

The Digital Services Act from the perspectives of sex workers

Yigit Aydin and Corinna Vetter



The Digital Services Act (DSA), which was adopted by the European Union (EU) in 2022, introduced new rules for very large online platforms (VLOPs) to tackle illegal content and empower users by pushing online platforms to develop appeal mechanisms against content and account takedowns. One of the many groups that are impacted by this legislation is sex workers, who may suffer from unintended consequences.

How technology transforms sex work and the importance of access to safe online spaces for sex workers

[Sex work is gig work](#) based on the consensual exchange of sexual or erotic services between adults for money, goods, or other services. It is very difficult to accurately estimate the number of people involved in sex work in Europe due to its mostly underground nature, largely because of stigma and criminalisation. [Recent estimates](#) stating that there are ‘1,500,000 women aged 15–49 years’ in the 27 EU countries do not accurately reflect the total number of individuals involved in the sex industry. These estimates overlook men, trans and non-binary people engaged in selling sex, as well as women who are above the age of 49.

Sex work in Europe is changing rapidly in line with global trends. [Digitally mediated sex work has grown](#) due to lockdown restrictions where brothels and other venues were shut down, leaving sex workers without financial protection in many countries. The result was the migration to digital and internet-mediated sex work, which [created new opportunities to generate income](#) from different sources while staying safer. Another significant portion of the sex industry is those involved in digital-only sex work and generate income through, for example, OnlyFans (and many other similar online platforms), whose user base has grown substantially since the beginning of the COVID-19 pandemic in 2020.

The role of digital technologies in facilitating sex work has grown substantially in the last decade. In fact, research consistently demonstrates that access to the Internet and adult sexual service platforms not only facilitates sex work and enable sex workers to earn money, but also provides a much safer working environment. Through Internet-mediated sex work, sex workers can establish more control over their working conditions and practices, and are able to set boundaries compared to more traditional ways of working, such as working in a brothel which offers less autonomy. [One particular research study](#) conducted in the U.K. amongst online sex workers revealed that 78.3% of these individuals believed that the internet had improved their working condition.

De-platforming, shadowbanning, and more: sex workers' ongoing struggle to exist online

Despite all the benefits of Internet-mediated sex work, digitalisation has brought new severe threats into the lives of sex workers, and thus, it is often regarded as a [double-edged sword](#) since sex workers are frequently excluded from online public spaces. Instagram, among other social media platforms, often impose strict limitations on the visibility of accounts through [de-platforming](#) or [shadowbanning](#).

These platforms justify their actions by arguing these accounts violate community standards by promoting illegal activity, even in instances where sex workers are simply talking about their lives and personal experiences. Deplatforming or shadowbanning not only targets individual sex workers' accounts, but also affects legitimate human rights organisations that use their channels to promote their work and advocate for the rights and protection of sex workers. Even so, using the words 'sex work' can result in being flagged as illegal by the content moderation algorithms.

Platform self-regulation is also heavily influenced by global and regional legislation. One notable example is the [FOSTA/SESTA](#) legislation in the United States, which was [packaged and promoted as an anti-trafficking legislation](#) but has wreaked havoc for sex workers worldwide. Since its approval in 2018, online services have been pressured to exclude sex workers in order to avoid the risk of legal action. Ironically, a [recent evaluation](#) of the effectiveness of FOSTA/SESTA shows that it ultimately failed to tackle human trafficking, although it was one of their main goals. EU policymakers have pursued an alternative path: the lack of efficient anti-discrimination laws, as well as laws that criminalise sex work in member states creates the perfect conditions for online services to discriminate against sex workers. By designing community guidelines that reproduce and amplify the inequalities in our societies, these online services contribute to the marginalisation of sex workers.

The DSA does not centre the needs of those at most risk of rights violations

Although EU policies are not specifically designed to regulate sex work, they still have a significant impact on workers in the profession. EU policymakers are currently grappling with the challenge of keeping up with fast-paced technological developments and the necessity for regulating tech corporations. An example of such an effort is the [DSA](#), which aims to empower users by forcing very large online platforms (VLOPs) to comply with regulations regarding illegal content, establishing accessible appeal mechanisms against content and account takedowns, as well as requiring algorithm audits.

