Regulating the Business of Pleasure: Hybrid regulatory regimes and transboundary influence of payment intermediaries in governing online sex work

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Abstract

Online sex work is often cited as a way to liberate sex workers by giving sex workers more control. But does the movement to digital spaces and the formal financial sector simply trade of one form of dependency and vulnerability for another? This paper seeks to understand the specific mechanisms employed by financial actors to target sex work and the relationship between state and private actors in the development of exclusionary policies. Furthermore, in light of the global dominance of the American financial sector, this paper examines the transboundary influence of US corporate financial regulation through its impact on sex workers outside the United States. The influence of government pressure on the corporate policies is examined through the policies of three financial service providers (Visa, MasterCard, and PayPal) in the context of two state policy changes: the Obama Administration's Operation Choke Point and the 2018 FOSTA/SESTA law. The international influence of these policies is explored through the experiences of Pornhub performers operating outside of the United States following the 2019/2020 suspension of services to the platform by PayPal, Visa, and MasterCard. This paper identifies two mechanisms employed by financial service providers which result in the exclusion of online sex workers: 1) direct prohibition of adult-related industries and 2) indirect exclusion through the incentive structure created to by financial service providers to monitor and regulate merchants which disincentivizes businesses to work with merchants involved in adult-related industries. This paper also finds that the dominance enjoyed by the US in the global financial system and its subsequent influence in foreign markets creates a system through which the problematic and exclusionary policies of US-based corporations are exported to countries regardless of their own legal frameworks governing sex work.

Contents

Introduction

Sex work is a broad category of work which includes many different activities such as dancing, escort service, full-service prostitution, and stripping. Other activities are indirectly related to sex work and share some but not all characteristics, for instance selling intimate clothing and 'sugar' relationships. Sex work has historically served as a way for those excluded from the formal economy to survive and maintain financial independence. However, in many cases, sex work lacks the formal recognition enjoyed by other areas of employment. As a result, sex workers lack bargaining power and consequently suffer without the legal protections, regulations, and benefits granted under traditional employment contracts (Van der Meulen, 2012). Due to the stigmatization and clandestine nature of sex work, research remains largely ideological rather than empirical (Lerum and Brents, 2016). However, some recent scholarship has increasingly conceptualized prostitution and other forms of sex work within the framework of labor relations or as "income-generating activities" (Adriaenssens et al., 2016). It is within this framework that sex work is examined in this paper.

Sex work has historically existed in all societies throughout history in different forms and facilitated through different institutions and relationships with legal systems. In general, there exists a paradox in the cultural and economic conditions of sex work. On one hand, the prevalence of sex work throughout time and space establishes its position as a constant and significant component of national economies and labor markets. Sex work has become increasingly mainstream through increased recognition and legal reforms. Recent decades have seen countries around the work to decriminalize sex work as a part of harm reduction strategies. Political activist movements have also focused on destigmatizing sex work and gaining recognition and voice to sex workers in political and public life (Brents and Sanders, 2010; Fuji Johnson and Porth, 2023). On the other hand, despite its integration into mainstream economies, cultural norms continue to uphold a view of sex work and those in its employment with disdain and judgement, leading to continued stigmatization and marginalization. Around the world, different types of sex work, from prostitution to pornography, is prohibited and criminalized.

One prominent sector which contributes to the marginalization of sex workers is the private sector in the United States. The financial services sector in the United States has a well-documented history of excluding people and businesses involved in socially undesirable industries, especially the production of legal, sexually-oriented content. An obvious question is why private corporations, whose raison d'etre is capital accumulation and profit maximization, would refuse to do business with a legal, highly profitable, multi-billion dollar industry? Why commit vast resources and time monitoring customers in order to discover and eliminate those whom are connected, even indirectly, to the sex work industry? Research has provided a partial answer to this question: the governance of the financial sector involves a hybrid framework which combines government-led regulation as well as the terms of service of private financial corporations. The US government enforces both informal and formal regulations by establishing industry "best practices" which deputize private corporations to use their power of surveillance over their platforms to target bad actors. In order to comply with state regulations, these companies opt to regulate beyond their legal mandates, a phenomenon called "beyond-compliance". The resulting policies prohibit socially undesirable behavior and exclude legally operating individuals and businesses connected to the sex work industry.

This paper builds on established research on the regulation of sex work and hybrid platform governance regimes and expands understanding in two ways: first, rather than relying on anecdotal cases of financial exclusion and potentially harmful legislation on sex work, this paper investigates the specific mechanisms present within corporate policies which facilitate the exclusion of sex workers. Second, while the scale and international influence of the US financial system is widely studied, this paper will examine the transboundary impact of US-based corporate policies on sex workers outside of the United States. The following research question guides this paper:

> *How do private US-based payment intermediaries govern online sex work and what is the impact of these policies on sex workers outside of the United States?*

Secondary research questions inform the three section of the empirical analysis:

Section 1: *How does the relationship between state and private actors influence the "beyond-compliance" regulatory framework that guides the financial industry policies regarding sex work?*

Section 2: *What mechanisms exist in the corporate policies of PayPal, Visa, and MasterCard which facilitate the exclusion of legal sex work?*

Section 3: *What are the consequences of the corporate policies of Visa, MasterCard, and PayPal on the livelihoods of sex workers globally who operate on the platform Pornhub and depend on US-based payment intermediaries?*

This paper proposes a three-part analysis to answer this question. First, the manifestation of social stigma against sex work as financial and reputational risk in the financial sector is analyzed in the context of payment intermediaries. This section discusses the relationship between private payment intermediaries and government regulatory bodies in the mitigation of risk and the development of corporate best practices. This section ends with a discussion of the implications of the hybrid "beyond compliance" that emerges as a result of the growing role of private corporations as regulators.

The second section investigates the specific mechanisms used by private financial service providers in regulating sexually-oriented behavior. First in this section is an explanation of two important regulatory policies, the US Department of Justice initiative Operation Choke Point and the federal FOSTA/SESTA law. The impact of these policies is analyzed through the corporate policies of three payment intermediaries during the period 2010-2022.

The final section examines the global impact of US corporate policies on the financial access of sex workers outside the United States. The cases examined are the 2019 decision by PayPal to cut ties with the platform and the 2020 decisions by Visa and MasterCard to do the same. The motivations of these policies are analyzed as well as the financial consequences for sex workers outside of the United States who earn money from content on Pornhub. The paper concludes with a summary of the finding, a discussion of the broader implications of corporate governance, and recommendations for further research.

This paper argues that the regulatory framework established in the United States by state and private actors to govern the financial sector contribute to the exclusion of sex workers and increased the precarity of legally operating sex work businesses both domestically and around the world. The US government enforces both informal and formal regulations by establishing industry "best practices" which deputize private corporations to use their power of surveillance over their platforms to target bad actors. In order to comply with state regulations, these companies opt to regulate beyond their legal mandates, a phenomenon called "beyond-compliance". The resulting policies prohibit socially undesirable behavior and exclude legally operating individuals and businesses connected to the sex work industry.

Private corporate policies enforce this exclusion in two ways: direct and indirect targeting of sex work. Direct targeting involves the prohibition of all sexually-oriented material or services regardless of legality. This strategy is exemplified in this paper by the corporate policy of PayPal. Indirect targeting involves a more subtle mechanism to drive sex workers from formal financial service platforms. Indirect targeting excludes sex workers through the incentive structure created to monitor and regulate merchants which disincentivizes businesses to work with merchants involved in explicit material. This strategy is exemplified by the corporate policies of Visa and MasterCard. Furthermore, this paper argues that the dominance enjoyed by the US in the global financial system and its subsequent influence in foreign markets creates a system through which the problematic and exclusionary policies of US-based corporations are exported to countries regardless of their own legal frameworks governing sex work.

