

ONLINE SEXUAL EXPLOITATION AND ABUSE IN THE UNITED STATES



The United States (US) is a key player in the fight against online sexual exploitation and abuse (OSEA). The role of the US in this fight is especially important because the US is a global hub of technological innovation. Many digital service providers and platforms are domiciled in the US. Over 90% of Americans have access to the internet, and that number is likely to increase to 94% by 2025.¹ Traffickers are online too. In the US, three quarters of sex trafficking victims say they were advertised on websites such as Backpage and Craigslist.²

The Covid-19 pandemic has made matters worse. For example, the helpline for the Cyber Civil Crisis Initiative, a Florida-based group focused on image-based sexual abuse, recorded sexual assault, and sexual coercion and extortion, logged almost 39% more calls related to online sexual abuse in 2020.³ The National Center for Missing and Exploited Children (NCMEC), experienced a significant increase in reports of online enticement⁴, from 11,658 in 2019 to 22,751 in 2020.⁵

The US has not always ratified international conventions designed to combat OSEA but has been proactive in domestic efforts to curb these harms. The US has put in place initiatives such as the Internet Crimes Against Children Task Force Program (ICAC program) to help state and local law enforcement agencies develop effective responses to technology-facilitated child sexual exploitation and internet crimes against children. The US passed the Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA), which make digital service providers and platforms liable for knowingly facilitating sex trafficking, but the law has been challenged on the grounds that it infringes on freedom of expression. The US approach is complicated by the prevalence of state law, which means the US response varies across the states for some violations.

Note: The information in this factsheet is largely derived from the report titled *Ending Online Sexual Exploitation and Abuse: A Call for International Standards*, published during November 2021. Please refer to the report for further information on these laws as well as a full list of recommendations. <https://www.equalitynow.org/endosea>.

¹ <https://www.statista.com/statistics/590800/internet-usage-reach-usa/>

² <https://observatoryihr.org/blog/the-role-of-the-internet-on-sex-trafficking/>

³ <https://www.cybercivilrights.org/ccri-blog/>

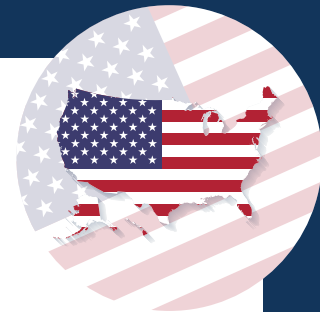
⁴ Online enticement can be defined as interacting with a child online with the intent to commit a sexual offence

⁵ <https://www.netclean.com/2021/04/06/we-have-seen-a-definite-increase-in-child-sexual-abuse-crime-during-the-covid-19-pandemic/>



Unsplash/Laura Chouette

LEGAL LANDSCAPE



Overview of International and Regional Treaties

The US is a party to several international and regional treaties that provide for the rights of women and girls and for protection from sexual exploitation and abuse. Internationally, the US has ratified:

- The Convention on the Rights of the Child's Optional Protocol on the sale of children, child prostitution, and child pornography (the CRC Optional Protocol).
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).
- The International Labour Organization (ILO) Convention on the Worst Forms of Child Labour.
- The International Covenant on Civil and Political Rights (ICCPR).

It has signed (but not ratified) both the Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which create international standards for the human rights of women and children respectively.

The Convention on Cybercrime of the Council of Europe (Budapest Convention) is the only binding international instrument on cybercrime, and the US has ratified it. It serves as a guideline for any country developing comprehensive legislation against cybercrime and as a framework for international cooperation among parties to the Convention.

Regionally, the US has not ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), which has been ratified by 32 out of the 34 members of the Organization of American States (OAS).

Overview of Existing Laws Covering OSEA

The US has been more rigorous in its domestic passage of laws designed to protect against OSEA.

At the federal level, the US has enacted a number of laws that are relevant in addressing online sexual exploitation abuse. Some of the main laws include:

- Title 18 United States Code (U.S.C.) - Crimes and Criminal Procedure, which creates a number of offenses relating to OSEA such as online grooming of children, sexual coercion and extortion, and possession, transportation, distribution, and production of child sexual abuse material (CSAM)⁶.
- The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act, which was enacted to prevent child abuse, and provides for investigation and prosecution of violent crimes against children.
- The Trafficking Victims Protection Act, which criminalizes trafficking for the purpose of sexual exploitation.⁷
- The Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA), which makes it illegal for digital service providers and platforms to knowingly assist, facilitate or support sex trafficking on their platforms.

