States and Victims to Fight Online Sex Trafficking Act of 2018 (FOSTA) by examining the terms of services and community guidelines adopted by Meta-owned Instagram and X. While aiming to curb sex trafficking, FOSTA-enabled platforms to adopt U.S.-centric moderation practices that censor sexual content globally, regardless of national legal frameworks on sex work and both international and country-specific definitions of trafficking. Beyond their failure to effectively support anti-trafficking efforts, platforms' decision to align their policies to the language of U.S. legal discourse can be understood as a breach of state sovereignty. Through their punitive approach against content that fails to comply with their post-FOSTA policies, platforms effectively force users to internalize American legal consciousness, regardless of their geopolitical location. Sex workers are the ones who are most impacted by these decisions, even in countries where their work is not criminalized. To survive online and the offline harms of deplatforming, they readapt their social media behaviors to what we define as the technologies of the FOSTA-self, a set of self-disciplining and self-censoring practices aimed at bypassing platform surveillance and retaining visibility.

Keywords

Sexual exploitation, sex work, FOSTA, platform governance, surveillance, sovereignty

Introduction

Over the past three decades, the development of internet-based communication technology has revolutionized the adult industry. Yet, navigating the digital era of erotic labor has been—and continues to be—extremely difficult for sex workers. On one hand, online spaces offer them the opportunity to advertise services, perform online work, build community, access harm reduction resources, control the narrative of their experiences, and—during the COVID-19 pandemic—create alternative incomes (Blunt and Stardust, 2021; Jones and Sanders, 2022; Ryan, 2019; Tripp, 2019; Waring, 2023). On the other, they force them to deal with a wider range of challenges, from doxxing and abuse to financial precarity and social media deplatforming (Are and Paasonen, 2021; Beebe, 2022; Cooper et al., 2024; Davisson and Alati, 2024; G. Easterbrook-Smith, 2023; Hill, 2024; Sanders et al., 2018; Swords et al., 2023). These harms are not occupational risks. They are the direct consequence of the U.S. puritan

understandings of sex and antisex work stigma, dangerously and insidiously codified into its legislation—specifically, the 2018 Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)¹ amendment to Section 230 of the 1996 Communication Decency Act (Are and Paasonen, 2021; Barwulor et al., 2021; Blunt and Stardust, 2021; Davisson and Alati, 2024; Gillespie, 2018b). Conceived as an antitrafficking bill, FOSTA aimed to curb sex trafficking by making platforms liable for the content they host. However, its conflation of consensual sex work with

¹School of Slavonic and East European Studies, University College London, London, UK

²Faculty of Law, Economy and Finance, University of Luxembourg, Kirchberg, Luxembourg

Corresponding author:

Carmela Morgillo, University College London, Gower Street, London, WC1E 6BT, UK.
Email: uclzcam@ucl.ac.uk



trafficking effectively outlawed adult advertisements and transformed the internet in yet another contested space where sex workers fight against the regulation and control of their existences—this time perpetrated not just by the state, but by global platforms whose corporate interests are tied to their compliance with U.S. policy (Beebe, 2022; Blunt et al., 2021; Cooper et al., 2024; Hill, 2024). Situated at the intersection between legal research and platform governance studies, this article offers a transdisciplinary contribution to the debate on FOSTA's global impact by looking at how Meta-owned Instagram and X integrate the language of U.S. legislation into their corporate policies—that is Terms of Service (ToSs) and Community Guidelines (CGs).

After reviewing Instagram and X's ToSs, we found that they do not mention neither sexual exploitation nor solicitation and only refer to “the law,” without specifying which national one(s) they refer to (Instagram, 2024; X, 2023). Neither platform seems to adapt ToSs to the areas they operate. Therefore, the law they refer to defaults to U.S. legislation, which does not always align with local legal frameworks. To expand the corpus of evidence that informs this study, we decided to include the analysis of CGs, the rules that, at least theoretically, aim to keep individuals safe by drawing a clear line between acceptable and unacceptable behaviors. CGs apply globally and, in the case of Instagram, they are linked to Meta's Transparency Center, meaning that they apply also to other platforms owned by the group, that is Facebook and Whatsapp. From a legal perspective, ToSs and CGs enjoy different legal value. ToSs are a binding contract between platforms and users; CGs only provide an acceptable platform behavior standard. Nevertheless, ToSs often refer to GC and platforms apply their set of corporate documents under a single discursive framework (Klonick, 2018; Suzor, 2019). Hence, we mainly focus our analysis on how CGs embody the language of U.S. legislation and globally enforce its prohibitive frameworks. By failing to include a more nuanced understanding of solicitation and a definition of offenses related to sexual exploitation in line with international criminal standards, platforms fall short on their promise to offer the ideal digital environment for individual self-expression and community formation and, rather, become a space for surveillance and censorship, on both a panoptical and synoptical level.