The findings of this paper of the powerful and punitive influence of private financial corporations are notable because of its significance to the institutions that govern our lives and livelihoods. The exclusionary practices of PayPal, Visa, and MasterCard that target sex workers are not limited to this case but point to a larger, alarming phenomenon in the global political economy: The widespread and unchecked transboundary influence of extralegal corporate regulation, written and developed by undemocratic US-based financial institutions, on marginalized communities worldwide. By controlling access to formal financial services, private corporations determine which people can operate publicly in the formal economy and which are to be condemned to the shadows of the informal sector. The significance of this phenomenon expands beyond concepts of economy participation and equal access to financial services. If the internet is understood as a public space, an extension of the public sphere, as conceptualized by Beebe (2022), the actions of corporations in governing online platforms transform from simple corporate best-practices to the enforcement of a moral gentrification of public space. Who governs the access to the internet and it monetization becomes a question of the role of private interests in public life and their influence on the material experiences of marginalized communities.

Literature Review

The debate over the regulation of public life has expanded with the rise of the internet as an essential platform to facilitate both social interaction and as a global marketplace. While the internet shares many attributes with traditional public spaces, its capacity for anonymity and its global reach present new challenges to governments and civil society in how and when to restrict its influence. The move of sex work onto online platforms was an inevitable development of the internet and follows the traditional phenomenon of sex work's universal reach. This paper brings together two broad areas of scholarly research: the regulation of sex work as undesirable behavior and the public/private regulation regimes of online platforms. The intersection of these two areas has received relatively little scholarly attention and is the primary area to which this paper seeks to contribute. This section ends with a review of the conceptualization of the internet and financial services industry as essential utilities, which serves as the broader theoretical framework which this paper can inform.

Regulation of Sex Work

Just as sex work has existed in all societies throughout history, so has debate over its presence in public life and control by state and private actors. From governments to religious communities to economic actors, institutions have developed frameworks to determine how sex work is defined as well as what to do with sex work and the people involved in it. For the purpose of this paper, focus will be given to the relationship between sex work and the formal economy as well as the evolution of sex work on internet platforms.

Labor which does not fit easily into traditional definitions of formal work, such as illicit, stigmatized, and informal labor see higher rates of marginalization. Sex work falls into this category and faces additional stigmatization based on social and religious moral standards. Studies on the lives of sex workers illustrate the high rates of exclusion and vulnerabilities faced by sex workers relative to the general population. Those employed in sex work report higher levels of poverty, poor physical and mental health, disability, and food insecurity (Shannon et al., 2009; Rosen & Venkatesh, 2008). Sex workers are also at a significantly higher risk of experiencing harassment and sexual assault than the general population (Bungay & Guta, 2018; O'Doherty & Waters, 2019). Research illustrates the detrimental effects of criminalization on the health and wellbeing of sex workers, especially incentives to move work ‘underground’ to evade law enforcement (Benoit et al., 2018; Krüsi et al., 2016).

Beyond general stigma from religious and moral principles, sex work remains either criminalized and/or marginalized because its conflation with sexual crimes such as rape. Central to this perspective is the conception of sex work as inherently antithetical to women’s liberation: “The political-moral assumption that prostitution is inherently exploitative has profound implications for laws on sex work, and for the ways sex work is dealt with” (Distiller, 2001). The conflation of consensual sex work with violent, sexual abuse is common throughout legal models of sex work. Even purportedly progressive models of sex work, such as the Nordic Model which decriminalizes the sale of sex but not the promotion and purchase of sex, have been critiqued for maintaining the assumption that sex workers are passive victims that should be “saved” from sex work. Additional critiques cite the continued criminalization of activities related to sex work as inhibitory to liberation because it reinforces the economic exclusion of sex workers (Escobar, 2019).

The legal barriers and social taboo prevent the recognition of sex work as legitimate and result in dangerous and precarious employment situations for those involved (Rand, 2019). Under most models the lack of recognition, criminalization, and other barriers render sex workers vulnerable to harassment, abuse, and fraud, especially during the process of solicitation and compensation. Traditionally, sex work has been facilitated either by solicitation in a public space dangerous or through an third-party establishment (brothel). Both forms are associated with high levels of exploitation, health risks, and overall danger. The Dutch model of prostitution, famously implemented in Amsterdam’s Red Light District, seeks to address this issue through highly regulated, legally licensed establishments. While formalization solves the problems of fraud and harassment, critics point out that one form of vulnerability is exchanged for another as sex workers become dependent on the third-party brothel in order to make a living (Renoire, 2021).

In the absence of universally favorable models, sex workers around the world have sought alternative platforms to pursue sex work. The past two decades has seen a steady increase in both direct and indirect online sex work. These jobs include uploading videos and photos, livestreaming, and private messaging, as well as using platforms as third parties to connect clients for in-person escorts and full-service sex work. The gig economy, which refers to informal, short-term contract employment facilitated on digital platform, has evolved as a potential solution for sex workers seeking to avoid the consequences associated with the criminalization and stigmatization of traditional sex work.

Online sex work improves working conditions for sex workers in several ways. First, on a digital platform, sex workers take advantage of the internet's global reach, with the potential to build large followings and expand their customer base. Second, for full-service sex work, online platforms allow sex workers to more easily vet potential clients, mitigating the risk of harassment and fraud. Third, online sex work creates opportunities for sex workers to work independently. Through online platforms, sex workers can produce, edit, publish, and monetize content themselves, escaping potentially exploitative dependency on brothels or other intermediary establishments. Lastly, online platforms diversify the types of sex work available, expanding beyond prostitution, dancing, and escort services to include selling photos and videos, selling clothing items, and communicating virtually with customers.

Hybrid Regulatory Regimes

The second area of research relevant to this paper is the role of private corporations as regulators of public life. The regulation of social and economic life is as old as civilization itself, especially attempts to suppress undesirable behavior. Furthermore, the debate over the role of private and state actors in controlling public and private life has informed the development of regulatory regimes. Rather than a dichotomic framework, regulation involves a complex interaction of overlapping and competing interests of powerful state and corporate actors as well as the negotiation between concerns over morality and sociopolitical concepts of liberty and self-expression.

The regulation of economic and social life has traditionally been a function of the state, which fulfills its duty to maintain social order through the enforcement of laws against undesirable behavior. However, governance in reality is more pluralistic. Most significant is the prominence of private transnational governance, which refers to the "right of a company to establish and enforce rules within its jurisdiction beyond those of the laws of the land" (Ciepley, 2013). Private transnational governance emerges both through the implementation by corporations of self-regulatory frameworks and the involvement of state authorities through legislative or executive-level rules (Cutler, 2009). The extent of a corporations jurisdiction is broad and contributed to the blurring of the line between state and private governance. In the context of private transnational governance, the interaction between state and private actors results in hybrid regulatory regimes that govern national and international industries.

One common form of hybrid regulation, and the form most relevant for this paper, is "beyond-compliance" regulation. This process involves state pressure of private corporations to enforce in their own company policies regulatory measures which exceed their legal responsibilities (Tusikov, 2018). In this arrangement, private actors set and enforce standards for their industry, guided by regulations or statutory laws from the government. However, direct state pressure compels corporate actors to interpret the national laws and regulations broadly in order to avoid the risk of punitive measures or reputational damage, resulting in non-legally binding corporate policies which go beyond the requirements of the legal code. Corporate actors become reluctant regulatory intermediaries that are "compelled to accept greater enforcement responsibilities" (Tusikov, 2018).

The motivations of states to create "beyond-compliance" regulatory frameworks fall into three categories. First, large corporations are private, highly centralized actors with extensive industry knowledge, high surveillance capacity, and greater control over the consumers and products in their jurisdiction compared to that of states. States seek to take advantage of this power to achieve a public good, such as limiting fraud, corrupting, and other bad behavior (Levi-Flaur 2010). Second, states benefit the "beyond-compliance" model because requiring corporations to development legal corporate policies and informal internal enforcement practices that comply with vague legislation allows states to avoid the time-consuming and messy legislative and judicial processes (Tusikov, 2016). Lastly, enforcement through corporate policies is beneficial to states because it shifts the burden of responsibility, accountability, and liability from state regulators and law enforcement agencies to corporate actors, reducing risk as well as the resources required to govern industries (DeNardis, 2014).