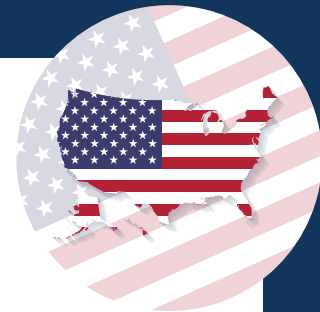
- The Child Pornography Prevention Act, which increases and expands the scope of penalties for sexual exploitation of children. It also Revises the definition of "visual depiction" to include data stored by electronic means.
- The Clarifying Lawful Overseas Use of Data (CLOUD) Act, which sets out the conditions under which service providers, that have a jurisdictional presence in the US, are required to disclose the contents of stored communications, or other information about a customer.

There are also a number of state laws that address some aspects of OSEA. For example, although there are gaps in the laws, 48 states have enacted laws that seek to address image-based sexual abuse.

6 § 2422, 2251-2260 of Title 18 U.S.C

7 § 103 (8) of the Victims of Trafficking and Violence Protection Act, 2000

GAPS IN THE LAW



Despite efforts to act against OSEA, a number of significant gaps in US law coverage of OSEA are worth noting. First, the US has not ratified some international Conventions, limiting collaboration and cooperation across borders. Second, although US federal statutes preventing sexual abuse and exploitation are robust, the references to technology are sparse and have not kept up with the reality of the internet age. The fragmentation of cloud data makes tracking the source of that data very difficult, and the law on this issue is evolving.⁸ Third, the structure of US law means inconsistencies at the state level in rooting out OSEA are common. Not all states have enacted laws on OSEA, and not all state laws remediate these harms in the same way. Fourth, legal challenges to existing OSEA laws may set back progress. For example, US courts are still to determine the constitutionality of FOSTA-SESTA.

However, there are ongoing debates on reforming the Communications Decency Act and holding digital platforms and service providers accountable for OSEA material on their platforms.

Online Grooming and Solicitation for Sexual Exploitation and Abuse

In the US, it is a federal criminal offense to use mail or interstate commerce to entice a minor into sexual activity.⁹ In practice, this law is commonly applied to prohibit online grooming of children, and offenders can be prosecuted for sexual grooming behavior if the activity crossed state lines for purposes of the interstate commerce requirement.

The US recognizes that grooming can take place without the offender physically meeting the child. In *US v. Chambers*, the defendant argued for a reversal of his conviction under Section 2422 because he neither intended to meet the minor child, who was in fact an FBI agent posing as a child, nor took a substantial step towards meeting her, despite chatting online with her for months.¹⁰ The Seventh Circuit held that Chambers had the requisite intent and had taken a substantial step toward meeting the minor, noting: “Child sexual abuse can be accomplished by several means and is often carried out through a period of grooming.”

Some US states have additional statutes prohibiting seducing a child online. For example, Florida prohibits knowingly seducing or soliciting sexual conduct from a child online.¹¹ Further, Illinois prohibits knowingly using a computer online service, internet service, or any other device capable of electronic data storage or transmission for online sexual grooming.¹² Not all states offer such protection.

Like in many other countries, the US laws around online grooming and solicitation for sexual abuse mostly provide protection for children and not vulnerable adults who may also be vulnerable to online grooming. In addition, by failing to extend protections to exploited children once they become adults, the law fails to appreciate the long-term nature of online grooming.

Online Sexual Coercion and Extortion

The US has criminalized the transmission, in interstate or foreign commerce, of any communication containing any threat to injure the property or reputation of the addressee or of another.¹³ While this law criminalizes extortion, it does not provide specific protection from online sexual coercion and extortion. Laws that address the sexual nature of this crime are necessary.

Child Sexual Abuse Material

US federal law prohibits using an interactive computer service to send a child any comment, request, suggestion, proposal, image, or other communication that is obscene or constitutes CSAM.¹⁴ State law provides additional

⁸ See *US v. Microsoft Corporation*, 138 S. Ct. 1186, 200 L. Ed. 2d 610 (2018)

⁹ 18 U.S.C. § 2422(b)

¹⁰ 642 F.3d 588, 592 (7th Cir. 2011)

¹¹ Fla. Stat. Ann. § 847.0135

¹² 720 Ill. Comp. Stat. Ann. 5/11-25

¹³ 18 U.S.C. § 875(d)

¹⁴ 18 U.S.C. § 1470

protection in some jurisdictions, however there are differences between these states with respect to what qualifies as obscene material when a child minor is involved.