We start the article with a literature review on FOSTA, its repercussions on sex workers, and the broader consequences of social media platforms' uneven moderation practices and opaque governance, including the heightened surveillance of user content. Social media's systems of surveillance do not work in isolation from corporate-government assemblages of control for digital subjects (Lewis, 2023) and capitalism's exploitation of their data-bodies (Galić et al., 2017). However, here we focus on their practices of surveillance and discipline of sexual content, which threaten sex workers' livelihoods and, more broadly, individuals' freedom to express their sexuality and ability to

access educational resources. We evaluate Instagram and X's corporate policies against both U.S. and international definitions of sex trafficking. Our analysis shows that these platforms construct, regulate, and globalize the idea of offenses related to solicitation and exploitation on the model of U.S. law and prohibitionist approach to sex work, irrespectively of national frameworks regulating commercial sex and state sovereignty in defining criminal standards. Building on the scholarship documenting the impact of platforms' flawed governance, we propose that users' fear of deplatforming leads them to readapt their online behaviors in compliance with U.S. legislation, regardless of their geopolitical location and the legislative frameworks and sociocultural norms that regulate sex work and sexual expression. To survive online (and avoid the offline consequences of digital obliteration) users are forced to internalize American legal consciousness and integrate it into the creation of what, drawing from Foucault (1988), we define as the technologies of the FOSTA-self: a set of self-disciplining strategies aimed at bypassing moderation and resisting platforms' algorithmically enforced discourses on sex and sexuality. Finally, we contend that these behaviors are not merely a response to platforms' opaque moderation practices. They are the inevitable outcome of a breach of state sovereignty—one that exploits the asymmetric relationships of interdependence between U.S.-based platforms and their global users (Jin, 2013) to extend the impact of American legislation, export its legal consciousness, and contribute to the reinvention, reinforcement, and normalization of U.S. imperialism.

FOSTA state-of-the-art: Context and consequences

Together with providing a space for self-expression and connection, the internet also opened new arenas for criminal, illegal, and exploitative practices, such as human trafficking for the purpose of sexual exploitation or, using U.S. legal terminology, sex trafficking. Before FOSTA, under Section 230, platforms that allowed online advertising of sexual services were immune from liability against claims of sex trafficking activity since—as courts ruled in cases against classified advertisement websites—they were neither producing illegal content nor encouraging it (Tripp, 2019). After it passed, they became liable for any involvement in facilitating sex trafficking, including hosting third-party advertisements related to illicit activities (Lingel, 2020; Tripp, 2019). No longer protected by Section 230, Craigslist removed its personal connections section, Facebook implemented new policies that reflected FOSTA's facilitation language, and Backpage completely shut down following the accusations of facilitating human trafficking and the sexual exploitation of minors made by both prosecutors and abolitionist lobbies' (Born, 2019;

Cole, 2019; Davisson and Alati, 2024; Lieberman, 2021; Lingel, 2020; McKnelly, 2018; Permanent subcommittee on investigations, 2017). Indeed, lobbying played a pivotal role in passing FOSTA; by leveraging longstanding moral opposition to sex work, groups like the National Center on Sexual Exploitation (Albert et al., 2021; Garland, 2018) and mainstream news (Reynolds, 2024) were successful in silencing opposition, including sex workers. To avoid criminal prosecution, other U.S.-based websites and platforms started to adopt stricter moderation practices that overcensored, invisibilized, and deplatformed content beyond the requirements of FOSTA compliance (Are, 2023; Are and Paasonen, 2021; Blunt and Stardust, 2021; Davisson and Alati, 2024; Gillespie, 2018b; Tiidenberg and Van Der Nagel, 2020; Tripp, 2019). FOSTA generated intense debates within legal scholarship (Albert et al., 2021; Balfour, 2019; Burnitis, 2020; Chamberlain, 2019). By holding online service providers (OSPs) liable for the content they host, FOSTA does more than erase any possibility of immunity for civil claims and state prosecutions linked to Section 2421A on sex trafficking offenses: it criminalizes any eventual failure to recognize and address sex trafficking and—by extent—the promotion of sexual services, including legal ones. Despite its nominal commitment to protect victims, FOSTA is deeply rooted in the United States' prohibitionist legislative strategy, which seeks to criminalize sex workers and eliminate the demand for their services under the assumption this will resolve trafficking (Goldman, 2018; Jackson and Heineman, 2018). Therefore, the bill's conflation of consensual sex work and trafficking is not accidental but reflects a dangerous convergence of moral, political, and technological agendas that willingly sacrifice sex workers' safety to reshape the regulatory landscape of the internet and the sex industry. By handing the responsibility to protect potential sex trafficking victims over to OSPs, FOSTA enabled platforms to devise and enforce new methods of surveillance that effectively turned them into the "custodians of the internet" (Gillespie, 2018a), in charge of determining who is worthy of being seen, what experiences can be shared, and who can profit of the creator economy (Are and Briggs, 2023; Are and Paasonen, 2021; Steen et al., 2023). Since FOSTA, both activists and researchers have raised their concerns about the risks of adapting platform discourse to the bill's definition of crimes related to sexual exploitation and trafficking, together with the flaws of a legislation that targets sex workers and fails to provide alternative pathways for victim protection (Are, 2022; Blunt et al., 2020; Blunt and Wolf, 2020; Mia, 2020; #SurvivorsAgainstSESTA, 2018). While being a national law, FOSTA exerted significant global impact (Jones, 2022). It ushered in a new social media era characterized by heightened surveillance, overvigilant policing of sexuality, opaque governance, and inconsistent moderation practices that transformed users' social media experience into one of constant fear of silencing