This hybrid system of regulation is reflected in the governance of undesirable behavior on internet platforms in the United States. In its effort to police bad actions on the internet, including the proliferation of counterfeit materials, illegal gambling, and child pornography, the United States government enlists private corporations to serve as intermediaries in policing the internet and eliminating bad actors (Tusikov, 2018). In the context of Internet regulation, the definition of an "intermediary" and the specific enforcement responsibilities are not clearly defined (Glasser and Schulz 2015). This uncertainty strengthens the power of the US government to pressure corporate actors and emboldens the government to make threats of legislative or legal action that would invoke serious reputational and financial costs on the corporation (Tusikov, 2018). As a result, the uncertainty present in the area of internet regulation therefore renders its regulatory system uniquely vulnerable to the development of "beyond-compliance" regulations.

The intersection of sex work regulation and hybrid platform regulation has received relatively little scholarly attention, particularly as it applies in the context of the US financial sector. Beebe (2022) and Tusikov (2021) provide the limited but valuable foundational research in this area. In her work on corporate actors as regulators, Natasha Tusikov examines the role of digital financial service providers in regulating sex online (Tusikov, 2021). This work focuses on the infrastructure which supports the online payment industry, concluding that the market concentration around a small number of powerful actors results in a regulatory system which is dominated by these private payment companies and results in redlining of sexual speech online. The empirical analysis of Tusikov (2021) centers around the relationship between banks, credit card companies, and payment platforms and the methods employed by these actors to monitor and regulate their platforms. Tusikov provides a valuable framework for understanding the structure of the online payment industry and the roles of different actors but leaves many aspects open for further research.

Foremost in the concepts left unexplored in Tusikov (2021) is the role of the state in the development of industry regulations. Despite her own research into hybrid regulatory regimes and the role of private firms as regulators, the discussion of state regulations of online sex work in Tusikov (2021) is limited to a brief mention of the FOSTA/SESTA law. Beebe (2022) acknowledges this gap and investigates state influence through corporate best practices and "beyond-compliance" regulation, outlining the way that the stigma surrounding sex work is transformed in financial system into financial risk and excluded from the formal financial sector through role of payment intermediaries as revenue chokepoints. While Beebe (2022) develops the framework of the hybrid regulatory regime governing online sex work, the relationship between state initiatives and specific impacts on corporate policy remains theoretical. This paper seeks to address this gap by studying how the corporate policies of online payment actors evolve over time in response to state policies as well as focusing on the specific mechanisms outlined in the corporate policies.

The second aspect underdeveloped by Tusikov (2021) and which is also left underdeveloped by Beebe (2022) is the impact of the US financial system's hybrid regulation of online sex work on sex workers outside the United States. Both papers acknowledge the size and scope of the US financial sector and the dominance of US-based payment platforms. However, their analyses are limited to the hybrid regulation's theoretical influence and include only loosely related anecdotal accounts of sex workers around the world who experienced financial exclusion. In order to address this gap, I examine accounts of internationally-based sex workers following changes to the corporate policies of US-based payment platforms regarding the adult entertainment platform Pornhub.

Methodology

This study will examine the relationship between the US executive and legislative frameworks on sex work, the corporate policies of financial service providers regarding sex work, and the subsequent influence of the corporate policy of US-based financial services market on international sex work industry. This analysis will rely on the terms of service agreements and acceptable use policies of four US-based financial service providers, including two credit companies (Visa and Mastercard) and one payment intermediary (PayPal). The analysis will focus on the regulation of sexually explicit material, including its production, sale, and purchase through the respective payment platforms. The selection of individual corporate policies was determined by the availability of the public record. Many previous versions of ToS and acceptable use policies are not publicly available. The policies included are those which have been made available for public use.

The analysis will include three sections. First, a review of US corporate policy regarding the mitigation of risk for financial service providers and its relationship with the sex work industry. This section will focus on the two most recent developments in the regulation of the financial sector in the US: Operation Choke Point, the US Department of Justice initiative beginning in 2013 to investigate banks and other financial service providers in order to use their positions in the financial market to address fraudulent and high-risk behavior, and FOSTA/SESTA, a combination of two Congressional bills (Allow States and Victims to Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act), federal legislation passed by Congress in 2018 aimed at eliminating sex trafficking on online platforms. This legislation makes it illegal for websites to "promote or facilitate prostitution" and amends the immunity given to platforms by the Communications Decency Act to make websites liable for content related to sex trafficking.

The second section will examine the specific terms provided in the corporate policies of the four companies, focusing on three periods:

1. Pre-2013: Before the Department of Justice initiative “Operation Choke Point”
2. 2013-2017: After the implementation of Operation Choke Point but before the introduction of FOSTA/SESTA
3. Post-2018: After the passing of FOSTA/SESTA by Congress in 2018.

The individual corporate policies for each company included in this analysis for each of the periods are provided below:

VISA

Pre-Operation Choke Point	2010 Visa International Operating Regulations
	2011 Visa Global Brand Protection Programme Guide
2013-2017	2015 Visa Core Rules and Visa Product and Service Rules
	2017 Visa Core Rules and Visa Product and Service Rules
Post-FOSTA/SESTA	2018 Visa Global Acquirer Risk Standards
	2018 Visa Core Rules and Visa Product and Service Rules
	2021 Payment Facilitator and Marketplace Risk Guide

MASTERCARD

Pre-Operation Choke Point	2010 Mastercard Rules
2013-2017	2014 Revised Standards for the MasterCard Registration Program
	2015 Revised Standards for the Business Risk Assessment and Mitigation (BRAM) Program
Post-FOSTA/SESTA	2019 Security Rules and Procedures: Merchant Edition
	2020 Security Rules and Procedures: Merchant Edition

PAYPAL

Pre-Operation Choke Point	2009 PayPal User Agreement
2013-2017	2015 PayPal Acceptable Use Policy
	2016 PayPal User Agreement
Post-FOSTA/SESTA	2018 PayPal Acceptable Use Policy
	2023 PayPal Help Center – Personal Account

The analysis of published corporate policies is supplemented with an analysis of non-policy corporate decisions in the form of journalistic anecdotal incidents of mistreatment of sex workers by the four financial service providers and public announcements made by the companies in regard to changes of policy.

The third section of the analysis will investigate the extent to which the regulation of sex work through US financial institutions impacts international sex work industries which rely on US-based financial corporations. The concentration of the global financial market in the United States and the supremacy of US-based financial service providers, especially PayPal, Visa and, Mastercard, has led to the assertion that US companies are able to influence and regulate international markets and set standards outside of the jurisdiction of the United States. This will be tested through case study of the experiences of sex workers on the adult entertainment website Pornhub following the suspension of services by PayPal in 2019 and Visa and MasterCard in 2020.

Empirical Analysis

Section 1: The Regulation of Sex Work and Financial Services in the United States

The regulation of sex work has always been a contentious topic in the United States. Currently, prostitution is outlawed in all states except for the exceptions of ten counties, including both the sale and purchase of sex (NSWP, 2021). However, the production of pornography is protected under the First Amendment as a form of artistic expression (Congressional Research Service Report, 2009). “Entertainment” is therefore the category under which much sex work falls outside of traditional prostitution and creates the legal framework through which the sex industry operates.

Private regulation of sex work and the market of explicit material reflects the incentives and profit maximizing business models of corporations that react to pressure from the state to enforce regulations. Because the state possesses considerable influence over corporate actors through the legal and judicial systems, fines, and public denouncements, government policy can greatly impact the decision-making calculations of corporate actors. Corporations prioritize avoiding public criticism and condemnation, a concept referred to as “reputational risk”, resulting in policies aimed at protecting their reputation. Related to this brand preservation approach is that of mitigating financial risk. The gargantuan size and scope of the global financial market creates the inevitability of the presence of bad actors. Ranging from illegal, criminal markets to unreliable actors and taboo industries, financial systems must create frameworks to address potential threats to the stability and legitimacy of the economy.