Chapter 110 of Title 18 of the United States Code prohibits sexual exploitation and other abuse of children. The code section prohibits, among other things, coercing a minor to engage in sexually explicit conduct “for the purpose of transmitting a live visual depiction of such conduct.”¹⁵ In addition, it prohibits “production, possession, receipt, mailing, sale, distribution, shipment, or transportation” of CSAM.¹⁶



Online Sex Trafficking

The Trafficking Victims Protection Act criminalizes trafficking for sexual exploitation, which it defines as the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years. Significantly, the law further defines any act of commercial sex with a person under the age of 18 years as “a severe form of trafficking.”¹⁷

In addition, the US prohibits the sex trafficking of children by force, fraud, or coercion.¹⁸ This federal statute makes it illegal to knowingly recruit, entice, harbor, transport, provide, obtain, or maintain a minor. It also makes it a criminal offense to participate in a business venture that causes minors to engage in commercial sex acts.

The code section entitled Transportation for Illegal Sexual Activity and Related provides further prohibitions, including criminalization of “knowingly transport[ing] an individual who has not attained the age of 18 years in interstate or foreign commerce...with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense...”¹⁹ The use of technology in trafficking is only mentioned in the coercion and enticement statute, which prohibits the promotion or facilitation of sex trafficking using mail, technology, or by way of telephone.²⁰

The US is making significant efforts to legislate around the online and digital technological aspects of sex trafficking. In response to the growing crisis of online sex trafficking across the country, the US passed the Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA). Among other things, FOSTA-SESTA amends the “safe harbor rule” clause under Section 230 of the Communications Decency Act (CDA) to clarify that the clause does not prohibit the enforcement of federal and state criminal and civil laws that penalize the providers and users of interactive computer services which knowingly facilitate, assist, or support sexual exploitation for sex trafficking, prostitution, and for other purposes. Victims can now sue entities that helped advertise and traffic them online. However, FOSTA-SESTA is being challenged on the grounds that it infringes on freedom of expression.

Image-Based Sexual Abuse

In the US, 48 states have laws that criminalize image-based sexual abuse. For example, New Jersey state law prohibits the non-consensual recording of someone's intimate body parts and the non-consensual distribution or sharing of that recording.²¹ California's Penal Code makes it an offense to post explicit images of someone online without their consent.²² However, some state laws are flawed or include unnecessarily burdensome requirements that create roadblocks for victims to be protected from image-based sexual abuse. For example, Arizona law requires an “intent to harm or harass” or for the offender and victim to be in a domestic relationship.²³

¹⁵ 18 U.S.C. § 2251

¹⁶ 18 U.S.C. § 2252

¹⁷ 22 U.S.C. § 7101-7114

¹⁸ 8 U.S.C. § 1591

¹⁹ (18 U.S.C. § 2423(a))

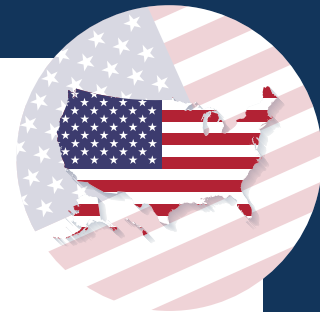
²⁰ 18 U.S.C. § 2425

²¹ NJSA 2C:14-9

²² Cal. Penal Code § 647(j)(4)