and deplatforming, disproportionately impacting sex workers (Are, 2023; Blunt et al., 2021; Blunt and Stardust, 2021; Davisson and Alati, 2024; ESWA, 2022; Gibson, 2019; Gillespie, 2018a; Pilipets and Paasonen, 2022; Tripp, 2019). Closely entwined with platforms' corporate interests, these dynamics are further complicated by payment processors' *de facto* role as extralegal regulators of sex work, which simultaneously threatens providers' livelihood and reinforces the stigmatization of the adult industry and of any form of sexuality that is perceived as deviant (Beebe, 2022; Franco and Webber, 2024; G. Easterbrook-Smith, 2023; Stardust et al., 2023; Stegeman, 2024; Webber and Franco, 2024).

While still facilitating many aspects of sex workers' personal and professional lives, social media platforms have become increasingly hostile toward them and excluded them from participating in public spaces (Davisson and Alati, 2024; Majic et al., 2024). To promote their services and evade both the precarity of online work and the market oversaturation on which adult websites thrive, sex workers rely on a complex multiplatform marketing strategy that merges content creation with client recruitment (G. Easterbrook-Smith, 2023; Hardy and Barbagallo, 2021). They adapt their content to the affordances—and levels of censorship—of the specific platforms they use to build new business models that rely on the curation of online personas aimed at selling access to their personal lives and building fanbases (Rand, 2018, 2019; Swords et al., 2023). Maintaining an online presence helps them to promote their work and regain negotiating power, without being forced to drive rates down, offer risky practices, accept bookings without screening, or needing third-party mediation (Are and Briggs, 2023; Blunt and Stardust, 2021; Blunt and Wolf, 2020; Hardy and Barbagallo, 2021). As sex work becomes increasingly volatile, akin to other gig-economy-platformed industries—not to mention threatened by the push for end-demand models—the intersection between financial precarity and stigma exposes sex workers to further risks, especially when they are deplatformed (Easterbrook-Smith, 2023; Grant, 2014; Hardy and Barbagallo, 2021; Rand, 2019; Smith and Mac, 2018; Stacey Clare, 2021; West, 2024). Paradoxically, with FOSTA, a previously independent category of workers has been placed under the complete control of platforms, with no reassurance over their safety and online existence (Blunt and Wolf, 2020; Davisson and Alati, 2024; G. Easterbrook-Smith, 2023; Hardy and Barbagallo, 2021). By criminalizing OSPs that host sexual content, even in countries where sex work is not criminalized, FOSTA directly fails the victims it claims to protect and threatens workers' access to income opportunities, harm reduction resources, and community (Barwulor et al., 2021; Blunt and Wolf, 2020; ESWA, 2022; Jones, 2022; Majic et al., 2024; Musto et al., 2021). Additionally, because of platforms' failure to clearly distinguish between sexual content and illegal activity, sex workers face a digital environment

that mirrors societal stigmatization of sexuality (Are, 2024b). Deplatforming sex workers goes beyond financial losses; it erases the community's personal and collective stories, built to reorient society's gaze from the victimhood/deviance binary imposed on their existence to their demands for a fairer work future.

FOSTA is a primary example of the disconnect between policy objectives and real-world consequences. Despite its claims to support antitrafficking legislation, platforms' enforcement of FOSTA seems to target sex workers more than traffickers (Blunt et al., 2020; Majic et al., 2024). Platforms' self-proclaimed rigorous approach to identifying and blocking illegal content by enacting FOSTA-compliant corporate policies, applying sensitive algorithms, and facilitating reporting mechanisms has not yet been proved to have made a significant difference in tackling sex trafficking or supporting victims (Blunt and Wolf, 2020; Chamberlain, 2019; Majic et al., 2024; Musto et al., 2021). Even with the shutdown of Backpage, traffickers did not stop their illicit operations; they just adapted to FOSTA and migrated to smaller, less regulated overseas websites, complicating investigations due to the need for mutual legal assistance treaties and cross-border cooperation (Born, 2019; Bronstein, 2021; Burnitis, 2020; Kessler, 2018; White et al., 2024; Wiesner, 2020). This dispersion fragmented trafficking-related data, forcing law enforcement authorities (LEAs) to deal with more challenges in identifying and investigating trafficking networks (Khodarkovsky et al., 2021; Zeng et al., 2022). Because of platforms' blanket removal of sexual content, one of the key tools for tracking trafficking activity—online advertisements—is no longer available, making investigations time-consuming and less efficient (US Government Accountability Office, 2021). Far from protecting victims, platforms' sexual content moderation did not stop trafficking. Despite their FOSTA-compliant governance, Instagram and X are still being used to groom vulnerable adults and minors into exploitation, and advertise illegal activities (Di Nicola et al., 2017; Gezinski and Gonzalez-Pons, 2022; Lavaud-Legendre et al., 2020). Quite worryingly, FOSTA shifted the focus of enforcement efforts; arrests for sex trafficking declined, while arrests for commercial sex—including instances involving trafficked individuals—have risen (Goldman, 2019). Even more problematically, by enabling platforms to surveil and deplatform sexual content FOSTA weakened victims' ability to seek community help and further isolated them (Blunt et al., 2020; Davisson and Alati, 2024).