The hybrid regulatory regime manifests in the US financial sector through two strategies. The first is the use of executive-level initiatives by state and federal regulators to limit risk in the financial sector. Guidelines developed by government organizations instruct private financial service providers how to assess risk and limit undesirable behavior, such as fraud and money laundering. The executive policy analyzed in this study is Operation Choke Point, which pressured banks and other financial service providers to increase surveillance of customers by identifying businesses and individuals who engage in unethical and/or unlawful behavior.

The second strategy examined in this study is the use of state legislation as a deterrence against undesirable behavior. Examples of this strategy include the prohibition of prostitution in almost every jurisdiction of the United States. Other examples include age restrictions on porn consumption, alcohol, tobacco, and recreational drugs (where not explicitly prohibited). The law examined in this study is the 2018 federal FOSTA/SESTA law which attempts to address the undesirable behavior of human trafficking by holding private companies accountable for their potential complacency in facilitating the crime.

Operation Choke Point: mitigating high-risk financial actors

Following the 2007-2008 global financial crisis, the Obama Administration turned the focus of its regulatory bodies towards addressing fraud in the financial system. The Financial Fraud Enforcement Task Force (FFETF) was created as a body within the Department of Justice (DOJ) in 2009 with the goal of regulating domestic financial service providers who had contributed to the financial crises, with specific focus on payday lending schemes which had become associated with predatory behavior, exploitation of customers, and participation in money laundering schemes (Pollack, 2023).

In 2013 the DOJ expanded the initiative of the FFETF to include a more forceful role for financial service providers and was enforced with the threat of civil penalties. Under the new protocol, later receiving the name Operation Choke Point, banks and other businesses would use the wide scope of influence in their role as payment intermediaries to act as “choke points” in the fraudulent activities. Corporations were instructed to cut ties with businesses deemed “not behaving in an ethical and lawful manner” and whose accounts showed “red flags indicative of fraud" (Bresnick, 2013). Financial service providers were incentivized to proactively terminate relationships with legal, fully licensed businesses which could potentially be labeled as "unsavory" or risk a disastrous lawsuit by the Department of Justice (Beebe, 2022).

Touted as necessary consumer protection regulations, the details of Operation Choke Point remained unclear and procedures relating to internal protocol and enforcement were opaque (FDIC, 2019). Critics of the policy pointed out that the regulatory pressure of Operation Choke Point resulted in the targeting of legally operating businesses which posed no substantial financial risk. Other criticism included that the policy which claimed to target fraud and money laundering used the categorization of "high risk industries" to pursue its goals. "High risk industries" included not only payday lenders but also firearms and ammunition sellers, tobacco sellers, gambling, and adult entertainment businesses. The ambiguous nature of Operation Choke Point's objectives, especially in its broad conceptualization of "risk", cemented its inevitable failure as a comprehensive, effective consumer protection policy. The dangers cited by critics of Operation Choke Point were realized as reports emerged of the bank accounts of sex workers being permanently closed despite their official good financial standing.

The grouping of exploitative industries such as payday lending and money laundering together with legal sex work illustrates the problematic nature of the premise of Operation Choke Point. In an effort to address illegal and harmful behavior in the financial sector, industries which involve legal but culturally "undesirable" behavior are unjustly targeted. What seemingly results is a system which enforces not only legal protections but also serves as a tool of moral policing.

FOSTA/SESTA: the conflation of legal sex work and illegal sexual abuse

With the rise of online sex work, there is an absence of legislation regulating the creation and distribution of explicit content on online spaces. At the same time, there are widespread efforts to combat human and sex trafficking, a significant portion of which includes online activities. Previous legislation to combat sex trafficking, such as the 2000 Federal Victims of Trafficking and Violence Protection Act (TVPA), which defined trafficking as ''the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act" (TVPA, 2000), were insufficient to address the growing influence and scope of the internet.

Advocacy organizations as well as the US government have cited online platforms such as Backpage, Tumblr, and Facebook as websites which facilitate the sex trafficking industry, serving as tools of traffickers to find and recruit potential victims, advertise services, and distribute illegal content (Chamberlain, 2019). Central to the debate over sex work is the conflation in public discourse of consensual sex work and coercive sexual exploitation. While the elimination of sex work based on moral grounds is less popular (although it remains in areas such as “obscenity” clauses), sex workers and the platforms upon which they depend are targeted for their supposed complicity in the sex trade and other criminal activities such as child pornography. This approach, however, has been critiqued as leading to harmful generalizations and platform regulations which compound the vulnerability of already marginalized groups (Cowen and Colosi, 2020).

The most significant anti-trafficking legislation in recent decades is the 2018 FOSTA-SESTA bill. The law came as a response to the public outcry at reports of rampant child sex trafficking rings operating on online social media platforms. Proponents of the law argued that online platforms were complicit in the illegal activities taking place under their noses. The goal of the law was to target the ease with which sex traffickers operate on public platforms by requiring stricter surveillance by the platforms themselves and implementing punitive measures for noncompliance.

Previously, under the Communications Decency Act of 1996 (CDA), internet platforms were immune from liability related to the content uploaded by their users in order to encourage growth of online platforms without the prohibitory burden of regulating all content. FOSTA/SESTA amended Section 230 of the CDA with the intention to hold platforms accountable for their role in sex trafficking. Supporters of this bill lauded it as an important step in preventing exploitation. Sex work advocates, however, were quick to criticize the bill as harmful to the welfare and wellbeing of sex workers. Most notably, FOSTA/SESTA does not distinguish between forced, coercive sex trafficking and voluntary, consensual sex work.

As opposed to the largely reputational risk of Operation Choke Point, the authority of which was primarily through its role in establishing industry best practices and reputational influence, FOSTA/SESTA introduced much more serious punitive measures. FOSTA/SESTA establishes noncompliance as both a civil and a criminal offense. At the threat of lawsuits, seizure, large fines, and even jail time, the response by websites and banks was swift, censoring themselves abruptly in order to avoid scrutiny. Backpage.com, formerly the largest adult content website, was seized within five days of the passage of FOSTA/SESTA (Gallay, 2021). Social media platforms Twitter and Tumblr banned all adult content from their platforms in 2018. Craigslist banned all personal advertisements and Instagram banned all content with "suggestive elements" in 2020 (Naftulin and López, 2021). The consequences for sex workers came equally swift, a process referred to by sex work researchers Katrin Tiidenberg and Emily van der Nagel as the "deplatformization of sex work" (Tiidenberg & van der Nagel, 2020). Accounts of sex workers were suddenly and inexplicably banned and content of users deleted without explanation of recourse.

Research conducted by Ariel Wolf and Danielle Blunt on the effects of FOSTA/SESTA on the lives sex workers shows an immediate and universally detrimental impact. Not only did websites and social media platforms removed sex workers, banks and financial service providers also canceled the accounts of sex workers who operated online and cut off relationships with entire online platforms (Reuters, 2019). A 2019 study of California-based sex workers finds common occurrences of bank account closures, declined payments, and difficulties opening bank accounts. The experiences of sex workers following FOSTA/SESTA illustrates the dual discrimination faced in maintaining their livelihoods: expulsions from both public online platforms and financial services.

The examples of Operation Choke Point and FOSTA/SESTA illustrate two approaches to mitigate what is determined to be bad behavior in the financial sector, through executive-level state regulators on one hand and legislation on the other. What emerges in the cases of Operation Choke Point and FOSTA/SESTA is the routine but misguided conflation of the legal, consensual sex work industry with different, illegal and harmful activities. In both examples, consensual sex work is either grouped with fraudulent and manipulative business practices or with sexual abuse and sex trafficking. This miscategorization is not only unfair, it also means that when policies are implemented to address these crimes, sex workers and their livelihoods are inevitably collateral damage.

Beyond state-level legislation and regulations to incentivize corporations to minimize undesirable behavior, private industry itself is mandated to create their own corporate policies that govern the operations of its business and its customers. Either in an attempt to maintain a positive reputation or avoid public and state scrutiny, private companies create extra-legal policies regulating the use of their products or services. In the following section I analyze the corporate policies of PayPal, Visa, and MasterCard and investigate the influence of government regulation of the financial industry on the extent of "beyond-compliance" regulation displayed by the private financial actors.