While the new requirements the DSA enforce appear to be positive for sex workers at first glance, in reality, the effectiveness of the DSA has limits. The DSA, in its current state, falls short in safeguarding the rights of those most vulnerable to rights violations and online harm, which is not surprising considering the [lack of meaningful consultation with and input from marginalised communities](#) during its drafting process. The DSA, as a whole, fails to

adopt a more layered approach in terms of recognising the strikingly different safety and accessibility needs of those most vulnerable, such as sex workers who are regularly discriminated against on online platforms.

The goal of the DSA was to regulate online services, especially VLOPs, to create a safe and trusted online environment where 'fundamental rights enshrined in the Charter are effectively protected and innovation is facilitated.' It prioritises its efforts to tackle the spread of illegal content of online services. However, in the context of sex work, this focus results in the over-censorship and exclusion of sex workers from essential services due to the widespread conflation of sex work and human trafficking. Sex workers, even in countries where selling sexual services is not against the law, still face high levels of discrimination from online platforms that fail to distinguish between sex work and human trafficking. These platforms also refuse to acknowledge the various national legal frameworks specific to each country. Instead, online services apply a blanket ban on everything related to sex, including sex work, through their community guidelines and terms of service agreements.

The DSA has taken some steps to empower users by encouraging platforms to prioritise accountability and transparency. For example, they have required VLOPs to establish clear mechanisms for users to seek redress, provide explanations on their content moderation practices, and assess potential systemic risks. However, these provisions remain difficult for marginalised communities to access. Online services users are not a heterogeneous group, and the DSA's failure to adopt a comprehensive approach is a missed opportunity to address the structural disadvantages and specific needs of the most vulnerable communities. This lack of insight undermines the potential to make a real difference for those that aren't able to access justice and are at most risks of rights violations. In such circumstances, any redress mechanisms continue to stay out of reach for sex workers as their entire existence is considered to be illegal.

What could feminist policymaking do for sex workers?

The DSA missed an opportunity to shift power away from platforms and to empower users. The current state of the DSA fails to consider the needs of the most marginalised individuals and those who face the highest risk of discrimination and other human rights violations, such as sex workers. In light of this, it is clear that a different approach to tech policy-making is necessary, one that truly centres the most marginalized voices – a feminist approach.

A feminist digital policy critically questions power imbalances and seeks sustainable solutions to address the root causes of these problems. The consequences of digitisation must be evaluated for the entire society within the context of existing inequalities. Based on this, decision-makers should prioritise measures that benefit those most negatively affected by the impacts of digitisation.

This means that diverse user communities should have been meaningfully included during the DSA drafting period. The operative word here is 'meaningfully', which emphasises the

importance of [recognising sex workers as experts](#) in their professions and engaging with them directly. To ensure that workers have equal participation in decision-making, it is crucial to address the barriers they face. These barriers include language, sex work stigma and difficulty in accessing a representative sample of members of this heavily marginalised and criminalised community. It is important to implement proactive solutions from the very start, so that they may be included in these processes. Creating legislation for online sex work requires careful consideration and a thorough understanding of the dangers and needs associated with this practice. Without meaningful consultation for sex workers, any regulatory measure carries the risk of negative consequences.

Not only policymakers, but also tech companies need to centre marginalised voices. In the context of the DSA, this would mean that VLOPs should consider sex workers' points of view when conducting their required impact assessment. A first step would be to closely examine their community guidelines and terms of service agreements, as these directly impact the agency, privacy, and safety of marginalised communities. In order to ensure inclusivity, it is necessary that community guidelines and terms of service agreements be drafted after meaningful consultation with marginalised communities. Furthermore, opportunities for regular feedback from the user base should be actively encouraged.

The described (unintended) consequences suffered by sex workers show the importance of conducting a contextual and societal impact assessment for all legislation. This will help to ensure that legislation does not worsen existing problems or give rise to new ones. So far, most impact assessments have mostly covered legal or technical levels, ignoring the societal component that is crucial to ensure sustainable and ethically responsible solutions. In the context of tech companies, it is essential to include meaningful consultation with affected communities and implement their voices into the design process for new technologies.

The way the DSA impacts sex workers' lives shows again that in order to make policy that improves the lives of all people, policymakers need to focus on those societal groups that are most affected by the negative consequences of digitisation and ensure that their needs are prioritised.

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Ein Projekt von

SUPERRR Lab

Oranienstr. 58A

10969 Berlin

superrr.net

Ansprechpartnerin: Elisa Lindinger

elisa@superrr.net