Sexual exploitation and solicitation: Law versus corporate policies

Framing criminal law through state sovereignty

Platforms' global application of FOSTA overwrites the protection of sex workers' labor rights guaranteed by national

legal frameworks. Even in countries where sex work is not criminalized, such as Germany, Belgium, and New Zealand, FOSTA-aligned platform policies still impose the digital erasure of sex, reducing sex workers' ability to operate safely. Platforms' global extension of an idea of prohibited content based on a specific national definition or interpretation of legal and illegal behaviors goes against traditional legal theories of sovereignty. Bodin defined sovereignty as the "absolute and perpetual power" of a state (1993: 4). In the legal discourse, trafficking is often articulated as not only a criminal offense but a sovereignty issue, whereby in order to protect its borders from an extreme security threat, the state is called to "perform the role of 'securer' of the nation" (Berman, 2003). Despite the lack of consensus over the definition of sovereignty (Nagan and Hammer, 2004), scholars often distinguish between internal and external sovereignty. The first represents the absence of competing jurisdictions within a state, while the latter refers to the lack of subordination to external orders in dictating states' political and legal framework (Agnew, 2018; Cohen, 2012). In the context of trafficking, criminal sovereignty—intended as defining and regulating legal and illegal behaviors (Capus, 2005; Comaroff and Comaroff, 2016; Doldi, 2018; Stenson, 1999; Warren, 2015)—generally adopts a preventive orientation, meaning moderating content before criminal prosecution. Many states, but also the European Union (Regulation (EU) 2022/2065 on a Single Market For Digital Services), require (or at least encourage) digital platforms to preemptively identify and remove illegal content, thereby investing them with quasi-judicial responsibilities (Yannopoulos, 2017). FOSTA is no exception. However, given the asymmetrical relationship between U.S.-based platforms and their global users (Jin, 2013), by decentralizing the enforcement of antitrafficking laws, FOSTA effectively embeds media platforms into the broader governance system, well beyond its jurisdiction (Musto et al., 2020) and underscoring a shift in the state/private sector responsibilities in regulating online content.

Despite international treaties, national definitions of trafficking still differ; this is an example of criminal sovereignty. Therefore, when global communication platforms—which also act as civic and professional spaces (Are, 2024a), embed the U.S. definition of criminal offenses related to sexual exploitation and trafficking, individual states' autonomy of criminal policy can be hindered. For instance, U.S. policies focus on sex trafficking, leading platforms to overlook other forms of human trafficking and exploitation. Consequently, while their moderators may be trained to spot sexual exploitation, Facebook and Instagram have been proved to host content linked to exploitation through domestic work (Duffy, 2021), failing both victims and LEAs.

It is important to note that the American prohibitionist approach to sex work is not accepted everywhere. In the United States, prohibitionist regulations aim at criminalizing most, if not all, actors of sexual exploitation schemes

—including consensual workers. Full-service sex work is illegal almost everywhere and, although loitering offenses are criticized by the legal literature (Herrmann, 2018; Struening, 2020) and are being increasingly repealed—such as Section 240.37 of the New York Penal Law, repealed in 2021—sex workers can still be prosecuted for engaging in it. Regulationist approaches, which can be found in some counties of Nevada and countries like Germany or the Netherlands, consider sex work within a strict specific employment relationship or independent status, usually with additional administrative and health control of workers (Hunecke, 2019; Outshoorn, 2014; Weitzer, 2017). Neo-abolitionist approaches, applied in countries like Sweden and France, only criminalize clients—but indirectly penalize sex workers and their communities (Smith and Mac, 2018). Decriminalization frameworks prioritize harm reduction by removing criminal offenses related to consensual transactions, as well as addressing stigma and mitigating conditions that may lead to exploitation or human rights violations. This model has been endorsed by researchers (Maciotti et al., 2023), sex workers (Smith and Mac, 2018; Stacey Clare, 2021) and various supranational organizations, such as Amnesty international (2016) and the Human Rights Council of the United Nations (Working Group on the issue of discrimination against women in law and in practice, 2016, 2019). The decriminalization framework, historically launched by New Zealand in 2003 (Abel et al., 2010) has been recently adopted, for instance, by some states in Australia (Aroney, 2021) and Belgium (Stroobants, 2022). Considering the differences in the legal frameworks that regulate the adult industry across the globe emphasizes that platforms' adoption of the U.S. prohibitionist approach and their systematic erasure of sexual content is more than an attack on users' ability to articulate their experiences online. By globally implementing and assuring their autonomous position on sex work and what they identify as sexual exploitation, it represents a breach of states' sovereignty.

