



NATIONAL CENTER ON SEXUAL EXPLOITATION

EndSexualExploitation.org

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FR: Benjamin Bull, Legal Counsel, National Center on Sexual Exploitation

RE: CDA 230¹ Immunity for Tech Companies embedded in USCMA

Background

- Overwhelming passage of FOSTA-SESTA², by the House (388-25) and Senate (97-2) was one of the great accomplishments of the 116th session of Congress. President Trump was surrounded by young victims of sex trafficking and their families when he signed the bill into law on April 11, 2018.
- By giving victims and their families the right to sue Internet Service Providers for knowingly facilitating sex trafficking and clarifying that Congress never intended to shield websites from liability for criminal conduct (including online sex trafficking, sexual exploitation of children, and prostitution), FOSTA-SESTA is monumental law.

What's wrong with USMCA

- But the current inclusion of CDA 230-like language in [Article 19.17](#) of the U.S. Mexico Canada Agreement (USMCA) undercuts FOSTA-SESTA.
- As NCOSE together with 150 other organizations and advocates wrote to Congress last September, the agreement directly undermines FOSTA-SESTA and exports the brutality of sex trafficking and rampant exploitation to our neighbors.
- Although the agreement includes a footnote in the digital trade chapter, (Chapter 19, Annex 19-A) which gestures toward FOSTA-SESTA, it does not make the new U.S. law limiting Internet liability for sexual exploitation **controlling**.
- Further, the language of Annex 19-A (4.) actually **misrepresents** why Congress passed FOSTA-SESTA. The footnote concedes an ‘exception for measures necessary to protect public morals,’ although it was mainly brutality and physical harm, including murder, that compelled Congress to act.

¹ Communications Decency Act of 1996 section 230 provides immunity from liability for websites that publish information written and posted by others

² Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)- Stop Enabling Sex Traffickers Act (SESTA)

- The [key sentence](#) is: “The Parties agree that measures necessary to protect against online sex trafficking, sexual exploitation of children, and prostitution, **such as Public Law 115-164, the “Allow States and Victims to Fight Online Sex Trafficking Act of 2017,”** which amends the Communications Act of 1934, and any relevant provisions of Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos delitos, **are measures necessary to protect public morals.**
- Inclusion of the phrase “such as” is a weak reference to the law.
- Extensive evidence exists that the tech community fought hard to get CDA 230-type immunity in the USMCA and [celebrates](#) its inclusion.

Ways to Fix

- USMCA agreement language can be changed, just not on the House floor.
- Ideally, USTR should pull section 230-like language from the digital trade chapter. Neither the Mexican nor Canadian government asked for these provisions.
- On August 6, Energy and Commerce ranking member Rep. Greg Walden [co-signed a letter](#) to Amb. Lighthizer with Committee Chair Rep. Frank Pallone, Jr. asserting that CDA 230 should not be included in the USMCA because it [does not belong there](#).