Section 2: Corporate Policy Regarding Sex Work between 2010-2023

The content of the following corporate policies will first be categorized based on what material/content is addressed. The categories include: 1) illegal sexual activities. 2) reputational concern. 3) general sexual behavior/content. Thereafter, for each period, the policies are examined to identify trends and track the evolution of specific wording and mechanisms that form the basis for the exclusion of sex worker and others related to sexually-oriented activities.

Period 1: Before Operation Choke Point

The policies in this section represent the approaches of three financial service providers regulating the acceptable use of their services and platforms with respect to sexually oriented activities. The policies during this period present categorizations of sexually-oriented activities through a combination of the three categories. In general, the restrictions included in the policies relating to adult content followed one of several avenues.

The first avenue is prohibitions of the purchase or sale of products that include illegal sexual characteristics such as child pornography, bestiality, non-consensual sexual behavior, and mutilation. The inclusion of these restrictions is obvious and fits with the general practice of corporations to prohibit the use of their products and services in association with illegal activities. Some or all of the restrictions listed appear in the policies of Visa, Mastercard, and PayPal. Visa prohibits its products or services from "being used for or associated with illegal activities" (Visa, 2010). Mastercard prohibits merchants and acquirers from submitting or accepting "any transaction that is illegal" (MasterCard, 2010). PayPal prohibits "Violate any law, statute, ordinance, or regulation" (PayPal, 2009).

The second category of restriction involves restrictions on the purchase or sale of products or services that include offensive or inappropriate content, but which are not identified as illegal. This category is left vague, without clear examples, and suggests that the judgment of which content or behavior qualifies as well as the enforcement of this policy is left to the discretion of the corporation. Examples of these policies include the Mastercard prohibition of "the sale of a product or service, including an image, which is patently offensive and lacks serious artistic value" or "any other material that the Corporation deems unacceptable to sell in connection with a Mark" (MasterCard, 2010). The PayPal policy prohibits "obscene materials or services" and stipulates that transactions involving “offensive items” are not covered PayPayl’s Buyer Protection. Visa’s corporate policy for this period did not include language regarding offensive or inappropriate products or services.

The next categorization is the regulation or prohibition of legal, sexually oriented activities or products. Examples of these policies include Visa and MasterCard’s categorization of creators of “adult entertainment sites” as high brand-risk merchants (Visa, 2011) and general “electronic commerce adult content merchants” (MasterCard, 2010) as “High-Risk Payment Facilitators”. PayPal’s policy also includes prohibitions of payments for “any sexually oriented [...] materials or services” and restricts the acceptance of payments from student accounts if a customer sells goods or services including “adult oriented materials” (PayPal, 2009). In this case, the term “sexually oriented” is broad and can be used to refer to any range of activities and products with varying levels of legality.

The last category is the prohibition of the purchase of sale of products or services which present a risk to the brand or reputation of the corporation. Examples of this language include the 2010 Visa International Operating Regulations which states that customers may not use any Visa product “In any manner that may bring the Visa-Owned Marks or Visa Inc. or its affiliates into disrepute” and prohibits any “activities or materials may infringe, dilute, denigrate, or impair the goodwill and/or reputation of the brand or Visa-owned marks”. Also included in this category is the 2010 Mastercard Rules which outlines a section entitled “Illegal or Brand-damaging Transactions” and prohibits the use of Mastercard products for “any Transaction that [...] in the sole discretion of the Corporation, may damage the goodwill of the Corporation or reflect negatively on the Marks” and reserves the right to remove account of any customer or user who “in the opinion of the Corporation, participates in any activity that may cause damage to the Corporation.” Notably, PayPal policies do not include any specific references to the protection of its brand or reputation.

Beyond the various ways the payment intermediaries categorize sexually-oriented activities the policies describe a broadly implemented monitoring system, Merchant Category Codes, which impact the ways industries are perceived in the banking system. Merchant Category Codes “classify merchants and businesses by the type of goods or services provided… to categorize, track and restrict transactions (Citibank, 2015). MasterCard outlines requirements for Acquirers, referring to financial institutions or merchant banks who accept MasterCard, to register merchants selling “adult content” with the corresponding MCC which labels these merchants as “High-Risk”. Other industries determined “High-Risk” according to MCCs include gambling merchants, non-face-to-face prescription drug merchants, and non–face-to-face tobacco product merchants. Notably, while MasterCard and Visa both utilize MCCs to categorize and implement monitoring protocols, Visa does not explicitly include adult content or industries in its list of high-risk merchants. While the 2011 Visa Global Brand Protection Programme Guide informally mentions “adult entertainment sites” as “high-risk”, it is not included in the official list of high-risk merchants. The 2010 Visa International Operating Regulations only mentions inbound and outbound telemarketing merchants and those involved in betting and speculation. However, it is possible that online sex work websites may fall into the category "Direct Marketing-Inbound Telemarketing Merchants”. The ambiguous policy regarding adult-oriented industries illustrates the difficulty during this period in determining whether sex workers will be able to access services through Visa. This ambiguity also leaves significant room for Visa to exclude certain customers on a case-by-case basis when deemed convenient.

The corporate policies in place during the period from 2010-2012 contain many of the characteristics criticized by sex worker advocates, especially restrictions on “inappropriate” products and services or specifically sexually oriented activities or products which are legal. Importantly, both types of restrictions are written in vague language which opens the potential for a wide range of interpretations. Also notable is the decision in the 2010 Mastercard Rules to combine illegal and legal products and services into one section: Illegal or Brand-damaging Transactions. This decision and the general language throughout this section illustrate a pattern within these corporate policies to discuss legal, sexually oriented material in the same sections and content as illegal material.

Period 2: After Operation Choke Point, Before FOSTA/SESTA

This period represents the period after the implementation of Operation Choke Point but before the adoption of FOSTA/SESTA, spanning from 2013-2017. In general, the corporate policies during this period remain largely similar to those of the previous period. The content of the policies include prohibitions on illegal activities such as bestiality and non-consensual sexual behavior, restrictions on generally offensive or inappropriate products or services, and restrictions on activities that potentially threaten brand reputation. In fact, much of the language remains exactly the same. For instance, the Visa policy includes the same statement prohibiting the use of Visa products "In any manner that may bring the Visa-Owned Marks or Visa Inc. or its affiliates into disrepute" (Visa, 2017). PayPal's user policy also maintained the prohibition of "certain sexually oriented materials or services", however the additional category of "obscene" was removed.

The most notable difference in the policies from 2013-2017 compared to the pre-Operation Choke Point period was in the policies of Mastercard. The 2014 MasterCard policy the expanded requirements by MasterCard in the identification of certain merchant categories. Previous policies included the identification of merchants by a Merchant Category Code and enforces the label of "High-Risk Payment Facilitator" to any financial institution who does business with merchants engaged in "Electronic commerce adult content" (MCC 5967 and 7841). The 2014 Revised Standards for the MasterCard Registration Program, however, expands on the previous identification standards to require any Acquirer (financial institution or merchant bank accepting MasterCard) in business with merchants involved in "non-face-to-face adult content and services Transactions" through a MasterCard payment service to monitor these merchants and identify all transactions from these merchants, requirements not applied for non-high-risk merchants in other industries. Finally, MasterCard (2014) requires all Payment Facilitators to pay an annual registration fee of 500 USD for each merchant involved in "non-face-to-face adult content and services", also not required for non-high-risk merchants.

In the case of Visa, most significant difference is the addition of a section which restricts the businesses which can sell Visa Pre-Paid Cards. The policy prohibits the sale of these cards by businesses "engaged primarily in the business of selling […] adult-themed items or other goods that may negatively impact the Visa Brand". While this rule is not as impactful as direct prohibition or restriction of sexually-oriented activities, it demonstrates the lengths Visa will go to in order to limit its association with adult industries.