U.S. policy versus international standards

Sexual exploitation and trafficking. In 2000, among growing preoccupations about transnational organized crime and human trafficking, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) in an effort to streamline definitions of trafficking and facilitate a worldwide response via the domestic criminalization of such activities (Roth, 2012; Siller, 2017). The document, signed by over 80 countries—including the United States—defines trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons through means such as force, coercion, fraud, or abuse of vulnerability, for purposes of exploitation, including sexual exploitation (Article 3.a). Since the Palermo Protocol, over

90% of states around the world have enacted antitrafficking domestic legislation (UNODC, 2014). Nevertheless, its transposition to different legislations has not been uniform. The Palermo Protocol criminalizes trafficking for any form of exploitation, including “the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3.a). This ambiguous connection between trafficking and prostitution, stemming from the intense antisex work lobbying that accompanied the Palermo convention and some delegations' antiprostitution stances, enables states to implement antitrafficking legislation that impacts consensual sex workers (Doezema, 2005).

The U.S. framework separates between sex trafficking and trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (Section 1590 U.S. Code). Under its definition, of sex trafficking crimes lead to transactional sex, understood as “any sex act, on account of which anything of value is given to or received by any person” (Section 1591(e)(3) U.S. Code). While linking transactional sex to trafficking would require evidence of coercion—which is not the case for consensual commercial sex—this understanding of trafficking has been weaponized against sex workers and instrumentalized to repress their rights and advocacy (Bernstein, 2018; Weitzer, 2010). Under the Palermo Protocol, sex trafficking must involve the deliberate use of coercive tactics. However, the U.S. definition features a *mens rea* standard of reckless disregard, which lowers the threshold of intent—except for acts of advertising, for which full intention needs to be proven (Section 1591(a)(2) U.S. Code). While federal antitrafficking efforts are complicated by the country's fragmented, state-specific legislation (Branscum et al., 2023), adding reckless disregard as a *means rea* standard eases the burden of proof and simplifies prosecutions. This divergence reflects the U.S. punitive approach to policy and criminalizes not only those coercing victims but also those who disregard the commission of an offense, participate in a trafficking scheme in any capacity, or benefit from it in any way. While the Palermo Protocol pushes for the criminalization of those involved in the “action elements” of trafficking such as recruiting or harboring individuals (Gallagher, 2010), U.S. law also criminalizes facilitators, intended as those “knowingly assisting, supporting, or facilitating” trafficking (Section 1591(e)(4) U.S. Code). This extension leads to the criminalization of a broad array of third parties connected to sex trafficking processes and criminal structures, which after FOSTA includes OSPs that might indirectly facilitate trafficking through their platforms, as well as targeting clients of sexual services that qualify as sex trafficking (Blunt and Wolf, 2020; Tripp, 2019).

Sexual solicitation. FOSTA creates a new offense of promotion and facilitation of prostitution and reckless disregard of sex trafficking by criminalizing “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 service [...], or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person” (Section 2421A(a) U.S. Code). Even failing to delete sexual solicitation content, whether in relation to sexual exploitation (nonconsensual) and sex work (consensual), would trigger platforms’ liability (Burnitis, 2020). By lowering the criminal requirements for sex trafficking offenses, FOSTA was meant to ease the prosecution of platforms used by traffickers (Albert et al., 2021). It should be mentioned that the application of the offense remains to be seen since scholars and judges are still debating on some of the elements of these offenses (ibid; Burnitis, 2020), such as the notion of “reckless disregard” (Miller Welborn Young, 2022), or the level of knowledge required to trigger liability (McKnelly, 2018). What we understand, however, is that by incentivizing platforms to prohibit content related to sexual solicitation by making them liable for facilitating criminal offenses, FOSTA reinforces and globalizes the U.S. prohibitionist approach to sex work.

Corporate policies

As previously mentioned, FOSTA reflects the U.S. criminalization-leaning approach to the sex trade, making global platforms liable for something that could be legal elsewhere. In our analysis of Instagram and X’s corporate policies, we found that while the vocabulary used is generally not very detailed regarding content linked to sexual exploitation, the few definitions included come closer to the U.S. understanding of sex trafficking offenses rather than to the international standards highlighted in the Palermo Protocol.

On Instagram, prohibited content includes human exploitation and adult sexual exploitation, as outlined in the Meta Transparency Center, as applicable of April 2025. In our study, we only focus on the first category, human exploitation, since the second relates to offenses against sexual freedom or dignity, such as assault or sextortion (Meta, 2025a). Interestingly, human exploitation seems to equate to human trafficking and is defined as “the business of depriving someone of liberty for profit. It is the exploitation of humans in order to force them to engage in commercial sex, labor, or other activities against their will” (Meta, 2025c). These guidelines prohibit all content related to sex trafficking, from “any commercial sexual activity with an adult involving force, fraud, or coercion” to instances “where a third party actor recruits for, facilitates or benefits from (financially or otherwise) commercial sexual activity” (Meta, 2025c). These definitions refer to the action elements of trafficking (Gallagher, 2010), as well as to the idea of benefitting from it, which only features in U.S. antitrafficking legislation. Similarly, the policy

includes a reference to commercial sex, which is outlined in Section 1591(e)(3) of the U.S. Code and is not mentioned in the Palermo Protocol. Even the list of coercive means mentioned comes close to the U.S. definition (Section 1591(a)(2b) U.S. Code), leaving out other aspects of coercion identified in international documents, such as abuse of power.