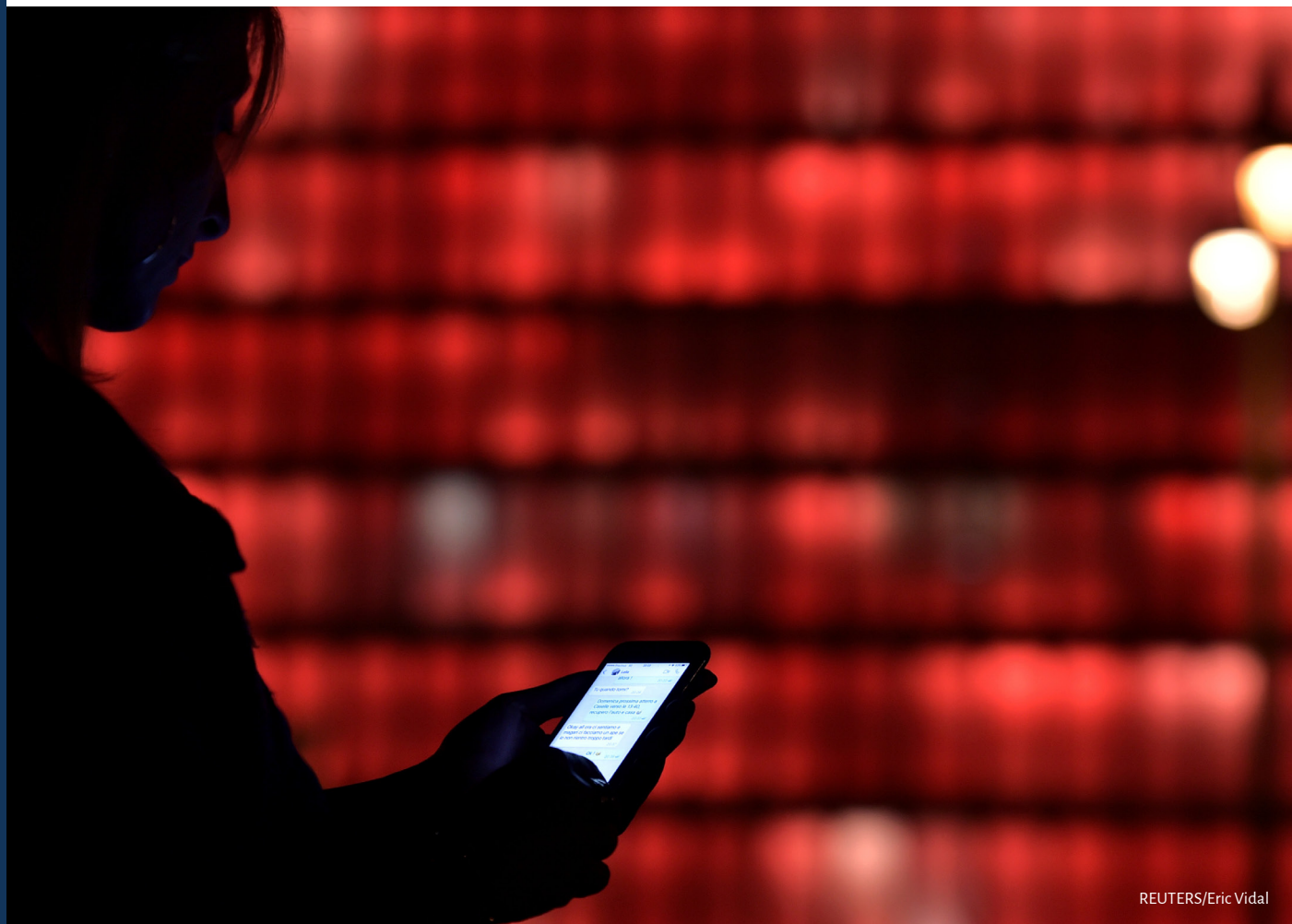
²³ (Ariz. Rev. Stat. Ann. § 13-1425)

KEY RECOMMENDATIONS



The US government should:

- Enact and implement laws that address the root causes of OSEA, in particular gender, sex-based discrimination and intersecting inequalities, and the proliferation of misogyny and abuse of power online.
- Ensure that laws and policies that address all forms and aspects of OSEA are enacted and implemented, and align with international standards, where they exist, including providing for protection of vulnerable people. Laws should also take into account the gendered, technological, and multi-jurisdictional nature and dimensions of OSEA.
- Ensure that legal protections offer support to victims and survivors to prevent further exploitation.
- Provide adequate resources to investigate and prosecute OSEA cases, and support victims' access to the legal system, including through providing adequate funding to key institutions including law enforcement, child protection services, and women's rights departments, and civil society organizations, towards investigating and prosecution of cases, and support to victims and survivors of OSEA.
- Mandate digital platforms and service providers to implement easy-to-use, clear and efficient policies and procedures relating to posting, sharing, publication and takedown of OSEA material on their platforms, and mandate penalties when they fail to comply with the law.
- Require digital platforms and service providers to adopt human rights based approaches to their business activities and encourage them to collaborate with the US government
- Support civil society initiatives to raise understanding of OSEA including information on how to identify violations and report to law enforcement and digital service providers and platforms.
- Promote and support efforts for a global response to OSEA including development of mechanisms to enhance international cooperation.
- Create oversight. Establish an independent regulatory authority to oversee the implementation of laws and regulations.
- Provide funding. Fund support institutions and access to legal systems. Fund law enforcement, the judiciary, child protective services, and women's rights groups.



REUTERS/Eric Vidal