Furthermore, the 2017 Visa Core Rules and Visa Product and Service Rules, provides specific instructions for what is labeled "High-Brand Risk Merchant Registration", which largely mirrors the policy of MasterCard towards merchants labeled as "high risk". While the policy of Visa in 2017 expands the list of high risk merchants, adding pharmacies, drug stores, and tobacco merchants, this updated policy still omits merchants of adult products and services. As a result, sex workers are not explicitly required to be identified in this category and their business partners (financial institutions and banks) are not compelled to register their accounts, monitor their transactions closely, or pay an annual fee. However, as in the previous period, the category of "Inbound Telemarketing Merchants" as a high-risk MCC leaves open the possibility that sex workers not registered under this code to face penalties and exclusion. Typically, inbound telemarketing merchants have referred to "Non-business-to-business audiotext/videotext and or digital content services accessed via telephone, fax, or over an open network, such as the Internet", for example horoscope readings, pay-per-call services, sports scores (Visa, 2010). While certain online sex work business potentially fall into this category, MasterCard policy (2014) distinguishes between this category and non-face-to-face adult content and services. This unclear language makes it difficult to determine with certainty how Visa intends to treat adult-related workers and creates room for a large range in interpretation.

Furthermore, Visa's policy during this period retains the vague language of the previous period and presents potential challenges to sex workers attempting to use these services, particularly the ban on the use of Visa products in "activities or materials [which] may infringe, dilute, denigrate, or impair the goodwill and/or reputation of the Visa brand or Visa-Owned Marks" (Visa, 2017).

Finally, the policy of PayPal regarding merchants of adult-related content identified by the Merchant Category Code is not provided in the policies. Instead, the policy prohibiting the use of PayPal services for any transactions involving "certain sexually oriented materials or services" remains unchanged from the pre-Operation Choke Point period. This policy is both more restrictive and less clear than the policies of Visa or MasterCard. While those banks provide instructions for doing business with "high-risk" merchants and , PayPal policy suggests a broad prohibition. The language used of "certain" materials or services is not clarified and remains too vague to provide guidance for specific cases. As a result, this policy suggests general intolerance for any adult-oriented activities.

The policies during this period retain the problematic language of the previous period, vague/unclear language, the grouping together of illegal and legal products/services, and the restrictions on legal, sexually oriented products or activities.

Period 3: After FOSTA/SESTA

The policies of the period following the FOSTA/SESTA law show clear differences from the previous period. First, while the April 2018 Visa Core Rules and Visa Product and Service

Rules does not specifically include adult-content merchants in the list of "high-risk" merchants, the 2021 Payment Facilitator and Marketplace Risk Guide alters the MCC of Inbound Teleservices Merchants to explicitly include merchants involved in "Digital Adult Content". This update illustrates the first explicit mention of adult-related businesses in the official list of high-risk merchants. The policies for the years 2019 and 2020 are not available, therefore it is unknown at which point this aspect was added to the corporate policy of Visa.

The 2018 and 2021 policies of Visa surrounding high risk merchants are more demanding than that of MasterCard. Most notably, the 2021 Visa Payment Facilitator and Marketplace Risk Guide requires that any Payment Facilitator (such as PayPal) register as a "High-Risk Payment Facilitator" if the business works with high-risk merchants. The Visa policies require Acquirers to register High Brand-Risk Merchants through according to Visa's Global Brand Protection Program (GBPP) and "monitor" high-brand risk merchants. The 2018 Visa policy outlines the monitoring procedure for high risk merchants, including the requirements by Acquirers for all merchants plus additional requirements for daily and monthly reviews of transactions, data collection, calculating typical transaction behavior for each high risk merchant category, and comparisons between typical, daily, and monthly transaction activity. Furthermore, any failure by Acquirers to properly register or monitor high brand-risk merchants may result in a fine of up to 50,000 USD per transaction (Visa, 2021). MasterCard requirements remained the same between Period 2 and Period 3, requiring that Acquirers identify and track the transactions of all merchants identified as "Non-face-to-face Adult Content and Services Merchants" (MasterCard, 2021).

While there is no mention of annual registration fees, registration and monitoring policies or MasterCard and Visa disincentivize outside institutions (Acquirers and Payment Facilitators) from entering into business relationships with online sex workers because of the strict regulations and risk of financial cost. While these policies do not prohibit adult-oriented merchants outright, the additional burdens imposed on financial institutions and businesses who are associated with them, the policies nevertheless incentivize businesses to refuse any connection.

The corporate policy of PayPal did not change between the 2012-2017 and Post-FOSTA/SESTA periods. The 2018 PayPal Acceptable Use Policy prohibits the use of PayPal for any transactions involving "items that are considered obscene" and "certain sexually oriented materials or services". The language remains vague and broad. What is meant by "obscene" or "certain" sexually oriented materials or services? The specific application of these terms seems to be at the discretion of PayPal, leaving much uncertainty. According to 2023 PayPal's User Agreement, failure to adhere to these restrictions can result in the suspension or termination of the account, withholding of account balances, legal action, and a fine of up to 2,500 USD per violation. The PayPal 2023 Acceptable Use Policy clarifies previous versions by stating that PayPal prohibits the use of its services for "Any adult content delivered digitally", which includes the majority of online sex work. The broad policy of PayPal results in a near total ban of sex work on PayPal services.

The analysis of the corporate policies of Visa, MasterCard, and PayPal from 2010-2023 shows large variation between the policies of the different corporations and a loose relationship between the state initiatives of Operation Choke Point and FOSTA/SESTA. Two mechanisms of exclusion emerge: First, Visa and MasterCard create regulatory frameworks that while not explicitly prohibiting sex work, impose extensive monitoring requirements for sex workers' businesses and affiliated financial service providers. In the cases of Visa and MasterCard, there exists a general trend from 2010 to 2023 of stricter regulation and monitoring of adult-related merchants through explicit references to these businesses and more extensive requirements for businesses connected with sex workers. These requirements, while intended to reduce fraud, create a double standard for sex workers wherein they must be in good financial standing with the payment intermediary in order to qualify as a merchant and are also subjected to more monitoring and higher standards than regular merchants, meanwhile the label of "high-risk" suggests that these businesses are unreliable and pose potential risk for the financial security of their partners. This label is placed on legally operating businesses preemptively, before any evidence of wrongdoing. The regulations and stigma attached to merchant banks who use these bank's services discourages them to enter into business with sex workers, even if technically allowed, raising the potential to limit sex worker's access to financial services.

The second mechanism is employed by PayPal and involves a broadly applicable prohibition on sexually-oriented products and services. This mechanism reflects the broader trend in other areas such as media coverage and legal frameworks which fails to meaningfully distinguish between non-consensual sex crimes and consensual, legal sex work. Not only does this unfairly discriminate against legally operating businesses, it also contributes to existing stigma against sex work that frames people who work in the industry as immoral and dangerous. Exacerbating this mechanism and contributing to the harm of the first mechanism is the employment of vague language with regard to adult-oriented work. The ambiguity employed by all three corporations creates general uncertainty regarding what work is and is not permitted. The consequences are significant and can leave sex workers vulnerable to fines and general financial insecurity when these corporations seemingly arbitrarily suspend sex workers.

Section 3: The International Impact of US Corporate Policy: A Case Study of Pornhub

This section examines the global influence of US-based payment intermediaries and the double-layered dependency experienced by sex workers which emerges through the centralization of both the financial services market and the online adult entertainment market. The dominance of a small number of powerful actors in these industries leaves sex workers both dependent on their services for their livelihoods and vulnerable to the often unpredictable decision-making of these companies towards sex work and adult content. The impact of this monopolistic landscape is examined through the case study of the 2019/2020 decision by PayPal, Visa, and MasterCard to cut ties with adult website Pornhub.