Instagram also prohibits solicitation, stating that while their platform welcomes users’ to “discuss and draw attention to sexual violence and exploitation” and “sex worker rights advocacy and sex work regulation,” they “draw the line, however, when content facilitates sexual encounters or commercial sexual services between adults” (Meta, 2025b). Meta’s CG classifies adult sexual solicitation and sexually explicit language as objectionable content, arguing that “some audiences within our global community may be sensitive to this type of content and it may impede the ability for people to connect with their friends and the broader community” (Meta, 2025b). As a result, any type of content categorized as sexual solicitation, whether explicit/implicit or paid/unpaid, is prohibited. These documents mention prostitution not as a form of work but as the act of “offering oneself or asking for sexual activities in exchange for money or anything of value” which encompasses “escort services, sexual/erotic massages, sex chats/conversations, fetish/domination services” (Meta, 2025b). For Meta, forbidding solicitation avoids “facilitating transactions that may involve trafficking, coercion and nonconsensual sexual acts” (Meta, 2025b), clearly conflating nonconsensual and consensual activities and *de facto* implementing the prohibitionist approach to sex work that underlies FOSTA’s adoption.

Regarding X, as in its version of February 2025, its illegal and regulated behaviors policy refers to human exploitation as “taking advantage of individuals for personal gain, often through coercion, deception, or abuse of power” with the aim of trafficking them for “sexual, labor, or other illegal purposes” (X, 2025b). While this policy does not directly prohibit soliciting, it forbids to “seek, provide, or act as a ‘middleman’ for offline sexual services” (X, 2025a). X’s distinction between human exploitation and sexual services, defined as the attempt to provide or seek in-person sexual services that involve “financial transaction, physical meetup, and may be offered using encrypted communication” (X, 2025a) does not mean that the platform is safe for sex workers. As highlighted in its adult content policy, X technically allows to share consensually “produced and distributed adult nudity or sexual behavior, provided it’s properly labeled and not prominently displayed” (X, 2024). However, this content is also subjected to scrutinization, detection, automatic flagging, and removal (X, 2024). Despite implying some degree of tolerance toward sex workers, X actively fails to recognize the legitimacy of their work by only defining sexual content as a form of expression. For X, “sexual expression, whether

visual or written, can be a legitimate form of artistic expression” in which adults consensually engage to reflect “their own beliefs, desires, and experiences” (X, 2024). Similarly to what Stegeman found in their analysis of adult platforms policies (Stegeman, 2024), this configuration of sexual content devoid of its work element mirrors the U.S. legal framework, which for the most part criminalizes work. As well as failing to recognize sex workers’ production and diffusion of sexual content as a legitimate form of work, which further invalidates both their collective experiences and their advocacy, the vagueness of these guidelines makes them unsuitable to support moderators’ work when it comes to identifying instances of sexual exploitation and trafficking. This is not only the case for X. Both X and Instagram’s failure in providing a clear definition of sexual exploitation and trafficking—and add more nuance about content produced in relation to consensual erotic labor, can result in moderators overlooking harmful content, or default to an understanding of offenses rooted in the national law of their headquarters: the United States.

National law and global impact

Platform surveillance

Despite marketing themselves as spaces where everyone is allowed to engage in self-expression and community building, in the era of surveillance capitalism (Zuboff, 2019), social media platforms enforce the systematic surveillance of their users through centralized observation of subjects and networked dataveillance (Doyle, 2011; Galič et al., 2017; Swords et al., 2023). By handing the responsibility to protect potential sex trafficking victims over to platforms, FOSTA enabled them to leverage the harms of human trafficking to legitimize new draconian methods of surveillance.

Foucault conceptualizes surveillance through the lens of Bentham’s prison-panopticon, a circular structure with a central tower from where guards observe prisoners (Foucault, 1995). This unique architecture ensures the illusion of constant surveillance; prisoners cannot see when they are being watched and, thinking that they are always being observed, they self-discipline themselves into compliance. Foucault’s articulation of the asymmetric relations between individuals and power in terms of surveillance is extremely useful to understand post-FOSTA digital behaviors. Similarly to Foucault’s prisoners, social media users exist in a state of permanent visibility. Because of this, they engage in the performance of specific identities (Baym and boyd, 2012; Waycott et al., 2017). However, not all identities are welcomed online and, after FOSTA, this includes sex workers and creators who engage with sexuality and other undesirable topics (Are and Briggs, 2023; Are and Paasonen, 2021; Blunt et al., 2021; Blunt and Stardust, 2021; Davisson and Alati, 2024). This does not erase sex

from platforms; it just means that if sex workers wish to continue to exist online, they have to heavily self-discipline their media habits. As well as adapting to the panoptical control of the algorithmic moderation systems, they must deal with the synoptical infrastructures of surveillance that platforms create. Applying Mathiesen’s theorization of the synopticon, a space for surveillance where the many watch the few (1997), to social media East (2021) argues that platforms produce new synoptical relationships among users, as well as between users and governance. Online, all users—including sex workers—offer themselves to the gaze of others and, understanding the voyeurism of networked technologies, they adapt their content to the multidimensionality of surveillance (Blunt et al., 2020: 404; Majic et al., 2024; Steen et al., 2023). Theoretically, this would imply that users have control, or at least the illusion of control over what they decide to share (East, 2021). In practice, since platforms moderate both user-generated content and the visibility it receives, things are more complicated. While mostly relying on panoptical infrastructures of surveillance, platforms include users in the disciplining of undesirable topics: in this case sexual content. As the lack of clarity around platforms’ governance systems seems to reaffirm individuals’ central role in the designing of an ideal online community, users resort to flagging to report concerns over content that may have escaped algorithmic moderation (Crawford and Gillespie, 2016). However, flagging can be weaponized against creators and is often used as a silencing strategy (Are, 2024b: 2). Additionally, as opaque governance leaves users to make sense of their visibility (and invisibility) through a mix of theories propagated through “algorithmic gossip” (Bishop, 2019), their attempts to defeat the algorithms are connected to the same synoptical network of surveillance that platforms affords them. The possibility to scrutinize what seemed to work for other creators or, in contrast, what got them in sexy jail² is an extremely powerful disciplining tool in itself.

Platforms’ invisibility politics influence the social and cultural norms of sex workers’ online activity, as well as the value that audiences place on their content (Are, 2022; Gillespie, 2018a, 2022; Pilipets and Paasonen, 2022; Steen et al., 2023). This triggers two distinctive behaviors: on one hand, user-driven moderation practices against sexual content (Are, 2024b; Crawford and Gillespie, 2016), on the other, the collective development of visibility strategies (Bucher, 2017; Steen et al., 2023). By allowing the circulation of visibility folklore theories, platforms harness users’ fear of invisibility to consolidate existing inequalities over whose stories count and, by seducing them with the promise of increased reach, persuade them into conformity (Öngün and Demirağ, 2014) instead of just driving them out, which would be against their commercial interests. For sex workers, this means that they could theoretically exist online; all they would have to do

is to self-discipline themselves into the obliteration of their identity.

Platforms' biopower, intended as their control over users' online lives, finds its legitimation in FOSTA's configuration of sex trafficking as a "state of emergency" (Agamben, 2005) in need of an immediate solution. Like a digital continuum of Agamben's state of exception, platforms become a space where sovereign power determines the inclusion and exclusion of its subjects (*ibid.*). By enforcing surveillance and threatening users with invisibility (Gillespie, 2022), platforms replicate society's relegation of sex workers to "bare life" (Agamben, 2005), something that can be completely erased—or even killed—to protect and enhance the life of the social body (Taşcıoğlu, 2021; Tsang, 2020). Since U.S.-based platforms are used worldwide with the same corporate policies, the logics of their digital biopower extend well beyond the national borders of the legislation they uphold, globalizing the subjugation to American sovereignty.

The technologies of the FOSTA-self

Framing FOSTA as an intersectional issue highlights how platforms' design of surveillance architectures ignores the needs of communities who endure multiple levels of oppression and use social media to bring visibility to their struggle and access safer working conditions (Coombes et al., 2022). To exist (and resist) online, sex workers have developed, adopted, and shared strategies of self-censorship that operate on both the panoptical and synoptical level. Their unique status as digital bare life at the mercy of algorithmic powers and users' flagging capacities configures their self-censorship practices as part of what we define as the online technologies of the FOSTA-self. The idea derives from Foucault's work on how human subjectivity is inextricably tied with wider social discourses and apparatuses (Foucault, 1988; Rose, 1996). Specifically, the technologies of the self refer to individuals' compulsion to effect "a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection or immortality" (Foucault, 1988: 18). We theorize the technologies of the FOSTA-self as a set of measures taken by sex workers to improve their online visibility by adapting their content to the requirements of platforms' corporate policies. Mostly, these strategies rely on users devising, embodying, and naturalizing self-disciplining strategies aimed at avoiding the offline consequences of digital death, which are extremely serious for sex workers.

While representing an important attempt to resist the gag-order against sexual sociability (Spišák et al., 2021), the development and adoption of these strategies demonstrates how sex workers—and many other users—have internalized the rules of post-FOSTA expression and learnt

to reproduce their identity through the discourses globally enforced by platforms' corporate policies. As such, these practices do not exclusively apply to U.S.-based sex workers and civilian³ creators and reflect the bill's reconfiguration of the social media landscape as a surveillance apparatus that enforces and globalizes a discourse of sexuality rooted in the U.S. prohibitionist framework. Notwithstanding the different cultural and social norms that shape users' construction of an online self and their articulation of an eventual sex working identity, many of them chase their desires of online visibility by attempting to transform their social media practices in compliance with platforms' post-FOSTA governance. As their success and livelihood is often "directly related to platformed indices of visibility" (Are, 2024b; Duffy and Meisner, 2023: 2), affecting the technologies of the FOSTA-self on their social media behavior offers them a shot at achieving and maintaining visibility. This possibility of digital immortality sublimates self-expression into a unique practice of self-censorship that relies on the internalization of American legal consciousness and the adaptation of personal experiences, identities, and ambitions to the constraints of a moderation system that infringes individual states sovereignty by globalizing the reach of national law.