The rise of the internet inevitably facilitated the shift from physical to online shopping, changing the way customers and sellers interact in the economy. As of 2021, online purchases accounted for roughly 19% of global retail sales. Online shopping has also expanded the geographic reach of customers and sellers, with up to 57% of customers reporting shopping internationally (Coppola, 2023; Baluch, 2023). Businesses and buyers alike are no longer limited to local markets. One consequential outcome of this remarkable development is the centralization of global financial services. As businesses and customers moved online so too did financial service providers as they sought to capitalize on the growing online market. The global scale of e-commerce necessitated efficient and widely accepted payment methods, driving the centralization of the online payment market around a few large payment platform companies whose dominance is reinforced by the global monopoly enjoyed by the US financial sector as a whole.

The global reach of the American financial sector is remarkable in its scope. Mastercard and Visa are the world's largest credit and debit card networks. Visa boasts a network including more than 200 countries and territories and a total of 4.1 billion cards worldwide as of 2022 (Visa, 2023). As of 2020, Mastercard had 2.33 billion cards in circulation around the world (Elad, 2023)

. In Europe, Visa and Mastercard make up 90% of credit card purchases (Statista, 2023). Around the world, Visa is the most popular credit card provider in 123 countries and Mastercard in 22 countries (Wright, 2022). In the realm of digital payment platforms, PayPal's market share sits at 42% and is accepted as payment for more than 7.2 million websites, making it the most widely used digital payment platform worldwide (Sujay Vailshery, 2022; Flynn 2022). Beyond the global reach of these US-based payment intermediaries, the international market constitutes a crucial customer base for growth, especially in offsetting recent declines in domestic credit card use. While credit card usage is lower internationally compared to rates in the United States, Visa and Mastercard also offer popular debit card options internationally.

The expansion of e-commerce in the past decade has further accelerated the international penetration of Visa and MasterCard in the international market and brought about the supremacy of payment platforms like PayPal. As of March 2022, the total number of active PayPal accounts stood at over 426 million, boasting a market share in online payment processing of just over 50% (Dautovic, 2022). Both Visa and MasterCard sit in the top ten of global digital payment companies (Emergen Research, 2023). The international dominance of MasterCard, Visa, and PayPal in online e-commerce has forced merchants and customers around the world to join these payment networks. On the local and regional level, smaller alternative payment platforms are available, such as Tikkie in the Netherlands and As an internationally operating business, it is almost impossible to avoid accepting these popular payment platforms without excluding large, profitable populations of potential customers.

In the case of international platforms such as Pornhub, the dominance of a few large payment platforms means that sex workers, regardless of location, are dependent on the continued availability of these payment methods. This dependency is exacerbated by the online adult entertainment market which, similarly to the financial service market, is dominated by a small number of powerful actors.

Pornhub, founded in 2007, operates on a similar model to YouTube by allowing members to upload videos for people to view and comment on. Pornhub ranks as the second most popular adult website worldwide (12th overall most visited websites) averaging 2.7 billion visits per month (Chornyy, 2023). Despite bans in 25 countries including Indonesia and South Korea, Pornhub's content creators and viewers alike span the globe (numerous loopholes exist which can circumvent restrictions i.e. purchasing a VPN) (VPN Unlimited, 2023).

Traditionally, uploading videos and making money on Pornhub was relatively straightforward and allowed for diverse demographics of content creators, from professional pornography production companies to amateur individuals. Before 2021, content creation followed several different methods: ad revenue based on number of views, video sales, custom videos, tips from fans, and Pornhub Premium (Bell, 2020). Payments to creators are paid monthly based on the total of the revenue from the various income sources listed above. Independently operating sex workers (those not associated with a production company) can join Pornhub's "Model Program" which allows amateurs to upload and monetize content in exchange for a cut of the profit (20%) and extra processing fees (15%) (Pornhub, 2013).

In November of 2019 PayPal announced the decision to remove its services from the Pornhub platform. Payments to more than 100,000 amateur performers (Models) were suspended, leaving those affected without a way to make money from their content or retrieve funds from their accounts (Reuters, 2019). The specific reasoning behind the decision is unclear; however, people familiar with the adult entertainment industry have suggested that it was partly motivated by the 2018 FOSTA/SESTA (Manskar, 2019). Also notable in this decision by PayPal is the fact that Pornhub and its content creators were able to use the platform to process payments at all in the period before, considering the company's strict prohibition of transactions of "certain sexually-oriented materials or services". While it is not possible to know for certain what motivated this change in policy, the timing of the decision illustrates the unpredictable and uneven nature of PayPal's corporate policy and its enforcement. On one hand, PayPal's corporate policy forbids the use of its products and services for sexually-oriented products and has a well-documented history of discrimination against customers connected to the sex work industry, including the exclusion of individual sex workers from PayPal (Blue, 2015). On the other hand, the company allowed the use of PayPal for transactions on Pornhub beginning before the launch of the Models Program in 2008 and have not previously pursued a sweeping ban of sex workers (Asher Hamilton, 2019).

Furthermore, the timing of PayPal's decision calls into question the relationship between their corporate policies and government regulation of public platforms. If PayPal's the decision to sever ties with Pornhub was motivated by the passage of the 2018 FOSTA/SESTA law and the severe penalties associated with noncompliance, one would expect PayPal's policy change to have occurred directly following the law's adoption in April 2018. No significant legislation or executive-level policies related to platform governance or sex work occurred in the period leading up to November 2019. The specific roots of the policy change in November of 2019 are therefore impossible to know with any certainty.

Sex workers' livelihoods on Pornhub became yet more precarious in December of 2020. A December 4th New York Times opinion article by journalist Nicholas Kristof entitled "The Children of Pornhub" examined the problematic content moderation practices of Pornhub. He identified the routine inclusion of underaged participants and videos of nonconsensual sex, calling out what he claims to be the egregious practices of Pornhub in which they profit from their facilitation of child pornography and sex trafficking. The article concluded with three proposals to make Pornhub safer: 1) Allow only verified users to post videos. 2) Prohibit video downloads. 3) Increase content moderation (Jubilian, 2020). Pornhub denied the allegations of negligence but implemented all of the recommendations the day after Visa and Mastercard announced investigations into their financial ties with Pornhub on December 7th (Nelson, 2020). Despite the commitments made by Pornhub to reforms, Visa and MasterCard announced on December 10th that they would pull their services from the website, blocking customers from using their cards to makes purchases on Pornhub. The following week, Pornhub announced that it "suspended all previously uploaded content that was not created by content partners or members of the Model Program" (Cole, 2020). The results of this sweeping decision was immediate: total videos on the website fell from 13.5 million to 4.7 million.

The combination of decisions by Visa, MasterCard, and Pornhub meant that within a week, unverified users could no longer upload or monetize content, all unverified content was removed, and the those remaining verified users could no longer receive payments from their content. Notable in this situation is the sequence of events. While Pornhub denied allegations of the New York Times article, it was not until the powerful credit companies threatened action that Pornhub announced changes.

The damage to sex workers who rely on Pornhub for their livelihoods was felt most strongly in the United States, which hosts the largest portion of Pornhub performers. However, sex workers across the world were affected by both Visa and MasterCard's decisions and Pornhub's purge of content. A British performer told Mashable that her ranking on the website, an important metric to attract new viewers, fell as a result of Pornhub's purge of pirated videos and led to a decrease in views of her independently produced content. A Russia-based performer reported that she and other performers have seen declines in viewership of at least 50% since December. Another performer based in Australia reported that her profits had fallen to one-fifth of pre-purge levels (Hay, 2021). In an article by BBC News regarding Visa and MasterCard, Swedish performer Cara Vega cited that her profits from Pornhub fell to just $34 in December 2020, saying "We didn't have time to prepare for it or to set money aside to pay rent the next month or anything like that…Visa and MasterCard acted in a very irresponsible way, leaving people without income overnight" (Fabbri, 2021).

The case of Pornhub illuminates the dual impact of the influence of powerful credit card companies on online sex work. First, the removal of Visa and MasterCard services from the platform immediately cut off sex workers from important source of income and denied them the ability to monetize their work. Second, the decision by Pornhub suspension of unverified content from Pornhub following investigations by Visa and MasterCard shows the ability of powerful financial service providers to dictate the policies of privately owned media platforms.