Having directly experienced the disintegration of social media's cybertopia and the effects of their invisibilization through the digitally mediated violence of platform necropolitics (Lewis, 2023), sex workers understand that their online survival depends on constant self-censorship and content-reinvention. They mitigate the risks of their online presence by creating backup accounts, erasing their pre-FOSTA digital archives, and engaging in the production of new content that, while still relegated at the margin of platforms' algorithmically rearranged cultures of participation, is much less risqué (Pilipets and Paasonen, 2022). Sex workers harness the affordances of platform interpenetration by turning their posts into a tool for creative disruption (Rand, 2019) and develop advertising strategies that seduce potential customers into clicking on embedded hyperlinks (Swords et al., 2023). Despite the immediate benefits they reap, the effectiveness of these strategies does not last forever. For example, although sex workers' ability to operate across different platforms allowed them to direct clients toward adult sites to sell services without infringing corporate policies, platforms soon picked up this behavior and began over-scrutinizing and deplatforming content that hinted to external links (Dickson, 2020; Swords et al., 2023).

Unsurprisingly, these measures did not curb the phenomenon. Rather, they called for a semantic shift. Just like netspeak appeared as a user-driven attempt to adapt language to online communication, platforms' silencing of nudity and sexual content led users to create new forms of expression whose only purpose is to signal community belonging and circumvent moderation systems (Steen

et al., 2023). Among these, algospeak—a coded language that substitutes potentially dangerous words with abbreviations, misspellings, homophones, and metaphors—is the most popular (ibid). Some of the words and expressions used by sex workers include corn emojis for “porn,” “seggs” for “sex,” “skripper” instead of “stripper” and, following the online trend that presented working in accounting as the ideal lie to tell people, doing sex work turned into being “an accountant” (Lorenz, 2022; The Youth Lab, 2023). In a comical attempt to deceive platforms’ ban on nudity, OnlyFans models recently started to exploit Instagram’s loophole around the display of female breasts to post content that featured them breastfeeding reborn baby dolls (Sawyer, 2024). Despite some occasional victories against the algorithm, users know that they are powerless over its inscrutable power (Are, 2023; Divon et al., 2025). However, this does not mean that their attempts to bypass the algorithm are useless or unserious. Just like in Bakhtin’s theorization of the carnival (Bakhtin, 1984), they create a shared cultural space where the rules of U.S. legislation, together with its imperialistic power over global users, are subverted and the power of the corporate axis that enforces them is mocked.

Conclusion

This study examined how Instagram and X construct, regulate, and globalize U.S. legislative frameworks and the country’s understanding of sexual exploitation offenses. Our findings reveal that their global enforcement of FOSTA-compliant discourses has reshaped online spaces and positioned U.S. legislative norms as a *de facto* standard, thereby marginalizing broader international standards such as the Palermo Protocol and overwriting individual states’ regulation in regard to consensual sex work. This homogenization extends U.S. prohibitionist policies globally, eroding state sovereignty in defining and regulating both sex work and trafficking. By embedding platforms into antitrafficking discourse, FOSTA enabled corporations to act as quasi-judicial entities, globally regulating online sexual content. Instagram and X’s alignment with U.S. frameworks often results in overbroad content moderation practices, suppressing consensual sex work, advocacy, and discussions. This framework prioritizes moralistic narratives over empirical evidence, as the assumption that reducing prostitution will reduce trafficking remains largely unsubstantiated. Additionally, by failing to address international perspectives, such as the distinction between consensual sex work and trafficking, it perpetuates stigmatization and harm to marginalized groups, particularly sex workers. Sex workers bear the brunt of the surveillance apparatus legitimized by FOSTA and their erasure from digital spaces should come as a warning for the dystopian future that platforms have in store for all media users, regardless of their


personal connections with the adult industry (Blunt et al., 2020; Coombes et al., 2022; McKnelly, 2018).


We share the concerns over the inadequacy of platforms’ content moderation practices and the lack of transparency of their governance systems. However, we believe that approaching the issues that arise from the ban of sexual content only from a technological perspective is not enough. Neither state-sanctioned nor platform-based solutions aimed at ending sexual exploitation can truly be effective within a framework of partial or total criminalization of sex work. As already demonstrated by previous scholarship and activists (Abel and Fitzgerald, 2012; Armstrong, 2014, 2017, 2019; Bateman, 2021; Clare, 2022; Easterbrook-Smith, 2020; Musto et al., 2021; Showden, 2017; Smith and Mac, 2018), the full decriminalization of the industry would not only support states in identifying and protecting victims of sexual trafficking while ensuring the safety of sex workers but, we argue, it would ultimately facilitate the reconfiguration of platforms as a more democratic space for self-expression, for everyone.

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ORCID iDs

Carmela Morgillo  <https://orcid.org/0009-0007-2920-7581>

Salomé Lannier  <https://orcid.org/0009-0003-3650-7866>

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Notes

1. Throughout this article, we only refer to FOSTA and not FOSTA/SESTA because, while the legislation originated from two proposals—the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA)—it was codified as a single, merged act under the name FOSTA.
2. This term refers to platforms’ algorithmic censorship and silencing of sexual content and is quite popular among sex working and body positive creators.
3. The term is used by sex workers to refer to nonsex working individuals.

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