Many, rightly, applaud efforts by large corporation to use their market influence to fight the spread of child pornography and sex trafficking. In the case of Pornhub, the prevalence of illegal content on the platform and the inadequate monitoring processes by the company are clear. However, the decisions by Visa and MasterCard show that these policies are not motivated primarily by concern for women and children. Beside the fact that the presence of illegal content had been widely known for years without actions by Visa and MasterCard, only verified performers and production companies can profit from content on Pornhub and both categories involve verification of ages and identities. The suspension of services by Visa and MasterCard to performers in the Pornhub Amateur Models Program therefore necessarily targets only legally operating businesses.

PayPal, Visa, and MasterCard's policy changes in light of Pornhub's model illuminate the impact of platform governance by private corporations: the undue harm to legally operating sex workers. Before December 2020 anyone with a Pornhub account could upload content to the platform, a model shared by other media platforms such as YouTube, Instagram, and Facebook. One result of this policy is that the illegal content condemned by the Kristof article was primarily uploaded by unverified users (Manskar, 2020). The move by Visa and MasterCard in December 2020 was meant to punish Pornhub and its parent company, MindGeek, for allowing the presence of this material on their website and the alleged facilitation of child pornography and trafficking. But as one of the most popular adult websites, the company can and did implement alternative payment methods following both the PayPal and Visa/MasterCard decisions, including cryptocurrencies, direct deposits, and alternative online wallets (Koning, 2019). As a result, Pornhub itself suffered very little in terms of long-term damages in either of the two cases.

The same could not be said for the hundreds of thousands of sex workers who lost their livelihoods. Beyond the suspension of widely used payment services, the dominance of Pornhub in the online adult entertainment industry means that there are few suitable alternative platforms. Even if migration to another platform is possible, many sex workers had built followings on Pornhub platform, followings that were damaged when payments stopped and would be sacrificed completely if sex workers changed platforms. PayPal, Visa, and MasterCard's policies show the dangers of regulation by financial service providers. Not only is there little evidence for the effectiveness of these policies in targeting bad actors, independent, legally operating sex workers are paying the price of Pornhub's failures while Pornhub suffers little damage. More generally, the case of Pornhub illustrates the common conflation between legal sex work and illegal sexual abuse and its inevitable harmful consequences when sex workers becoming collateral damage of purported anti-trafficking initiatives.

Conclusion

This paper investigates the structural barriers instituted by state and actors which impact the online sex workers' access to financial services. The direct influence of state actions on the development of private sector regulations regarding sex work was described in Section 1 through the examination of Operation Choke Point and FOSTA/SESTA. This section illuminated the clear conflation in legal and regulatory policy of sex work and other, nefarious activities. This conflation manifested in two ways: 1) illustrated by Operation Choke Point, the conflation of legal sex work and fraudulent financial behavior and 2) illustrated by FOSTA/SESTA, the conflation of legal, consensual sex work and illegal, consensual sex crimes. The aftermath of both initiatives show the tendency of sex work to become the collateral damage of well-intentioned policies targeting bad actors.

While both initiatives had clear implications for private financial actors, the study in Section 2 of the corporate policies of Visa, PayPal, and MasterCard did not discover a clear relationship between these two initiatives and changes in corporate policies. While the corporate policies during the period from 2010-2023 showed a general trend of becoming stricter and more exclusionary towards adult-related businesses, changes in policy were not clearly associated with changes in state-level regulatory or legal policy. This section did illuminate two specific mechanisms within corporate policy regarding the exclusion of sex workers. First, the policies of PayPal remained largely unchanged and illustrated direct targeting of sex work. This policy mechanism involves the broad prohibition of sexually-oriented material or services regardless of legality, illustrated by PayPal's ban on "certain sexually oriented materials or services" (PayPal, 2018). The second mechanism was exemplified by the policies of Visa and MasterCard is the indirect targeting of sex work. Direct targeting This strategy is exemplified in this paper by the corporate policy of PayPal. Indirect targeting involves a more subtle mechanism to drive sex workers from formal financial service platforms. Indirect targeting excludes sex workers through the incentive structure created to monitor and regulate merchants which disincentivizes businesses to work with merchants involved in explicit material.

Section 3, which investigated the international effects of the decisions by PayPal, Visa, and MasterCard to withdraw their services from the adult entertainment website Pornhub, found a clear impact on the livelihoods of sex workers around the world who operated on Pornhub. Accounts from sex workers following the suspension of financial services on the platform showed immediate declines in income and followings directly related to the policy changes. These changes in corporate policy reflects a similar trend to those from Section 1 and 2, namely the conflation of legal sex work with illegal sex crimes. Specifically, the decision by Pornhub to remove all unverified content and restrict uploads shows a clear strategy of broad penalties that, while targeting illegal behavior and content, result in harm to legally operating sex workers. Notably, the reaction of Pornhub to the threats and subsequent changes to suspend services by PayPal, Visa, and MasterCard closely mirror the reactions of these same payment platforms following changes in state-level regulations of sex work. This trend highlights the complex interactions which occur between public and private actors to produce sex work regulation.

The implications of this study in the broader context of sex work regulation, online platforms more generally, and the global financial industry. First, the results of this study suggest that online sex work does not seem to provide sex workers the opportunity for liberation that was initially proposed. The international nature and dominance of a few actors in both payment companies (PayPal, Visa, and MasterCard) and adult entertainment (Pornhub) mean that sex works have little choice but to cooperate with these platforms, subject to their exclusionary policies, or risk isolation from the major consumer base. This monopolistic system created a situation wherein the movement of sex workers to digital spaces and the formal financial sector in order to gain greater control of their work and avoid the exploitative intermediary brothels results in new dependencies, namely the dependence on large media platforms to reach customers and powerful payment intermediaries to facilitate formal payments. The result is a paradox in which online sex workers outside the United States both cannot operate successfully without these payment platforms but also cannot operate their legal businesses because of their corporate policies.

Second, the international influence of US-based financial service providers identified in this paper and the enforcement of their corporate policies beyond territorial barriers harms sex workers around the world and has profound implications for the influence of private actors and their ability to undermine democracy around the world. The policies of private financial service providers are not created or enforced through the authority of democratically elected bodies but instead through the extralegal policy of undemocratic, opaque corporate leadership that operates outside public accountability and scrutiny. For sex workers outside the United States the implications are twofold: because the dominant actors are US-based, the policies have no requirement to adapt to more lenient domestic laws and there is no possibility to influence corporate policy through their domestic political systems.

If access to the internet and to financial services are prerequisites for participating in public life and the formal economy, the power of private firms to exclude sex workers means that these private actors are determining which people can exist in public space and which groups are to be condemned to the shadows of the informal sector.

Limitations and Recommendations for Further Research

This study encountered several limitations. First, the stigmatization and frequent criminalization of sex work which contributes to its precarious position within the formal economy also hinder its accessibility to research. Much data which is necessary to develop a more comprehensive understanding of sex work is not publicly accessible. Furthermore, previous versions of the corporate policies of Visa, MasterCard, and PayPal which are no longer enforced are not made publicly available. This paper relied on the haphazard supply of policies on various websites. A more complete collection of corporate policies would allow for a more comprehensive analysis.

The experiences of online sex workers in accessing financial services remains a largely unstudied area of research and provides many opportunities for further research. Preliminary research should be expanded upon to include a larger and more diverse samples of banks, credit card networks, and payment intermediaries In particular, the forces impacting the policies and decision-making of small financial institutions and those based outside of the United States is not well understood. Empirical research should also explore the relationships between a more comprehensive set of actors, including political institutions, civil society, regulatory agencies, and corporate actors, in particular explaining divergence in regulatory frameworks and approaches in different political contexts. Lastly, the conceptual framework of the internet and financial services as essential utilities which are prerequisites to full participation in economic and social life is of clear consequence to this research and did not receive adequate attention in this paper. Further research should develop this framework to better situate the regulation of online sex work in its broader historical, social, and political context.

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